



Slump Sale under GST regime: Opening the Pandora's Box

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For the past many years, India is taking constructive measures to position itself as an attractive investment destination and the Government of India (GoI) is also putting noteworthy efforts at its end to integrate the Indian economy with the world economy.

In the process of its integration, a number of companies went for business restructuring and are still going for it aiming at unlocking business value, facilitating future divestments/exits, increasing efficiency in business, providing higher rewards to shareholders, etc. Slump Sale is one of the modes of business restructuring process wherein the business activity as a whole is sold along with assets and liabilities. In India, it used to be a preferred way of transfer on account of easy and simple taxation. However, the recent amendment to Income-tax Act, 1961 by way of Finance Act, 2021 has brought few complexities to this transaction. Further, Indirect tax implications on transactions of slump sale have been a matter of discussion since the erstwhile indirect tax regime and is certifiably not a new debate under the GST system. This article is an attempt to analyze the concept of slump sale and GST implications on the same.

Slump Sale: A Glimpse

The term slump sale is not defined under the GST law. To understand the meaning of slump sale, we have referred Income-tax Act, 1961. As per Section 2(42C) of Income-tax Act 1961 as amended via Finance Act 2021, "slump sale" has been defined as a transfer of one or more undertaking by any means in which all the assets and liabilities of a business are transferred to the recipient for a lump-sum consideration without valuing individual assets and liabilities. In other words, any transaction where the value of the business is determined collectively in a single value, and not by considering or valuing the individual assets/liabilities of the business, such transaction can be referred to as a Slump Sale Transaction. Since all assets and liabilities are transferred for a lump sum consideration, it is pertinent to understand GST implications of such transfer.

Is Slump Sale a supply?

Under the GST law, tax would be leviable on all the transactions which qualify as 'Supply', as may be applicable, except the supplies which are outside the purview of GST i.e. non-Taxable Supplies. Further, there shall be a supply of goods or services or both. Supply under GST being an inclusive definition has a very wide connotation. It encompasses all types of transactions be it a sale, transfer, lease, rental, license, barter, or disposal made for a consideration by one person to another in the course or furtherance of business. Since supply includes all forms of activities including transfer and slump sale





being a transfer of business assets and liabilities, we need to analyze the presence of other important elements that are prerequisite for a transaction to qualify as supply-

- i. Whether it is a good or a service or both?
- ii. Whether there is any consideration in slump sale?
- iii. Whether slump sale can be considered as a transaction in the course or furtherance of business.

I. Whether it is a good or service or both?

Both goods and services have been duly defined under GST. Goods have been defined to include all kinds of movable property other than money and securities but include actionable claim, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. And service has been defined under GST law to include anything other than goods, money, and securities but include activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. Transfer of business assets has been considered as goods as per Schedule II annexed to GST law. Under the same schedule, transfer of going concern as a business has been specifically excluded from the definition of goods.

Further, services by way of transfer of a going concern, as a whole or an independent part thereof is exempted under GST. Slump sale involves transfer of both assets and liabilities of an undertaking and not just goods lying in the business. Further, to constitute a slump sale, it is not necessary that the business is ongoing at the time of its transfer. Thus, there is ambiguity in the provisions to determine whether slump sale is a good or service. And, thus a subject matter of litigation.


ii. Whether there is consideration or not?

As evident from the definition of slump sale, it is a transfer of business assets and liabilities for a lump-sum consideration. And, consideration is also an inclusive definition under GST and has a wide connotation. And, with the recent amendment in income tax act with respect to deemed consideration concept, it may also become a matter of litigation under GST as normally in slump sale, the consideration is normally not wholly in money and valuation provisions have to applied with. Thus, due consideration shall be made to ensure that there are no gaps in the computation mechanism both under Income Tax Act and GST Act.

iii. Whether slump sale can be considered as a transaction in the course or furtherance of business?

One school of thought is such transaction would be neither during the course of business nor in continuation of business. And, slump sale involves closure of business. The second school of thought is slump sale may get covered under the definition of business which includes supply or acquisition of goods including capital goods and services in connection with commencement or closure of business. Slump sale involves closure of business of seller and commencement of business of buyer.





Based on the above discussion, it can be concluded although there is ambiguity in law with respect to various definitions, slump sale can be considered as a supply keeping into consideration its wide approach towards each term. And, the same has been duly clarified through one of the FAQs released by CBIC which stated slump sale will have the same treatment as normal supply. Further, keeping into consideration that service includes anything other than goods, it will be a safer approach to consider the same as a service to avoid any litigation in future. However, whether the transaction is exempt from GST or not, it would require evaluation whether transfer is a going concern or not.

Valuation of Slump sale

Since GST is levied on the value of supply, therefore determination of Value of taxable supply is of utmost importance for determining the tax to be charged. Determining value of slump sale transaction can be challenging especially in the case of related/distinct persons which is very common in trade. In case of transactions between unrelated persons, where the entire consideration is in money, the transaction value i.e. the price actually paid will be the basis for the valuation of the slump sale. However, normally the consideration in such transactions is not solely in money and thus valuation provisions shall apply and as stated above due care shall be made to ensure that there are contradictory positions taken in income tax and GST. With respect to the value of taxable supply in case of slump sale between related persons, valuation rules must be referred to and due care shall be taken while arriving at the taxable value. Normally, department is very vigilant with respect to such transactions. GST rules provide certain criteria to determine valuation between related parties or distinct persons. The prescribed criteria include open market value if available, if open market value is not available then the value of supply of goods or services of like kind and quality will be the basis for valuation. However, if both open market value and similar supply is not available then there are other rules like cost-plus method, residual method.

Conclusion

Indirect tax implications on transactions of slump sale have been a matter of discussion since the erstwhile indirect tax regime and is not a fresh dispute under the GST regime. In order to remove imbroglia, the GST law has attempted to provide the needed clarifications with respect to its taxability, valuations, and credit availability. Such simplification in the taxation system would certainly encourage investors to invest in domestic companies ultimately leading to the growth of Indian economy. The revival of companies through slump sale will definitely be more cost-effective than setting up a new structure altogether. Also, this will encourage the investors to take over such companies and generate more job opportunities in India. Further, the recent amendment in Income Tax Act with respect to valuation for slump sale transactions which is in line with the valuation rules under GST where consideration is not solely in money or is between related/distinct persons will also curb window dressing done by tax evaders to lessen their tax liability.





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