IGST to States - The Revised GoM

DECEMBER 11, 2019

By Vijay Kumar

ON 4th December 2019, the GST Council issued an Office Memorandum stating,
"In pursuance of the decision taken in the 37th GST Council Meeting held on 20th September, 2019, a Group of Ministers (GoM), who are also Members of the GST Council, is constituted (?) study in detail the issue of IGST Settlement as on 31st March 2018 in view of the concerns expressed by the States of Punjab, Tamil Nadu, Union Territories of Delhi and Puducherry and to address any possible dispute arising from the same".

The Finance Minister Ms. Nirmala Sitharaman was to be the convenor of the 'GoM on IGST Settlement' which consisted of the following Members:

1. Mr. V. Narayanasamy, Chief Minister, Puducherry
2. Mr. Sushil Kumar Modi, Deputy Chief Minister, Bihar
3. Mr. Manish Sisodia, Deputy Chief Minister, Delhi
4. Mr. T. S. Singh Deo, Minister for Commercial Taxes, Chhattisgarh
5. Mr. Niranjan Pujari, Finance Minister, Odisha
6. Mr. Manpreet Singh Badal, Minister for Finance, Punjab
7. Mr. D Jayakumar, Minister for Fisheries and Personnel & Administrative Reforms, Tamil Nadu

On 7th December 2019, the GST Council came up with another O.M stating,
"In partial modification to the Office Memorandum of even no dated 04th December 2019 with respect to constitution of the GoM on IGST Settlement, the GoM is reconstituted
to study in detail the issue of GST Settlement as on 31st March 2018 in view of the concerns expressed by the States of Punjab, Tamil Nadu, Union Territories of Delhi and Puducherry and to address any possible dispute arising from the same."

The new 'GoM on IGST Settlement' with Mr. Sushi Kumar Modi, Deputy Chief Minister, Bihar as convenor will consist of the following Members:

1. Mr. V. Narayanasamy, Chief Minister, Puducherry
2. Mr. Manish Sisodia, Deputy Chief Minister, Delhi
3. Mr. T. S. Singh Deo, Minister for Commercial Taxes, Chhattisgarh
4. Mr. Niranjan Pujari, Finance Minister, Odisha
5. Mr. Manpreet Singh Badal, Minister for Finance, Punjab

6. Mr. D Jayakumar, Minister for Fisheries and Personnel & Administrative Reforms, Tamil Nadu

The GoM **would** examine the status of amount of IGST remaining un-apportioned as on 31st March 2018 as per the extant legal provisions and what action is required to be taken at this stage, if any. The outcome of the discussions in the GoM shall be submitted to the Hon'ble Union Finance Minister and Chairperson, GST Council. The GoM on IGST Settlement could be assisted in its work by Shri Ritvik Pandey, Joint Secretary, Department of Revenue and the Convenor of the GoM may invite other officers, as required.
(GST Council O.M in F. No. 571/GoM/IGST Settlement/GSTC/2019, dated: 07/12//2019)

Why was the FM replaced as the Convenor of the GoM? The media widely reported this and finally after another three days, the CBIC clarified the issue. In a twitter clarification, the CBIC stated,

> ***With reference to some news being circulated in a section of social and other media about the change in the constitution of GOM on IGST, it is hereby clarified that subsequent to Union Finance Minister's meeting on 4th Dec 2019 with the Finance Ministers of Punjab, Madhya Pradesh, Rajasthan and Deputy Chief Ministers of Delhi and Puducherry and their request in the aforesaid meeting, a Group of Ministers was constituted for discussing issues relating to IGST. Inadvertently, Union Finance Minister was mentioned as Chairman of the GOM. Since Union Finance Minister who is also the Chairperson of the GST Council could not have headed the GOM as its report is required to be submitted to the Chairperson of the Council. In view of the above, a modification was made to the constitution of the GOM where Sri Sushil Modi, Deputy CM, Bihar was made its Convener. The GOM will deliberate on IGST issues and submit s its recommendation to the Union Finance Minister and Chairperson of GST Council. This explains the reasons for change in the constitution of GOM.***

This is the story of GST - everything is done in a hurry and with no concept like a second look at what you draft. And regretting followed by faulty corrections is done later and leisurely. First of all, the previous O.M did not mention the Finance Minister as ***Chairman***, it said, she was to be the convenor. The first O.M was issued with the approval of the Hon'ble Union Finance Minister and Chairperson, GST Council. At that time didn't they know that she could not be the convenor? Wisdom dawned a little later and they issued the second O.M, which was issued with the approval of the competent authority. Who is the Competent Authority to appoint a group that consists of a Chief Minister, two Deputy Chief Ministers and four ministers of various states?

