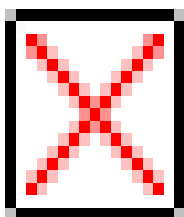
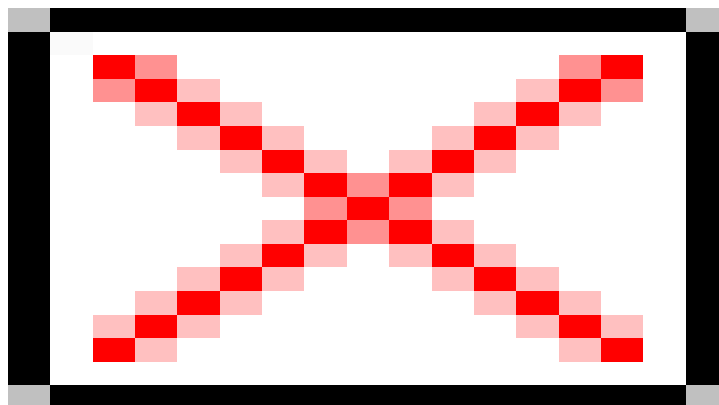


APRIL 02, 2021

By Dr G Gokul Kishore



THIS

100th part is the 234th article in the writing journey of this author. The present GST article series was started in second half of 2018. The objective was and is to highlight issues arising out of implementation and interpretation of GST law and to suggest measures so that the adverse impact on taxpayers is minimised. Many in the tax administration including a former Chairman, CBIC and members of trade and industry have shared positive comments and encouraged this author to continue this endeavour. The author expresses gratitude to everyone who supported, encouraged, commented and read the articles.

GST Council - Rate rationalisation to be a priority

The GST Council met virtually last time in the 43rd meeting on 12th October, 2020. Almost five months have passed without any meeting. The 44th meeting was expected in March, 2021 but the month has marched past without any event. The meetings of 2020 were mostly dominated by the only issue of compensation as the Covid-19 induced revenue loss became a crisis of alarming proportions threatening to jeopardize the consensus system of GST Council meetings. Though second or third wave of the pandemic is seen, considering the vaccination drive, it appears the situation is or will be brought under control.

GST revenues have been remarkably reassuring - an indicator of consumption picking up and economy slowly coming back on track. A committee was constituted to suggest rate rationalisation. Various suggestions were discussed like merging the present rates into three. As no major rate revision has been undertaken for more than one year now, it is time a meeting of the GST Council is held and rate rationalisation is placed on top of the agenda. It will take at least two or three meetings for such a major exercise to gain approval of the States. Every State will be concerned over the impact of such revision and would like to have an authentic projection on revenue collections.

The intention of this article is not to support any particular suggestion on rate revision but to impress on the need to discuss this issue. Like in the case of anti-profiteering computation, the impact of pre-GST cumulative indirect tax incidence should be compared with GST incidence based on three years data after taking into account increased availability of ITC, increased liability or cash flow in terms of taxing inter-unit stock transfers, increase in compliance cost and other relevant factors. If rates are eventually revised, then they should be frozen for at least a year or two.

GST Appellate Tribunal - Amendment on eternal wait

Constitution of GST Appellate Tribunal is a mystery. The Madras High Court struck down the relevant provisions of CGST Act way back in 2019. The GST Council recommended and the Removal of Difficulty Order No. [09/2019-Central Tax](#) dated 3-12-2019 was issued so as to indirectly extend the time-limit for filing appeals by reckoning the date of assumption of office by the President of the Tribunal as the start date of limitation. This is apparently benevolent. However, after the adverse order of departmental Appellate Authority, where taxpayers could not succeed in challenging them in writ proceedings before High Court, the taxpayers have to comply with the order-in-appeal though one day in future GST Appellate Tribunal will come into existence and all these appellate orders may be set aside providing consequential relief to the taxpayers. But this is not the GST system initially envisaged. It is a tragedy that a dispute resolution body itself has become a subject matter of dispute and for this, the blame shall lie with the draftsmen who wanted bureaucrats to dominate the quasi-judicial body.

Allahabad High Court has, in several cases, pointed out that because the Tribunal has not come into existence, it is treating writ petitions like appeals and passing orders. It is a paradox that existence of alternative appellate remedy is the usual bar in seeking writ remedy but in GST, it appears, existence of writ remedy has become a reason to put the alternative appellate remedy on the backburner. Time of Constitutional Courts is not meant for adjudicating factual disputes between the tax department and the taxpayers. There has been no report on whether an amendment to relevant provisions is being contemplated, whether such an amendment has been considered by the GST Council in the past and whether a roadmap for bringing the Tribunal into existence with infrastructure, selection process for President and Members of National Bench, Regional Benches, State Benches and Area Benches has been made. The inaction on this part is inexplicable. The same should give way to some concrete action by way of discussion in the GST Council on the draft amendment.

Softening the blow of use of extreme powers

Modus operandi of clandestine removal of goods i.e. supply of goods without invoice has been in vogue since excise levy was implemented in 1944. Availment of credit without receipt of goods has been practised by the unscrupulous elements since introduction of Modvat credit in 1986 (for inputs) and 1994 (for capital goods). Because compliances are system based in GST regime, the advantages of intelligence developed using data are being utilised by the tax administration today. Issue of press release by various Commissionerates on busting of fake ITC racket, arrest of persons concerned, etc., has become a routine feature. Scores of petitions are being filed before High Courts on use of power on provisional attachment and based on HC directions, CBIC had to come out with instructions (dated 23-2-2021).

Though Andhra Pradesh has come out with SOP on access to business premises and also search and seizure operations, the same does not provide any guarantee to taxpayers against misuse of such powers as the SOP is meant for departmental officers only. CBIC has also issued [instructions](#)

dated 2-2-2021 on procedures to be followed during search operation. Cancellation of registration is a power hardly heard of in pre-GST regime but the good law of GST is so stringent that for every infraction, the department is empowered to not merely suspend but also cancel registration. Business gets crippled when such precipitative action is taken. Penalising business is different from compelling business to fold up. Rent-seeking is also reportedly rampant in restoration of suspended / cancelled registration. Circular No. [1009/16/2015-CX](#) dated 23-10-2015 containing guidelines on launching of prosecution was issued by CBIC under Central Excise. The GST Council should take note of the proliferation of disputes before High Court, particularly on use of such extreme powers and recommend issuance of comprehensive guidelines containing sufficient safeguards to taxpayers whenever exercise of such powers is unconscionable.

[The author is an Advocate, Gokul & Subha Advocates, Chennai. Views expressed are personal.]

See [Part 99](#)

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