



**Representation by
The Express Industry Council of India ('EICI') on important
considerations in framing the GST legislation for the Express (Courier)
Industry**

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BACKGROUND

- ▶ Courier service (also known as Express Delivery Service ('EDS')) refers to the time bound door-to-door transportation and delivery of documents, gifts, parcels, spare parts, reports, samples, pharmaceuticals (temperature controlled logistics), high value fashion items, etc., with seamless integration of Information Technology (IT), providing tracking to the end consumer (hereinafter interchangeably used as 'courier service' or 'EDS').
- ▶ EDS is becoming one of the fastest growing industries in India. Furthermore, growth of the industry is being driven by the booming e-commerce market in the country. As per a survey by ASSOCHAM, India's e-commerce market, which stood at \$ 2.5 billion in 2009, reached \$ 8.5 billion in 2012 and rose 88% to touch \$ 16 billion in 2013 riding on booming online retail trends and defying slower economic growth and spiralling inflation. Recent reports issued by Goldman Sachs have projected the Indian ecommerce industry to rise to a gross merchandise value of USD 69 billion by 2020.
- ▶ With the above, the EDS industry size which is pegged at approximately INR 110,000 million (as of 2012)¹ (with the organised segment accounting for nearly 48% of the market) is expected to boom equally. The organised segment can be further sub-divided into two categories – air express and ground express. While, the EDS industry currently forms a small part of the entire logistics domain, it is nevertheless, amongst the fastest growing sectors within the logistics industry.
- ▶ The relevance of the express industry can be summarised as under:
 - (a) Enables users to reduce operating costs by at-least 10%.
 - (b) Offers employment opportunity to 1.2 million people in India, which is expected to grow to 1.7 million by 2014-15.
 - (c) Industry is estimated to contribute approximately Rs. 8,000 million (as of FY13) as service tax.
 - (d) Directly/ indirectly contributes to government revenues by way of service tax, profession tax, octroi, cess, surcharge, etc.
- ▶ We, the Express Industry Council of India ('EICI'), represent a cross section of members from the international and domestic courier/ express service companies in India. Our members include leading domestic and international courier service providers. EICI members contribute to 80% of the industry's turnover.
- ▶ The members of EICI are encouraged by the passage of the Constitutional Amendment Bill ('CAB') for Goods and Services Tax (GST) by the Lok Sabha, including the release of the draft GST processes on Registration, Payments, Refund and Returns; and hope for the early implementation of GST. A GST regime aligned with the overall objectives of this tax reform of removing cascading impact of taxes, unifying the Indian market, simplifying administration and compliances, and rationalizing the rates of taxation will no doubt prove to be a catalyst for general economic growth.

¹ Source: Study of Express Industry in India Report – May 2012 and CARE Research

- ▶ It is therefore essential that sector-specific issues are taken cognizance of and specific rules addressing unique features of the sector are formulated under GST regime. The nature of activities of courier industry can be bifurcated into 2, namely:
 - (i) Domestic couriers, which includes picking up and delivering within India (a significant and growing part of this market is the booming e-commerce sector); and
 - (ii) International courier, which includes movement of parcels/ shipments from either Inside India to outside India (ie import shipments) or vice versa (ie export shipments).
- ▶ The nature of the courier business is unique, given that the operations involve 2 contracting parties, a pick up destination and a delivery destination as well as a pick up hub/ warehouse and another for the last mile delivery.
- ▶ With regard to international operations, the complexities are further based on who is the contracting for the courier service and who is paying for the courier service. We have tabulated the key types of transactions that occur in a courier service:

Transaction	Movement of parcel	Payment of consideration
Export Prepaid (Export PP)	Shipment moves from a location in India to a location outside India	The Indian Consignor in India pays for the courier services
Import Prepaid (Import PP)	Shipment moves from a location outside India to a location in India	The foreign Consignor outside India pays for the courier service
Export Cash Collect (Export CC)	Shipment moves from a location in India to a location outside India	The foreign Consignee outside India pays for the courier services
Import Cash Collect (Import CC)	Shipment moves from a location outside India to a location in India	The Indian Consignee in India pays for the courier service

- ▶ Additionally, several international players have global networks and use these networks to make international deliveries, which may result in the Indian courier company providing only the last mile delivery in India (from Indian port to consignee destination in India) for import consignments and the first leg delivery (from consignor destination in India to the Indian port of export).
- ▶ With a view to streamline existing challenges, the need of the hour is to align the principles of taxation to the concept of destination based consumption tax, as well as internationally accepted taxation guidelines which are easy to comply and administer. Specifically, in the courier industry, to have a taxation regime that is ambiguous or is not easy to comply with could mean a continuing boost to the unorganised sector (which exists in this industry).
- ▶ It is therefore essential that sector-specific issues are taken cognizance of and specific rules addressing unique features of the sector are formulated under GST regime. We

have outlined, in this note, our key submissions covering, *inter alia*, the following aspects:

- (a) Need to have single registration for courier service sector
- (b) GST treatment of output services – parity to be created between all freight transportation services
- (c) Appropriate place of supply rules:
 - Aligned to international best practices
 - Ease in compliance and administration
- (d) Key factors related to credit mechanism
- (e) Other operational and procedural considerations, specifically in the context of seamless movement of goods within India.

EXECUTIVE SUMMARY

Key recommendations on the legal framework

1. Need for single registration

- ▶ Given the nature of courier services, it is imperative that a single pan India registration be allowed for the Express Delivery service industry for ease of compliance and administration (which has already been recommended by the Select Committee for the Banking Industry).
- ▶ GST charged to courier service providers would be a wash transaction as input taxes would be available as set off and therefore, a single registration and pooling of credit will not result in loss of state revenues.
- ▶ Further, single registration should invariably provide pooling of credits across states for set off against output tax liability of any state, at the option of the courier service provider to minimize credit blockages.

2. Proposed place of supply rules under GST

- ▶ Courier services should be classified under the larger category of freight/ good transportation services so that all exemptions, place of supply and other principles of taxation are aligned for all goods transportation services.
- ▶ Location to be clearly defined:
 - a) Location of service provider – Single registered premise
 - b) Location of the service receiver – the billing address in the records of the service provider as on the date of billing
- ▶ Similarly, the location of the service provider should also be determined in a simple manner and not be defined based on the performance of the service (as is currently envisaged).

3. International courier transactions

- ▶ Transactions with non-resident/ foreign entities engaged in business not to be considered as B2C transactions merely on account of such entities being unregistered.
- ▶ Zero rating of following international transportation services (including courier):
 - a) Transport of goods by air or land, where the transportation is from a place outside India to another place outside India; from a place in India to a place outside India; or from a place outside India to a place in India
 - b) If the supplier is involved in provision of local transportation services only -
Service to be zero-rated if supplied to an overseas customer on goods for export;
Service to be zero-rated if provided to an overseas customer in business capacity for the first leg of import
 - c) Incidental services for goods to be delivered to their place of consignment -
included supplies of loading, unloading, handling, insurance and other services
- ▶ Export status not to be incumbent upon receipt of consideration in foreign exchange.

4. Credit mechanism

- ▶ Need to have free transfer of credits, including a non-restrictive Input Service Distributor mechanism.

- ▶ Present credits of excise duties available on Air Turbine Fuel (petroleum) should continue under the GST framework. It is suggested that ATF be included in the GST net (by carving out ATF from the exclusion of petroleum).
- ▶ Transition provisions for set-off should be clearly provided for allowing full set-off against the proposed GST.
- ▶ No restriction of admissibility of credit (i.e. availability of credit in respect of all goods and services used in relation to courier business).
- ▶ Admissibility of credit should be based on invoices issued to the purchaser and GST network should be used only as an audit tool for determining eligibility to such credits.

5. Valuation

- ▶ To minimize tax costs, it is suggested that reimbursements be specifically excluded from the value of service.
- ▶ Alternatively, the conditions to be satisfied to qualify as 'pure agent' should be made less stringent.
- ▶ Penal charges/ liquidated damages on account of failure to adhere to contractual terms should be excluded from the value of taxable services.

6. Other relevant aspects

Bad Debts

- ▶ At present there is no explicit provision under the service tax and VAT legislations providing for *suo moto* credit/ refund of tax paid in respect of bad debts. This results into tax burden on the courier service providers despite the fact to the extent of bad debts, no economic benefit has accrued/ been derived by the courier companies. Therefore, it is recommended that supplier should be entitled to refund/ credit of the GST so paid or suo moto deduction from the GST liability.

Rationalized RNR

- ▶ Rate of tax applied on courier services should be aligned with the merit rate of tax, applicable to essential products and services.
- ▶ Additionally, there should be uniformity in tax rates applicable in different states in respect of courier services.

7. Recommendations on the model GST Law

- ▶ The definition of the term 'Agent' provided under model GST law is very wide which could cover any bailment arrangement including a courier service, warehousing service provided which is on P2P basis. Such instances should be excluded from the definition of the term 'Agent' to avoid ambiguity.
- ▶ Entry 5 of schedule 1 includes supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business without consideration. It is recommended that exclusions (such as warehouse to warehouse movements by express service providers) needs to be specifically carved out.

- ▶ Section 69/ 71 of the Model GST law suggests that even in case of any default on the part of the supplier, the conveyance/ vehicle of the transporter would be confiscated/ detained and also penalty could be imposed on the transporter. In this regard, it is submitted that transporters are only service providers to suppliers and as such should not be made liable for penal consequences for any default on the part of the supplier.
- ▶ The concept of related party transactions should be done away with in case of domestic transactions, given that the value addition of every supply would be subjected to applicable GST. Instead, the transaction value should be adopted.

Key recommendations on operational aspects

8. Movement of goods within India

Operational challenges under the current state VAT/ Entry Tax laws

- ▶ Multiplicity of compliances
- ▶ Inefficiencies on account of lack of adequate infrastructure/ automation at the check-posts
- ▶ Discretionary powers given to officers impacts easy/ fast transportation
- ▶ Lack of understanding of the EDS operations

Recommendation on the compliances/ procedure to be adopted in the GST regime

- ▶ Removal of physical check posts at borders.
- ▶ A trusted agent model for EDS operators with single PAN India transport license should be developed.
- ▶ A single Universal Declaration to be the only compliance to be undertaken by the transporter. The universal declaration to contain details of the consignor and consignee and goods being carried.

9. Movement of international cargo

Key concerns faced by the EDS Industry

- ▶ International deliveries are subjected to multiple verifications at check posts
- ▶ Inconsistency in the state level compliances
- ▶ Inefficiencies on account of lack of adequate infrastructure/ automation at the check-posts
- ▶ Discretionary powers given to officers impacts easy/ fast transportation
- ▶ Lack of understanding of the EDS operations

Recommendations

- ▶ Physical verification for International deliveries must be done only at custom stations. Verification of every consignment only leads to higher dwell time and duplication of processes.
- ▶ There needs to be a gateway for flow of information uploaded by the EDS Company between the GSTN and the ICEGATE terminal.
- ▶ There should be common registration of GST and Importer Exporter Code.

- ▶ There should be provision for self – declaration and correction of error
- ▶ There should be a mechanism for dispensation of routine examination for perishable goods and resorting to examination only on the basis of intelligence or information.

Key Recommendations on the report of the Joint Committee on business processes for GST

10. Report of Joint Committee on GST Registration

- ▶ It is recommended that free flow of credits (of CGST & IGST) be allowed between multiple registrations (in case single registration framework is not implemented), and there should be no restrictions on transfer of credits from one location to the other.
- ▶ No restrictions on availment of pre-registration credits.
- ▶ Granting single registration to express/ courier companies who in turn can charge IGST for courier services provided across States.
- ▶ Since CGST and IGST are central levies, single or centralised registration should be available for CGST and IGST respectively. .
- ▶ For recovery purpose also separate registration should be considered as separate entity.
- ▶ Registration condition for additional places of business should be left optional at the option of the assessee.
- ▶ Provision relating to blacklisting of dealer and reversal of ITC on valid purchases made from such dealers should be removed.
- ▶ Details of primary bank account should adequately serve the purpose of the government and need for details of all bank accounts would only be a redundant activity.
- ▶ Specific clarification should be issued to the effect that the tax payer would be centrally registered at the principal place of business and required to undertake compliances from such location for all offices in the state
- ▶ No cancellation of registration should be invoked due to failure to file returns or due to contravention of the provisions of law. If the same are to be implemented, the tax payer should be given 30 days to respond rather than the proposed 7 days.

11. Report of Joint Committee on Payment Processes

- ▶ Specific clarification that adjustment of duty payments can be made by the tax payer against eligible duty scrips and the said adjustment could be made against any of the registrations held by the tax payer on a pan India level. .

12. Report of Joint Committee on Return Processes

- ▶ Assessee should be given an option to file single monthly return in forms of GSTR-1, GSTR-2 and GSTR-3 wherein assessee should provide details of supply and inputs in respect of each State and Union Territory.
- ▶ Time frame for filing of return should be extended from the existing proposal of 10th and 15th of the next month.
- ▶ Date of filing of the return in GSTR-2 form should be clarified.
- ▶ Advances received by the dealer should not be subjected to tax under GST regime. Alternatively, GSTR-2 should be suitably amended to facilitate recipient of service to avail ITC on taxes paid on advances to suppliers.

- ▶ Assessee should be provided an option to include invoices on suo motu basis even after 10th day up to the date.
- ▶ In GSTR-2, assessee should be given an option for manually adding the credit/ debit notes issued by counter-party supplier, when such debit/ credit notes have not been uploaded by such supplier in his GSTR-1.
- ▶ Specific provisions should be incorporated allowing assessee to revise returns upto the date of filing of annual return.
- ▶ Clarification regarding situations in which only part credit is allowed, is required.
- ▶ Specific table should be provided in GSTR-6 to disclose debit/ credit notes uploaded by counter-party suppliers in GSTR-1.
- ▶ GSTR-6 should provide specific table for disclosure of modification/ amendment of previously distributed credits.
- ▶ Specific table should be provided in GSTR-6 to enable availing of credits on tax paid on reverse charge on import of services by ISD should be incorporated.
- ▶ Under GST law, only one mechanism i.e. reverse charge or TDS should be incorporated so as to reduce complexity and compliance burden of the assessee.
- ▶ The requirement of provision of reconciliation of GSTR-8 for each registration with P&L Account of the entity should be re considered.
- ▶ The requirement of disclosure of quantitative details of goods procured in GSTR-8 should be reconsidered.
- ▶ It is recommended that entire credit on capital goods should be made available for utilisation as soon as goods and related documents are received by the assessee.
- ▶ Buyer should be allowed credit on the invoice uploaded by the counter-party supplier, even if such invoice or concerned goods are received or accounted for at a later date.
- ▶ Recipient of goods should be allowed to avail ITC on receipt and uploaded invoice. Such practice being followed under present indirect tax regime should be continued under GST law.
- ▶ Under GST law, due date for payment should be defined.
- ▶ SGST credits should also be allowed to be transferred.
- ▶ Specific provisions in GST returns should be made for transitional credits of pre-GST taxes.
- ▶ Incorporation of Shipping bill against export invoices should not be made mandatory in the GSTR-1 return in the month of invoice

13. Report of Joint Committee on Refund Processes

- ▶ Excess payment made due to wrong mention of nature of tax or GSTIN should also be allowed to be carried forward
No time limit or special conditions should be prescribed for utilisation of excess tax paid against future tax liabilities, which has been suo moto re-credited to the tax payer.
- ▶ Refund of GST paid on capital goods should be allowed on export of services.
- ▶ Provision for having a single refund assessment for refund of CGST and IGST for pan-India operations should be enabled.
- ▶ Refund documents required in each state should be consistent/ same across all states.

PART A: Recommendations for the legal framework for taxing courier services under the proposed GST law

1. Need for single registration

Summary of recommendations:

- ▶ Courier services are provided seamlessly across geographies. Given the nature of courier service, it is not feasible to determine the actual place of performance of such courier service for each state of movement. The above will result in material ambiguity with regard to state wise compliances if the same are mandated.
- ▶ Given the pervasive nature of this service offering, the goods or services are procured and used across States. Cascading tax cost will also become an unintended reality as credits will be blocked given that the procurement and usage of services and goods are not necessarily physically aligned with the provision of services.
- ▶ Multiple registrations and the resultant multiple assessments/ investigations/ audits would result in a dramatic increase of tax compliance effort as also tax uncertainty and litigation.
- ▶ Given the above, the industry recommendations are as under:
 - i. Select committee has recommended a single registration for the Banking industry on account of the fact that Banking services are pan India services.
 - ii. Courier services have a wider coverage and a perpetually growing structure to cater to the evolving supply chains of their clients. For instance, with the boom in the e-commerce sector, the delivery of goods through cash-on-delivery and need to build e-fulfilment centres to cater to this growing demand has led to courier companies developing solutions, which will only further blur the state barriers. Further, the said sector caters to more than billions of deliveries on a daily basis. As recommended by the Select Committee for the Banking industry, it is imperative that a single pan India registration be allowed even for the courier service industry.
 - iii. GST charged to courier service providers would be a wash transaction as input taxes would be available as set off given that services of courier service companies are taxable and therefore, in any event, a single registration and pooling of credit will not result in loss of State revenues. Single registration across States would be easy to administer for the revenue authorities and easy to comply with for the courier companies.
 - iv. Single registrations should invariably provide pooling of credits across States for set off against output tax liability of any State, at the option of the courier service provider to minimize credit blockages.

