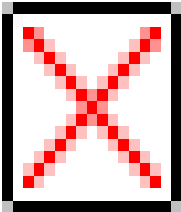


GST -The status of the regime after 4 years

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Introduction



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nation has traversed through the pandemic from April 2020 to June 2021 and during this period, vital time of GST stabilization phase was affected. In particular, the period from Jan to May 2021 was hoped to be the recovery months of the Calendar Year (for both business and GST reforms) but the good beginning in January 2021 was more than offset by the fatal face of the Wave 2 of the pandemic thereby denting the Indian Trade and Industry (T&I) of the motivation and enthusiasm to bounce back. The T&I fervently hopes to that the demand of second half of Calendar Year 2021 will show signs of recovery and so will structurally the law and urgent changes required in GST.

In all review exercises of a reform of the magnitude of GST, it is necessary to look at the report card of hits and misses and determine and where we are heading after 4 years of this reform. We draw attention to a few of them below.

Hits

Cooperative Federalism

It will be indeed to the credit of our reform parliamentarians and legislators that all decisions of the GST Council have been taken unanimously and the cooperative federalism has survived despite many challenges post 2019 and post pandemic date.

Uniform Legislation

This has also been the hallmark of the GST and the Council at large has given patient hearing even to excluded sectors on their eagerness to join in the GST regime. Secondly all amendments have been dealt with by relevant Committees and then approved the Council. Industry Bodies have been widely heard in 2017-18 when many changes were made to the 28 per cent and 18 per cent category. While specific Cesses for natural calamities are demanded by States, this does not impact the framework if they have a time associated with it.

Compensation Cess

Ability and willingness to hold on despite challenges on Revenue front has been the hallmark of India GST. The GST Council has found way on account of the deficits in Revenue collections of the States through the specified borrowing methods discussed in the Council. While this method may extend the levy of Compensation Cess for repaying the borrowings beyond 22, the practical possibilities lie only in this option.

Misses

Reform ethos -Seamless Credit

The reform focussed on creating an integrated regime with Electronic compliance based on backbone of the declarants honesty and ramping up electronic surveillance and controls. While the GST commenced with the integrated regime, the fraudulent registrations coupled with Invoice frauds and Revenue targets changed the course of seamless credit regime with unwanted controversy over status of credits,

responsibility of buyer etc. The needless over emphasis on recovering money, coercing genuine buyers to part with credits added salt to the stomachs of hungry T&I. Seamless regime which was the upshot of our GST has been compromised. While many High Courts restored the faith in the original GST like Gujarat, Delhi, TN, Mumbai among others, the taxpayer was left out right from the transition credits stage.

Simplicity in Returns process

The GST ethos was based on simplicity in the initial returns carved out. However with delay in Electronic Returns as originally conceived, coupled with various changes to formats and multiple options being promised and not delivered have impacted this key point thereby causing an impact to the ethos of our GST. One hopes that by 2022 June, a final set of returns will emerge which will be integrated, will work well in terms of user overload and be stable for some time.

Inability to give Fiscal Assistance Sectors impacted during the pandemic

It is true that many sectors have been impacted by the pandemic and it may not be possible to afford fiscal incentives like deferral of GST to all but the Fiscal Press and Online Portals like TIOL have time again voiced that Airlines, Hotels Tourism have gone into submarine conditions and that a fiscal stimulus in the form of deferral of GST payments over 5 to 7 years is de-minimis. While the Hotels and Tourism are a integrated unit, it is important to see the recent press notes that have appeared on closure of many in the Southern side of the country. (<https://www.thehindubusinessline.com/economy/covid-wave-two-impact-hotel-sector-sees-little-room-for-hope/article34384995.ece>).It is not out of context to mention that a popular star hotel in Maharashtra closed down due to inability to pay wages. While many doses of monetary assistance by the Centre was given, the fiscal motivation would be added advantage in terms of deferred GST.

Litigative Environment created by Revenue through AAR Rulings

While the AAR was considered to be a institution aimed at cutting disputes, the Authorities across States have only added to the disputes by taking a mere Revenue view on issues without looking at the ethos of the GST law and the reforms it was intended for. While many amendments are due in section 101 A in the law, the NAAFAR has not commenced its operations so as to afford stability to institutionalized process.

Anti -Profiteering

During the CY 2018, 2019 much of energy was utilized in taking action on larger Corporates which were considered defaulters. Most of the Anti Profiteering orders are now before Writ Courts on various issues including the basic challenge of no machinery provisions .While the code was inserted with a laudable objective, the way it was implemented was not in spirit of the law or the ethos of the reform.

Framework and actions on ground

Institutional framework like GST Tribunals have not commenced functioning fully and there are mere edifices created. The resulting load on Writ Petitions in the High Courts of the country have become worrying and hence commencement of institutional framework designed by the GST process is necessary for the ethos of the regime. Quasi Judicial Authorities who pass orders which have credibility ramifications for tax payers must also not look /perceive all litigants as those who want to evade taxes.

Recently the Hon Apex Court in the case of Radhakrishna Industries orally also remarked that Revenue cannot perceive all businesses as fraudulent. Despite such views, hasty actions on the ground leading to Court lifting attachments, release of properties, personnel etc are happening.

Front End Assessments and Single Authority

While Annual GST Returns for 2017-18 to 2019-20 have been filed many assesses Returns have not been fully scrutinized and assessed. While the pandemic has taken away the concept of physical personal hearing, the Electronic hearings have not produced the results as were imagined and anticipated. It is indeed sad that many assesses have completed four years of GST without one assessment order of 2017-18 to 2019-20.

Technology in forefront

It is indeed important to accept that GST is discussed more from Technological point of view, than from the legal issues' perspective. While IT systems and Electronic implementation of the law is an important segment, the backbone of GST reform is set of healthy CGST/SGST/IGST/UGST enactments. While time should be devoted to the IT side of implementation, facilitation etc but crucial issues which require amendment in the law cannot be side lined to the back burners. It is indeed time for the Council to give a facelift to the law by drawing a laundry list of

outstanding issues across goods and services so that the law frame work aligns itself to ethos of GST. (List of sample issues highlighted in June 2020 by TIOL)

Expectations of Taxpayers

The tax paying fraternity hopes for a simple GST based on integration in its true sense, resting on the platform of easy Electronic compliance buttressed by an atmosphere of mutual trust between the assessee and GOI/States. It will be fitting, if we as a nation allow GST to settle down on the above basis by 2023.

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