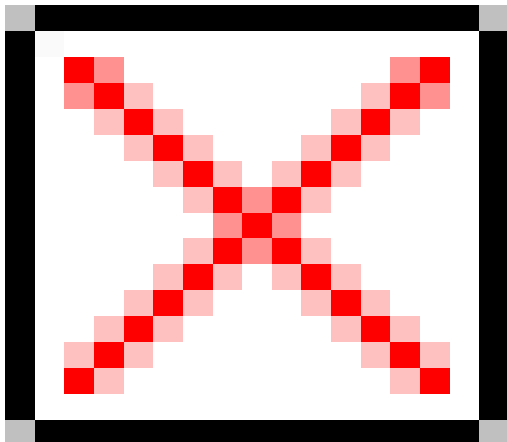


**Elusive Power Sharing Agreement - No GST on 1st April 2017?**



TIOL-DDT 2984

05 12 2016

Monday

A Member of the GST Council says,

*It is confirmed now that GST cannot be implemented on April 1. Parliament has to pass three laws:*

- 1. Central GST*
- 2. IGST*
- 3. Compensation Law*

*Similarly, the State legislatures have to pass the SGST. The drafts for these four laws have to be approved by the GST Council. The GST Council meeting on 2nd and 3rd, failed. The next meeting is on 11th and 12th. Even if the Council approves the draft legislations on 12th, they cannot be presented to and passed in this session of Parliament which ends on 16th.*

*What is the dispute? The main issue is on sharing the power to collect taxes by the Centre and the States. Majority of the States want assesseees with turnover of less than Rs. 1.5 crore. Those above this turnover are to be shared between the Centre and the States.*

*This is not acceptable to the Centre. They also want control over the small assesseees. Big or small, Centre wants control over all the assesseees.*

*States want control on three grounds:*

- 1. State Governments have more association than the Centre with the small assesseees. The States have to bear the ire of the taxpayers which the new tax will bring.*

**2. It will be difficult for small assesseees to face several agencies.**

**3. There are 2.5 lakh State Government tax officials while there are only 70000 Central Employees. It is logical to hand over the larger number of assesseees to State government.**

**Centre does not agree to this. Their fear is that their power will be weakened. They also argue that in service tax, they too have association with small traders. Further they claim superiority in managing inter-state trade.**

**On this note, the Council dispersed without a decision. This is unfortunate. The Council had solved far more complicated technical issues, but this power struggle could not be settled. "All these days we have compromised, let the Centre compromise now," seems to be the point of the majority of States.**

**But GST has to come on or before September 15 2017:** Finance Minister Mr. Arun Jaitley sounded the warning bells that the Constitution does not permit delay in GST implementation; So, if as on 16 September 2017, there is no GST, then there is no taxation in the country. Should the biggest tax experiment in the country be held up because we can't decide who should harass the assesseees? Maybe we should create a new Indian GST Service which should administer the GST. And what is the great administration these officers, Central and States are going to do when all the activities are going to be online? Maybe for each State, an audit group headed by an Assistant Commissioner level officer with a hundred inspectors can do the job. You need a maximum of 20,000 GST officers for the whole country.

### ***Union Budget on 1st February?***

A Member of the Lok Sabha asked:

Will the Minister of FINANCE be pleased to state:

- (a) whether the Government has decided to advance the presentation of the Union Budget in January;
- (b) if so, the details and the reasons therefor;
- (c) whether the Government has assessed the long-term and short-term impact by advancing the union Budget;
- (d) if so, the details thereof along with steps taken to improve the budget making exercise by adopting the best practices of the modern public finance management; and
- (e) the extent to which such a move is likely to make the budget making more participatory, transparent and accountable?

The Minister of State for Finance, Mr. Arjun Ram Meghwal replied in the Lok Sabha on 2nd December 2016:

(a)&(b): A proposal was made for advancing the date of budget presentation from the last working day of February to 1st February, 2017 or any other suitable date as may be necessary. While approving this proposal, Cabinet, in its meeting held on 21.9.2016, directed that for 2017-18, the date of Budget presentation be determined taking into account the notification regarding calendars of State elections.

(c)&(d): Government has considered the various aspects thoroughly relating to advancing the date of presentation of Union Budget. Major advantages in advancing the date of Budget presentations are:

- (i) presentation of single Appropriation Bill (including the estimates of Ministry of Railways after its Budget getting merged with Union Budget) to Parliament for the expenditure of the Government for full year, obviating the need for a separate Bill for 'vote on account' for incurring the expenditure for the first two months;
- (ii) obtaining the approval of Parliament on full budget would enable operationalizing the budget for new schemes/projects included in the Budget right from the commencement of financial year and

Ministries/Department can plan their expenditure allocations for the full year even better;

(iii) the benefit of new taxation measures involving legislative changes in central excise and service tax (GST) will accrue to the Government from the commencement of the financial year; and

(iv) various stakeholders like business and industry are also likely to benefit from the advancement of presentation of Union Budget as they would have greater clarity on tax measures.

