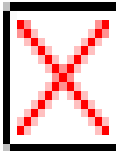


Small Businesses - Allowing States to collect IGST & CGST may warrant another Constitutional Amendment?

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ONE

of the controversies that is gathering storm around implementation of Goods and Services Tax (GST) is the demand by the States for exclusive 'Single Control' by them over the 'Small Business' with annual turnover below Rs. 1.5 Crore in place of much discussed 'Dual Control' by Centre and the States. In other words, the States have demanded to collect State GST (SGST), Central GST (CGST) and even Integrated GST (IGST) for inter- State Trade in respect of the aforesaid Small Business. The controversy is unnecessary and deserves to be nipped in the bud, as would be evident from the following discussions.

It is with diligent deliberations since 2006 and proper application of wisdom that the Empowered Committee of State Finance Ministers (EC) came out with the first consultation document on GST - the First Discussion Paper (FDP) in November, 2009. While choosing the GST Model for India, the EC had three options. The first option was to have 'National Single GST', where the Centre would collect the GST for both Centre and States and distribute the States' share on the basis of the consumption pattern of the individual States, since GST is a destination based consumption tax. This model is prevalent in most of the developed countries including Australia, New Zealand and EU countries. But the EC was wise enough to understand the federal system in India with sufficient fiscal autonomy to the States. Thus, FDP noted at Para 3.1 as follows.

"3.1. It is important to take note of the significant administrative issues involved in designing an effective GST model in a federal system with the objective of having an overall harmonious structure of rates. Together with this, there is a need for upholding the powers of Central and State Governments in their taxation matters."

Accordingly, the first option of 'National Single GST' was rightly discarded. The second option was to go in for the model with the reverse situation where the States would collect Central GST as well, in addition to the States GST and remit it to the Centre. This model is rarely followed. To the best of this author's information, except for one province of Canada - the Quebec region, nowhere in the world of VAT/ GST regime, the VAT/ GST collection of Center is outsourced to the States. This model was not taken seriously by the EC, as is evident from the fact that there were no worthwhile discussion in the FDP on this model.

The obvious choice was therefore to go in for 'Dual GST' model. The FDP explained this as follows.

"3.2. Keeping in view the report of the Joint Working Group on Goods and Services Tax, the views received from the States and Government of India, a dual GST structure with defined functions and responsibilities of the Centre and the States is recommended"

The FDP further goes on to state at Para 3.2 (i) and (viii) as follows

"(i) The GST shall have two components: one levied by the Centre (hereinafter referred to as Central GST), and the other levied by the States (hereinafter referred to as State GST)"

"(viii) The administration of the Central GST to the Centre and for State GST to the States would be given. This would imply that the Centre and the States would have concurrent jurisdiction for the entire value chain and for all taxpayers on the basis of thresholds for goods and services prescribed for the States and the Centre." (emphasis supplied)

The matter was further clarified in the Frequently Asked Questions and Answers on GST' as appearing in the Annexure to FDP. In response to the Question No. 8, it was, *inter alia*, responded as follows:

"(vii) The administration of the Central GST would be with the Centre and for States GST with States". (emphasis supplied)

Further, in response to the Question No. 9 asking why is Dual GST required, the response was as follows:

"India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism."

Lets now have a look at the Constitutional provisions after the recently effected amendments.

The new Article 246 A of the constitution reads as follows:

"246A.- Special provision with respect to goods and services tax.

Â - (1) "Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State."

It goes further on the issue of taxing the inter - state trade as follows:

"(2)-Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

Article 269 A of the amended Constitution makes the position further clear that the levy and collection of the GST on supplies in the course of inter state trade will be in the exclusive domain of Centre. It reads as follows:

***"269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.
- (1) Goods and Services Tax on supplies in the course of inter-State trade or commerce
shall be levied and collected by the Government of India
and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament
by law on the recommendations of the Goods and Services Tax Council" (emphasis supplied)***

In the conspectus aforesaid, it is clear that another Constitution amendment would be necessary before it is decided to outsource to the States the work vested on the Centre with respect to collection of IGST in particular.

The recently talked about cross empowerment of States to collect CGST and IGST below the threshold of Rs. 1.5 Crore will not be a prudent step for revenue considerations as well. Taxation of services, an intangible thing is more difficult compared to taxation of goods, a tangible entity. The States have no experience in taxing services, while the Central Board of Excise and Customs has the collective experience of 22 years in this field since 1994. On a rough estimate, about 90 percent of Service Tax Payers would be below the aforesaid threshold of Rs. 1.5 Crores. It would not be wise to put this additional burden of collecting CGST and IGST as well on the States who have no experience of taxing the Services. Therefore, dual control is the best option with Center collecting CGST and States collecting SGST as has been proposed from