It is learnt that an Assistant Commissioner has last week served notice on a taxpayer proposing to impose a penalty of 50,000 rupees for:

1. Not displaying the certificate of registration in a prominent location at the place of business,

2. Not displaying the name boards containing GSTIN at the place of business.

No ifs and buts in taxation

Addressing the ***Hindustan Times*** Summit recently, the Finance Minister said that she was committed to a simpler tax code, "without ifs and buts" to help revive the economy. What a glorious concept!. Let us hope she achieves it. She also said,

We have asked tax collection officers to not strain and put pressure on the assessees even if tax collection targets are not met.

The Goods and Services Tax rate structure has become distorted due to a string of rate reductions after the new indirect tax was introduced two years ago.

In the enthusiasm to reduce taxes, that framework which was originally agreed at stage one of GST was distorted.

Single rate of GST

Dr. Kelkar in his new book has some interesting observations on GST.

- Government is an important buyer of goods and services, and a low single-rate GST would yield cost savings for all levels of government.

- There are strong inter linkages between GST and direct tax collections. The value-added tax (VAT) chain induces legibility for the state, and this legibility induces higher direct tax revenues also. A successful GST reform will yield higher direct tax collections also.

- Looking for revenue neutrality between the new GST and the old indirect taxes is an incomplete vision. Looking for budget neutrality in the induction of GST, instead of revenue neutrality, would have been better.

- Fundamental tax reforms always involve giving up revenues in the short term and making it up on higher GDP growth.

- We should have been comfortable running up larger budget deficits in the short run. An insistence on achieving revenue neutrality in the short run was a mistake.

- A simple single-rate GST is easier to implement, as opposed to a complex GST system with multiple rates. It would make sense to first build a single-rate GST, achieve a high compliance environment, and then examine the possibility of having multiple rates.

- At the early stages of learning how to build a tax administration, the officials should have low powers of investigation and punishment. If high powers are given to officials, alongside the poor checks and balances of an early-stage organization, this will yield a collapse into intimidation and corruption. Only after a tax administration is working at high levels of probity with low tax rates, low powers of investigation and low penalties, can we consider gently raising these powers.

- These are the natural sequencing opportunities: to build the Easy pieces first, to learn state capacity on simple problems, and then come to the more difficult ones.

But then, the then Finance Minister, Mr. Jaitley had said in Parliament,
"if you said that a Hawaii chappal and a BMW car have one rate, then it will be a regressive tax. That is not possible."

Where is the Appellate Tribunal?

Sub-section (1) of section 112 of the Central Goods and Services Tax **Act, 2017**
provides that any person aggrieved by an order passed against him under section 107 or section 108 of this Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

But where is the Appellate Tribunal? Remember the constitution of the Tribunal has been struck down by the Madras High Court. - **2019-TIOL-2188-HC-MAD-GST**
. So, what is the remedy? Rush to the nearest High Court? The Government has realised this difficulty and has clarified that the start of the three months period shall be considered to be the later of the following dates: -

1. date of communication of order; or

2. the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

So, we can all wait till the President enters office, whenever that happens. But till then, will the order of the lower authority be deemed to be stayed or should he pay the pre-deposit and wait for the tribunal to start functioning? Another clarification, another day. (**Order No. 09 /2019-Central Tax, dated 03rd December, 2019)**

The whole problem with GST had been succinctly explained by the Prime Minister as akin to the slight difficulty with a pair of new spectacles.

We have used those spectacles for the last two and a half years and the problem remains. What would you change? Your spectacles, your eyes or GST?

Until next week