1.1. Courier services are unique on account of the following reasons:

- (i) Courier services are provided seamlessly across geographical boundaries. Further, on a day to day basis, billions of deliveries are made across Indian subcontinent and internationally.

- (ii) Courier services are incessantly evolving to cater to new client businesses and their changing supply chains. The significant shift and evolution of courier services is incumbent on the changing economy and growing industries. A classic example of the same is the e-commerce sector which has changed the way and manner in which courier services are provided seamlessly in an even further increased time sensitive manner. In the future with growing need for just in time delivery, the advent of deliveries through drones appears to be just around the corner in the Indian market. Such developments would only mean that the courier services will be that much less constrained by state boundaries.
 - (iii) Actual performance of service and usage of services/ goods may not be entirely aligned to place of supply of service where the output tax accrues. Further, in the context of courier services, it is impossible to track state level performance of services.
- 1.2. In order to meet state level compliances, the courier service companies would not only need to determine the performance of service, the location of service receiver (which could be different from location of consignor and consignee), and also the location of the service provider. The above will result in material ambiguity with regard to state wise compliances if the same are mandated.
 - 1.3. Additionally, the cascading tax cost will also become an unintended reality as credit of goods/ services will be blocked given that the procurement and usage of goods and services will not necessarily be geographically aligned with the provision of services.
 - 1.4. It is pertinent to note that the Select committee has recommended a single registration for the Banking industry on account of the fact that Banking services are pan India services.
 - 1.5. Even Courier service is provided on a pan-India basis and in fact could have a greater reach than banking services. As recommended by the Select Committee for the Banking industry, it is imperative that a single pan India registration be allowed even for the courier industry.
 - 1.6. If such single pan India registration across States is not allowed, multiple registrations and the resultant multiple assessments/ investigations/ audits would result in a dramatic increase of tax compliance effort as also tax uncertainty and litigation. Furthermore, courier service companies would be saddled with host of compliances to be undertaken for each State-wise registration and this would require significant changes in the IT systems and procedures to ensure compliance.
 - 1.7. Having multiple State-wise registrations for each levy (i.e. CGST, SGST and IGST) could drastically diminish the synergy benefits that GST regime is otherwise set to bring. The envisaged advantages of consolidating warehouses and benefits of better resource utilisation as well as economies of scale may not be a reality, as the industry would be forced to take into account tax considerations such as minimum leakage of credits, etc.
 - 1.8. Additionally, it is pertinent to note that supplies by one business to another business (i.e. B2B supplies) are tax neutral i.e. wash transactions as credit of tax paid by one person (i.e. supplier) would be available as credit to another person (i.e. purchaser). A

significant portion of the organized sector deliveries constitute B2B supplies which under the GST would be wash transactions as the registered clients would be in a position to claim offset.

Further, output courier services are taxable and most supplies to courier companies would be B2B supplies. Therefore, GST charged to courier service providers would anyway be a wash transaction as courier companies can set off the input tax against output tax liability arising on provision of taxable courier service. **Therefore, single registration across States would not only be easy to administer for revenue authorities but also be easy to comply with by courier service providers.**

- 1.9. Separately, in case of Centralised procurement of goods and services at head office and provision of output services across States, it would not be uncommon for input credits to exceed the output tax liability in the State where the head office is located. In such cases where the input tax credit in a State far exceeds the output tax liability in the said State, it would result in significant credit blockages in individual States and working capital inefficiencies if collation of such credits and utilization thereof across States is not allowed.
- 1.10. **Therefore, it is imminent that to minimize credit blockages and working capital inefficiencies under GST regime, collation of credits across States be allowed for utilization against output tax liability in States where such tax liability arises/ exists as per Place of Supply Rules (discussed below), at the option of the courier service provider.**
- 1.11. **In light of above, as for the banking industry, it is imperative that a single pan-India GST registration is allowed even for the courier industry (as against separate state-wise registrations) to reduce cascading, uncertainty and ease in compliance, under the GST regime.**

2. Proposed place of supply rules under GST

Summary of recommendations:

- ▶ Courier services should be classified under the larger category of freight transportation services/ transportation of goods services so that all exemptions, place of supply and other principles of taxation are aligned for all goods transportation services, as is done in most other countries.
- ▶ Place of supply rules – the proposal under the GST regime, to determine the place of supply for transportation of goods services based on the location of service recipient for B2B transactions and location of handing over of the goods for B2C transactions, is a clear principle which will reduce cascading of taxes.
- ▶ For courier industry the location of the service provider/ service receiver needs to be clearly determined as:
 - a) Location of service provider – Single registered premise
 - b) Location of the service receiver – the billing address in the records of the service provider as on the date of billing

2.1 We understand that unlike under the present service tax regime, under the GST regime courier services are proposed to be classified under the larger umbrella of ‘freight transportation services’. Under the present service tax legislation, for instance, Section 66D of the Finance Act, 1994, provides exemptions/ zero rating to international inbound/ outbound transportation services through modes other than courier, leading to disparities.

2.2 Defining transportation of goods services / freight transportation services to include courier services is a welcome proposal and is in accordance with the international tax practices followed in various developed jurisdictions such as Singapore, United Kingdom, Malaysia, etc. (refer Annexure A).

2.3 Further, with regard to transportation of goods (including couriers), we understand that the place of supply of services is proposed to be determined basis the following:

Nature of supply	Place of supply to be determined basis
For B2B supplies (ie for supplies made to registered customers)	Location of service receiver
For B2C supplies (ie services provided to unregistered customers)	Location of handing over of goods

2.4 This is a clear principle which will avoid any cascading of taxes. For example, in case of domestic B2B courier transaction, where the service receiver is registered in Maharashtra and requires for a parcel to be delivered from Maharashtra to Tamil Nadu, the GST applicable would be local Maharashtra GST. The service receiver having his business in Maharashtra should be able to claim offset of the local Maharashtra GST paid.

- 2.5 Where in the same example if the B2B client has an establishment in Tamil Nadu ie is registered, local Tamil Nadu GST should apply which could be offset by the service recipient with the GST liability in Tamil Nadu.
- 2.6 Further, in relation to B2B transactions, it is imperative that the location of service recipient is flexible to be able to take full credit of the GST charged and there are no leakages/ blockages of credits for business and the law is clear on determining the location of service provider/service receiver to avoid any uncertainty and litigation.
- 2.7 **With this single key objective in mind, we propose that the location of the service receiver for courier services should be the billing address of the service receiver as existing in the records of the service provider on the date of billing.**
- 2.8 **Similarly, the location of the service provider should also be determined in a simple manner and not be defined based on the performance of the service (as is currently envisaged). Given the need to have a single pan-India registration under the GST for the courier industry, it is recommended that such centrally registered office should be considered as the location of the service provider. This would not only reduce the ambiguity in determining the place of supply and the applicable GST but would also be easy to administer.**

3. International courier transactions

Summary of recommendations:

- ▶ Transactions with non-resident/ foreign entities engaged in business not to be considered as B2C transactions merely on account of such entities being unregistered
- ▶ Zero rating of following international transportation services (including courier):
 - (a) Transport of goods by air or land, where the transportation is -
 - i. from a place outside India to another place outside India;
 - ii. from a place in India to a place outside India; or
 - iii. from a place outside India to a place in India
 - (b) If the supplier is involved in provision of local transportation services only:
 - i. Service to be zero-rated if supplied to an overseas customer on goods for export
 - ii. Service to be zero-rated if provided to an overseas customer in business capacity for the first leg of import
 - (c) Incidental services for goods to be delivered to their place of consignment - included supplies of loading, unloading, handling, insurance and other services
- ▶ Export status not to be incumbent upon receipt of consideration in foreign exchange

- 3.1 International courier transactions which involve transportation of a parcel from Indian to another country and vice versa into India are generally B2B transactions for the Indian courier service provider.
- 3.2 The courier companies carrying international parcels have global networks to provide services outside India. The Indian courier companies leverage on their foreign network entities to provide support for completing the outside India leg of a delivery.
- 3.3 The treatment of the international courier transactions under the present legislation has been a matter of concern for the industry as the taxation principles are not aligned with international practices.

Need to deem transactions with foreign entities engaged in business as B2B transaction (ie a transaction with a registered dealer)

- 3.4 As per the proposed place of supply rules, services provided to any foreign entity (whether in business or otherwise) would be considered as a B2C supply, as it is to a foreign unregistered party.

Such an interpretation/ law would result in all international transactions being considered as B2C, leading to all export transactions being treated as taxable in India and all imports being exempt. The same is not aligned with international practices. Determining the status of a transaction with a foreign entity as a B2C (merely on account of the foreign entity not being registered) would vitiate the taxation principles altogether.

Accordingly, our recommendation is that transactions which **foreign network entities** should not be considered as a B2C supply (by according it the status of being unregistered for the purposes of determining the place of supply of services).

- 3.5 For determining/ classifying transactions as B2B, international GST jurisdictions, for instance in the United Kingdom, define a transaction with a VAT registered entity (registered under the relevant VAT laws of its country) as being in “business”. A similar alignment is essential under the proposed GST to ensure that the appropriate classification is accorded to transactions with businesses whether with Indian or foreign clients, such that the entire basis for determining taxability/ place of supply is not vitiated.

Zero rating of international transactions

- 3.6 One of the key objectives of any taxation regime is to ensure that there is no double taxation of any supplies and that no taxes are exported out of the country thereby burdening the exports of goods/ services from such country with local taxes (making the local goods/ services uncompetitive in the international market).

Keeping in mind the above, most developed GST/ VAT legislations zero rate international freight transportation services (which includes courier) ie both export and import transactions, are zero rated. We have provided a summary of the relevant provisions under the GST laws applicable in Singapore, UK, Australia, Canada, Malaysia, in **Annexure A**. Further, most countries zero rate ancillary activities such as handling, loading, unloading, etc., provided in course of international freight transportation.

- 3.7 In the context of the Indian courier industry, the present law not only makes a clear demarcation for courier services from freight transportation services in its place of supply rules, but also in the exemptions available. For instance, the place of supply for goods transportation services (other than courier) is under Rule 10 of the Place of Provision of Service Rules, 2012 ('POPSR'), while for courier services it is Rule 4 of the POPSR. Similarly, the exemption available to goods transportation services under the Negative List under Section 66D(p) of the Finance Act, 1994, is for all modes of transportation other than courier (and goods transport agency services). This disparity needs to be aligned under the GST, where courier services should be classified under the larger umbrella of freight transportation services.
- 3.8 Specifically with regard to international transactions (both courier and otherwise), today the law is not aligned to the principles of non-export of taxes from the country and no double taxation of transportation services. For example, in the context international transportation services, where there are 3 key scopes of origin services (transportation and ancillary activities in the country where goods are picked up), international freight (port to port transportation) and destination services (transportation in the destination country including ancillary activities), there is ambiguity and ongoing litigation on following aspects:
- i. Applicable place of supply rule under the POPSR - Rule 10 (transportation of goods other than courier) while in certain cases depending on the construct of the contract and the contracting entities, it could be Rule 8 (if service provider and service receiver located in same country) or Rule 4 (performance of activity).

- ii. The existing Rule 8 of the POPSR is unreasonable – it provides that where a service provider and service receiver is located in India, irrespective of the nature of services provided or the location of consumption of such service, the place of supply is deemed to be in India. This has significant impact for the goods transportation sector as the contracting parties could differ depending on the trade terms negotiated between parties (such as FOB, Ex-works, CIF, etc). However, the same appears to impact the tax treatment of the same transportation services.

For example, in an import transaction which is negotiated under ex-works terms, the Indian consignee (who is buying the goods) appoints the logistics company for the import of goods from a location outside India to a destination in India. The entire transaction is typically negotiated for the end to end transport of the goods. The said terms are favourable to the Indian buyer as he is able to negotiate and have more control over the import terms as well as have the flexibility to appoint its own logistics provider who would typically be Indian. Appointing an Indian service provider would not only boost the Indian logistics industry but also result in reduced outgo of foreign exchange.

- iii. The exemption under Section 66D(p)(ii) for international freight is restrictive in its interpretation, and there are varied trade practices with regard to tax treatment of the scopes undertaken outside India². The said negative list entry reads as:

Quote

Services by way of transportation of goods-

(i) *by road except the services of-*

(A) *a goods transport agency; or*

(B) *a courier agency;*

(ii) *by an aircraft or a vessel from a place outside India upto the customs station of clearance in India; or*

.....

Unquote

- 3.9 In several instances, the interpretation being taken by the department is that the said exemption is available only to the extent of international freight and not to all the activities undertaken outside India up till the Indian port of clearance. Such an interpretation has led to international transactions from India being burdened with additional Indian taxes. The issues have been discussed in detail below.

Inbound international couriers – Double taxation on import of goods, in the form of Customs Duty and Service Tax

² While the exemption for ocean freight has been withdrawn wef 1 June 2016, for airfreight the exemption continues under the Mega Exemption Notification No 25/2012 - ST dated 20 June 2012

- 3.10** For an international inbound shipment carried through courier into India, freight and insurance is included for the purpose of determining taxable transaction value for Indian customs duty purposes ie all import shipments are assessed by customs on a CIF (Cost, Insurance and Freight) basis only.
- 3.11** Under the Customs Act, 1975, read with the Customs Valuation Rules, 2007, the 'transaction value' of goods imported into India is the 'price' for 'delivery at the time and place of importation'. For determining the same, Rule 2(1) of the Customs Valuation Rules prescribes that the following needs to be included:
- (a) Cost of transport of imported goods to the place of importation
 - (b) Loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
 - (c) The cost of insurance
- 3.12** Where the above is not ascertainable, the rules provide that the following needs to be added:
- ▶ FOB (Free on Board): Where values are declared on an FOB basis (or nothing declared), 20% towards Freight Cost and 1.125% towards insurance cost is added to the value declared, to arrive at the CIF cost.
 - ▶ C & F (Cost and Freight): Where values are declared on a C&F basis, 1.125% Insurance Cost is added to the C&F Value to arrive at the CIF Cost.
 - ▶ In addition to the above, for all import shipments, 1% of the CIF value is added towards Landing Charges. All assessments are done on the CIF Cost Plus 1% Landing Charges.

Practically, for determining the value of imports through courier, the above prescribed basis of valuation is adopted ie where actual costs are unascertainable.

- 3.13** Therefore, for all customs duty purposes, the value of the courier service in an inbound shipment is already included and subject to customs duty as a part of taxable transaction value (deemed where not determinable). By levying an additional service tax at 15% on the courier services provided in an inbound shipment, the courier costs are being subject to double taxation of the value of these services – one due to levy of customs duty on the imported goods (as a part of value of such goods) and second, by way of service tax on such services in the hands of the Indian courier service providers.

Outbound international couriers - Export of taxes on Indian courier services

- 3.14** As mentioned above, under the existing place of supply rules, even an outbound international courier transaction would be in India given that a part of such service is performed in India.
- 3.15** Treatment of international services including courier is further burdened in order to acquire a zero rating status:

- i. In case the service receiver and service provider are in India, the place of supply of such service is deemed to be in India (Rule 10 of POPSR). Developed jurisdictions such as the UK, EU, Singapore, etc, do not prescribe any such specific rule with a sweeping deeming fiction irrespective of the nature of service provided. Having such a rule only results in exportation of Indian taxes due to which logistics services provided by an Indian logistics provider (such as courier) will suffer an additional service tax of 14.5% making logistics for export of goods that much more costlier than in the international market. While one may argue that the Indian exporter will be entitled for refunds of taxes paid on exported goods, one cannot ignore the restrictive input tax credit principles presently existent in India as well as the cumbersome and litigative refund procedures.
- ii. Further, under the Indian tax laws such as service tax, the export of services is further burdened with the requirement of receipt of consideration in convertible foreign exchange in order to be treated as zero rated. For example, in a delivery duty paid contract, the goods transportation services would be treated as exempt since the place of supply is outside India (as destination of goods is outside India as per Rule 10 of POPSR) but not zero rated as the consideration to the transport service provider will be paid by the Indian exporter in Indian Rupees. This will not only result in cascading taxes but may also distort supply chains by encouraging traders to structure transactions to reduce tax costs.

3.16 Taxing international movement of goods will result in Indian goods and services being costlier, which would only dampen the Governments initiative in building India into an international logistics hub. We have enclosed a summary of relevant provisions where international freight transportation services are zero rated under international jurisdictions in Annexure A.

3.17 With a view to India becoming a logistics hub, it is imperative that the international transactions are not burdened with any taxes. For ensuring the same, the following needs to be implemented under the GST:

- I. **International movement of goods into India and from India should be zero rated. Following export related transactions also to be zero rated:**
- II. **If the supplier is involved in provision of local transportation services only:**
 - a) **Service to be zero-rated if supplied to an overseas customer on goods for export**
 - b) **Service to be zero-rated if provided to an overseas customer in business capacity for the first leg of import**

3.18 Incidental services for goods to be delivered to their place of consignment - included supplies of loading, unloading, handling, insurance and other services.

