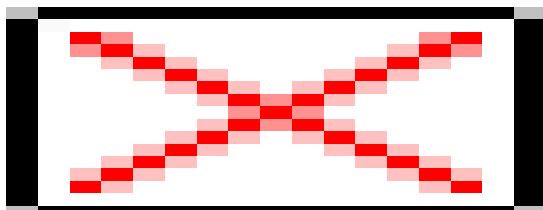


Challenges swamping government related supplies

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TYPICALLY,

government establishments in India have all along been entrusted with the mammoth task of creating and preserving utilities for public at large, including and not limited to education, infrastructure, sanitation, public transportation, health care, safety, etc. The sudden push towards privatisation is essentially more an aftermath of a huge fiscal deficit that needed to be circumvented, coupled with high outflow towards capital investment, thus, reinstating economic growth. While privatisation of few more government establishments is on the cards, stabilisation and growth of existing entities also needs to be augmented, more from an economic liberalisation standpoint.

One of the major roadblocks for such establishment has been addressing tax-related issues, more specifically indirect taxes, where due to multiplicity of tax treatments on various supplies made by the government, there is significant leakage of input tax credits (ITC) as most procurements made by the government are covered under the ambit of GST. In this article, we have attempted to highlight some of the real challenges faced by government organisations in availing ITC which in turn is resulting in an increase in the overall cost of making the supplies. The same are discussed below:

ITC availment time 'limitation' and onerous GSTR-2B compliance

The GST law forbids availment of ITC after a specified period. Typically, the government follows cash-based accounting wherein expense is recognised only when cash is paid, which impedes ITC availment, as -

-Â Substantial delay in making payment to the supplier because of budget limitations, certifications, etc., results in ITC not getting accounted for until payment is made, and such delay in accounting ITC, combined with the time taken in Form GSTR-2B reconciliation often leads to the expiration of the ITC availment time limit.

-Â Government, typically, initially makes only part payment owing to retention policies, deficiencies in supplies, etc., and later, maybe in the succeeding month or year, depending upon the nature of work, pays the retained amount resulting in ITC commensurate to the retained amount getting lapsed due to its recording in the books after the ITC availment time limit expiry. Also, such part payment practice calls for very burdensome record-keeping of Form GSTR-2B data to track partly availed and partly not availed invoices, leading to the near-impossible ITC reconciliations and eventually the unavailing of ITC commensurate to retained payments, even if the retained amount is paid within the limitation period.

The cost of loss of genuine ITC merely as a result of following cash-based accounting and part payment practices is a major concern for the government which is already functioning on narrow margins. GST laws need to be aligned with the manner of accounting and payment being followed by the government, at large.

Also, the intention behind mandating GSTR-2B ITC reconciliation was to weed out fake invoicing and ensure payment of GST by the supplier by encouraging the reporting of invoices in Form GSTR-1. In the case of supplies made to the government, such intention is anyways met by provisions relating to tax deducted at source (TDS) whereby the government deducts TDS and brings the transaction into the tax net. Removing such GSTR-2B compliance requirement on the government, the intention

behind which is anyways being met by the TDS provisions, is the need of the hour to ensure no blockage of working capital so as to contribute more to society by supply of public goods and services and thus, achieving public sector growth.

Taxing revenue sharing in concessions

For speedy development of infrastructure, a non-budgetary system of public-private partnership model is being adopted by the government, such as rail infrastructure development under the Rail Yojana wherein private party finances, constructs and operates such infrastructure for a defined period. Such arrangement is very much prevalent in the development of public infrastructure wherein fees/tariffs generated from such infrastructure is apportioned between the government and the concessionaire to enable the concessionaire to recover its investment, operating and maintenance expense.

Of late, concessionaires have been asked to discharge GST on the revenue share accruing to them by treating apportioned fees/tariffs as consideration for infrastructure support services provided to the government. Such demand is detrimental in seeking private investments in the concession route to construct infrastructure in the future and to complete all pending projects, particularly when the intended position is that concessionaire is only an investor getting a return on its investment through revenue apportionment.

Keeping in mind such underlying intended position, a specific GST exemption must be notified for such revenue of the concessionaire to settle the position beyond doubt that the fees/tariffs apportionment is mere return on investments made by the concessionaire.

Unreasonable RCM Levy

Majority of the services supplied by the government and a few supplies of goods attract a levy of GST under reverse charge mechanism. Such a tax levy mechanism breaks the ITC chain as supplies liable to GST under RCM are treated as an exempt supply for ITC availment in the hands of the supplier. The table below explains the same in the hands of the government, as a supplier-

Â	Particulars	GST under RCM	GST under FCM
Inward	Taxable Value (A)	100	100
Â	GST @18% (B)	18	18
Â	ITC (C)	0*	18
Â	Net Cost (D=A+B-C)	118	100
Â	Payment made to Vendor/ Net Cash Outflow (E=A+B)	118	118
Outward	Taxable Value (F)	150	150
Â	GST @18% (G)	0**	27
Â	Cash Tax Liability (H=G-C)	0	9
Â	Payment received from Customer (I=F+G)	150	177
Â	Net Cash Inflow (J=I-H)	150	168

* ITC not available owing to supply liable to pay GST under RCM

**** Liable to GST under RCM in the hands of recipient**

From the above table, it is apparent that GST paid on procurements adds to the cost on account of being ineligible owing to supplies liable to GST under RCM. Such ITC chain break is inimical to GST's fundamental feature of seamless chain of ITC.

RCM was primarily intended to check tax evasion and widen the scope of levy of tax on supplies made by various unorganised sectors by shifting the burden of tax payments to the recipient. It makes no sense to apply such a levy mechanism to government supplies, especially if it makes such supplies expensive.

Recently, GST on all taxable supplies of the Department of Posts has been levied under forward charge supplies which were hitherto liable to GST under RCM. Ideally, this should be done in respect of all government supplies which are liable to GST under RCM at present to ensure an uninterrupted and seamless ITC chain.

Given that the government plays a major role in the Indian economy and also to ensure there is no loss to the exchequer, it is imperative for the GST Council to take corrective measures to address the above challenges in future.

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