COVID-19 - Choking off breathing pipe - Delay in 'oxygenating' Fiscal Policy tightens chokehold!

TIOL - COB(WEB) - 765
MAY 27, 2021

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INDIA
is in a state of utter physical and mental exhaustion - tired and bedraggled! Eye-watering amounts of aches and pain have spared none! The high-octane COVID-19, which began to grow like bamboo shoots after rains, has largely succeeded in firing a taser to incapacitate the life of the entire nation! We are witness to a series of harrowing scenes of tragedies in the recent weeks. A very stiff chokehold on our normal life! With the daily caseload of the radioactive contagion still staying afloat above two lakhs, it continues to choke off our breathing pipe! The genius loci across the entire territory is none but Hades, the Greek god of death and interestingly the son of Cronus!

Tut-tut, over 4000 dying on a daily basis! The number is toxic and steeply mountainous if we go by unofficial figures! Not less than a carnage is being reported from rural India where hospitals are almost non-existent!

With the left-in-the-lurch bread-earners gone, pillars of kitchen smoke are missing in thousands of households across the country as the lethal virus has literally entombed their homes! The cost of living, a popular jargon for economists worldwide, has lost its meaning, hopefully temporarily, in India! What has become voguish is the Cost of Dying which a large number of poor families cannot afford and have no choice but to 'submit' the dead bodies of their loved ones to the holy river Ganges! For those who can afford a decent burial, a gaggle of gravediggers and funeral service providers have diligently been burning midnight 'pyres' for the past two months.

On their parts, the Central and the State governments claim to be doing everything with a stone in the shoe but the prominent faces extolled for their panjandrum in the power corridors have been held by their collars for not doing anything for elimination of 'choke' points! None of the 'tools' devised by the Governments appears to be having tangible bite in the spiralling number of fresh cases! People have been accusing the governments of plumbing to an unfathomable depth of political and administrative cowardice and not doing anything in public weal! Amidst a lengthening thread of pain points, one of the 'can't breathe' sparring points has been the levy of IGST on import of oxygen concentrators. Truly speaking, the levy of GST and Customs duty on a wide range of drugs, medical devices and personal protective kits, amid the rising death toll, have come to symbolise insensitivity and remorselessness of the tawdry political elites!

Against such a soaring 'pillar' of stigma and po-faced policy approach the expression 'tax' itself has become a cause cÃ©lÃ¨bre. Though the Union Finance Minister may gift herself a few moments of solace by believing that this is political dirt-digging but it is certainly more than politics - it's about life which no power on this planet can give but can certainly help save it! This is where the Ministry of Finance, in particular the CBIC, has been morphed into a ***dramatis persona***! Had the Finance Minister consulted beyond the caucus of technocrats who are trained to mouth inputs to garner more and more taxes or heard the deafening din being made by the common people, a timely political wisdom would have parachuted to save the day at least for the Ministry of Finance! No political elite, honest to one's profession of competitive politics of governance, would have strained one's auditory nerves to hear such anti-people suggestions even sotto voce!

Before I talk about the scheduled virtual GST Council meeting tomorrow and what may, in all probability, transpire there, it would be more contextual to first dwell on the latest Delhi High Court decision (2021-TIOL-1168-HC-DEL-CUS) in the case of import of oxygen concentrator by an individual combating the lethal pathogen for unimpeded breath! Hearing the petition of 85-year-old individual importer who was gifted oxygen concentrator by his nephew residing abroad, the Bench noted that albeit tax does not ordinarily recognise equity but it ought to bend to its will in times of calamity (any taker in the Ministry of Finance or the GST Council?). Linking it to a healthy and dignified life as guaranteed under Article 21 of the Constitution, the High Court underlines that the approach needs to change in times of war and pandemic. While tossing out the CBIC Notification No 30/2021 as illegal and partisan, the Bench found that the levy of IGST on individual importer runs afoul of Article 14 of the Constitution too. In a nutshell, the present time is so acutely traumatic that even the interpretation of a taxing provision needs to mirror the grief of prevailing times which threatens to disrupt the social order. In his letter to the Union Finance Minister, Mr Manpreet Singh Badal, the Finance Minister of

Punjab, aptly sums up as a case of excessive delegation of legislative powers to officials and also a disconnect between the tax administration and the judiciary.

I am sure that such a court order may be viewed in some quarter of the Executive as a case of judicial overreach or stepping on the toes of the Government but when the Executive turns thick-skinned and insulates itself from distress and bleeding of the society at large, the buck inevitably passes on to another pillar of the system, the judiciary, to bridge the void, voila! Ordinarily, the elected Executive should be more responsive to pain of the people getting tetchy but in the case of IGST, the policy-makers are being seen as having chortle over cappuccino in the North Block! The Finance Minister has a moral and constitutional duty to find out where her trusted team of technocrats goofed up and proved themselves to be whippersnapper!