3.19 Export status not to be incumbent upon receipt of consideration in foreign exchange - In case of international transactions, the zero rating should not be incumbent.

4. Credit mechanism

Summary of recommendations:

The basic framework of allowing credits as exists under the present cenvat mechanism should continue – for example, eligibility of credits of services used for taxable services; proportionate credit reversals in case of taxable and exempted supplies; etc. Specifically, we propose the following recommendations:

i. Need to have free transfer of credits, including a non-restrictive Input Service Distributor mechanism

- ▶ In the event single registration is not allowed to the courier industry, given the seamless nature of the services provided by courier companies pan-India, there would not only be a burden of undertaking state level compliances but also significant leakage and blockages of credits, if the input tax credits are not transferable across states. In order to avoid such leakages and resultant cascading of taxes, a system of transfer of credits is essential under the GST.
- ▶ It is recommended that the free flow of credits be allowed between multiple registrations (in case single registration framework is not implemented), and there should be no restrictions on transfer of credits from one location to the other. For this the IGST backend clearing systems could be used for settling state payables/ receivables.
- ▶ *Input Service Distributor Mechanism* - The present provisions allowing inter-unit transferability of credit (i.e. transfer of credit from one location to other locations where output tax liability exists) under input service distributor ('ISD') mechanism. Under ISD mechanism, credit can be transferred across locations at the option of the assessee and only maximum limit of transfer based on turnover is prescribed to mitigate risk of leakage of revenue. The present proposal under Para 2.1(10) of the 'Report on Registration', defines a very restrictive ISD mechanism. The ISD mechanism should be one which allows free transfer of credits for all input services, inputs and capital goods.

ii. Present credits of excise duties available on Air Turbine Fuel (petroleum) should continue under the GST framework

- ▶ The exclusion of ATF from the GST net would have a significant adverse impact on the express industry. It is suggested that ATF be included in the GST net (by carving out ATF from the exclusion of petroleum).
- ▶ Notwithstanding the above, it is only imperative that the cascading impact on ATF is not further heightened under the GST regime due to non-availability of credit of the present 8% excise duties. In the event, ATF is not included in the purview of GST, the law should be enabled to continue to pass on the input tax credit of the present 8% excise duty.

iii. Transition provisions for set-off should be clearly provided as under:

- ▶ Transition of existing cenvat credit balance for set off against GST without any time limit for such set-off

- ▶ Transition of VAT credits on goods that are lying in stock at the time of transition into GST – courier companies incur costs not only on capital goods but also packing materials, etc., which are critical in the provision of services
- ▶ J&K GST balance should also be transitioned into the GST and be available for set-off against GST
- ▶ Where any amounts have been paid as pre-deposit for any matters under litigation, in case the matter is in favour of the industry, the same should be available for set-off against future liability

iv. No restriction of admissibility of credit (i.e. availability of credit in respect of all goods and services used in relation to courier business)

- ▶ Restrictions on admissibility of credit would result in cascading and increase the cost of logistics services at large. Further it would defeat the intent of achieving tax neutrality under GST for businesses. The intent of GST is to remove cascading impact of taxes. To ensure this, no restrictions should be imposed on credit availment in case of all goods and services that are used in business activities.
- ▶ Presently, there is significant on-going litigation in respect of admissibility of credits for various input services and capital goods (including motor vehicles used for delivery of parcels). Similarly, there are restrictions on the credit availability such as services used for the employee related benefits – given that such expenses are towards employees and often used to incentivise employees who are critical assets for a service business like courier services, credit in relation to such expenses should be permissible.

v. Availability of credit on invoices

- ▶ Under GST regime, the sales information uploaded by the assessee on the GST network and reconciled would form basis for admissibility of credit. There is a risk of the purchaser losing credit due to default/ error on the part of the seller or due to systemic issues resulting in higher tax pay out by the purchaser. Therefore, admissibility of credit should be based on invoices issued to the purchaser and GST network should be used only as an audit tool for determining eligibility to such credits.

4.1 Present Credit mechanism

- ▶ As discussed at Chapter 1, **courier service providers should be allowed to obtain single registration pan India and pool credit accruing in different States for set off against output tax liability arising in any State** for reasons stated therein.
- ▶ **However, if allowing courier service providers to obtain single registration pan India is not possible/ feasible, then it is imperative that the present Cenvat credit mechanism which mitigates cascading and ensures that there are minimal credit blockages be adopted under GST regime.**

Key aspects/ features of the present credit mechanism are outlined below:

- ▶ At present, credit is available of specified Central taxes paid in respect of all inputs, capital goods and input services used for the purpose of provision of taxable output service.

Even in accordance with the Guidelines on international VAT issued by the OECD, under value added tax systems, business firms get input credit for all taxes charged by the value chain and the same is adjusted against the output tax liability of the business entity. In the absence of such credit mechanism the very objective of achieving tax neutrality would fail. Further, value added tax systems are designed to tax final consumption and as such, only consumers who should actually bear the tax burden.

- ▶ There are provisions allowing inter-unit transferability of credit in case of input service distributor ie ISD. In terms of Rule 7 of Cenvat Credit Rules, 2004, input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to fulfilment of following conditions:

- (i) The credit distributed does not exceed the service tax paid thereon
- (ii) Credit of service tax attributable to service used units exclusively engaged in manufacture of exempted goods or provision of exempted services shall not be distributed
- (iii) Credit of service tax attributable to service used wholly by a unit shall be distributed only to that unit
- (iv) Credit of service tax attributable to service used by more than one unit shall be distributed pro rate on the basis of turnover of such to the turnover of all its units which are operational in the current year

From the above, it is evident that the transferability of credit between units is at the option of the assessee and the ceiling limit for such transfer is based on turnover. This ensures minimal credit leakages and tax costs and also mitigates risk of department losing revenues.

- ▶ Issue of accumulation of credits would also be faced by manufacturing companies (such as automobile industry), under GST regime, where due to manufacturing in one State, most credits accumulate in such State but due to sale occurring across States, output taxes are payable in multiple States. **To address this mismatch, transfer of credits under IGST model has been introduced in respect of goods. Similar provisions allowing transferability of credit from one State to another should also be allowed to service providers such as courier services (on optional basis) so that credit leakages are minimized by ensuring that credit is available where taxable supplies are made.**

Accordingly, similar provisions as prevalent in case of ISD mechanism presently should also be introduced under GST regime. Given that IGST clearing mechanism has already been proposed to mitigate risk of credit accumulations for manufacturing industry, even for service providers, credit of CGST and SGST accruing in one State should be allowed to be transferred to another State as IGST using IGST clearing mechanism at the backend. This inter-State transfer of credit using IGST clearing mechanism should be allowed to courier service providers on an optional basis. This would minimize the risk of excess credit accumulations in individual states and the resulting working capital inefficiencies.

- ▶ Separately, at present, Cenvat credit reversal is required to be undertaken by the assessee where the assessee is engaged in provision of exempted service.

In this regard, in terms of Rule 6(3) of the Cenvat Credit Rules, an option is provided to the assessee for adopting the method of reversal of credits relatable to provision of exempted services either on one-on-one basis or overall turnover basis.

Similar option for reversal of credit should also be adopted under GST regime. Accordingly, reversal of credit in individual State could either be computed as –

- (i) Directly related to provision of exempted services in such State
- (ii) Proportionate basis i.e. Amount of be reversed in individual States =

$$\frac{\text{Total credits across States} \times \text{Exempt turnover of individual State}}{\text{Total turnover of all States including zero rated supplies}}$$

- ▶ **Thus, under the GST regime, the aforesaid basic framework of the Cenvat credit regime should be retained.**

4.2 Exclusion of Air Turbine Fuel (ATF) from GST framework (credits on ATF to continue as status quo)

- ▶ The decision of deferring the levy of GST on petroleum (including ATF) would result in cascading effect for the express industry. As is evident, ATF constitutes substantial input for providing express delivery services through the mode of air transport. At present, ATF costs (inclusive of excise duty and VAT) ranges from Rs 75,000 to Rs 85,000 per/ KL which itself is much higher than the average international prices of ATF. It is estimated that cost of ATF typically constitutes 25% or more of the operator's operating cost in India. Currently, Cenvat credit of the excise component (excise duty of 8% is applicable under tariff entry no 27101920, read with Notification No 12/2012-CE, dated 17 March 2012) is available to the air carriers, while the VAT is a cost to air carriers (VAT ranges from 5% to 40 % across various states).
- ▶ It is submitted that presently also as a product ATF is recognized and treated differentially than petroleum even under the present Indirect tax laws. For instance, under the existing CENVAT Credit Rules, 2004, under the definition of 'inputs' (Rule 2(k)) while credit is not available on petrol and diesel, Cenvat credit is available of excise duty on ATF. The proposed GST law, ATF is being treated at par with petroleum and both are proposed to be outside of the GST (for a moratorium period).
- ▶ In the event ATF is kept outside the ambit of GST (even if under a moratorium), the cascading of taxes would continue given none of the taxes paid on ATF would be recoverable. Moreover, the CENVAT credit benefit of the excise component which is currently available would also be lost, thereby, increasing the cascading impact. Today, the Indian logistics' expenditure as a percentage of GDP is close to 13% versus 7%-8% in developed countries, which is an indicator of efficiency³. Any further

³ Source: Knight Frank, Industry, Motilal Oswal Sectoral Report on Logistics , March 2015

cascading such as the above cost would get embedded in the cost of service charges and would result in inflationary repercussions.

- ▶ It is submitted that ATF be included within the purview of GST (and an exception be carved out for ATF from the exclusion of petroleum).
- ▶ Given the above, it is represented that ATF should continue to be included within the purview of GST and be carved out as an exception from the exclusion of petroleum. The same could be enabled under Section 17 of the Constitutional Amendment Bill (pertaining to amendment of entry number 84, List I of Union List) be amended to specifically exclude ATF.
- ▶ Notwithstanding the above, it is only imperative that the cascading impact on ATF is not further heightened under the GST regime due to non-availability of credit of the present 8% excise duties. In the event, ATF is not included in the purview of GST, the law should be enabled to continue to pass on the input tax credit of the present 8% excise duty.
- ▶ **The exclusion of ATF from the GST net would have a significant adverse impact on the express industry. It is suggested that ATF be included in the GST net (by carving out ATF from the exclusion of petroleum). Nonetheless, the present Cenvat credit of excise duty available on ATF, should continue under the GST regime, such that the cascading impact is not further heightened due to exclusion of ATF (ie petroleum) from the GST.**

4.3 Transitional provisions for set-off of credit

- ▶ At present, courier service provides, typically being service providers, discharge service tax which is a Central levy. Given the fact that courier services are not liable to State level levies, State level taxes such as VAT/CST/Entry Tax/Octroi charged on goods as also SAD portion of Customs duty (which is a Customs duty to countervail State VAT taxes) are not available to be set off against output taxes to service providers (such as courier companies).
- ▶ However, under GST regime, even a service provider such as courier service provides would pay both, Central as well as State taxes for provision of services. It is pertinent to note that as on the date of introduction of GST, there could be substantial amounts of input taxes i.e. VAT credit/ Cenvat credit lying unutilized pertaining to VAT/Entry Tax/CST/Octroi, excise duty paid on various goods and inventory lying in stock in relation to provision of courier services.
- ▶ Procurements made after the implementation of GST will materially be more advantageous as taxes charged on these procurements will be entirely eligible for a set off. In case transitional provisions allowing carry forward of existing input taxes such as VAT/ Cenvat credit pertaining to various goods are not introduced, it will mandate the industry to defer procurements. This will create material distortions and impact the economy. In light of this, every implementation of new regime replacing erstwhile regimes has adopted these transitional provisions. We have outlined below some of the instances where such transitional provisions were introduced.

- ▶ It may be noted that even at the time of transition from Sales tax regime to VAT regime, various State VAT legislations (such as Maharashtra, Gujarat, Orissa) allowed carry forward and set off of input credit in respect of purchase of goods made during Sales tax regime and lying in stock (as on the date of implementation of State VAT legislation) against output VAT liability.
- ▶ Further, in Malaysia, transitional provisions allowing refund of taxes paid on purchase of goods made prior to implementation of GST regime and lying in stock were introduced. Additionally, it is pertinent to note that there would also be huge amount of Cenvat credit availed as per returns but lying unutilized as on the date of implementation of GST.
- ▶ **Considering that the goods lying in stock/not capitalised would continue to be used by the courier industry for provision of courier services, it is imperative that the credit pertaining to such goods lying unutilized be allowed to be set off against output liability (SGST/ CGST/IGST) under the GST regime. For instance, VAT/Entry Tax/Octroi credit in a particular State should be allowed to be carried forward for set off against output SGST liability in the said State. Similarly CST/SAD should be allowed to be carried forward for set off against output CGST/IGST liability.**
- ▶ **Further, balance of credit availed (but lying unutilized) as per returns in prior to GST regime should be allowed to be carried forward for set off against output GST liability.**
- ▶ If such transitional provisions for allowing carry forward of existing credits and set off are not introduced, huge amounts of credits would lapse resulting in undue high tax costs for the sector.
- ▶ **It is therefore, suggested that, even under GST regime proposed to be introduced in India, similar transitional provisions be introduced, allowing carry forward of existing credits for set off against output GST liability, without any time limit.**
- ▶ **Additionally, even credit of entry tax, paid should be allowed to be carried forward for set off against output GST liability, without any time limit.**

4.4 No restriction on admissibility of credit – ‘input services’, ‘inputs’ and ‘capital goods’ to be accorded a wide definition

- ▶ The VAT/GST is a multi-stage tax, applied at each stage in the supply chain for goods and services. To ensure that the tax applies in a neutral manner to different supply chains (and without giving rise to tax cascading), it is critical that each supplier in the chain be allowed to claim full and immediate credit for any taxes paid on its inputs acquired for use in making the supply.
- ▶ Courier services are provided on pan-India basis and the operators would be acquiring business inputs in potentially all of the States. The courier industry is both capital intensive and labour intensive. The courier service providers expend significant amounts in building its network to enable quick and seamless deliveries across India and outside. Restriction on availment of credit results in substantial credit blockages resulting in tax costs.

- ▶ The intent of GST is to remove cascading impact of taxes. To achieve this, it is imperative that there are no restrictions for availment of credit in respect of any taxes paid on any goods procured and services used in relation to business activities.
- ▶ **Therefore, it is suggested that credit of all taxes paid on all goods procured and services, directly or indirectly, used in relation to courier business should be allowed.**

4.5 Reimbursements for expenses incurred by employees

- ▶ We understand that under GST regime, information uploaded on GST Network could form basis for availment of credits wherein supplies are required to be classified as B2B and B2C. In respect of reimbursement given to employees for official expenses incurred by them on behalf of the company, the same could be treated as B2C supply in the GST Network (as employee would typically not be registered for GST purpose). Further, even the invoice could be in the name of the employee. In such cases, there is a high risk of losing credit even though such expense is incurred for business/ official purposes.
- ▶ It is relevant to note that in international legislations such as Australia and New Zealand, GST credit is available once the employee gives a tax invoice or receipt for the expense incurred for business purposes. Further, reimbursement could be by way of reimbursement to employee for expense incurred or as an advance.
- ▶ **It is suggested that similar provisions as above be introduced under GST regime for allowing credit of expenses incurred by employees for business purposes even if the invoice is not issued to the company but is issued to the employee.**

4.6 Credit should be available based on invoices and not merely basis GST network

- ▶ We understand that under the GST regime, it is proposed that information uploaded on the GST network and reconciled would form basis for admissibility of credit. That is to say, upon sales list being uploaded, purchases list would be electronically generated based on details of sales to the purchaser uploaded by multiple sellers. Therefore, there is a risk that the purchaser loses credit due to default/ error on the part of the sellers or due to systemic issues/ errors.
- ▶ This would result in undue higher tax payouts by the purchaser (as lesser credits being available) resulting in working capital inefficiencies and tax costs, on account of no fault on his part.
- ▶ **Therefore, it is suggested that admissibility to credits be based on invoices issued to the purchaser and GST network be used only as an audit tool for determining eligibility to credits.**

5. Valuation

Summary of recommendations:

i. Exclusion of reimbursement from value of service

- ▶ Courier service providers incur huge amount of operating/ other expenses in relation to their courier business, such as duties, concor charges, etc. Such expenses are and reimbursed by customers at actuals.
- ▶ Furthermore, authorities also seeking to levy tax on such reimbursements from the courier service providers. To minimize tax costs, it is suggested that reimbursements be specifically excluded from the value of service.
- ▶ Alternatively, the conditions to be satisfied to qualify as 'pure agent' should be made less stringent and as long as expense is incurred on behalf of another person and is reimbursed at actuals, exclusion should be available in respect of the said expense from the value of service.

ii. Penalties and liquidated damages to be excluded from value of taxable service

- ▶ Penal charges/ liquidated damages on account of failure to adhere to contractual terms, should be excluded from the value of taxable services

5.1 Specific exclusion in value of service in respect of reimbursement of expenses

- ▶ Courier service providers incur huge amount of operating/ other expenses in relation to their courier operations. Such expenses being in the nature of duties paid, concor charges, etc, that are paid in the course of clearance of goods, primarily being in the nature of statutory levies or specific costs that are incurred for regulated services.
- ▶ These expenses incurred by the courier companies are reimbursed by the customers at actuals (i.e. no mark-up on the expenses is recovered).
- ▶ At present, though the Service Tax Valuation Rules provide for specific exclusion of expenses incurred by 'pure agent' from the value of service, the conditions prescribed, in order to qualify for such exclusion, are very stringent and practically, arduous to comply with.
- ▶ Furthermore, while on one side, reimbursement is not excluded from the value of service and on the other hand, authorities also seek to deny credit to courier service providers in respect of the service tax charged on reimbursement of such costs.

