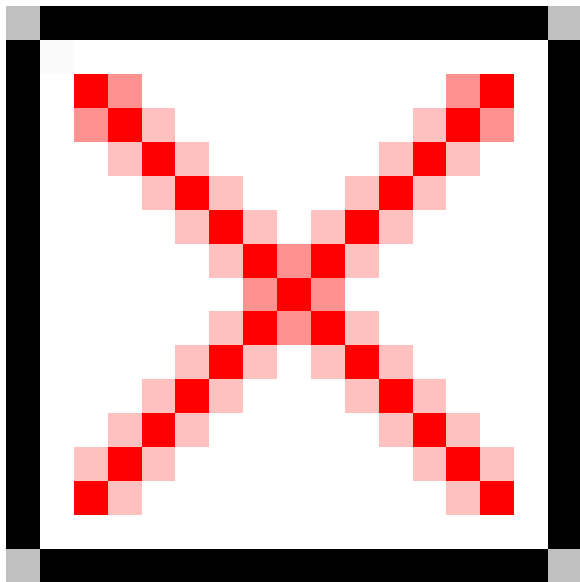


A Tax on Walking, Readingâ€™ for the disabled

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By Vijay Kumar

A normal person need not pay tax for walking. But a disabled person needs to pay 5% tax for walkingâ€™



Mr. Nipun Malhotra, aged all of 33 years, is one of India's leading disability rights activists and scholars. Despite having a locomotor disability from birth called 'arthrogryposis', which leads to a lack of muscles in his arms and legs and renders him permanently dependent upon a wheelchair for basic mobility, he has worked tirelessly to improve the lives of thousands of other disabled citizens in India who face accessibility, financial and social barriers.

Apart from being a disability rights activist and scholar, Nipun is also extremely well-qualified educationally and has graduated on merit and hard-work from the prestigious St. Stephens College, Delhi University, with a Bachelor's Degree in Economics and has also obtained his Master's Degree from the Delhi School of Economics. He has also obtained a Degree from the Indian School of Business (ISB) at Mohali and was on its Board. Professionally, he heads one of India's largest auto component businesses as its Executive Director.

He topped the country in Business Studies in class twelfth, about which he says, **I guess it helped that I was studying when my classmates were playing Cricket.** (As Lynne Truss, says in her book, **"Eats Shoots and Leaves"**, that while other girls were out getting their necks disfigured by love bites, she was sitting at home learning grammar!)

He adds, **Girls, I'm quite handsome - at least Umoja Travels, India's first accessible travel company thinks so as they've chosen me as their brand ambassador.**

He is the founder of 'Wheels for Life' (www.wheelsforlife.in)

- a crowdsourcing platform connecting those who need wheelchairs to donors who can financially contribute for them. An avid tweeter, Nipun writes regularly on Disability issues. His writing has appeared on Scroll.in, the Indian Express, NDTV Blog etc. He has also authored a comic titled 'No red card for the disabled'.

Why do I write all this in a column designed for GST?

On 20.06.2017, a few days before GST came into existence, Nipun wrote a letter to the Finance Secretary and Revenue Secretary.

Excerpts from his letter:

- I am writing to you on behalf of the 2.21% population of India which is disabled.
- As per the GST Council meeting dated 18.05.2017, I was quite surprised to learn of a proposal to levy GST on commodities essentially required by Persons with Disabilities.
- It is rather unfair that those who are already burdened with physical limitations which further have the effect of limiting mobility and interaction with one's environment, instead of measures to reduce these barriers, our Government is proposing to impose onerous financial barriers. This Policy decision should be reconsidered and reversed, keeping in mind our Hon'ble Prime Minister's vision *qua* the rights of the disabled.
- Even in countries like Austria and Canada, where GST is enforced, tax exemptions are provided to the Persons with Disabilities. Our legislators and judiciary have always worked for the cause of inclusion of persons with disability and have protected their constitutionally guaranteed right of equality, dignity and freedom of movement.
- My objective of sending this letter to your Ministry stems from my *bona fide* belief that this Government, in particular, is genuinely concerned about not only protecting the Constitutionally guaranteed rights of those who are disabled but even beyond that, is willing to work for the actual upliftment of those who are restricted in their movement due to genetic or other reasons.
- I hope you will consider my plea on behalf of the entire disabled community of India, and waive all taxes which directly affect the disabled community. I am happy to make myself available for a meeting, should your department require that.

