

GST Amendments - A bid to 'decarbonise' toxic practices!

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FOR

cold-eyed doomsayers, the GST has already turned into an aging pillar of India's fiscal experiment! A good size of the taxpayers, the higher judiciary and, even otherwise wholesomely paid professionals, have become allergic to frequent changes in a thicket of rules, regulations and top-down administrative diktat! Though a sizeable chunk of the indirect tax community may not agree with such awfully intense and wonkish assessment of the prevailing state-of-affairs but it has indeed become hard to sugarcoat even positive amendments for them. If the GST is to win, voilÃ , such 'superspreaders' of gloomy mood do need to be brought to heel! One of the 16 proposed amendments in the Finance Bill 2021 is to guillotine tax audit i.e a timely burial of a compliance provision which was fast turning into a museum piece!

It is certainly not a case of taxpayer empowerment at the cost of exchequer's interests. There are other provisions in the law to protect the turf of the Revenue.

However, what knocks my socks off is the emergence of a lightning rod of 'pot-and-pan-banging' protests from some quarters which has created combustible atmosphere surrounding the North Block! Although the mascots of these associations and even the affected Institute need not be blamed for displaying steadfast loyalty to their own forums and their members but what is spawning misgivings is - Whether the Union Finance Minister would be able to demonstrate the same degree of fealty to her own larger constituency of faceless taxpayers? Are the mandarins in the Ministry of Finance invulnerable to the swelling balloon of political pressure? Is this amendment a well thought out decision to overcome widely-experienced legislative throes? Or frenetic jockeying by influence-peddlers would succeed in nudging the Government to pour cold waters on this supposedly 'torrid' amendment?

I personally believe that the pertinent amendment is to 'decarbonise' the GST compliance eco-system

. That is beside the point that it would certainly hurt the interests of much-pampered professionals who had become accustomed to trousering 'high-octane' professional fees!

They are also not at fault as the onus to protect interests of taxpayers rests with the sovereign and not professionals. In today's cut-throat competition where rivals are quick to snitch clients, jockeying for reversal of the omission by well-heeled and richly-networked professionals is a natural event. And it is now left to the BJP's political leadership to positively respond to the aggressive 'Cavalry' of professionals or 'Calvary' of taxpayers' interests!

Let me now swirl to one of the widely-analysed amendment in Section 7 of the CGST Act, 2017. It is retrospective in nature. This is to tax rich clubs in the country. In fact, taxing clubs is an 'intoxicating' international practice. After GST was notified, most clubs got themselves registered and continue to pay taxes. Everything was moving spectacularly fine for the Revenue but for the Apex Court decision in the month of October, 2019 in case of Calcutta Club Ltd ([2019-TIOL-449-SC-ST-LB](#))

). And the verdict governed by the judicially deep-seated doctrine of mutuality, went against the Revenue in case of service tax and VAT. This is where a technical chink surfaced at one of the meetings of the GST Council. A view got cemented that for once, the Revenue should steal a thunder by muscling in the pertinent provisions even before some professionals or assesseees get a wacky idea to challenge the same (See our [Guest Column](#) by noted Advocate Shailesh Sheth). That is how this amendment was approved by the GST Council.

Though it is a well settled law that even fetters of iron cannot 'tax' the sovereign from taxing a particular income or supply but a serious problem lies here! There is a striking mismatch in phrasing the amendment in the Finance Bill and the text approved by the GST Council to tax contribution in place of consideration.

Secondly, legal drafting of this amendment appears to be 'oumuamua-ing' for precise legal lingo (Oumuamua means 'scout' in Hawaiian language)! Many legal savants have already pointed out the 'mutating virus of error' in its drafting! Thirdly, it appears that its over-arching shadow on many other taxpayers such as RWAs and Trade Unions had perhaps escaped the range of eyecups used while discussing the amendment. From the minutes of the GST Council, however, it does not mirror so!