It is, therefore, suggested that specific exclusion be made in the value of service in respect of such reimbursement/ expenses incurred by courier service providers.

Alternatively, it is suggested that the conditions required to be satisfied to qualify for exclusion from value of service or as 'pure agent' be rationalized so as to provide that as long as expense is incurred on behalf of another person and the same is

recovered at actuals, the value of expense/ reimbursement should be excluded from the value of service.

5.2 Exclusion from value of service in respect of penal charges such as those arising out of contractual obligations, late payment charges, etc

- ▶ At present, there exists specific exclusion in the Service Tax Valuation Rules in respect of interest on delayed payment of any consideration for provision of service, from the value of service. Accordingly, any interest on such delayed payment should not be liable to service tax.
- ▶ Additionally, in the Education Guide dated 20 June 2012 issued by the CBEC, it has been clarified that fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity.
- ▶ Despite this under negative list regime, even penal charges such as those arising out of contractual obligations/ breach of contract, late payment charges and cheque bounce charges are sought to be liable to service tax by the authorities contending that it represents an 'activity for consideration'.
- ▶ Please note that these penal charges such as those arising out of contractual obligations/ breach of contract, late payment charges and cheque bounce charges are not towards provision of 'service' per se and therefore, should be excluded from the value of service and not be liable to GST. Additionally, we have also discussed treatment of such penal charges as per international legislations.

Malaysia

- ▶ GST is not chargeable if the payment for liquidated damages is punitive in nature which is due to breach of contract for non-performance/non-compliance. Further, even late payment penalty on overdue accounts is not subject to GST.

New Zealand

- ▶ Late payment charges in the form of default or penalty interest is an exempt financial service.

Australia

- ▶ GST ruling GSTR 2000/19 issued by Australian Taxation Office suggests that interest on delayed payment could be in any form i.e. interest could be in the form of accruing interest charge, fixed percentage of amount due or a fixed amount.
- ▶ A charge for late payment penalty that is consideration for a financial supply is not an adjustment event i.e. GST is not payable.
- ▶ **In light of above, it is suggested that under GST regime, exclusions be carved out from value of service in respect of penal charges such as those arising out of contractual obligations, late payment charges and cheque bounce charges or specific clarification be issued for such charges to not be liable to GST.**

6. Other relevant aspects

Summary of recommendations:

i. Bad debts

- ▶ At present there is no explicit provision under the service tax and VAT legislations providing for *suo moto* credit/ refund of tax paid in respect of bad debts. This results into tax burden on the courier service providers despite the fact to the extent of bad debts, no economic benefit has accrued/ been derived by the courier companies.
- ▶ There is a risk of higher tax cost if bad debt relief is not provided by way of refund/ credit/ deduction from GST liability in cases where GST has been discharged on supply of goods or services but consideration has not been realised.
- ▶ Given the above, we recommend:
 - a) Established international practices allow credit/ refund of GST paid on transactions subsequently resulting in a bad debt.
 - b) Supplier should be entitled to refund/ credit of the GST so paid or suo moto deduction from the GST liability.
 - c) Further, even presently under service tax legislation, it may be noted that debtor is required to reverse the credit availed in respect of purchases in respect of which consideration is not paid within stipulated period. Therefore, allowing refund/ *suo-moto* credit to service provider in respect of tax paid on bad debts would not have adverse impact on revenue.

ii. Rationalised RNR

- ▶ High level of taxes would be crippling for the service sector, in particular for essential services such as courier.
- ▶ The Select Committee, in its report presented to the Rajya Sabha, has recommended that the standard rate of GST should be within 20 percent.
- ▶ Rate of tax applied on courier services should be aligned with the merit rate of tax, applicable to essential products and services.

Additionally, there should be uniformity in tax rates applicable in different states in respect of courier services. Failure in doing so would result in pricing issues, distortion of distribution channel and have the risk of causing significant anomalies in revenue collection.

6.1 Bad debts

- ▶ At present there is no explicit provision under the service tax and VAT legislations providing for suo moto credit/ refund of tax paid in respect of bad debts. This results into tax burden on the courier companies despite the fact to the extent of bad debts, no economic benefit has accrued/ been derived by courier service companies.

- ▶ International legislations suggests that bad debt relief in the form of refund of tax paid or reduction of net VAT/ GST liability should be available, when tax has already been discharged on invoicing basis. In this regard, we have outlined the treatment of bad debts in UK, Singapore and Canada legislations for your reference.

United Kingdom (UK)

- ▶ When a person has supplied goods or services for a consideration and has paid VAT on the supply and the whole or part of consideration has been written off in his accounts as bad debts and a period of 6 months have elapsed from date of supply, the person shall be entitled to a refund of VAT.

Further, the debtor is required to reverse the input tax credit taken in respect of the amount remaining unpaid within six months of the relevant date being, date of supply or if later, due date for payment.

Singapore

- ▶ Refund of tax paid earlier in respect of bad debts can be claimed if the following conditions are satisfied:
 - I. Goods and services have been supplied for a consideration in money and accounted for and supply has been paid on the supply
 - II. Whole/ part of the amount has been written off as bad debts in the books of accounts
 - III. 12 months have lapsed from the date of supply or debtor has become insolvent
 - IV. Reasonable steps have been taken to recover the debts
 - V. Value of supply is equal to or less than its open market value
 - VI. In case of goods, ownership has been transferred to customer

Canada

- ▶ Deduction from net GST liability is available upon amount receivable being written off as bad debts.
- ▶ In light of above, when a person has provided goods or services and paid GST thereon, in the event of any bad debts relating to such supply, it is suggested that refund/ credit of GST so paid should be available, so that tax so paid is not a cost to the business.
- ▶ **Where the supplier of goods or services has accounted for the supply and paid GST on such supply and the whole or any part of the consideration for the supply has been written off in his accounts as a bad debt, then the supplier should be entitled to refund/ credit of the GST so paid or suo moto deduction from the GST liability.**
- ▶ It may be noted that even at present in India, if the purchaser does not pay the service provider within three months, then the purchaser is required to reverse the credit so availed. As discussed, similar provisions exist in UK. Therefore, granting the service provider, refund/ credit of the GST so paid on bad debts portion or suo moto deduction from the GST liability will not result in revenue leakage.

6.2 Rationalized revenue neutral rate (RNR)

- ▶ Courier service has now become a basic and critical infrastructure services for businesses. These services currently attract a service tax rate of 14.5%. It is imperative that the tax burden on these services should not be any higher than the current burden.
- ▶ There have been reports that the RNR for GST could be as high as 27%. Such high level of taxes would be crippling for the services sector, in particular for the essential services such as courier and post.
- ▶ Our recommendation in this regard is as under:
 - I. The Select Committee, in its report presented to the Rajya Sabha, has recommended that the standard rate of GST should be within 20 percent. The Chief Economic Advisor in his report has recommended an RNR be in the range of 15% - 15.5%.
 - II. The rate of tax applied on courier services should be aligned with the merit rate of tax, applicable to essential products and services.
 - III. Additionally, as discussed above, there should be uniformity in tax rates applicable in different states in respect of courier services. Failure in doing so would result in pricing issues, distortion of distribution channel and have the risk of causing significant anomalies in revenue collection.

7. Recommendations on the model GST law

Summary of recommendations:

i. Definition of the term 'Agent'

- ▶ The definition provided under the model law is very wide and could potentially cover any bailment arrangement including a courier service provider, warehousing service provider etc
- ▶ It needs to be recognized/ clarified that courier service providers provide services to customers on a P2P basis and the relationship thereof is that of a bailor- bailee. Hence, such instances should be specifically excluded from the definition of 'agent' to avoid ambiguity

ii. Supplies without consideration

- ▶ Entry 5 of Schedule I includes supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business without consideration
- ▶ It is recommended that the scope of this entry needs to be clarified and specific exclusions (such as warehouse to warehouse movements by express service providers) needs to be specifically carved out.

iii. Penalty/ confiscation

- ▶ Section 69/ 71 of the Model GST law suggests that even in case of any default on the part of the supplier, the conveyance/ vehicle of the transporter would be confiscated/ detained and also penalty could be imposed on the transporter
- ▶ In this regard, it is submitted that transporters are only service providers to suppliers and as such should not be made liable for penal consequences for any default on the part of the supplier.

iv. GST Valuation Rules

- ▶ The concept of related party transactions should be done away with in case of domestic transactions, given that the value addition of every supply would be subjected to applicable GST. Instead, the transaction value should be adopted.

v. Input service Distributor

- ▶ The definition of ISD needs to be modified to substitute the words "input services" with "Input Tax Credit".

7.1 Scope of term 'Agent'

- ▶ The definition of agent has been given a wide ambit to mean a person who carries on the business of supply or receipt of goods and/or services on behalf of another, whether disclosed or not and includes a factor, broker, commission agent, arhatia, del credere agent, intermediary or an auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not;
- ▶ The definition provided under the model law is very wide and could potentially cover any bailment arrangement including a courier service provider, warehousing service provider etc
- ▶ Further, as per section 3(2A) of the Model GST Law, where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.
- ▶ Though the aforesaid provision under Model GST law seeks to deem P2A transactions to be P2P transaction, it does not specify the circumstances/ scenarios in which P2A transactions may be deemed to be P2P transactions.
- ▶ It needs to be recognized/ clarified that courier service providers provide services to customers on a P2P basis and the relationship thereof is that of a bailor- bailee.
- ▶ Further, if a if the relationship between the courier company and its customer is regarded as an 'principal - agenc' relationship, then every customer of the courier service provider will need to register at the premises of such a provider. This would lead to unnecessary complexities and would defeat the intention of the legislation as a courier service provider is not an agent of the customer.

In this regard, our recommendations are:

- ▶ Services provided by the courier service provider to customers on a P2P basis needs to be recognized as Bailment and the relationship thereof between the courier service provider and the customer is that of a bailor- bailee. Hence, such instances should be specifically excluded from the definition of 'agent' to avoid ambiguity
- ▶ Further, the specific circumstances where the services are received by an agent and are taxable under section 3(2A) needs to be specified.

7.2 Supplies without consideration

- ▶ Entry 5 of Schedule I includes supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business without consideration.
- ▶ The scope of this entry is very ambiguous and leads to uncertainty for express service providers, particularly in connection with warehouse to warehouse movements (spread across two different states), wherein the movement is only

for the purpose of consolidation and further transport. For example – under a hub and spoke model, if goods move from one warehouse (in State A) to another warehouse (in State B) of the courier service provider, for the purpose of delivery to the ultimate consumer. In terms of the aforementioned entry, even such movements could be construed as a supply, which does not appear to be the intention of the law.

- ▶ Given this, it is recommended that the scope of this entry needs to be clarified and specific exclusions (such as above) needs to be specifically carved out.

7.3 Penalty/ confiscation

- ▶ As per Section 69, (i) where any person transports any goods or stores such goods while they are in transit in violation of the provisions of this Act; or (ii) stores or keeps in stock goods or supplies goods which have not been accounted for in the books or records maintained by him in the manner required, all such goods and the conveyance used as a means of transport for carrying the said goods shall be liable to detention.
- ▶ Further, as per Section 71, any conveyance used as a means of transport for carriage of taxable goods without the cover of documents shall be liable to confiscation,
- ▶ This could lead to detention of conveyance/ other goods in case of default by one single supplier, thereby causing business disruption

In this regard, our recommendations are:

- ▶ It needs to be recognised that transporters (including express service providers)/ warehouse service providers are merely service providers and not suppliers of the goods. Hence, for any default/ wrong doing on the part of such supplier, the transporter/ warehouse service provider should not be penalized, which not only leads to business disruption but also loss of reputation and goodwill.
- ▶ Further, it is submitted that the onerous task of determining whether good are duty paid/ otherwise the supplier is compliant with the GST law should never be casted on the express service provider, as they are not the supplier of goods.

7.4 GST Valuation Rules

- ▶ In cases where supplier and recipient of supply are related the transaction value would be accepted, if is demonstrated that the relationship has not influenced the price.
- ▶ The entire concept of 'related person' which is more from Valuation perspective is not warranted under GST since it is
 - an indirect taxation
 - a value added tax
 - and a destination based tax.

- ▶ Unlike in case of transfer pricing and customs where two different taxing jurisdictions are involved and there could be a possibility of tax shift, under GST, the shift could be only between the States without depriving the Government of its revenue on an overall basis. It is pertinent to note that a transfer pricing concept in customs being a standalone tax is justified. But imposing this rigour to GST is unnecessary complication as the tax charged to a related party is likely to be a wash transaction. In view of this, such transfer pricing concepts have not been incorporated today under State VAT transactions as also International VAT jurisdictions.
- ▶ In this regard, our recommendation is that the concept of related party transactions for the provision of services should be done away with in case of domestic transactions, given that the value addition of every supply would be subjected to applicable GST. Instead, the transaction value should be adopted.

7.5 Input service distributor

- ▶ The concept of ISD has been introduced for the purpose of distribution of credit where the recipient of credit is located in different states.
- ▶ In this regard, it is pertinent to note that proposal for distribution of credit has been made only for 'input services', and not 'inputs' and 'capital goods'. This may lead to a situation wherein credit may accumulate at one location especially in case wherein location of payment of GST is distinct from location where goods are received. If such credit relating to goods is not allowed to be distributed then it may lead to substantial credit blockades.
- ▶ Therefore, it is recommended that the definition of ISD be modified to substitute the words "input services" with "Input Tax Credit" in order to also provide for distribution of credit of inputs and capital goods in same manner as distribution of input services.
- ▶ Further, the process for distribution of credit is fairly complex and stringent. Therefore, it is imperative that simple procedures are legislated for the purpose of distribution.

PART B: Recommendations on Operational aspects under the GST Regime

8. Part B 1 – Recommendations with regard to movement of goods within India

8.1 Background

- ▶ The concept of having inter-state check posts has emerged primarily with the objective of having a check on whether vehicles moving in and out of the state are compliant with the payment of road tax and other conditions such as weight being carried, no overloading, no carriage of prohibited goods, etc, prescribed by the Regional State Authorities by the respective State Transport Authorities.
- ▶ The check posts are being correspondingly used by the state VAT authorities not only to monitor the movement of goods into and outside the state but also with the objective of keeping a real time measure/ check and balance to ensure appropriate VAT compliances being done by the consignor/ transporter/ consignee. This leads to undue delay in movement of goods and completely defeating the Government's agenda of achieving ease of doing business.
- ▶ At a conceptual level, GST aims at creating a unified market, allowing 'seamless' flow of goods/ services across the country. Hence, given that at this stage, it is imperative that the need to have check-posts be re-considered and the same be streamlined to ensure a regime that does not lead to operational difficulties for the Trade.

8.2 Operational challenges under the current state VAT/ Entry Tax laws

Under the current regime, the major operational challenges faced by the EDS providers include:

8.2.1 Multiplicity of compliances

- ▶ Under the current regime, compliances related to inter-state movement of goods is solely governed by state specific VAT/ Entry Tax laws, which essentially translates into multiplicity and complete inconsistency in compliances. This makes it very difficult for the EDS providers to comply/ collate permits at the consolidating warehouse for each consignment that is to be delivered to a particular destination.
- ▶ Besides operational challenges due to multiplicity of laws, there is also a great amount of uncertainty with regard to the procedures prescribed. For instance, the state VAT/ Entry Tax laws are not equipped to address compliances related to movement of goods pursuant to e-commerce transactions. As a result of this, the commercial tax officers at the ground level, without appreciating the various nuances of the e-commerce business seek to impose compliances on the EDS providers which are impractical or at times even impossible to carry out.
- ▶ Besides, burdening the EDS companies with unreasonable compliances, the commercial tax officers in certain states have also sought to recover tax from EDS providers on the ground that the sale is concluded in the destination state. Such an approach is unconceivable and completely against the provisions of the Constitution of India and the Central Sales Tax Act, 1956. Such an approach is not only leading to litigations at various levels, but is also posing tremendous operational challenges,

which have forced some of our members to enforce a complete embargo in delivering e-commerce consignments in certain states.

- ▶ Further, given the fact that most of our members have a pan India operation base, they are required carry out required compliances for every state in India. As a direct corollary to this, the EDS companies spend significant time in carrying out such compliances and this also necessitates the requirement of maintain a robust team of manpower responsible for such compliances. This not only impacts the delivery times but also increases cost of services.

