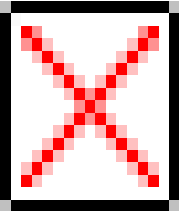


Litigation in High Courts - Need for White paper on GST considering road ahead

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WHEN

the path breaking fiscal reform was implemented in July 2017, the expectations were two fold a) Good and Simple Tax b) Regime which will permit only critical legal issues to reach the portals of higher judicial forums .The experience assimilated over 3 year period, suggests that there is an impending need for GST Council, States and GOI to visit the litigation database and find a efficacious solution to reduce litigation. No doubt much has appeared in TIOL columns on this, but the current article has a different slant and content .The inflection point to present this view is a recent judgment of Hon'ble Punjab and Haryana High Court in the matter of lifting of attachment of bank accounts in the case of UFV INDIA GLOBAL EDUCATION reported by us under [reference 2020-TIOL-1541-HC-P&H-GST](#)

. Once again, the provision of section 83 of the CGST [Act, 2017](#) and its interpretation was raised in the Hon'ble High Court on a Writ Petition.

After seeing the regularity of matters like this, we summarized cases on our website for July 2017 to 2020 (till 1st September 2020) into broad buckets, to drive home the point that there is impending need for an in depth perusal

Buckets	HC	SC	Total
Transitional Credit	70	1	71
ITC Freezing and release	288	6	294
Interests Gross /Net, other reasons	386	4	390
Search, and Seizure,	175	3	178
Arrest and Bail involving allegations of evasion	84	3	87
Attachment of Bank Accounts pending investigation	66	1	67

Actions on non- filers and unregistered persons	9	0	9
Classification matters	46	0	46
E way Bills /Seizure of goods	175	2	177
Cancellation of Registration, problems in registration etc	242	1	243

The list includes not only final orders but also orders of remand, dismissal of Writ Petitions etc.

While cases can be slotted into more than one bucket, the overall objective is to look at these numbers critically so that a wholesome solution is attempted. Pertinent to advert that cases pending before higher judicial forums are not included in the list.

Summary of cases before Authority of Advance Rulings and its Appellate Authority

The cases reported have been divided into the following buckets -

Buckets	AAR	AAAR	Total
Classification matters	417	46	463
Eligibility of items to tax as Services	397	59	456
ITC Eligibility /Reversal/others	172	36	208
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Analysis

A careful perusal of buckets like ITC Freezing, Transitional Credits will pose the larger question of why the Revenue took a very hard stance on the entire credit regime. When the regime was launched, the larger expectation was an understanding Revenue Department of the needs of the taxpayer. It is indeed very disappointing that the GST credit regime is considered as a concession by the statute which on the contrary is the essence of a Value Added Tax Regime. To bring sanctity to the tax system, the Revenue must not in future argue that credit is a concession given by the enactment. It is emphatically true that a Value Added Tax regime will fail without the bedrock of ITC and a fully integrated Tax credit system is ***de minimis***.

On Interest being levied at gross instead of net of ITC available with the assessee, the controversy was unnecessary and sparked very unfavourable trade reaction leading to loss of precious time which otherwise could have been focussed on improving turnover of respective goods and services.

E way bills controversy in many States arose due to approach taken by SGST officers of resorting to overkill on defaults in information in the bill and the fallout could not be contained at the administrative level. What was surprising was that many Anti Evasion Officers started

questioning classification of goods which area was demarcated for the Assessing Officer /Jurisdictional officer.

The protection of Circulars as regards attachment of bank accounts and circumstances under which actions would be resorted as available in the erstwhile regime were not there in GST, leading to a wave of petitions. This was aggravated by the unfair actions of attachment even after search and seizure actions was completed and no Show Cause Notice was issued. The law was more mired in controversy because of the panic action taken in many cases even when assessee was co-operating in the enquiry.

It is trite that TIOL as a Knowledge house on Taxes fully supports all government actions against defaulters and people who indulge in fraudulent activities either from an ITC stand point or from evading tax on supply. However, the entire nation is a witness to the on-going classification dispute on Hand sanitizers and the representation made before the various forums on this. It is true to certain extent that the Industry rose to the occasion of dealing with the pandemic and supplied sanitizers and in the process of doing business, they were taken on by a storm of tax classification issues.

As regards the Authority for Advance Rulings, the larger Revenue focus in all decisions without understanding the link between the commercial side of business and the provisions of law resulted in many approaching the High Courts. The authorities are so focussed on denying ITC to that extent that Lifts in Housing Societies have been refused credits in a few Advance Rulings holding they are not Plant and Machinery (despite the clarity in law). The recent decision of P&H HC also reflects the growing trust deficit between assessees and Revenue which does not augur well for a developing country like India.

The AAR and AAAR decisions could not be appealed anywhere but to the High Courts under Constitutional provisions. The load at the High Courts is mounting also due to COVID affecting normal functioning, despite E-Hearing across the country.

The promise of GST was a hassle-free credit system and yet in many areas section 17(5) is being used to read into the law, interpretation which were not before the legislature when the Act was duly approved. We have come a full circle on litigation effective Sep /Oct 2017 and going by the pace of litigation, we will end the 5 years of GST with number of cases, we may find hard to believe.

White Paper on Litigation policy

While all efforts are made by the GOI and the Council with all States to ensure adequate impetus is given to revive the economy post pandemic, it is pertinent that a White paper is published on GST Litigation by the Council clearly laying down what will be clear points of focus on principle issues. This paper can act as a guiding post for the Trade and Industry to take a stand while contesting issues.

Approach of Assessment Authorities for 2017-18 FY (July 17 to March 18)

The Litigation arising out of the first assessment is yet to reach the portals of Appellate Authorities or higher Judicial forums. At this stage what one hopes for, is that the respective Jurisdictional authorities will respect the relevant annual returns which were audited and signed by Auditors and at the minimum must not request for information already compiled in the Forms 9/9C. Additionally as regards the broken period for April -June 2017, it is expected that the flow through of the information from erstwhile returns under State laws do not create any new information content or reconciliations.

Expectations of Trade and Industry

As the COVID pandemic effect tapers off by year end the Trade will definitely like to see the Appellate Tribunals in GST functioning fully and a proper nation wide information on all aspects of the infrastructure and facility set up should be made public. While a Good and Simple Tax may not envisage matters regularly reaching Tribunals, it is a fact that we cannot wish away minimal litigation under the fervent hope that the Revenue gives more than it takes.

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