(e): The extant budget making process is already participatory, transparent and accountable. The proposed advancement of budget presentation would help accelerate the process and timely delivery of services and implementation of schemes/projects.

### ***Customs - Mandatory Advance Filing of Bill of Entry***

**IN** an effort to speed up the clearances from the port, the time taken by the various stakeholders was studied by the JN Customs and it was observed that, delay on the part of the importers in filing the Bills of Entry was leading to overall delay in clearances of the imported consignments.

As a measure to ensure faster clearances, reduce dwell time of cargo and as a step towards 'Ease of Doing Business' the JN Customs has decided that all the Bills of Entry pertaining FCL cargo, will have to be filed in the ICES system as Advance/Prior Bills of Entry mandatorily.

All the Bills of Entry, filed as Advance/Prior Bills of Entry, will be granted enhanced facilitation.

It is advised by JN Customs that Bills of Entry pertaining to LCL Cargo may also be filed as advance/prior Bills of Entry.

FCL = Full Container Load.

LCL = Less than Container Load

[JN Customs Public Notice No. 164/2016., Dated November 30, 2016](#)

### ***FTP - Minimum Import Price - Extended***

#### **MINIMUM**

Import Price (MIP) for 19 HS Codes under Chapter 72 of ITC (HS), 2012 - Schedule - 1 (Import Policy) is extended till 4th February, 2017.

[DGFT Notification No. 31/2015-2020., Dated: December 03, 2016](#)

### ***Encouraging usage of Debit Cards among Government employees***

**THE** Department of Expenditure in an Office Memorandum states,

In the recent years advancements in banking technology, progress in mobile banking and innovative technologies to facilitate digital payments have enabled large number of small denomination transactions to be handled smoothly in electronic mode. The Government of India has taken policy decisions encouraging cashless/electronic transactions.

In its endeavour on moving towards electronic payments, Central Government Ministries/Departments have been crediting the salary and other payments for the majority of its employees electronically, direct into the designated bank accounts of the employees.

Given the progress made in banking technology, it is assumed that each employee would be in possession of a Debit/ATM card linked to his/her bank account. Ensuring and encouraging government employees to maximise the usage of Debit cards for personal related transactions instead of cash would go a long way serving with the employees serving as 'ambassadors' for the digital push and also motivate, encourage the general public in taking up the cause.

All Ministries/Departments are requested to encourage their employees to make use of Debit Cards for personal related transactions instead of cash. Ministries/Departments should liaise with their accredited banks and set up special camps to facilitate obtaining of and ensure that all its employees are in possession of Debit Cards. Ministries/Departments may also issue similar advisories to their attached/subordinate offices, PSUs, Autonomous Bodies etc.

Ministry of Finance, Department of Expenditure Office Memorandum F.No. 25 (30)/E.Coord/2016., Dated: December 01, 2016

### ***Customs - Express Cargo Clearance System (ECCS) at Courier Terminal, Sahar, Mumbai***

#### **CUSTOMS**

officers facilitate customs clearance of courier parcels, gifts, documents etc. in the Courier Terminals across the country. The clearance provided so far is by filing the Customs documents manually. Since the volume of import/export through the courier mode has shown phenomenal growth, there was an acute need for an advanced automated system on lines of ICES to speed up the clearance process. Further, with the advent of e-commerce in a big way, the requirement for a system based clearance process was felt even more.

Express Cargo Clearance System ECCS is an Automation Program developed on PPP model by Express Industry Council of India (EICI). EICI, a representative body of courier/express industry in the country would put up the entire hardware, software and networking for automation. For smooth and seamless operation of ECCS application, ICES and ICEGATE teams at DG System, CBEC, New Delhi will provide all necessary support and help to ensure that the best IT standards are maintained. However, the system would function under the control of the Jurisdictional Customs authorities as in the case of ICES.

The new system known as Express Cargo Clearance System (ECCS) would be introduced as a pilot at Courier Terminal, CSI Airport, Mumbai with effect from 5th December, 2016 to carry out automated assessment and clearance under the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010.

CBEC Circular No. 58/2016-Customs; Dated: December 02, 2016

### ***Customs - Outsourcing by an authorized Courier***

**AS** per regulation 13(j) of Courier Imports and Exports (Clearance) Regulations, 1998, an authorized Courier is obligated not to subcontract/ outsource functions permitted or required to be carried out by him in terms of the said regulations to any other person, without the written permission of the Commissioner of Customs.

#### ***Express Industry Council of India***

has represented to the Board that it is experiencing difficulty in obtaining permission each time if they want to outsource any of the components in the door to door supply chain. EICI has further elaborated on the subject by saying that it is not viable and efficient for a courier operator to own entire supply chain and seek permission each time.