8.2.2 Inefficiencies on account of lack of adequate infrastructure/ automation at the check-posts

- ▶ Under the current regime, a vast majority of the States do not have an electronic mechanism of issuing way bills/ transit pass. As a result of this, the EDS companies in certain cases are forced to obtain these passes from the concerned commercial tax offices, which is a time consuming and completely inefficient process; leading to significant delay in completing deliveries. Further, in few states, the transit passes can be obtained only at the border check posts, by the driver of the vehicle, where the driver is harassed by asking several questions and back up documents, which may be very challenging for the driver to address at that point of time.
- ▶ Even in states where there exists a procedure of obtaining the way bills/ transit passes electronically, there is significant delay in obtaining these documents due to system being slow/ down on several occasions.
- ▶ Further adding to the distresses of the EDS companies is the process of manual checking of the permits at the check posts. Most of these check posts are not operational round the clock or drastically short staffed. This leads of queues extending to several kilometres and in certain exceptional situations, these queues take days to be cleared.

8.2.3 Discretionary powers given to officers impacts easy/ fast transportation

- ▶ As mentioned above, the current state specific laws are completely inadequate to address the needs of the current business regime. This has led to a situation where the commercial tax officers on ground, exercise their own discretion to determine whether compliances have been correctly/ adequately carried out. In most of these situations, the positions adopted by these officers are not within/ or are at times in distortion of the parameters prescribed under the law.
- ▶ Transport vehicles are stalled and not released for minor procedural infractions; and vehicles/ warehouses are seized completely for several days/ weeks without providing any opportunity to take corrective steps. For instance, where a vehicle is carrying multiple consignments, due to a minor problem with a single/ few consignments, the entire vehicle is seized and held up till a solution is arrived at, which is agreeable to the officers.
- ▶ Further, in certain cases, even after the vehicle has passed through the check posts, mobile squads stop the vehicles in transit purportedly for the purpose of verification for determining tax evasion. However, due to lack of any defined guidelines on the

functioning of these squads, these squads do not even register incidents or appropriately report the reasons for stopping the vehicle, the findings of the squad, etc.

- ▶ Such unfettered discretion in the hands of the commercial tax officers (including the mobile squads) causes a tremendous amount of uncertainty, fear and disruption to the overall business processes, increasing inefficiencies to the whole chain of activities.

8.2.4 Lack of understanding of the EDS operations

- ▶ One of the significant challenges in today's regime is a complete lack of understanding of the EDS operations by the commercial tax officers at the ground level. It needs to be recognised and appreciated that EDS companies are only engaged in delivering time sensitive consignments across the country on behalf of the seller/ consignor or consignee. The EDS companies are *per se* not involved in the sale transaction. The EDS provider is only responsible for transporting the goods from one place to another.
- ▶ However, the EDS company, being the interface between the seller and the buyer, is always the first in the chain to be subject to scrutiny by the commercial tax officers. As a result of this a *bonafide* EDS company is harassed for non-compliance on the part of the consignor/ consignee and is imposed with heavy penalty and other strict actions such as seizure of vehicles/ warehouse etc., for no fault on their part.

8.3 EICI's recommendation on the compliances/ procedure to be adopted in the GST regime

Summary of recommendations:

- ▶ Removal of physical check posts at borders. With GST subsuming the state entry taxes and other similar municipal levies as well as the implementation of the GSTN where transaction level data will be reported by sellers and buyers, the need to have physical state barriers should no longer exist.
- ▶ EDS operators should be granted an accredited status and accordingly be allowed to operate under a compliance regime, which is transparent and provides ease of doing business – this can be done through having a PAN India level transporters license that needs to be quoted on all documents of the transporter.
- ▶ A single Universal Declaration to be the only compliance to be undertaken by the transporter. The universal declaration to contain details of the consignor and consignee and goods being carried. This declaration to have a unique number allotted which would need to be uploaded on a real time basis. Hence, along with the transaction level details that will be uploaded through the GSTN network (by both the consignor and consignee), the universal declaration could serve as a three way match for reconciling every transaction reported onto the GSTN. This would help in having a seamless flow in the transport of goods, without unduly burdening the transporter for any non-payment/ non-compliance on part of the consignor/ consignee.

8.3.1 Removal of check post system

- ▶ The primary intention of having check – posts is largely to control smuggling and incorrect declaration of goods for tax evasion (such as in declaration of intra-state movements as inter-state, declaring dutiable goods as exempt, declaring sale transactions as stock transfer, incorrect classification for lower tax rates etc). However, for both these broad objectives, check – posts hold no relevance on account of the following:
 - i. It is highly improbable that a dealer intending to smuggle goods into a state, would take a route which has a check-posts. Even if a route having a check-post is used, goods can be cleared given the rent seeking realities that exist at check-posts today;
 - ii. Further, for cases of incorrect declaration, the EDS companies can in no manner be a party to the same, as the EDS providers only deliver the parcels which are picked up from consignor in a packed/ ready to deliver condition and then delivered as it is to the consignee. Therefore, no real purpose is served by making the EDS responsible for any mis-declaration of goods.
- ▶ Currently, given the sheer volumes of trucks, it is impossible to check more 3% of trucks in busy trade lanes, and more than 10% of trucks in the free/ less busy trade lanes.

- ▶ Further, in the GST regime, all transactions would need to be reported onto the GSTN (ie GST Network) by both the consignor and consignee, which would result in full disclosure of transactions at two levels. With the EDS companies declaring the consignments being carried, it would lead to a 3-way match being available to the department. Hence, no additional check post check should be necessary.
- ▶ Additionally, in the GST regime, some of the existing arbitrage in terms of inter-state versus intra-state transactions, such as exemptions, differential rates of tax, classification of goods, etc., should no longer exist, thereby reducing any incentive to incorrectly declare transactions.
- ▶ Therefore, given the manner in which check posts function today and with the advent of GST in future, having a check post system of verifying inter-state movement of goods is completely ineffective and irrelevant. Rather, the existing system should be replaced by a robust and formal risk managed system that streamlines the inspection regime by removing barriers at the border, but issues intelligence based risk management.
- ▶ It is recommended that any assessments undertaken by the Government should be aligned at an India level and based on the documentation that is generated as a part of every EDS providers operations under the GST – being the proposed Universal Declaration as well as the manifest and airway bill reference number that is generated for each consignment. For any mechanism introduced for assessment, the following aspects are critical:
 - a) Consistent parameters should be implemented across all states in India
 - b) The assessments should be based on pre-defined risk-based parameters that again adopted by all State Governments at an India level, such that discretion is minimised. Where all the defined parameters are not triggered, the vehicles should be allowed to move through a green channel mechanism with no stopping vehicles
 - c) Any assessment that is undertaken needs to be time bound
 - d) In the event of any significant mis-match between the Universal Declaration and the information submitted into the GSTN by the consignor/ consignee, the primary responsibility of reconciliation should be cast on the consignor (and then consignee), and not the EDS companies.

8.3.2 Developing a trusted agent model for EDS operators with single PAN India transport license

- ▶ The EDS companies should be granted an accredited status of ‘trusted agent’ wherein a pan India transport licence under the overall GST framework is granted. The transport license number granted to the EDS would be shown on all shipment control documents and every EDS company should be granted only one such license for pan India operations.
- ▶ This registration/ license granted under the GSTN should be delinked/ distinct from the state level GST registrations that may be obtained by the EDS Companies.
- ▶ The transport licence so granted under the GSTN would only be for the purpose of reporting the consignment details being carried by the transporter to the respective

commercial tax authorities in the states. Hence, there should not be requirement of related compliances such as filing of returns, etc. – the details of the consignments (either sales, stock transfer, etc) would be disclosed by both the consignor and consignees as a part of the compliances undertaken and reported on the GSTN. Therefore, the risk that a transaction/ movement would go unreported is low with the transactions level reporting proposed onto the GSTN.

- ▶ The licensing regime could be subject to the following conditions:
 1. The scope of EDS providers should be clearly defined in order to be eligible for the license;
 2. The licence should only be granted to a body corporate, having a proven track record of non-compliance below a certain threshold in the previous year (may be less than 5% total consignments carried);
 3. Should be granted to a body corporate having at least 30 goods carrier registered in its own name/ taken on lease;
 4. Before granting the transport license, the EDS companies may be directed to make a fixed amount of security deposit.

- ▶ The concept of ‘trusted agent model’ exists in some form even under the current regime in few states. For instance, in the state of West Bengal, all EDS companies engaged in delivering e-commerce consignments into the State are required to obtain a special registration with the office of the Commissioner of Commercial Tax, by virtue of which they are completely exempted from generating and verifying way bills for inward movement of the consignments. This kind of a mechanism has streamlined the entire process, by creating a transparent and easy system of compliances.

- ▶ The adoption of ‘trusted agent model’ would not only iron out the difficulties faced in the current regime, but could also prove beneficial to the revenue. Under this model, the EDS companies could act as conduits between the revenue and the trader in unveiling possible smuggling or other non - compliance.

8.3.3 Prescribe a pan-India ‘universal declaration’ format as the single compliance for transporters

- ▶ As mentioned in the preceding paragraphs, currently, inter-state movement of goods is governed by state specific VAT/ Entry Tax laws, which essentially translates into varied compliances for each of the states, which leads to several operational challenges (as detailed above). Given this, it is urged that in the GST regime this be simplified and the multiple declaration forms be replaced with one ‘universal declaration’ which shall be used by the EDS companies to declare movement of goods across states.

- ▶ For this purpose of the ‘universal declaration’, the following process is suggested:
 - i. The universal declaration should be tagged to the transport license issued under the GSTN (as mentioned above). For every journey, the EDS provider would be required to upload this declaration into the GSTN using its login credentials only once at the beginning of the journey.

- ii. The universal declaration shall contain all necessary details which are present in the various way bills today, which could be used by the commercial tax authorities to verify the consignments and carry out any investigation as may be required. It is suggested that universal declaration form would include details, namely (a) Consignor name (b) Consignor TIN (c) Consignee name (d) Consignee TIN (e) HSN code of goods (as informed by the supplier) (g) Value of the Goods (h) -Reference number
- iii. In addition to the basic requirements mentioned above, the form of declaration should also capture the following situations:
- ▶ For reverse logistics (return of goods) - the consignor and the consignee would be the same person;
 - ▶ For C2C transactions (unregistered consignor/ consignee) - TIN number would not be available. However, every other information remains same/ is available;
 - ▶ For good carried for exhibitions - the consignor and the consignee would be the same person;
 - ▶ For movement of document - mention 'not goods' in the HSN classification and 'no commercial value'
 - ▶ For import transactions - instead of invoice number, there needs to a reference to the Bill of Entry ('BoE') number and the GSTN Number of the importer (proposal to replace the existing Importer Exporter Code ('IEC') Number is discussed in the subsequent part of this paper). Further, for import transactions through courier, there should be flexibility to provide the GSTN number of the EDS company importing the shipments below threshold limit (say Rs 5 lakhs) with no requirement to provide the GST registration number of the importer. Similar, exception should also be provided for personal shipments, upto the value of Rs 5 lakhs.
 - ▶ For export transactions - there needs be a reference to the GST registration number of the exporter, shipping bill reference (though not mandatory) and exception should also be provided for export of personal shipments (upto value of Rs 5 lakhs).
- iv. Under this mechanism, the information pertaining to the consignments would be uploaded (in the universal declaration format) onto the GSTN on a real time basis ie prior to movement of the vehicles information.
- v. Every universal declaration shall have a unique reference number and can be verified by the commercial tax officers either by entering the details in the GSTN or by scanning the barcode generated in the printed version of the declaration.
- vi. The universal declaration filed by the EDS provider shall be valid for every door-to-door movement of good/ consignments and shall include transaction

done through agents or any other sub-contracted arrangement ie goods will move under the airway bill of the EDS provider itself.

- ▶ It should be noted that the concept of universal declaration is being suggested as a complete replacement of existing system of generating way bills/ declarations as per the state VAT/ Entry Tax laws. Upon filing of the Universal Declaration onto the GSTN, the vehicles carrying courier shipments should be allowed to move across states seamlessly without any further requirement of carrying documents other than such Universal Declaration and the manifest that gets generated by the courier companies as a part of their present operations. Therefore, there needs to be a complete overhaul of the existing system/ infrastructure for implementing this mechanism.

- ▶ A recommended draft format of the same is enclosed as Annexure B.

9. Part B 2 - Recommendations with regard to movement of international cargo

9.1 Background

- ▶ Globalization of business transactions, shift to just in time manufacturing and inventory control methods and, growing requirement of industries of all types to ship products quickly by air to distant customers are the key driving forces in the development of EDS.
- ▶ The air cargo industry, which is forecasted to grow at a compound annual growth rate (CAGR) of 4.1% over the next five years, incorporates an industrial supply chain, also comprising of EDS - a rather important and fast growing sector in the global economy.
- ▶ The core business of the EDS industry is the provision of value-added, door-to-door transport and deliveries of next-day or time-definite shipments⁴, including documents, parcels and merchandise goods. Statistically, International express traffic continues to grow faster than the average world air cargo growth rate, expanding 8.9% in 2012 and 5.8% in 2013. In 2011, the international EDS market share increased to 14.7% and then, continuing to outpace the growth of international freight and mail, its share increased to 16.2% in 2012 and 17.0% in 2013⁵.

We have outlined below, the operational aspects of the EDS industry, key issues being faced and our recommendation in this regard.

9.2 Salient features of the EDS Industry

- ▶ The main features of the EDS industry include:
 - i. Speed of Service - For many companies even more important than cost in determining their competitiveness
 - ii. Door-to-door Delivery including completion of all cross border regulatory requirements
 - iii. Tracking Systems
 - iv. Proof of Delivery
 - v. Security and Reliability and access to global connectivity to their customers.
- ▶ Express delivery services enable companies to maximize their efficiency and minimize their inventory costs. It enables small companies to utilize high quality, rapid delivery services that they could not provide themselves. This is particularly important in facilitating their participation in export markets. Express services are likely to be of particular benefit to companies in the developing countries by improving companies' handling of returns and complaints - for example, by allowing next-day delivery of replacement equipment to customers or quick turnaround of repairs. *f*

⁴ Time-definite shipments normally incur a transit time of between 2 and 3 days

⁵ World Air Cargo Forecast 2014-2015 - Boeing

- ▶ Additionally, EDS also help Small and Medium Enterprise ('SMEs') to serve global markets by enabling them to take advantage of the economies of scale, its large-scale transport operations generate, while at the same time providing the same high quality of service.

9.3 Broad stages of a typical express delivery



- ▶ The EDS industry simplifies and speeds the process of transporting goods. It organises collection from the customer, allows the sender access to information on the progress of shipments from pick-up to delivery, and provides proof of delivery. Where shipments cross international borders, the EDS industry handles customs clearance as well as the payment of duties and taxes as required. The movement of every international courier transaction is driven and tracked by the airway bill number that is generated for each consignment by a consignor to a particular consignee at a specific destination.
- ▶ The key stages of an express delivery are explained below by way of an example:
 - The EDS provider locally picks up the parcel from the consignor in India. The pick-up of parcel may be done directly by the EDS provider and in case where the EDS provider does not have a network, the pick-up of the parcel may be sub-contracted to a local courier service provider. The pick-up of parcels from the consignor is done by road.
 - Upon pick up of the parcel from the consignor, a unique consignment number (hereinafter referred to airway bill number) is issued by the EDS provider, for the purpose of tracking. Most international EDS providers use a bar coded system, which is then stickered onto the parcel.
 - All the goods collected locally from various consignors at a particular location are collated and consolidated at the local warehouse of the EDS service provider. The local warehouses are generally regional, catering to a number of pick-up locations/ pin codes.

- iv. At the local warehouse, segregation of the parcels from various pick-up points in the region is done based on the destination of the parcels. The carriage of the parcels from the consignor's location into the local warehouse is primarily done by road and in certain cases may involve rail transportation as well.
- v. As stated above, every parcel will have a unique Airway bill number which will be manifested as per movement of shipments ie International or Domestic Shipments. Based on such Airway bill, whether the parcel is meant for domestic or international can be determined as well as the destination location can also be determined.
- vi. From the local warehouse, the goods move to the country gateway for outbound shipment. Here, it is important to note that the goods may be transported from the local warehouse to the country gateway by trucks or trains. However, at any point in time each package is identifiable individually with the help of the Airway bill number/ Way bill, as the case may be.
- vii. In addition to the airway bill number, the movement into and out of the local warehouse may be for both domestic and international parcels, which is identifiable by the EDS provider typically based on a colour coding system which is distinct for domestic and international deliveries.
- viii. Upon arrival at the country gateway, the EDS providers assist in custom clearance activities and the goods are transported through airway. It may be possible, that a few goods are not allowed to be exported, which are subsequently retained by the EDS provider till the requisite discrepancies are rectified by the customer or else are returned to the consignor. Any customs duty applicable is assessed and paid to the Indian customs authorities. Please note that the EDS provider provides the details of all parcels moving out of India to the Indian Customs authorities basis the airway bill and the same is uploaded into the ICEGATE system.
- ix. In the entire process from pick-up to outbound delivery, the package can be tracked by the customer anytime with the help of the airway bill number.
- x. A similar process is followed in the reverse for a consignment which is inbound into India. The difference being that prior to any movement of goods within India, the imported consignment has already been subject to a thorough assessment (including a physical check) by the Indian customs authorities and the applicable customs duty has been duly assessed and collected by the Indian customs. Further, details of the imported goods are also upfront submitted by the EDS provider and are therefore available with the Indian customs authorities.
- xi. For instance, let's assume that a package is locally picked up from Bhadohi in Uttar Pradesh for delivery to U.K. Upon pick-up from the consignor, an airway bill number is generated and allotted to the picked up parcel. The package is then locally consolidated at Varanasi. As the package is for international delivery, it is earmarked separately with the help of the Airway bill number which will have details of the type of movement and the destination. Upon consolidation, the packages are sent to the country gateway,

in this instance being Delhi, for international delivery. Here it is important to note, that the goods may be checked in transit by the local check-post authorities and on crossing every other state during transit. Thereafter, all custom clearances and verification are re-done at the airport.