The first Notification 28/2021 was issued on April 24, exempting more than a dozen COVID-19 related items from Basic Customs Duty and Health Cess but a conscious decision was taken to collect IGST! Then popped up a query from an individual importer about the levy of IGST which was mechanically answered as 28% tax rate. This was apparently seen as a smack in the face of the deepening crisis in the country. And it created a crotchety and high-decibel controversy. Many grizzled politicians and civil society leaders across India felt scorned, appalled and aghast at such a tax rate when the nation is paying huge cost of excessive timidity of the government! This prodded North Block to issue a face-saving Notification 30/2021 on May 1 where a concessional rate of 12% was offered in case of individual importer. Like a scalded cat, they also issued a detailed FAQ on import of various medical equipment. The essence of all these notifications and FAQ is that no IGST is to be paid if imported free of cost for free distribution as COVID-19 relief through NGO and other agencies. This flabbergasted the nation again as such a policy ill-treats the gesture of Indian 'persons' including corporate who paid to buy COVID-related supply from foreign suppliers for free distribution in India albeit the objective of free supply by foreign countries or NGOs and Indian entities importing such supplies against payment remain the same - free distribution in India!

The issue was taken up by the Fitment Committee in the last week of April but the bulldozing caucus managed to slam-dunk the sane voices and prevailed on the winning rationale that if an Indian importer can pay for such relief supplies they can also afford to pay tax, ouch! Indeed, it has been a timeless fiscal approach of our policy makers to dragoon taxpayers into paying for the work which should have been done by the Government. Wah-wah! Let the nation pay additional cost for government's failure to save 'melting' souls! This is a shining example of how a simple issue of helping haplessly dying Indians can be morphed into a fiendishly complicated fiscal challenge! Even as the rigidity of our ***babudom*** prevails, here comes the Delhi High Court order tossing out the Notification granting concessional rate which inadvertently takes us back to 28% IGST rate till it is further reduced to exempted. This has created more piquant situation for the desperate importers whose oxygen concentrators are piling up at Customs stations for lack of quick clarifications! The bitten off Customs has, in the latest ad hoc exemption notification, further parachuted in many conditions if COVID-related supplies are imported by different categories of importers.

The issue of reducing GST rates on various medical items and drugs needed for treatment of COVID-19 infected patients is likely to dominate the virtual deliberations tomorrow at the GST Council meeting which is strangely meeting after a little over seven months. Such a wide canyon of time may itself become a sparring issue for some finger-wagging State Finance Ministers who have been demanding election for the post of Vice-Chairman of the Council. If they are going to jaw-jaw over tax rates, normal PPE kits, masks, sanitisers, Oximeters and other common items should also be included for concessional rates.
Many States including Punjab have written to the Centre for such concessions. The West Bengal Finance Minister has written to the Council Chairperson to go extra mile and, in no uncertain words, jockeyed for exemption or make zero-rated taxation for many items as she can do to help relieve pain of COVID-19 patients. For the Customs, Centre alone can do it and it should not duck or glower at such demands being made repeatedly by the States and also civil society leaders.

The second issue which is bound to come up is that of Compensation for the fiscal 2021-22 which is to be debated and finalised like the previous year - a messy conundrum, genetically!. If time permits the Council may also take up a few recommendations of the Law Committee such as notifying the beneficial amendment made in Section 50 vide the Finance Act, 2021; exemption to government departments from issue of e-invoice and rationalisation of late fee. Some of the other issues could be long-pending pain of GST on ENA; conversion of monthly to quarterly payment under QRMP Scheme; some GSTN issues and also perhaps some court directions given to the Council. However, I expect that non-fiscal flimflam may cut the jaw-jaw short and some important issues may be pushed to next meeting!

If the State Ministers and the Union Finance Minister are serious about COVID-19 related concessions to be passed on to taxpayers, they need to be twinkle-toed about allowing ITC on free distribution done under CSR and even without CSR by amending Section 17(5) of the CGST Act 2017.

Denying ITC amounts to discrimination and a slap in the face when the Indian corporates deserve plaudits for holding hands of the needy. I know that an amendment or insertion of a proviso in this Section may take time but Removal of Difficulty Rules u/s 172 may prove handy if the Council decides so. The Council also needs to unsnarl the logjam over the demand for GST exemption to vaccines as onus falls on States to source them directly from the manufacturers. Ideally, it should be made zero-rated so that the ITC chain is not upended and in case of imports, refund should be considered. The objective of the Council should be to sow signs of recovery and hope and support to the gaslit nation which is finding it difficult to clutch at sanity while dealing with the swelling pandemic purgatories. I sincerely hope that the missing thinking cap would be back to the key decision-makers at this critical time!