

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

SEPTEMBER 19, 2016

By Sumit Dutt Majumder



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 2006and 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.

 \hat{A} - (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

the beginning. It fact, the Centre (read CBEC) should spare some of their officers with experience in Service Tax for deputation to the States, at least for the initial period.

Thus, with respect to administering of IGST, the amended Article 269A of the Constitution makes it very clear that Centre will levy and collect IGST, and then get it apportioned between Centre and the Destination States. Besides, if the States are asked to administer IGST, the issues will arise as to which state would administer it - the origin state or the destination state. In either case, there will be a conflict of interest, Further, none of the individual States have an All- India jurisdiction, in the absence of which a seamless flow of credit across the country will be a difficult and cumbersome proposition.

As for providing the ease of doing business for the 'Small Business', the following facts and steps would be relevant.

Three basic functions like Registration, Payment and Filing of Returns would be supported by a common portal of the technology support, GST Net, where the taxpayers would file only one document for each of these functions at the front end, and these would be split into two for CGST and SGST authorities at the back end. Therefore, for a clean transaction, the taxpayers won't even have to meet any of the agencies, not to speak of two agencies. The question of dealing with or meeting two agencies will arise only when there is an allegation of infraction or evasion and during the audit. The compliance requirements for Audit,Periodicity of filing of Returns, Quasi- judicial Proceedings etc. can be relaxed for the Small Business. In line with the concept of Large Taxpayers Unit (LTU), there could be the concept of Small Taxpayers Unit (STU) where the CGST, SGST and IGST authorities can sit together under one roof and facilitate the Small Business in their tax compliance.

Summing up, the cross - empowerment of the States to collect both CGST and SGST including IGST, below the threshold of Rs. 1.5 Crores will require another Constitution amendment. Further, if the Centre agrees to this cross-empowerment for outsourcing its revenue collection work to the States which have no experience of taxing the Services, a lot will be at stake for Centre with regard to revenue mobilization. It may not be forgotten that the commitment to compensate the States 100 percent for first five years will entail a lot of additional burden for the Centre, at least at the initial years. Therefore, the best option would be not to upset the apple-cart that is almost ready for delivery and implement the Dual GST model with dual control, as has been proposed from the very beginning. Keeping the concern for Small Business in mind, the steps suggested for further ease of doing business for the Small Business may be considered for implementation in the proposed Dual GST model.

[The author is former Chairman, CBEC and currently engaged by the EU in a GST project in India. He is also author of the book "GST in India ………a€!"

(DISCLAIMER

: The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)