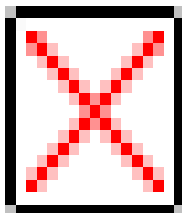


## GST - A mixed bag of issues in New Year

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### Introduction

#### WITH

the dawn of Calendar 2021, the nation hopes for a turnaround year. In the run for bouncing back, it is earnestly expected that the GOI and the Council addresses the following areas of concern which will definitely assist the Trade and Industry to play its part.

#### Concern 1

Recordings (Video and Audio facility) at offices which have power of Arrest - Observations of the Hon'ble Apex Court in case of Paramvir Singh Bainsi versus Baljit Singh and others reported in [2020-TIOL-175-SC-MISC-LB](#)

The Supreme Court in para 19 of the judgment ordered that even offices which carry out interrogation and power of arrest should have facility of Video recordings and ordered a detailed process on recording and preservation. It is indeed true that all agencies working under the Ministry of Finance such as DRI /DGGSTI etc should have the same facilities.

At this juncture, it is pertinent to observe that in the above offices various registered assesseees may appear before the authorities. Apart from mere recording of the proceedings a detailed process note should be issued on how to treat tax paying assesseees with respect and courtesy. Even when summons are issued under various provisions of Customs / GST Acts etc, a clear cut direction should be laid down for all field offices in the area of anti-evasion as to how demarcation should be made between issues that arise on interpretation of law and evasion of taxes outright. It is indeed critical to appreciate that just because larger period proceedings have been initiated or are possible in a given case, the assessee concerned cannot be treated badly and disrespected. Finally as the GST law matures, it is pertinent that a relationship building process is created with all tax payers who contribute to nation building. A working relationship between the sovereign and the citizen is, at best, a positive development for the country. An interpretational issue can give rise to a Show Cause Notice but that does not by itself empower the Revenue to label the assessee as dishonest.

In the light of the observations of the Hon'ble Apex Court preservation of human rights in Revenue investigations is sacrosanct.

#### Concern 2

The vexed section 83 - A different case but actions not commensurate to level of aberration / non -compliance -  
[2020-TIOL-2222-HC-MUM-GST](#)

The Hon'ble High Court of Bombay vide para 25 of the judgment came down heavily on the action of the Revenue in attaching Bank Accounts. It is not as if that the TIOL has not pointed out this earlier (please refer to our article on As I SEE IT Column - August 2020) wherein we had adverted to the Circulars under the old regime and again drew reference to the fact that there are no protection Circulars and how the provision of section 83 should be ring fenced. The observations of the Hon High Court are reproduced below which conveys the opinion also of the Trade and Industry.



**"Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact, it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."**

**Like under the proviso of section 11 A (erstwhile regime) the word ineligible credit in Rule 86A is in the company of fraudulent credits and hence must take the same colour.**

It would be interesting to observe the views of the Hon Gujarat High Court in para 65 of the judgment rendered recently -

**"Our final conclusions may be summarized as under:-**

**(I) The invocation of Rule 86A of the Rules for the purpose of blocking the input tax credit may be justified if the concerned authority or any other authority, empowered in law, is of the prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.**

**(II) The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons.**

**(III) The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.**

**(IV) The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit.**

**(V) The Government needs to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned. In this regard, the Government needs to act promptly."**

In summary it is incumbent upon the GOI/Council to look at Rule 86A and provisions of section 43A also and provide adequate comfort to the Trade and Industry.

#### **Concern 4**

**Compliance to Orders of Judicial forums - 2020-TIOL-1660-CESTAT-MUM - reported on 3 December 2020**

In this matter a SCN was issued to the assessee on the vexed subject of Cenvat Credit which was dropped by Commissioner vide the OIO but was subsequently reviewed by the Committee of Chief Commissioners under 35 E (1). Though the issue under the erstwhile regime is of no

relevance in the GST times, what is pertinent is the observation of the Hon Tribunal given in para 6 of the judgment (reproduced below). It is not the first time that Tribunals and Courts are raising this non compliance to higher forums orders and in case the Executive disagrees with the orders of the relevant forums, the appropriate measure is to appeal to the next higher forum and get a stay of the orders which is subject matter of dispute. However even without obtaining stay orders, decisions of Tribunal, High Courts are side stepped and this sadly continues even in the GST regime.

***"6. Though it was grossly improper on the part of the Committee of Chief Commissioners to insist that an appeal filed on their direction by the adjudicating authority should even suggest that decisions accorded by competent appellate authorities or constitutional courts do not bind adjudicating authorities merely because the executive authority has chosen not to accept those, we do not intend to dwell overmuch on such demonstrated lack of respect for rule of law and leave it to the management of the Central Board of Indirect Taxes & Customs to evolve appropriate methods for proper sensitisation at the senior levels that are entrusted with the high responsibility of review. A copy of this order may be served on Chairman, Central Board of Indirect Taxes & Customs for necessary action."***

### **Expectations of Trade and Industry**

As we move into another calendar year and the Trade is looking forward to bouncing back in terms of good business / industrial activity, it is de ***minimis***

that all actions of the GOI /Council contribute to healthy growth and co-operation in a manner that the Trade grows and so do the coffers of the GOI.

**[The views expressed are strictly personal.]**

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