9.4 Key concerns faced by the EDS Industry

- ▶ As the name suggests – “express” delivery service providers, the key reason for customers to opt for deliveries through the courier mode is speed! It is for this speed and timeliness of delivery that customers are willing to pay a higher premium to courier companies as against transportation through freight mode.
- ▶ When compared to other modes of transportation such as through freight forwarders (air or ocean), the key differentiator is that a courier company seeks to deliver in less than half the time as promised by freight through air and a fraction of the time as compared to ocean freight. What is relevant to highlight is the fact that the infrastructure used by courier and air freight is identical in terms of the road infrastructure, the air crafts, etc., and similarly the domestic infrastructure used by courier and ocean transportation is also the same. Therefore, what is relevant to note is that the speed of courier is acquired through the specialised clearance processes that are notified by various Government and regulatory entities in countries. If there were any delay caused on account of this specialised speedy clearance process, the entire fundamentals of time bound delivery through courier would collapse.

Keeping the above in mind, we have separately highlighted the key issues being faced by the courier industry in India with regard to international parcel deliveries.

9.4.1 International deliveries are subjected to multiple verifications at check posts

- ▶ Any international delivery (being inbound or outbound) is thoroughly physically checked at the custom clearance stations at the country gateway. The need for re-checking at check-posts or by mobile squads is not only not relevant but also time-consuming, leading to disruption in the making the time bound deliveries and therefore, increase in the cost of providing such services in India.
- ▶ With the growing volume of international trade, the need for expeditious clearance of goods within the minimum possible time has been gaining importance. Though some improvements have been witnessed in the recent past, numerous bottlenecks to trade persist. As a result, the dwell time of cargo at Indian airports is significantly longer than that in other major airports in Asia. This compromises the competitiveness of Indian industry, reducing trade potential and, therefore, needs to be addressed as a priority. It is imperative to understand that international deliveries cannot be treated at par as the domestic deliveries.

9.4.2 Other issues

In addition to the above, international deliveries face similar set of issues as domestic deliveries such as:

- ▶ Inconsistency in the state level compliances

- ▶ Inefficiencies on account of lack of adequate infrastructure/ automation at the check-posts
- ▶ Discretionary powers given to officers' impacts easy/ fast transportation
- ▶ Lack of understanding of the EDS operations

These have already been discussed in detail at para 7.2 of the present representation.

As India looks at becoming a logistics hub globally, it is necessary to implement a regime under the GST that promotes international trade including the express industry, to achieve trade competitiveness. We submit that the following operations related recommendations be taken up on priority and incorporated in the proposed GST law in the context of international courier services.

9.5 Our Recommendations

- ▶ Physical verification for International deliveries must be done only at custom stations. Verification of every consignment only leads to higher dwell time and duplication of processes. Therefore, there is a need to provide for express gateways to international deliveries.
- ▶ There needs to be a gateway for flow of information from ICEGATE terminal into the GSTN, as the same is uploaded by the EDS Company. As soon as the consignment information/ details are uploaded in the GSTN (in case of export) or ICEGATE (in case of import), the information should be interlinked through a central server infrastructure into ICEGATE and GSTN, respectively
- ▶ There should be common registration of GST and the Importer Exporter Code should be done away with. On implementation of GST, having a separate IEC will not only lead to multiple registrations but also multiple assessments/ investigations/ audits would result in a dramatic increase of tax compliance effort as also tax uncertainty and litigation. It is recommended that only one registration be required on implementation of GST and the need to have a separate IEC may be done away with.
- ▶ There should be provision for self - declaration and correction of error
- ▶ There should be a mechanism for dispensation of routine examination for perishable goods and resorting to examination only on the basis of intelligence or information.

9.5.1 Physical verification for International deliveries must be done only at custom stations

- ▶ The system of having manual check posts to track movement and content of goods has become completely irrelevant given that the entry tax/ octroi is being merged into the GST as well as tax rate arbitrage would no longer exists under GST.

- ▶ Especially for international deliveries, there is an additional check since the packages pass through the customs check before outbound as well as inbound deliveries. Further, physical verification is carried out at the origin as well as the destination ie screening and scanning of goods are done twice in respect of every international delivery. Details relating to the consignments are already available and may be checked by the authorities at any point in time. Physical verification of every consignment in-transit only leads to higher dwell time and duplication of processes. Therefore, there is a need to provide for express gateways to international deliveries.
- ▶ Added to this is the fact that details of all transactions would be available to the Revenue Department in the GSTN through the transaction level information posted both by the consignor and consignee.
- ▶ Additionally, post-audit must be conducted instead of waiting for export documentation. This will lead to expeditious export clearance on a self-declaration basis.
- ▶ Further, many countries like Hong Kong and the US have implemented cargo pre-clearance to expedite cargo shipments to EDS companies. The government should consider extending cargo pre-clearance to 'trusted' logistics companies that fulfil certain criteria. This will enhance the efficiency of the logistics sector as a whole.

9.5.2 Common gateway between GSTN and ICEGATE

- ▶ There needs to be a gateway for flow of information uploaded by the EDS company between the GSTN and the ICEGATE terminal. As soon as the consignment information/ details are uploaded in the GSTN (in case of export) or ICEGATE (in case of import), the information should be interlinked through a central server infrastructure into ICEGATE and GSTN, respectively.
- ▶ Such linkage has also been proposed in the Joint committee report on Refund Processes for GST:

Quote

d) It is recommended that linkage between ICEGATE of Customs administration and the proposed GSTN of GST administration may be established so that online verification of the exports can be carried out. In any case such linkage has to be established to verify IGST paid at the time of import of goods / services.

Unquote

- ▶ The EDS companies should be not be required to submit additional documents/ details than those submitted with the customs authorities online at the time of customs clearance. It should be made optional to the EDS companies if it wishes to reload the same information that is already provided through ICEGATE system on the international deliveries again into the GSTN through the Universal Declaration.

9.5.3 Common registration of GST and Importer Exporter Code

- ▶ Courier services are provided seamlessly across geographical boundaries. Further, on a day to day basis, billions of deliveries are made across Indian subcontinent and internationally.
- ▶ On implementation of GST, having a separate IGST and IEC will not only lead to multiple registrations but also multiple assessments/ investigations/ audits would result in a dramatic increase of tax compliance effort as also tax uncertainty and litigation. Further, considering that a Common Gateway for flow of information is already proposed between GSTN and ICEGATE, having dual registration would be redundant.
- ▶ Therefore, it is recommended that only one registration be required on implementation of GST and the need to have a separate IEC may be done away with.

9.5.4 Provision for self-declaration and correction of errors

- ▶ The draft model GST law in Chapter XII (Offences & Penalties) – Section 56 to 67, inter alia prescribes for prosecution, confiscation and detention of goods, confiscation of vehicles, levy of penalty etc for transportation of goods from one place to another without prescribed documents/ or in violation of other provisions of the Act.
- ▶ Often extra or non-manifested shipments arrive which are not listed on the Manifest or some get left behind. This is a global problem for all international airlines, as a few extra shipments do escape being manifested at the origin or some shipments get left behind. If the contents of the shipment are not restricted or prohibited for import/ export, a formal declaration should be allowed to be filed directly with no specific approvals, delays and administrative penalties on EDS operators for such overages.

9.5.5 Privilege to perishable commodities

- ▶ Instructions should be issued to Customs field formations in respect of perishable cargo for dispensing with routine examination and resorting to examination only on the basis of intelligence or information, so as to ensure that perishable cargo movement in import/ export clearance process is quick.

**PART C: Recommendations on the four GST processes - Registration, Payments,
Returns and Refunds**

10. Key concerns - Report of Joint Committee on business process for GST on GST Registration ('Report on Registration')

Summary of recommendations:

- ▶ It is recommended that free flow of credits (of CGST & IGST) be allowed between multiple registrations (in case single registration framework is not implemented), and there should be no restrictions on transfer of credits from one location to the other. For this the IGST backend clearing systems could be used for settling state payables/receivables. Further, GST regime should also provide for distribution of credit of inputs and capital goods in same manner as distribution of input services under ISD mechanism.
- ▶ Under GST regime, there should not be any restrictions on availment of pre-registration credits. The provision in this regard should adequately allow credit of such taxes paid by way of deeming provisions (if required).
- ▶ Granting single registration to express/ courier companies who in turn can charge IGST for courier services provided across States. This would also result into ease of assessment and collection of taxes, and it would also reduce burden of compliances under multiple registrations.
- ▶ Since CGST and IGST are central levies, single or centralised registration should be available for CGST and IGST respectively. This would also ease the administrative efforts of the Central Government and compliance efforts.
- ▶ For recovery purpose also separate registration should be considered as separate entity. Alternatively, single registration window should be made available at the option of the assessee for registering all premises across locations under one registration number.
- ▶ Registration condition for additional places of business should be left optional at the option of the assessee. These conditions should not be stringent and should be business friendly.
- ▶ It is pertinent to note that under present indirect tax regime, there is no provision relating to blacklisting of dealer and reversal of ITC on valid purchases made from such dealers. Also, there are judicial precedents which suggest that where credit is allowed even when the seller vendor has not remitted tax post collection. Such provisions should also be excluded under GST regime, since these are likely to pose significant challenges both operational and commercial.
- ▶ Details of primary bank account should adequately serve the purpose of the government. Providing details of all bank accounts would only be a redundant activity which would increase compliance on part of the assessee and there we recommend that only details of primary bank account should be made mandatory in the registration form.
- ▶ Specific clarification should be issued to the effect that the tax payer would be centrally registered at the principal place of business and required to undertake

compliances from such location for all offices in the state (unless multiple registrations have been taken by the tax payer for each location in the state).

- ▶ No cancellation of registration should be invoked due to failure to file returns or due to contravention of the provisions of law. If the same are to be implemented, the tax payer should be given 30 days to respond rather than the proposed 7 days.

10.1 Proposal relating to Input Service Distributors ('ISD')

- ▶ As per proposal mentioned in Para 2.1(10) of the Report on Registration, concept of ISD may be continued under GST regime, for distribution of credit paid on input services used at multiple locations which are separately registered. Further, ISD would be required to obtain registration number for distribution of such credits.
- ▶ In this regard, it is pertinent to note that proposal of distribution of credit as per ISD mechanism has been made only for 'input services', and not 'inputs' and 'capital goods'. This may lead to a situation wherein credit may accumulate at one location especially in case wherein location of payment of GST is distinct from location where goods are received. If such credit relating to goods is not allowed to be distributed then it may lead to substantial credit blockades. Necessity of such mechanism for goods has also been acknowledged in in Para 2.1(10) of the report.
- ▶ Further, clarity regarding whether separate registration as ISD are required to be made for each State and Union Territory. If separate registration as ISD would be required in each State and Union Territory, it would lead to massive increase in compliance on part of the assessee.

Recommendation

- ▶ *It is recommended that free flow of credits (of CGST & IGST) be allowed between multiple registrations (in case single registration framework is not implemented), and there should be no restrictions on transfer of credits from one location to the other. For this the IGST backend clearing systems could be used for settling state payables/ receivables.*
- ▶ *Further, GST regime should also provide for distribution of credit of inputs and capital goods in same manner as distribution of input services under ISD mechanism.*

10.2 Pre-registration credits

- ▶ We understand from Para 2.1 of the Report on Registration that a proposed has been made to allow credit of Input Taxes Credit ('ITC') in respect of purchases made before date of registration, only in cases where assessee has applied for registration within 30 days from the assessee's liability for obtaining registration.
- ▶ Disallowing credit of taxed paid by assessee on procurements of goods and services prior to the date of obtaining registration would lead to cascading; thereby defeating the one of key objectives of GST.

- ▶ Further, it is pertinent to note that High Court⁶ and various other Tribunals have in the past held that credits should be allowed even for procurements made before date of registration irrespective of any delay in filing application for registration. Additionally, the report also makes a mention that provisions of non-availability of pre-registration credit may not stand the test of judicial scrutiny.

Recommendation

- ▶ *Given the above, under GST regime, there should not be any restrictions on availment of pre-registration credits. The provision in this regard should adequately allow credit of such taxes paid by way of deeming provisions (if required).*
- ▶ *Further, provisions relating to additional checks and balance (viz. physical verification of pre-registration invoices, online verification of such invoices) should also be devised so as to ensure that only credits of actual tax paid is availed by the assessee.*

10.3 Single or Centralised registration for the express industry

- ▶ It has been indicated in Para 2.2 of the Report on Registration that assessee would be required to obtain separate registration for each State and Union Territory even if the assessee is supplying goods or services from multiple locations under a single legal entity. In this regard, express/ courier service providers providing courier services across States would be required to take separate registration for each State and Union Territory.
- ▶ The express/ courier companies are not in conformation with boundaries of 29 states and 7 union territories. Logistics is a sector which has to operate seamlessly across states / union territories without having to worry about actual performance/ delivery of service in each state/ union territory. Today, the express industry caters to more than 16,000 pin codes across India and to maintain state level wise registration and activity (especially in states of Delhi-Haryana-Uttar Pradesh or Andhra Pradesh-Telangana) would only lead to cumbersome compliance and increased litigation on issues such as valuation, place of supply, etc.
- ▶ Further, it is a fact that adoption of GST would require overhaul of present accounting and IT system established by express/ courier companies. However, for identifying and capturing details of multi-state transactions and segregation of transactions so as to arrive at correct taxability and value of services, would be extremely cumbersome requiring a complete revamp of current IT framework.
- ▶ Further, multiple assessment/ investigations/ audits resulting from multiple registrations would result in dramatic increase of tax compliance efforts.

Recommendation

- ▶ *Above issues under multiple registrations can be resolved by granting single registration to express/ courier companies can charge IGST for courier services provided across States. This*

⁶ Karnataka High Court in case of mPortal India Wireless Solutions Pvt Ltd [2012 (27) STR 134 (Kar.)]

would also result into ease of assessment and collection of taxes, and it would also reduce burden of compliances under multiple registrations.

10.4 Centralised registration for CGST and IGST purpose

- ▶ As mentioned above, proposal has been made in the Report on Registration for separate registration for each State (even for CGST and IGST purposes). In this regard, we understand that assessee may need to obtain CGST and IGST registrations for each of the 29 States and 7 Union Territories.
- ▶ In this regard, it may be noted that CGST and IGST would be administered by the Central Government and hence limiting CGST and IGST registrations to specific state may be illogical. This would significantly hinder free flow of credit of CGST and IGST across States. Further, obtaining separate registration and periodic compliances in this respect would result into multi-fold increase in compliance.

Recommendation

- ▶ *Since CGST and IGST are central levies, single or centralised registration should be available for CGST and IGST respectively. This would also ease the administrative efforts of the Central Government and compliance efforts.*

10.5 Recovery of dues in case of separate registrations

- ▶ From perusal of the Report on Registration, we understand that certain restrictions have been proposed in Para 3.6 for multiple registrations within a State for business verticals of a taxable person. It has been mentioned that for recovery of dues, all business verticals will be considered as a single legal entity, even though separately registered.
- ▶ In this regard, it may be noted that transfer of ITC from one vertical to another vertical is restricted; because by virtue of separate registration, such vertical become separate entities. However, such deeming fiction is overlooked for recovery of dues.
- ▶ Hence, proposal relating to recovery of dues of business verticals of a single legal entity runs contrary to deeming fiction of separate legal entity created due to separate registrations.

Recommendation

- ▶ *Thus, for recovery purpose also separate registration should be considered as separate entity. Alternatively, single registration window should be made available at the option of the assessee for registering all premises across locations under one registration number.*

10.6 Proposal relating to additional places of business

- ▶ Draft form for GST registration provided in Annexure III of the Report on Registrations requires assessee to furnish details relating to additional places of business. As per Field 16 of the form, the assessee is required to furnish details of all places from where he conducts business.

- ▶ For effective provision of services to customers, courier companies may have several warehouses/ offices, pick up and consolidation centres as well.
- ▶ The current proposal for additional places of business may pose significant challenge as regards interpreting the particular place of business as additional place and therefore the need for registration. This would lead to substantial increase in compliance on part of courier companies.