On not getting any response from the respected Secretaries, he approached the Supreme Court with a writ petition on 17.07.2017. Some of his grounds were that:

1. the imposition of any tax/duty/levy, such as the one contemplated under the Goods and Services Tax [Act, 2017](#) on essential mobility aids used by disabled people is totally violative of Fundamental Rights guaranteed under Articles 21, 21A, 19 (1) (d), 14 and 15.
2. the imposition of a tax on wheelchairs meant for those with permanent locomotor disabilities, is akin to imposing a financial penalty on the able-bodied for walking. Such a taxing regime is directly violative of Article 19 (1) (d) as also Article 14 of the Constitution and must be immediately struck down.
3. the imposition of any tax/cess on Braille- material and writing paper is akin to imposing a State sponsored financial burden on reading, which is directly violative of the Right of Free Speech and Expression for the entire blind community which relies on such aids as essential goods.

He prayed that the Court should:

- Strike down the levy of GST on essential equipment for disabled people (wheelchairs, specially equipped vehicles for disabled, braille papers, crutches etc.) as being unconstitutional under Articles 14, 15, 19(1)(d), 21, and 21-A.

On **21.08.2017**, the Supreme Court issued notice. The case came up for hearing this week - **on 26.10.2020**.

The Attorney General for India stated that after a detailed discussion with the Secretary -Revenue, it has been found that it may not be possible to accede to the request of the petitioner that an exemption from tax be granted on 'mobility devices' because of the policy implications. However, he submitted that the petitioner may move a representation before the GST Council.

The senior counsel appearing on behalf of the petitioner stated that he would wish to press the petition. However, he submitted that since the petition under Article 32 of the Constitution has been instituted in the public interest to safeguard the interests of a large number of similarly situated disabled persons, who have to suffer a tax on mobility devices, at this stage he would move a representation with the GST Council.

The Attorney General stated that there could be no objection to the petitioner pursuing a representation. (Why should there be any objection if anyone wants to pursue a representation to the GST Council?)

The writ petition is to be posted for final disposal in **March 2021**.

That's where it stands. Maybe there is little that the Supreme Court can do - after all there is no equity in tax. But can't the government and the GST Council act? Heavens are not going to fall if a few wheelchairs, braille papers and crutches are exempted from GST. Instead of allowing the litigation to ferment in the highest courts, the government should immediately act to give relief to such people and not take refuge in technicalities like **"policy implications"**, **"import issues"** and **"input credit problems"**.

Nipun had in his petition submitted,

The imposition of any tax/levy even on input materials purchased by any member of the manufacturing chain which produces mobility aids, ought to be eligible for 100% input tax credit, so as not to pass on any of the tax burden to the disabled consumer, even indirectly. The resultant input tax credit refunded to the manufacturer is not only desirable, but also the constitutional mandate of the State, inasmuch as it prevents the tax burden from being passed on to the disabled consumer. Similarly, the tax rate upon the final consumer, which is presently at 5% for most disabled items, is patently unconstitutional and should be struck down. Under the present GST regime, although the manufacturer receives 100% input credit, however the end-user i.e. the disabled consumer, is still burdened by the 5% tax rate. This increase, albeit small, in the total price of the mobility aid is grossly unfair and tantamount to a penalty for being disabled and wanting to be mobile. Such an increase directly affects the ability of the disabled person to purchase the product.

Please see [2020-TIOL-167-SC-GST-LB](#).

Will somebody listen?

Until next week