Let me now comb through the amendment which promises to slow down the pulse rate of the 'heart' of GST - the Input Tax Credit (ITC)! What really invited this wrath vide amendment to Section 16 of the CGST Act, 2017? A thicket of reasons! First, the Revenue always had a non-negotiable dream to achieve matching of invoices

between the supplier and the recipient. But it did not crystallise. Secondly, the volume of eyebrow-raising gigabytes of data revealed rising incidence of propensity to not file GSTR-1 whilst continuing with filing of GSTR-3B, thereby utilising ITC. Thirdly, a teeth-chattering trend of barrelling of ITC into the system through fake invoices was closely analysed.

The CBIC Chairman recently highlighted that after a drive was launched in November last, over 3000 cases were booked detecting over 9000 fake GSTINs in mere three months! **Oof! What a 'stunner' rather an ITC-gunner!**

Even after a one-time amnesty for filing GSTR-1, obduracy towards poor compliance was diagnosed! All these factors proved irresistible propellers for the GST Council to amend Section 16 and make filing of GSTR-1 by supplier mandatory for the recipient to avail ITC.

Let me now discuss the flip side. Since the GST Council was acutely aware of the pain such a mandatory provision may cause to the taxpayers, it was also decided to flesh out the provision of Section 149 - the compliance rating of suppliers. I just heard that the Revenue is fully armed with detailed preparedness to activate this provision

- of course, only in the GSTN portal. Such a list of 'blacksheeps' is not going to be made public as it would have many other legal spin-off effects. So, a registered taxpayer will have access to the compliance rating of their suppliers, prepared on the basis of their last 40 months return-filing fiscal behaviour. Such a facility would enable recipients to spot the 'fiscal poltroons' in a taxpayer's list of suppliers. It may also be acknowledged that the GSTN has already activated its assiduously prepared - Know Your Supplier(KYS) facility. It is a twin tool - **pre-login & post-login**

with more details. Pre-login showcases limited information to any visitor looking for clues about one's supplier. A good number of recipients have vouched to me that KYS is a good tool!

The next meaty amendments are relating to Sections 129 and 130. A delinking of nexus between these sections has been proposed on the basis of several adverse writ courts' decisions. The provisions of Sec 129 have now been corralled only for issues relating to detention, seizure and release of goods and conveyances in transit whereas Sec 130 is now confined to adjudication. In cases of detention, tax cannot be demanded now. **Only penalty provision survives.**

Such an amendment is indeed taxpayer friendly as the intertwined provisions had ignited a period of utter chaos. However, what may cause angst among transporters is the rigid provision of no less nor more but 200% penalty! This is again a chilling example of poor drafting! It should have been 'up to 200 per cent' penalty rather than 200% of the tax payable! Such an amendment may sound a sweepstake for the Revenue but has the potential to put transporters to a 'cloudburst' experience like the recent one in Chamoli district of Uttarakhand!

Given the change in the e-Way bill rules - 100 km being substituted by 200 km in 24 hours, blistering application of the penalty provision is likely to be the order of the day. This is more so when there are no exceptions for the hilly states or weather conditions nexus (thanks to undeniably frigging change in our local climate) and even for the part-load consignment transport. Apparently, such a change in the distance to be covered within 24 hours was done to stymie any attempt by a transport to undertake multiple trips on the basis of the same e-Way Bill! It is beyond the pale of doubts that it is a frigging possibility but corralling all the cases under the same bracket across India sounds blighted and weirdly exotic proposition!

Unless these provisions are steamrolled into more compliance-friendly format, it may prove to be a recipe for GST sclerosis! I sincerely hope that wisdom may occupy a chunky part of Revenue Department in the North Block, particularly after the ardent votary of iron-fisted legal and administrative provisions in the GST - the Revenue Secretary, says Sayonara to his all-powerful musical chair!

Also See [GST - Omission of Tax Audit - Will crock-of-bile tears turn FM soppiier!](#)