GST Linked Incentive to J&K - A few questions - GST - An agenda for reforms - Part - 99

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ON 19th February, 2021, Department of Promotion of Industry and Internal Trade issued a notification on Central Sector Scheme for Industrial Development of Union Territory of Jammu & Kashmir. One of the components of this scheme is GST Linked Incentive (GSTLI). The scheme has not evoked much discussion though it raises certain important questions which form the subject of this Part-99.

GSTLI - Essential features

The new GSTLI is part of the scheme intended to promote industrial growth in the Union Territory of Jammu & Kashmir. The scheme seeks to provide four types of incentives - Capital Investment Incentive (CII), Capital Interest Subvention (CIS), Goods & Services Tax Linked Incentive (GSTLI) and Working Capital Interest Subvention (WCIS). CII and CIS are available to new and existing units and WCIS is for all existing units subject to conditions as to eligibility, etc. However, GSTLI is an incentive available only to new units registered under GST. The notification is quite unambiguous as it states that a unit will be required to have a new registration number for GST and if an applicant has another unit registered within the UT of J&K, existing GST number shall not be used for the new unit which has been registered under this scheme.

CII can be availed by new units and existing units undertaking substantial expansion subject to investment ceiling of Rs. 50 crore in plant and machinery in the case of manufacturing sector or durable physical assets including building for service sector. But, GSTLI is not tied to value of investment in plant and machinery or such durable assets. For the purpose of benefits, Zone A and Zone B will be defined in guidelines but this is also not relevant for GSTLI as the eligible units in both the zones will enjoy the same quantum of benefit. GSTLI will come into effect from 1st April, 2021 and it will remain in force till 31st March, 2037. The incentive will be equal to 100% of gross payment of GST i.e. GST paid through cash and by way of utilisation of input tax credit (ITC). The upper limit or maximum amount of incentive will be capped at 300% of eligible value of investment. The incentive can be claimed for 10 years. Amount received as incentive will be required to be returned if the new unit winds up business within 5 years.

In respect of goods, benefit of GSTLI benefit will not be available for products covered under the negative list. This list includes tobacco, pan masala, plastic carry bags of less than 20 microns, petroleum oil, coke and fly ash and sectors like plantation, refineries and power generating units (above 10 MW). Units engaged in activities which are considered as not involving substantial value addition like storage, cleaning, sorting, labelling, relabeling and alteration of retail sale price will not be eligible for this new incentive. For service sector, it will be restricted to services covered under the positive list like tourism and hospitality, entertainment parks, healthcare, IT, maintenance and repair, testing, R&D, education, etc. The incentive is not available in respect of exported goods or services.

GSTLI - Is it a refund or reimbursement of GST or just incentive?

The scheme has been announced through a notification issued by Ministry of Commerce and Industry. It requires all other relevant Ministries / departments to amend respective Acts / Rules / Notification, etc., for giving effect to the decision contained in the policy as communicated through this notification. A Ministry or department cannot undertake legislative exercise of amending an Act but this can be ignored as a minor drafting error. The notification uses the word ***"refund"*** when it specifies the condition of returning / repaying the incentive if the unit closes business. Otherwise, neither ***"refund"*** nor ***"reimbursement"*** is used. If GST paid is not treated or granted as refund or reimbursement, then it is likely to be implemented based on claim / application filed

by the eligible unit merely claiming the same as ***"incentive"***
. This probably explains why there is no mention about recommendation or approval or ratification by the GST Council to such incentive in the notification.

Before issuance of this notification, on 7th January, 2021, a press release was issued communicating the government's decision to implement such policy for industrial development of J&K. According to this press release, GSTLI
"is not a reimbursement or refund of GST but gross GST is used to measure eligibility for industrial incentive to offset the disadvantages that the UT of J&K face."
This means GST paid is not refunded but such tax paid is taken as the basis to determine the quantum of incentive that can be granted to eligible unit. But this raises the first question - if the incentive amount is equivalent to GST paid and is granted only if GST is paid, then is it not, in other words, refund of GST paid? It appears some bureaucratic brilliance is behind this so that ratification by GST Council is not required for such ***"incentive"*** as it is only a central scheme in a Union Territory without involving ***"refund of GST"***
. May be, the draftsman contemplated to derive support from Budgetary Support Scheme implemented with the introduction of GST to partially grandfather area-based excise exemption.

What if certain States also provide GSTLI?

If the present GSTLI for J&K is not taken or is not required to be taken to the GST Council, even then there is no guarantee that such issue will not be raised in the meeting of the Council. A few States may come up with similar idea to incentivise new industries by arriving at the benefit based on GST paid in their State - SGST component. States with weak finances may not be able to afford implementing such incentive but relatively wealthier and producing States can contemplate such scheme which means the former States may see migration of business. The temptation to set up industries in specific States offering such tax incentives will be too strong to resist. Ultimately, the objective of such welfare schemes is employment generation and some sacrifice in the form of incentive can be perceived as worth undertaking. Though a few States have implemented SGSTÂ based incentive, the same is restricted in applicability and therefore, is not comparable to GSTLI announced for J&K

The grand scheme of ***"One Nation One Tax"***
will be searching for a place in history with tariff war and competitive or populist tariff measures being taken by States, particularly those not ruled by the party in power at the Centre. The only drawback will be the denting or weakening of claim for more compensation on the ground of revenue loss arising out of implementation of GST by such States. Whether States can afford to extend such incentives based on SGST paid may appear academic today but may gain relevance considering the impact of GST on fiscal federalism.

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See Part 98