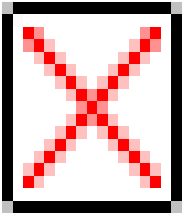


**GST - Agenda for the second year - Part 34 - Representation before GST Council - Not amenable to writ?**

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**APRIL 23, 2019**

**By Dr G Gokul Kishore**



GST Council recommends the tax rates and exemptions for goods and services impacting the entire economy and all the citizens alike. The word used in the Constitution is 'recommendation' but they are invariably translated into decisions through notifications. It may sound strange if it is held that such body is not amenable to writ jurisdiction of High Court. Without being judgmental, we shall discuss a judgment holding so, in this 34th part.

**GST Council not duty-bound to consider representations**

In GST regime, taxpayers believe more in prayers than petitions. Representations with prayers seeking reduction in rate or exemption are filed in large numbers both by individual taxpayers (companies) as well as industry bodies and associations. As GST Council recommends the rates and exemptions, such representations are submitted to the secretariat of the GST Council with copy to CBIC or vice versa. A welcome change in the method of working of the administration is that these representations are considered and wherever the person or body concerned requests, the grievance is discussed in person. In cases perceived as deserving action, GST Council is apprised, and it recommends accordingly.

Writ petitions are also filed when the issue pertains to denial of permission to revise TRAN-1 form or when vehicles and goods are detained and seized for e-way bill related infractions. What happens if a person files representation with the GST Council seeking exemption and simultaneously files writ petition seeking court's intervention to direct the Council to decide expeditiously? The Kerala High Court was confronted with such a situation in *Union of India v. Shiyad & others* [Writ Appeal No. 2061 of 2017, Judgment dated 11-4-2019]-  
[2019-TIOL-888-HC-KERALA-GST](#)

. The Single Judge had earlier disposed the writ petition in favour of the petitioner directing the GST Council to consider the representation within one month's time after hearing the petitioner. The Division Bench has set aside this judgment and allowed appeal by the department and GST Council. Though the DB has also held that the petition lacked bona fide, the present discussion is on the implications of the ratio of this judgment insofar as the subject matter is concerned.

One of the major grounds for allowing the writ appeal is that the petitioners did not cite any provision in the Constitution or any other statute whereby duty has been imposed on GST Council to adjudicate on the grievances raised by members of general public regarding levy of GST on any product. The Division Bench cited Article 226 of the Constitution which empowers the High Court to issue writ in the nature of mandamus. It held that such remedy will be available when the statute imposes a legal duty on a person or authority and the person seeking such remedy has legal right to enforce performance of such duty. Writ of mandamus is limited to enforcement of obligation imposed by law. Functions of GST Council as provided in Article 279A of the Constitution have been noted while agreeing with department's contention that receiving representations from public and passing orders after hearing them is not a function of the GST Council.

**GST Council not vested with power to consider representations?**

Filing of representation may not be a legal right of the taxpayers and disposal of the same may not be a legal duty on the part of the receiving authority. But they are routinely filed to highlight hardship faced when a particular provision of law is implemented which may not be known to

the administration involved in rule-making and issuing notifications. Tax administration for long has been considering such representations and wherever required, meetings are held so that the person concerned is able to explain the grievance or issue properly. The mechanism provides actual feedback from the ground level to those in top echelons so that necessary amendments are made to remove the difficulties. It also facilitates better implementation of the law. In general, tax laws do not contain any provision which empowers a person to file representation and which casts a legal obligation on the authority concerned to dispose the same after observing principles of natural justice. Such remedies are founded on the belief that bureaucracy exists to serve the public and not vice versa. If the ratio as contained in this judgment is extended, then no writ petition may lie against any authority who can sit on a representation for years without taking any decision. This leads us to two questions: Is the GST Council not vested with power to consider representations and what is the role of writ courts in such matters?

Clause (4) of Article 279A of the Constitution lists the subject matters on which GST Council is empowered to make recommendations. Sub-clause (h) empowers the Council to make recommendation on any other matter relating to GST, as it may decide. This confers power on the Council to consider matters which are not listed. It is well-known that representations, wherever perceived as having prima facie merit by the secretariat, are considered as part of agenda item by the Council in its meeting and such action can be attributed to power derived from such sub-clause. It may be a fact that the provision being residuary and not specific cannot be read as imposing an obligation on the Council to consider representations. However, the intention of such provision is to permit sufficient space for such an important body to recommend on matters which are necessary for smooth implementation of GST law. This sub-clause is required to be read with clause (6) which mandates that the Council shall be guided by the need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services. If the Constitutional mandate is harmonized structure of GST and the Council is expected to orient its recommendations which will help achieve such objective, then representations highlighting tariff inefficiencies and imperfections need to be considered.

### **Role of writ courts**

GST is a new tax and the law is at a very nascent stage. Implementation challenges are plenty and it is the industry which can help the tax administration in fine-tuning the law by flagging serious issues and anomalies. Writ remedy is invoked by taxpayers when statutory remedy is not available. Writ courts are considered as courts of justice and equity. People approach writ court seeking justice which is not expressly provided for in the codified law. It may be true that mandamus commands activity and unless the authority has a legal duty to perform a particular act, writ court cannot issue such direction. However, drawing from the PIL and environmental jurisprudence, one can hazard to say that the contours of mandamus have been redefined and enlarged in the recent decades. The volume of directions given by courts to various authorities on matters of public importance has led to coining of the expression 'judicial activism'. Constitutional remedies exist to further the objectives of a welfare State. May be, it is time that the pre-requisite of 'legal duty and legal right' for mandamus is re-visited.

*(â€¦To be continued)*

**[The author is an Advocate and Joint Partner, Lakshmikumaran & Sridharan, New Delhi. The views expressed are strictly personal.]**

See Part [XXXIII](#)

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