Recommendation

- ▶ *Given this, the registration condition for additional places of business should be left optional at the option of the assessee. These conditions should not be stringent and should be business friendly.*

10.7 Proposal relating to blacklisting of dealers

- ▶ Suggestion has also been made in Annexure X of the Report on Registration, to include provisions relating to blacklisting of dealers under GST regime. In this regard, any dealer purchasing from such blacklisted dealer may not be eligible to avail ITC for such purchase. Further, in certain cases, ITC availed on certain invoices issued for purchases made from a dealer prior to blacklisting of such dealer would also need to be reversed.
- ▶ Default in payment of tax is principal condition for blacklisting of dealer, and buyer in this case would be required to reverse ITC. This scenario leads to recovery of tax from the buyer who is not in default. Further, when buyer has already paid consideration (including tax) to the blacklisted dealer, then reversal of ITC would be highly prejudicial to the buyer. Reversal of ITC during the period pre-blacklisting of such dealers would also lead to credit blockades and cascading effect.

Recommendation

- ▶ *It may be noted that courier companies procure services and goods from thousands of dealers. Maintaining track of blacklisting of such dealers and reversing pre-blacklisting ITC in respect of purchases made from them would be (i) mammoth task and (ii) additional cost by way of credit reversal despite no wrong doing by the courier companies.*
- ▶ *Further, it would extremely unfair to all genuine buyers if credit availed by them is denied on the ground that selling dealer is subsequently blacklisted. As long as the buyer has made a bonafide purchase and is in possession of all requisite documents supporting the claim of credit, credit should not be denied to such buyers.*
- ▶ *It is pertinent to note that under present indirect tax regime, there is no provision relating to blacklisting of dealer and reversal of ITC on valid purchases made from such dealers. Also, there are judicial precedents which suggest that where credit is allowed even when the seller vendor has not remitted tax post collection. Such provisions should also be excluded under GST regime, since these are likely to pose significant challenges both operational and commercial.*

10.8 Details of bank accounts maintained by assessee

- ▶ It has been suggested in Para 11.10 of the Report on Registration that the assessee would be required to furnish details relating to every bank account maintained by such assessee in Field 13 of the draft form for GST registration.
- ▶ In this regard, it is pertinent to note that it is a business reality that assessees may obtain additional banks accounts during a specific period. Updating the registration every time when a new account is taken would lead towards increase in compliance efforts.

Recommendation

- ▶ *Details of primary bank account should adequately serve the purpose of the government. Providing details of all bank accounts would only be a redundant activity which would increase compliance on part of the assessee and there we recommend that only details of primary bank account should be made mandatory in the registration form.*

10.9 Specific clarification on “Principal Place of Business” being the centralised registration in a state

- ▶ The registration process requires that the principal place of business be provided. Under para 11.9 of the Report on Registration defined the same as the location where the tax payer would make available all records to the tax authorities and the tax authorities would serve all communication/ notices to the tax payer at such address. Given that there is a requirement to provide each additional place of business, it is the understanding that the principal place of business would be like a centralised registration for the tax payer in a particular state and compliances with regard to the tax payer in that state would be undertaken from such “principal place of business”.

Recommendation

- ▶ *Specific clarification should be issued to the effect that the tax payer would be centrally registered at the principal place of business and required to undertake compliances from such location for all offices in the state (unless multiple registrations have been taken by the tax payer for each location in the state).*

10.10 Cancellation of registration

- ▶ The Report for Registration proposes a *suo moto* cancellation of the registration in situation such as (i) non-filing of a return for a specific period (like 6 months) (ii) contravention of provision of GST law The proposal is that the tax payer would be intimated and given 7 days to respond/ rectify from date of such intimation (Para 10.4).
- ▶ Under the existing service tax law, non-filing of a return invokes late fee/ penalty for failure to file returns, but not a cancellation of registration. Furthermore, technically, contravention of provisions of law can invite penalty, but not cancellation of the registration itself.

Recommendation

- ▶ *No cancellation of registration should be invoked due to failure to file returns or due to contravention of the provisions of law. If the same are to be implemented, the tax payer should be given 30 days to respond rather than the proposed 7 days.*

11. Key concerns - Report of Joint Committee on business process for GST on Payment Processes ('Report on Payment')

11.1 Clarity that payment of tax by debit to export scrips

- ▶ With regard to the proposed mode of payments (as provided under Paras 8 and 9 of the Report on Payment), specific clarification is sought that payment through scrips will be permissible.
- ▶ Para 9 contains a restriction for payment through adjustments/ scrips, but we understand that the same is for internal departmental payments/ settlement. The tax payer would be allowed to adjust tax payments against eligible duty scrips available.

Recommendation

- ▶ Specific clarification that adjustment of duty payments can be made by the tax payer against eligible duty scrips and the said adjustment could be made against any of the registrations held by the tax payer on a pan India level. .

12. Key concerns - Report of Joint Committee on business process for GST on Return Processes ('Report on Returns')

Summary of recommendations:

- ▶ Without prejudice to our representation for single registration, under GST regime, assessee should be given an option to file single monthly return in forms of GSTR-1, GSTR-2 and GSTR-3 wherein assessee should provide details of supply and inputs in respect of each State and Union Territory.
- ▶ Time frame for filing of return should be extended from the existing proposal of 10th and 15th of the next month.
- ▶ Date of filing of the return in GSTR-2 form should be clarified.
- ▶ Advances received by the dealer should not be subjected to tax under GST regime. Alternatively, GSTR-2 should be suitably amended to facilitate recipient of service to avail ITC on taxes paid on advances to suppliers.
- ▶ Assessee should be provided an option to include invoices on suo motu basis even after 10th day up to the date.
- ▶ In GSTR-2, assessee should be given an option for manually adding the credit/ debit notes issued by counter-party supplier, when such debit/ credit notes have not been uploaded by such supplier in his GSTR-1. Further, ability of the counter-parties to engage in relation to the amendments to the original invoicing arrangements such as the debit/ credit notes is also required to be incorporated. A unilateral unfettered right to either of the parties will result in commercial ambiguity increasing the level of uncertainty in doing business.

- ▶ Specific provisions should be incorporated allowing assessee to revise returns upto the date of filing of annual return.
- ▶ Clarification regarding situations in which only part credit is allowed, is required.
- ▶ Specific table should be provided in GSTR-6 to disclose debit/ credit notes uploaded by counter-party suppliers in GSTR-1.
- ▶ GSTR-6 should provide specific table for disclosure of modification/ amendment of previously distributed credits.
- ▶ Specific table should be provided in GSTR-6 to enable availing of credits on tax paid on reverse charge on import of services by ISD should be incorporated.
- ▶ Under GST law, only one mechanism i.e. reverse charge or TDS, should be incorporated so as to reduce complexity and compliance burden of the assessee.
- ▶ The requirement of provision of reconciliation of GSTR-8 for each registration with P&L Account of the entity should be re considered. Dealers above the required threshold could be considered to provide a Tax audit report certified by Chartered Accountants (most state legislations prescribe provision of a tax audit report).
- ▶ The requirement of disclosure of quantitative details of goods procured in GSTR-8 should be reconsidered.
- ▶ It is recommended that entire credit on capital goods should be made available for utilisation as soon as goods and related documents are received by the assessee.
- ▶ Buyer should be allowed credit on the invoice uploaded by the counter-party supplier, even if such invoice or concerned goods are received or accounted for at a later date.
- ▶ Recipient of goods should be allowed to avail ITC on receipt and uploaded invoice. Such practice being followed under present indirect tax regime should be continued under GST law.
- ▶ Under GST law, due date for payment should be defined.
- ▶ CGST and IGST are central levies, and hence, free flow of such credits should be allowed across States without any restrictions. Requisite amendments should be made in the ITC ledger and in return formats to allow and disclose such transfer of credit from one location to other locations of a single legal entity.
- ▶ SGST credits should also be allowed to be transferred.
- ▶ Specific provisions in GST returns should be made for transitional credits of pre-GST taxes.
- ▶ Incorporation of Shipping bill against export invoices should not be made mandatory in the GSTR-1 return in the month of invoice

12.1 Representation relating to GSTR-1, GSTR-2 and other common issues

12.1.1 Substantial increase in Compliance [para 2.1]

- ▶ As per para 2.1 of the Report on GST Return, it is proposed that an assessee would be required to file returns in forms of GSTR-1, GSTR-2 and GSTR-3 on monthly basis in respect of each registration number. Additionally, monthly returns in form of GSTR-6 for Input Service Distributor ('ISD') and in GSTR-7 for TDS are also proposed under GST regime.
- ▶ In this regard, courier companies having presence in each State and Union Territory would be mandated to file 108 returns every month (GSTR-1, GSTR-2 and GSTR-3 for each of 29 States and 7 Union Territories). Additionally, GSTR-6 and GSTR-7 may also be applicable for some or all of the locations. This would result into massive increase in compliance, complexity and efforts on part of the assessee. The total number of returns to be filed even assuming that the GSTR 1 - 3 are considered as a single return related to compliance (which in fact it is not), would mandate filing of more than 1200 returns/ year.
- ▶ It is evident that the compliance related to each return requires a huge amount of collation and furnishing transaction-wise detail. It needs to be appreciated that courier companies serve a large number of customers and filing returns by furnishing details of provision of services as also collation of details related to procurements and that also state -wise will result in a dramatic increase in compliance effort. The state wise registration and administration also results in substantial tax cascading impact on account of state wise credit blockages.
- ▶ In this regard, therefore EICI has already represented for pan-India centralised registration for courier companies, in which courier companies would discharge IGST for supply of courier services. In such single registration scenario, assessee would be required to file only 3 monthly returns, instead 108 monthly returns.
- ▶ If single registration could not be granted to courier companies, we suggest that a common return for GSTR-1, GSTR-2 and GSTR-3 for pan-India operations should be considered (in which provisions for submission of details of each State or Union Territory may be provided).

Recommendation

- ▶ *Without prejudice to our representation for single registration, under GST regime, assessee should be given an option to file single monthly return in forms of GSTR-1, GSTR-2 and GSTR-3 wherein assessee should provide details of supply and inputs in respect of each State and Union Territory.*

12.1.2 Due date for filing returns [para 2.1]

- ▶ It has been indicated in para 2.1 of the Report on Return that an assessee would be required to file GSTR-1 and GSTR-2 on 10th and 15th day of the next month respectively. Further, in the intermittent period between 10th and 15th day, assessee would be required to identify from the auto-populated data in GSTR-2 whether all

input invoices have been included in such return or not. Further, certain invoices would be required to be added, and requisite follow-up would be required to be made in this regard with concerned suppliers.

- ▶ Courier companies deal with thousands of suppliers and large number of customers; hence, compilation of details of invoices for GSTR-1 would require substantial amount of efforts. Further, courier companies would be required to identify missing details of each and every invoice of each supplier based on GSTR-1 filed by such thousands of suppliers.
- ▶ Given the complexity vis-à-vis efforts involved on part of the assessee, time frame of 10th and 15th of next month provided in the proposal might not prove to be adequate for the purpose of efficient compliance on part of courier companies.

Recommendation

- ▶ *Given the above, time frame for filing of return should be extended from the existing proposal of 10th and 15th of the next month.*

12.1.3 Date of filing GSTR-2 [para 2.1 and 3.2.3]

- ▶ From perusal of para 2.1 of the Report on GST Return, it is noted that GSTR-2 should be filed on or before 15th of the next month. However, para 3.2.3 mentions that, such date is 17th of the next month.
- ▶ In this regard, clarification is sought regarding which date should be considered for filing GSTR-2 since dates mentioned under para 2.1 and para 3.2.3 are different.

Recommendation

- ▶ *Date of filing of the return in GSTR-2 form should be clarified.*

12.1.4 GST on advances [para 3.1.5]

- ▶ From perusal of para 3.1.5, it appears that under GST regime, dealer would be subjected to tax even on advance received, even if supply of services or goods has not been made. This proposal requires tax be imposed prior to the actual supply of services/ goods. It is pertinent to be noted that the Constitution grants the powers to (the State Government as also Central Government) impose a GST only on actual supply and therefore any tax levied on mere receipt of advances (where no supply has occurred) is likely to be considered as ultra vires the Constitutional powers.
- ▶ Without prejudice to the above, if advances received from recipients are taxed such payment should be allowed as credit to recipients.
- ▶ In this connection, it is observed that supplier is required to upload details relating to taxes paid on such advance in table 12 in GSTR-1. However, GSTR-2 does not provide any field wherein details relating to taxes paid in advance could be disclosed, which may lead to denial of substantial credit of taxes already deposited with the government.

Recommendation

- ▶ *Advances received by the dealer should not be subjected to tax under GST regime. Alternatively, GSTR-2 should be suitably amended to facilitate recipient of service to avail ITC on taxes paid on advances to suppliers.*

12.1.5 Suo motu inclusion of invoices [para 3.2.1.(4) and para 3.8]

- ▶ Para 3.8 of the Report on Returns, appears to suggest that a Supplier is not eligible to modify supply details by himself but can only modify on the basis of the details uploaded by counter-party purchaser in GSTR-2. By this restriction, a supplier shall not be eligible to rectify any of the mistakes even when the mistakes are identified and errors can only be rectified in the subsequent return (triggering penal costs and interest) by making adjustments by issuance of debit/credit notes.
- ▶ In this regard, supplier should also be allowed to suo motu include invoices which could not be filed along with GSTR-1 due to inadvertent errors or otherwise. This would provide bona fide assessee with a window to comply with the provisions of returns.
- ▶ It is pertinent to note that supplier is allowed to add/ delete invoices on being pointed out by counter-party recipient on or after 11th of the next month up to 17th of the next month. Similarly, supplier should also be allowed to add/ delete invoices on his own during such period.

Recommendation

- ▶ *Assessee should be provided an option to include invoices on suo motu basis even after 10th day up to the date.*

12.1.6 Manual adjustment of debit/ credit notes based on GSTR-1 of counter-party supplier [para 3.2.1.(10)]

- ▶ The Report on Return, proposes that details of invoices and debit/ credit notes would be auto-populated in GSTR-2 from GSTR-1 filed by counter-party suppliers.
- ▶ However, in respect of invoices of counter-party suppliers, assessee could include invoices based on receipt of goods/ services or invoice, even if such invoice has not been uploaded by the supplier in GSTR-1. A similar functionality enabling addition of debit/ credit notes is not incorporated.
- ▶ Further, in a situation wherein supplier has uploaded credit/ debit note in respect of an assessee but such assessee has not actually received the same; assessee has no ability to reject, amend or dispute such credit/ debit note uploaded by the supplier. This is likely to create material amount of commercial ambiguity, which would increase uncertainty.

Recommendation

- ▶ *In GSTR-2, assessee should be given an option for manually adding the credit/ debit notes issued by counter-party supplier, when such debit/ credit notes have not been uploaded by*

such supplier in his GSTR-1. Further, ability of the counter-parties to engage in relation to the amendments to the original invoicing arrangements such as the debit/ credit notes is also required to be incorporated. A unilateral unfettered right to either of the parties will result in commercial ambiguity increasing the level of uncertainty in doing business.

12.1.7 Revision of return [para 3.12]

- ▶ Para 3.12 of the Report on Return does not enable revision of return. Even in cases of inadvertent and bona fide errors on part of the assessee, revision of return would not be permissible.
- ▶ All assesses and specifically courier companies having pan-India registrations are being mandated to comply with compliances that are extremely complex – furnishing humongous amount of information and file hundreds of returns every month within extremely tight deadlines. Evidently inadvertent and bonafide errors cannot be ruled out. The present return procedure does not provide any functionality for revision of returns – in fact requires every assessee to file only adjustments in subsequent returns for amendments and pay applicable tax along with interest or claim refunds which would be only granted after an assessment process.
- ▶ Further, it may be noted that Annual Return in GSTR-8 would be auto-populating details relating to supply and inputs from monthly returns filed by the dealer. Such consolidated details would be used for reconciliation with Profit & Loss Account of the dealer. However, if monthly returns filed by the dealer are not accurate, then gross profit/ loss as per returns would also not reconcile with Profit & Loss Account. Hence, to prevent reconciliation in GSTR-8 being inaccurate, dealers should be allowed to revise monthly returns.

In this regard, it is pertinent to note that almost all current tax legislation in the country have specific provisions allowing revision of returns.

- ▶ Given that the GST legislation is a major shift from the current indirect tax regime in the country, its introduction is likely to have a fair deal of ambiguity, including the ambiguities in reporting such transactions, at least in the initial years. Denying an assessee the option to revise its return could potentially disrupt the compliances to be undertaken.

Recommendation

- ▶ *Under GST law, specific provisions should be incorporated allowing assessee to revise returns upto the date of filing of annual return.*

12.1.8 Disclosure of invoices on which partial credit availed earlier [table 12 of GSTR-12]

- ▶ From perusal of GSTR-2, it is observed that dealer would be required to provide details in relation to invoices on which partial credit has been claimed earlier. Further, details relating to credit availed in the concerned month is also required to be mentioned in the said table.
- ▶ In this regard, it may be noted that proposal does not mention circumstances in which dealer would be required to defer credits or avail partial credits.

Recommendation

- ▶ Clarification regarding situations in which only part credit is allowed, is required.

