

GST - Trusting the taxpayer and bridging trust deficit

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pandemic gripping the nation has not let its guard down and continues to run riot in all parts of the nation. While dipping numbers give us confidence, the gains in one geographical part is more than offset by rising numbers in another part of our country. A recent CMIE report adverts that nearly 1.8 crores of salaried employees lost their jobs since April 2020 and in July 2020, 50 lakh salaried people were given yellow slips. The GST collections have also been under stress for July 2020 and were only 86 per cent of the GST revenues of the previous year same month. The GST Council has also not considered the suggestions of various stakeholders for some reliefs in GST relating to impact of the pandemic. However, there have been a few concerning events that have occupied Trade and Industry attention in the current quarter and will, therefore, address a few of them below.

Views of DGGSTI dated 10 June 2020 on Evasion of Duty of Sanitizers

Based on an advice from Central Economic Intelligence Bureau, a [letter](#) was issued by DGGSTI dated 10 June 2020 addressing that evasion had taken place on in respect of Hand sanitizers. The controversy was also reported in the Economic Press. The purpose of this point is to not to deliberate on the merits of the classification but the manner in which the letter was issued. The letter articulated evasion of duty in the subject column of the Circular, even prior to investigation. It is important to note that in the classification issue on the subject, the suppliers were discharging duty at 12 per cent and hence even in the context of section 73 and 74 of the CGST Act, it can at best be a situation of short payment of duty.

The Hon Supreme Court of India in the case of Siemens Limited versus State of Maharashtra reported in - [2006-TIOL-190-SC-CESS](#) held that ***"A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."***

In the above case, an opinion was formed at the stage of the issue of the SCN itself and hence the Apex Court held that if a pre-conceived view was taken making the whole process devoid of sanctity. As regards the classification of sanitizers the Intelligence and Anti Evasion authorities had already taken a view that it was a case of evasion even without going through process of an investigation and a SCN followed up by an adjudication. While investigation would reveal the basis of the decision of classification, it will also be worthwhile to examine if any tax payer has acted on legal advice etc. The entire approach of the authorities strengthens the view that a taxpayer is considered an evader even prior to commencement of litigation which is not an indicator of a tax friendly regime as claimed.

Attachment of Bank Accounts - Section 83 of the CGST Act read with recent developments in High Courts

Recently, a few judgments have been reported on attachment of bank accounts provisionally to protect revenue. While the Hon'ble High Courts have also been cautious in using discretion in interfering at the investigation stage and attachment of bank accounts, it is the opinion of the Trade and Industry that there is a tendency to use the provision of section 83 in a manner without adequate protection to the taxpayer.

Section 67 read with 83 empowers Revenue to provisionally attach property including Bank Accounts. This provision was present in the erstwhile Central Excise Law (inserted by Taxation Laws Amendment Act, 2006) as 11 DDA but that did not mention Bank accounts specifically. The Board also issued a Circular (protective Circular [874/12/2008-CX](#)) reiterated in Letter F.No. [224/37/2005-CX-6](#) issued on 24 December 2008, to protect assesses and circumstances when 11DDA would be resorted to. In the GST Law there is no such protection Circular and it is believed that the Anti Evasion authorities are using this provision without any safeguards against the Trade and Industry.

The way forward would be to ring fence the law as in the erstwhile regime. On a perusal of the erstwhile regime Circular, the Parliamentary Committee views were incorporated as -

"iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue. The remedy of attachment being, by its very nature, extraordinary, must be resorted to with utmost circumspection and with maximum care and caution. The grounds on which the Central Excise Officer entertains the reasonable belief that the noticee would dispose of, or remove, the property and the source of his information, if any, should be clearly stated while seeking the previous approval of the Commissioner of Central Excise. Normally, the proposal to be made to the Commissioner of Central Excise should be forwarded within one month's period of the issue of SCN. It may also be noted that appropriate disciplinary action shall be initiated against the officers who may be found to exercise the powers of provisional attachment of property frivolously and without sound reasons. [Recommendation of the Standing Committee on Finance (Fourteenth Lok Sabha) in its 27th Report]."

Further the Circular incorporates the conditions under which Provisional attachment would be possible

"vi) The following types of offences committed by a manufacturer or an exporter may be considered for provisional attachment of property: -

(a) Removal of goods without the cover of an invoice and without payment of duty;

(b) Removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;

(c) Taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;

(d) Taking of CENVAT Credit on invoices or other documents which a person has reason to believe as not genuine;

(e) Issue of excise duty invoice without delivery of goods specified in the said invoice;

(f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine".

A genuine classification issue does not find mention in the above grounds as duty would have been discharged under GST based on interpretation of classification by the manufacturer/supplier and hence would be outside scope of Clause a) above. It is pertinent to point out that vide Circular [129/48/2019-GST](#)

dated 24 December 2019, the GST Policy Wing has permitted this route of attachment under the SOP for non-filers of returns. It is important that to enhance taxpayer trust the provision of law in section 83 be adequately ring fenced and a fresh Circular need to be issued under GST law also.

DGSTI Circular on summoning Senior Officials of tax payers -Investigations

The recent Circular as reported in the Press was issued (19 August 2020) urging restraint in summoning senior officials of tax payers at first instance. It is not out of place to clarify that under the erstwhile regime Circulars were issued on the same and of interest is the Circular dated January 20, 2015 under reference F No [207/07/2014-CX-6](#) wherein under para 4 it is mentioned -

"4. Further, senior management officials such as CEO, CFO,Â GeneralÂ Managers of a large company or a PSU should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision-making process which led to loss of revenue".

The content of the current circular as understood from the Economic Press Reports are similar but there have been instances of senior officials being called unnecessarily by the Intelligence authorities. It is important to refer to a recent judgment of the Hon Madhya Pradesh Court reported as - [2020-TIOL-1395-HC-MP-GST](#)

wherein the Hon High Court granted bail to Directors as one of the grounds was they were not Directors the time offence was committed.

It is necessary to point out that after an entire investigation process has been done, senior management personnel are summoned with no avail as a view has been taken based on legal advice that course of action / tax strategy etc is tenable in accordance with law. It would, therefore, be fruitful if the Intelligence and Anti-Evasion authorities also refer to the basis of the decisions which in many cases would be supported by a legal opinion instead of summoning the Senior Officials. Additionally, it is not invalid to say that under the GST regime as regards issues like Transitional Credits, ITC credits pending due to reconciliation etc. many High Courts have ruled in favour of the taxpayer and, therefore, if any coercive actions are taken on these issues despite HC decisions supporting the taxpayer, it would be surprising and untenable. In substance, it is therefore desirable if the recent Circular (as reported in the Press) is complied and an atmosphere of trust and stakeholder importance is created.

Summary

With completion of 3 years of GST, it is time that the law recognizes taxpayers with dignity and respect. In the current scenario of economic downturn consequent to the pandemic, a healthy Government TaxPayer relationship is ***de minimis***

if India is to recover economically. It is, therefore, urged that the GOI/States and Council addresses these issues in a manner that a taxpayer is respected and proud to contribute to the nation.

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