CBEC has decided that for functions namely pickup or local delivery of export/imported courier packages/shipments, transportation for officials and housekeeping activities permission will not be required. Prior intimation would suffice. The authorised courier will ensure that due diligence is exercised and necessary checks carried out before outsourcing these activities.

CBEC Circular No. 59/2016-Customs; Dated: December 02, 2016

### ***Vakalatnama filed by a new advocate is to be accepted in absence of 'no objection' of advocate already on record - High Court***

**CAN** a litigant change his lawyer midway? Should the changed lawyer give a 'no objection'? And what if he refuses to give the 'no objection'?

I know a lawyer who recently became a judge of a High Court who before joining as a judge called all his clients and gave them the 'no objection' on the vakalats.

The Supreme Court had in a case observed,

***A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative.***

In a judgement delivered on Friday last, the Karnataka High Court held:

1. a party to a litigation has an absolute right to appoint an advocate of his choice, to terminate his services, and to appoint a new advocate.
2. A party has the freedom to change his advocate any time and for whatever reason.
3. However, fairness demands that the party should inform his advocate already on record, though this is not a condition precedent to appoint a new advocate.
4. There is nothing known as irrevocable vakalatnama. The right of a party to withdraw vakalatnama or authorization given to an advocate is absolute.
5. Hence, a party may discharge his advocate any time, with or without cause by withdrawing his vakalatnama or authorization. On discharging the advocate, the party has the right to have the case file returned to him from the advocate, and any refusal by the advocate to return the file amounts to misconduct under Section 35 of the Advocates Act, 1961.
6. In any proceeding, including civil and criminal, a party has an absolute right to appoint a new Advocate. Under no circumstance, a party can be denied of his right to appoint a new advocate of his choice.
7. if an Advocate is discharged by his client and if he has any genuine claim against his client relating to the fee payable to him, the appropriate course for him is to return the brief and to agitate his claim in an appropriate forum, in accordance with law.

So, if you want to change your lawyer, just go ahead and do it.

Please see [2016-TIOL-2921-HC-KAR-MISC](#)

### ***High Value Suspicious Declarations made under the IDS 2016***

**THE** Deputy Editor of a Gujarat based business newspaper mailed me:

I am xxx deputy editor of a Gujarat based business newspaper. I am a regular reader of your DDT columns on [Taxindiaonline.com](http://Taxindiaonline.com).

I am sure you must have already read about Mahesh Shah, a resident of Ahmedabad who had declared Rs13,860 crore as unaccounted cash under the Income Declaration Scheme (IDS).

The declaration is around 20% of the total under the IDS in the country. However, there are various questions that are left unanswered:

1. Why the IT department cancelled his declaration ahead of first instalment?
2. Why did IT department not wait till Mahesh Shah defaults (if he did not have such money as per declaration) to pay the first instalment of tax under the scheme on November 30.
3. Why did a chartered accountant entertain a person who was not his regular client?

4. Did IT department make necessary checks before accepting his declaration?.

He wanted me to raise these questions in DDT.

The Government yesterday clarified:

In the recent Income Declaration Scheme (IDS), 71,726 declarants had declared an amount of Rs. 67,382 crore. Among the declarations received, there were two sets of declarations of high value which were not taken on record in the above figure because these declarations were found to be suspicious in nature being filed by persons of small means.

A family of four declarants namely, Mr. Abdul Razzaque Mohammed Sayed (self), Mr. Mohammed Aarif Abdul Razzaque Sayed (son), ShrimatiRukhsana Abdul Razzaque Sayed (wife) and Ms. Noorjahan Mohammed Sayed (sister) who were shown as residents of Flat no. 4, Ground Floor, Jubilee Court, 269-B, T.P.S-III, Linking Road, Bandra (W), Mumbai, filed a total declaration of Rs. Two lakh crore (Rs. 2,00,000 crore). Three out of the four PAN numbers were originally in Ajmer which were migrated to Mumbai in September 2016, where the declarations were filed.

The other declaration was filed by one Mr. Mahesh Kumar Champaklal Shah resident of 206, Mangal Jyot Tower, Jodhpur Gram Satellite, Ahmedabad for an amount of Rs. Thirteen Thousand Eight Hundred and Sixty crore (Rs.13,860 crore).

These declarations from Mumbai and Ahmedabad were kept pending for investigation about the genuineness of the same and were not included in the total value of declarations announced on 1st October, 2016. After due enquiry, it was found that these declarants were persons of suspicious nature and very small means and the declarations could have been misused.

Therefore, after due consideration, the Income Tax Department decided by 30th November, 2016, to reject these two sets of declarations of Rs. Two Lakh Crore and Rs. Thirteen Thousand Eight Hundred and Sixty Crore respectively. The Department has since commenced enquiries against these declarants to determine the intention behind these false declarations.

Until Tomorrow with more DDT

Have a nice day.

Mail your comments to [vijaywrite@tiol.in](mailto:vijaywrite@tiol.in)