12.2 Representation relating to proposals relating to GSTR-6 and Input Service Distributor ('ISD')

12.2.1 Debit/ credit notes issued to ISD [para 3.6]

- ▶ Para 3.6 read with return form GSTR-6 in Annexure VII, it is observed that ISD would be able to distribute credit of input goods and services under the cover of invoices.
- ▶ However, it is noted that there is no field in GSTR-6 for presenting details relating to debit/ credit notes issued by suppliers to ISD. In this regard, suppliers in their GSTR-1 would submit details relating to debit/ credit notes issued to ISD, but such details may not be reflected in GSTR-6 in absence of any specific field showing auto-populated details of debit/ credit notes issued to ISD.
- ▶ Given this, it is necessary to provide corresponding field in GSTR-6 to enable ISD to submit details relating to debit/ credit notes issued to it by various suppliers.

Recommendation

- ▶ Specific table should be provided in GSTR-6 to disclose debit/ credit notes uploaded by counter-party suppliers in GSTR-1.

12.2.2 Rectification in distribution of credit by ISD

- ▶ The ISD return does not provide any functionality for rectifying or adjusting distribution of credits.

Recommendation

- ▶ GSTR-6 should provide specific table for disclosure of modification/ amendment of previously distributed credits.

12.2.3 Disclosure of services imported by ISD

- ▶ Further GSTR-6 does not contain any field to collate credits of tax paid (on a reverse charge basis) on an import of service

Recommendation

- ▶ Specific table should be provided in GSTR-6 to enable availing of credits on tax paid on reverse charge on import of services by ISD should be incorporated.

12.3 Representation relating to proposals relating to GSTR-7 and TDS provisions

12.3.1 Rationale behind proposal of TDS [para 3.10.1.(10)]

- ▶ From para 3.10.1 (10), it appears that GST law would provide for certain supplies of goods/ services made to specified categories of purchasers where, the purchasers would be required to deduct tax at source from payment due to suppliers.
- ▶ However, proposal does not mention for which type of goods/ services and for which category of purchasers TDS provisions would be applicable. Further, how this framework of TDS would be implemented is also unclear.

Recommendation

- ▶ *Discussion paper on ambit, applicability and framework of the proposed TDS scheme needs to be circulated for discussion purposes.*

12.3.2 Incorporation of TDS and reverse charge mechanisms not warranted

- ▶ From the Report on GST Returns, it is noted that in certain cases assessee would be required to discharge tax on reverse charge basis. Further, in case of certain services and certain dealers, provisions of TDS would be applicable.
- ▶ In this regard, as per the general understanding, provisions of TDS and reverse charge are incorporated in tax laws for protecting the interest of the revenue. In both cases, tax is to be paid by recipient of services. However, credit in case of TDS is available to service provider as against service receiver in case of reverse charge.
- ▶ Since intent of incorporating TDS and reverse charge mechanisms is similar, only one mechanism should be incorporated under proposed GST law to reduce complexities and confusion coupled with it.

Recommendation

- ▶ *In this regard, under GST law, only one mechanism i.e. reverse charge or TDS, should be incorporated so as to reduce complexity and compliance burden of the assessee.*

12.3.3 TDS certificate [para 3.10.1.(10)]

- ▶ Para 3.10.1.(10) of the Report on GST Return mentions that deductor would be required to file TDS return in GSTR-7 and provide details of, inter alia, TDS certificate number. However, form of GSTR-7 does not specify any field for disclosure of TDS certificate number. Further, details relating to issuance of TDS certificate have also not been mentioned in the proposal.

Recommendation

- ▶ *Discussion paper on the framework for TDS compliances including the requirement of the issuance of TDS certificate should be issued. Furthermore, the formats and procedure for the issuance of TDS certificate needs clarity and discussion.*

12.4 Representation relating to proposals relating to GSTR-8

12.4.1 Reconciliation between details in GSTR-8 and Profit & Loss (P&L) Account [para 5.2 and para 5.3]

- ▶ Para 5.2 and 5.3 of the Report for Return, propose that a dealer in respect of its registration would be required to prepare reconciliation of gross profit/ loss arrived in GSTR-8 with P&L Account.
- ▶ In this regard, it should be noted that courier companies having registrations in each State and Union Territory would be required to file GSTR-8 in respect of each registration separately. However, P&L Account is prepared at consolidated level for pan-India operations. Further P&L of a company has several transactions that incorporate items that do not have any relation to actual supplies and procurements. The reconciliation requirement is merely additional compliance that will not have any incremental value in the compliance
- ▶ It is infeasible for courier companies to provide reconciliation of gross profit/loss of one registration with P&L Account of the entity as a whole (since P&L Account is not made for each registration). Further, the incremental information does not seem to be of any material value to the administration. The said compliance will unintentionally only lead to significant increase in compliance burden.

Recommendation

- ▶ *The requirement of provision of reconciliation of GSTR-8 for each registration with P&L Account of the entity should be re considered. Dealers above the required threshold could be considered to provide a Tax audit report certified by Chartered Accountants (most state legislations prescribe provision of a tax audit report).*

12.4.2 Quantitative details in GSTR-8 [table 5 of GSTR-8]

- ▶ GSTR-8 in Annexure IX of the Report on Return, it is observed that assessee would be required to provide quantitative details of goods relating to goods procured by the assessee.
- ▶ In this regard, it may be noted that it may not be possible for courier companies to maintain details relating to quantitative usage of goods pertaining to each HSN code.

Recommendation

- ▶ *The requirement of disclosure of quantitative details of goods procured in GSTR-8 should be reconsidered.*

12.5 Credit of capital goods [para 3.2.1.(8)]

- ▶ From para 3.2.1.(8), it appears that assessee would be allowed to avail ITC pertaining to capital goods over a period of two years in two equal instalments.
- ▶ However, no reason has been provided under the proposal for deferment of credit. Further, there is no need to defer such credit since capital goods are used by the assessee in furtherance of the business and should be treated at par with other input goods.

Recommendation

- ▶ *It is recommended that entire credit on capital goods should be made available for utilisation as soon as goods and related documents are received by the assessee.*

12.6 Representation relating to proposals relating to basis of accounting of goods [para 3.2.1.(9)]

12.6.1 Treatment of goods-in-transit

- ▶ Para 3.2.1.(9), it appears that recipient would be eligible to avail ITC only after receiving product and recording purchase in books of accounts. Goods sent by supplier may reach to recipient in different month and may be accounted even after.
- ▶ In such scenario, supplier would include such invoice in his GSTR-1, but recipient would need to remove such invoice from his GSTR-2 as purchase has not been recorded in its books of accounts. In this case, supplier would be required to remove such invoice in his return due to rejection of the invoice by recipient, which would lead to undermining of taxable turnover by the supplier.
- ▶ Further, in the subsequent month, recipient would include invoice in GSTR-2 in his input details. However, supplier could not make corresponding change in GSTR-1 since supply has been made in the previous month.
- ▶ The above requirement of allowing credits based on incremental events of receipts as also accounting will significantly increase compliances, assessment and as also lead to confusion in relation to filing of the returns.

Recommendation

- ▶ *Buyer should be allowed credit on the invoice uploaded by the counter-party supplier, even if such invoice or concerned goods are received or accounted for at a later date.*

12.6.2 Goods received in multiple lots

- ▶ Para 3.2.1.(9), appears to prescribe that in case of goods covered under single invoice are received in multiple lots, then recipient would be able to avail ITC only in the period in which last lot has been received.
- ▶ In this regard, issue may arise regarding how part of the goods received from the supplier would be disclosed in the return, since quantitative details are not required to be disclosed under GSTR-2. Hence, it is unclear how GSTR-2 of the recipient would match with GSTR-1 of the supplier, since supplier would disclose the invoice in his GSTR-1 in the month of raising invoice but recipient could not be allowed to disclose such invoice in GSTR-2 until last lot is received.
- ▶ The above issue could be resolved if recipient is allowed to avail credit based on receipt of invoices. Similar practice is followed under current indirect tax regime.

Recommendation

- ▶ *Recipient of goods should be allowed to avail ITC on receipt and uploaded invoice. Such practice being followed under present indirect tax regime should be continued under GST law.*

12.7 Due date for payment of tax [para 3.8]

- ▶ From perusal of steps 7 & 8 contained in para 3.8, it appears that assessee would be required to discharge liability of tax before filing GSTR-3 on or before 20th day of the next month. However, no specific date before which payment is to be made is mentioned under the proposal.

Recommendation

- ▶ *Under GST law, due date for payment should be defined.*

12.8 Transfer of credit from one location to other location

- ▶ Report on Return, it is observed that in respect of each registration, entity would be required to maintain ITC ledger. Further, no proposal has been made in ITC ledger or any return forms for allowing transfer of credit from one State to other State of the same legal entity, or within separate business verticals in the same State.
- ▶
- ▶ Limiting credit of CGST and IGST to a particular registration/ State would be counter intuitive to the key objective of free flow of credit across States. Since CGST and IGST would be administered by the Central Government only, and hence, free flow of credit should be permissible across States.
- ▶ Further even SGST credits should be allowed to be transferred by using the ISD mechanism.

Recommendation

- ▶ *CGST and IGST are central levies, and hence, free flow of such credits should be allowed across States without any restrictions. Requisite amendments should be made in the ITC ledger and in return formats to allow and disclose such transfer of credit from one location to other locations of a single legal entity.*
- ▶ *SGST credits should also be allowed to be transferred.*

12.9 Disclosure of credits under pre-GST laws

- ▶ From the Report on GST Return, it is observed that no proposal has been made relating to disclosure and allowing availment of existing credit under Excise, Service Tax and VAT laws as also taxed embedded in the Capital goods and traded goods in stock in ITC ledger or returns to be filed under GST regime.
- ▶ Denying the assessee a substantive right of credit of pre-GST taxes paid would lead to unintentional consequences of tax cascading impact thereby defeating key objectives of GST.

Recommendation

- ▶ *Given the above, specific provisions in GST returns should be made for transitional credits of pre-GST taxes.*

12.10 Incorporation of shipping bill against export invoices

- ▶ As per paragraph 3.10 of the draft report it is mandatory to incorporate shipping bill in the contents of invoice level information of exports.
- ▶ Considering the time gap between date of invoicing and physical export furnishing, shipping bills references in the return is not feasible. This can however, be validated and verified by the authorities through the database available at ICEGATE.

Recommendation

- ▶ *Incorporation of Shipping bill against export invoices should not be made mandatory in the GSTR-1 return in the month of invoice*

12.11 Treatment of invoices for a value less than INR 50,000

- ▶ Paragraph 3.1 of the draft report provides that invoices below INR 50,000 that do not have an address of record would be treated as intra-state sales. In this case, it should be clarified that for inter-state transactions where IGST has already been charged, would there be an additional requirement to charge CGST and SGST as well.
- ▶ If CGST and SGST are required to be charged, adjustment/ refund of IGST paid earlier should be available.

13. Key concerns - Report of Joint Committee on business process for GST on Refund Processes ('Report on Refund')

Summary of recommendations:

- ▶ Excess payment made due to wrong mention of nature of tax or GSTIN should also be allowed to be carried forward at the option of the assessee for set off against future tax liabilities.
- ▶ No time limit or special conditions should be prescribed for utilisation of excess tax paid against future tax liabilities, which has been suo moto re-credited to the tax payer.
- ▶ Transfer of credit from one location to another should be allowed under the GST regime this would help in minimising the cash blockages. This is extremely pertinent for courier/ express industry on account of the fact that courier companies have huge network of back offices & consolidation hubs, from which billings are not likely to take. In fact, such locations would only be mid-points in the journey rather than origin or destination. Hence, such locations are likely to never have any GST liability, but huge amounts of credit flowing in.
- ▶ Considering that intention of the government is make our exports market more complete and to eliminate export of taxes. Under GST regime; refund of GST paid on capital goods should be allowed on export of services.
- ▶ Provision for having a single refund assessment for refund of CGST and IGST for pan-India operations should be enabled.
- ▶ Refund documents required in each state should be consistent/ same across all states.

13.1 Suo motu adjustment in respect of tax paid due to mistake or inadvertence

- ▶ It is mentioned in 2(A) of the Report on Refund that assessee would be eligible for refund in case excess payment of tax by mistake or inadvertence. The proposal has enlisted situations in which such refund is to be made.
- ▶ In this regard, for excess payment made on account of wrong mention of nature of tax (CGST/ SGST/ IGST) and wrong mention of GSTIN, assessee would be eligible for cash refund only. Since adjustment of future tax liability against excess payment and payment of tax in cash after obtaining cash refund have same effect for discharging tax liability, assessee should also be given the option to carry forward such excess payment to be set off against future tax liability.
- ▶ It is pertinent to note that in case of excess tax paid due to wrong mention of tax amount in the payment document, proposal has been made for carry forward of such excess tax at the option of the assessee.

Recommendation

- ▶ *Excess payment made due to wrong mention of nature of tax or GSTIN should also be allowed to be carried forward at the option of the assessee for set off against future tax liabilities.*

13.2 No time limit for adjustment of excess tax paid

- ▶ Para 2(A)(vi) specifies that in case of wrong mention of tax amount, the GST Law would provide for an automatic set off if such excess payment is not on account of interpretation of notifications, application of exemptions, etc, ie difference in interpretation between tax administration and taxpayer. While the report proposes to allow suo moto re-credit of such excess tax payment, it further proposes that the excess tax payment will be allowed to be utilised against future tax liability within a prescribed time limit.
- ▶ Such a proposition is regressive and if it is established and accepted that the amount has been excess paid, the taxpayer should be have the liberty to adjust the same against future liabilities without any restrictions.

Recommendation

- ▶ *No time limit or special conditions should be prescribed for utilisation of excess tax paid against future tax liabilities, which has been suo moto re-credited to the tax payer.*

13.3 No pre-audit/ post audit requirements should be placed for excess payment of tax due to mistake or inadvertence

- ▶ The proposal to have a pre-audit (for refund limits to be prescribed) or a post audit for refunds in excess of Rs 1 lakh, should not be made applicable in case where the refund is on account of wrong/ inadvertent payment of tax for cases proposed under Para 2(A) of the Refund Process Report.
- ▶ If required, the threshold should be higher - Rs 5 crores and above for both pre-audit and post-audit.

13.4 Transfer of blocked credit

- ▶ From perusal of Para 2(H) of the Report on Refund, it seems that under GST regime, the assessee would be granted refund of accumulated input tax credit in cash only in case of inverted duty structure and partial reverse charge.
- ▶ In this regard, it may be noted that in the express/ courier industry it is quite likely that in case multiple registrations significant credits accumulation may get triggered at specific locations due to high expenditure on inputs, input service and capital goods. The output GST liability in this context may not be able to entirely setoff the accumulated credits.
- ▶ Further, the proposal also suggests that credits lying at one location cannot be transferred to other locations. In case such accumulated credits are not allowed as refunds it would lead to cash blockage thereby hindering working capital needs.

Recommendation

- ▶ *Transfer of credit from one location to another should be allowed under the GST regime this would help in minimising the cash blockages. This is extremely pertinent for courier/ express industry on account of the fact that courier companies have huge network of back offices & consolidation hubs, from which billings are not likely to take. In fact, such locations would only be mid-points in the journey rather than origin or destination. Hence, such locations are likely to never have any GST liability, but huge amounts of credit flowing in.*
- ▶ *In case this option is not available to the assessee, cash refunds should be granted for accumulated credit balances lying at the yearend. Such provisions currently also exist under State VAT laws.*

13.5 Refund of GST paid in case of export of services

- ▶ It is indicated under heading 'Export of Services' in Para 2(B) of the Report on Refund that under the GST regime in case of export of services, the assessee would be granted refund of GST paid on input (input services).
- ▶ However, it has not been explicitly mentioned in the report that whether GST paid on capital goods would be eligible for refund. From the primary reading of the proposal, it is understood that refund of only GST paid on input services may be available to the service exporter.

Recommendation

- ▶ *Considering that intention of the government is make our exports market more complete and to eliminate export of taxes. Under GST regime; refund of GST paid on capital goods should be allowed on export of services.*

13.6 Assessment of refunds should be single for CGST and IGST across all states

- ▶ Para 6 of the report proposes that the refund applications would be assessed separately by the state authorities for SGST and by the centre authorities for CGST and IGST. The assessment for CGST an IGST should be single and not for each state as that would only add to compliance burden on the tax payer too have multiple refund assessments for each state for each levy of SGST and CGST/ IGST.

Recommendation

- ▶ *Provision for having a single refund assessment for refund of CGST and IGST for pan-India operations should be enabled.*

13.7 Consistency in compliance documents for refund on pan-India basis

- ▶ Para 5(vi) of the Refund Process Report suggests that the states should prescribe all additional documents that are required for assessment of the refunds. While the same mentions that the state and Centre should determine together the list of information/ document required for refund assessments, it is imperative that the set of requirements for all states and centre should be single and consistent. Today, service providers are having to make a single pan-India refund filing for one single

service tax; the need to comply with different requirements for SGST and CGST of each state would place a significant compliance burden on service providers.

Recommendation

- ▶ *Refund documents required in each state should be consistent/ same across all states.*