5 SHADES OF GREY IN GST

GST was launched with much fanfare at midnight, July 1, 2017 replacing 17 erstwhile laws, both Central and State level. The learning curve of both, the Government and the industry, has been steep over the near 9 months that have elapsed. And, astonishingly, the multitude of notifications, circulars and press releases have left India gasping and clutching at straws to stay afloat.

Having said that, the intention is honorable and must be respected and supported in every way. The long run will prove that GST is certainly good for the Indian economy contrary to oscillating views doing the rounds as of now. Any new legislation takes time to settle down, as will GST. Till then, thoughts and deliberations between the two stakeholders, the Government and the industry, will continue. Amongst many others, the following 5 things have the potential of disruption to a much larger extent and merit greater debate.

1. Anti-Profiteering

   Taking a cue from the Malaysian GST law, this was also picked up for the Indian law. However, other than a few lines of legislation and no detailed guidelines on the subject, this will prove to be the proverbial "pandora's box" of litigation, especially when assessments commence. The law requires the benefit arising under GST to be passed on to the consumers, and rightly so. Simple enough to read but extremely complex to implement. The law is silent (intentionally!), on how to calculate this benefit - compute for the company as a whole or on individual stock keeping units (SKUs); transition expenses incurred permitted as a set-off from benefits under GST or not; how do businesses in the service sector evidence passing on the benefit; and the list goes on and on. An organization's nightmare and an accountants delight! It would augur well if the government considers releasing adequate guidelines and framework, not just for the businesses, but also for its jurisdictional authorities to prevent unnecessary litigation for all and sundry.

2. Supplies without consideration

   I call this the "Damocles sword" hanging on every tax payer. Transactions between related parties, different offices of same company, even activities between employer and employee are now taxable even if done without consideration. Looks quite innocent on first read but as you delve deeper into the relationships and activities between branches, other than just stock transfer, the mischief of this provision hits, and hits hard. Think of all the activities that are done between various offices for each other and between the employer and the employee, and it becomes messier. Included in the quagmire are the services taken by Indian subsidiaries from their overseas parent. Now, at the time of assessment, this pit will be dug deep and tax demand raised for all such activities identified by the authorities on which tax has not been paid. The story does not end here. In addition to payment of interest and penalty, the tax amount so paid would also not be available as input credit to be offset against any future tax liability. Double whammy! Help is surely needed here from the lawmakers.

3. Reverse charge

   A provision with the widest import possible was made to tax all supplies received from a person not registered under GST. This puts all, and I mean all commercial

transactions in the country in the ambit of taxation under GST. This means enormous strain of compliances on the buyers of goods and recipient of services. Alternatively, it may also signal the death of small business houses as registered tax payers may not be willing to deal with such vendors to avoid the onerous compliances involved. The magnitude of the problem can be felt when a company buys various goods from the small shop next door and then has to find out the correct HSN code and the tax rate for each individual item bought and pay GST on reverse charge. Thankfully, as of now this provision has been kept in abeyance and deferred, but the government may consider simplifying the onerous compliance requirements before it is implemented in future.

4. Revenue neutrality

   From the concept of a single GST, it finally became dual GST with 3 tax components viz. IGST and CGST under the control of Central Government and SGST under the control of the respective State Government. And with this in place, the tax payer is now burdened with not just ascertaining, but also paying the correct tax. Any tax erroneously paid as IGST instead of CGST and SGST cannot be adjusted and has to be paid afresh under the correct head. Of course, recourse has been given to seek a refund of the tax erroneously paid under wrong head. But, then, is it harnessing technology ? The government has its own argument in favour, but from a tax payer's perspective, it is an unnecessary burden which can be easily taken care of through technology and electronic adjustments. To add to misery, seeking refunds from the authorities has always had its share of trials and tribulations, in addition to working capital blockage due to time involved. Surely, there could be an easier methodology here.

5. Advance rulings

   Good thing in GST is that advance rulings can be sought for before initiating a transaction, even at the planning stage. Bad thing is, there are multiple authorities for giving rulings, one for each State. The enormity of the issue will only be understood when different State authorities pronounce different rulings for the same issue over different periods of time. The judiciary will be swamped with litigation and till such time the apex court gives its judgement, the litigation keeps getting piled up, year after year. The government must relook at the provision and provide a mechanism so that any ruling is applicable to the whole of India.

These and many more such issues will keep the midnight oil burning for quite a few years. It may prove to be worthwhile if the government continues to hear the voices and provide solutions in a pragmatic and proactive manner.

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