Kudos to Mr Jaitley for steadily steering GST Council towards 'Destination' & Tax!

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THE two-day conclave of the GST Council concluded yesterday. Immediately after the early winding up of the meeting, the Union Finance Minister, Mr Arun Jaitley, invited a good number of the State Finance Ministers to interact with him as part of his pre-Budget consultations. The State Ministers were carefully selected keeping in mind the plurality of India's polity and, accordingly, invitation was extended. Some of the State Finance Ministers, who had just exited from the GST Council's meeting after successfully demonstrating their frayed tempers over the issues of dual control and compensation for the projected revenue loss, did not even wait for the same to fade away. And they continued with their fulminations to register their annoyance with the Union of India over some of its recent policy decisions. One such Minister from the State of West Bengal, a politician by 'accident', in fact saw an opportunity to please his '***Aka***' and strongly registered his protests against demonetisation which has allegedly led to erosion of tax collections by the States. He described the situation arising out of demonetisation as a state of 'financial emergency' in the country. After spitting out his grim criticism he walked out of the meeting and briefed the media about his supposedly 'daredevil' act.

Since similar fulminations are a common sight at the GST Council meetings, they hardly faze Mr Jaitley. And the fact that Mr Jaitley does not lose his ***sangfroid*** and is not miser with his diplomatic smile which helps him in winning over frayed tempers, he managed to move a few more inches closer to his 'destination tax' goals. For a major swathe of the economy and a large number of experts, the latest Council meeting did not achieve anything tangible but the truth is - he managed what he wanted from this meeting. Mr Jaitley was **not at all aiming at resolving the territorial waters and cross-empowerment issues**. His sole goal was to grant a patient hearing to frayed tempers and get the Council to approve what he wanted. And the Council has **officially approved** the two critical documents - the IGST law and the Compensation Bill.

Let's take a look at the major bone(s) of contention in the IGST. The two critical issues are - the jurisdiction of Coastal States over the territorial waters where many a transactions take place and the States have been collecting state taxes. As per many State Finance Ministers, the Coastal States have been levying VAT for several years and they were never stopped from doing so. For instance, the AP Finance Minister said that they have been mopping up as much as Rs 600 Crore from supply of bunker fuels to foreign vessels and also exploration of gas. Going by such a practice the Coastal States feel that it is now not correct to exclude territorial waters from the jurisdiction of State. In response to such a plea, the Union Finance Minister commented that the SEZs have been a deemed foreign territory within the geographical control of States but they never objected to it. However, Mr Jaitley hinted that a solution can be found to this issue and the Parliament can be taken into confidence to allow the States to continue with the present practice.

The second issue is the dispute over cross-empowerment under the IGST law. The States have been arguing that although the Union of India had the powers to levy CST on inter-state trade but there was an administrative arrangement to allow the States to collect such tax and also keep them as per Article 269, a similar arrangement can be made even now under Article 269A. But, the Ministry of Finance is of the view that such powers cannot be vested in the States under IGST.

Since Mr Jaitley has indicated that a solution can be worked out to address even this problem, the State Ministers agreed to officially approve the rest of the provisions of the IGST. In fact, many of the industries such as telecom, banks, insurance and IT had pleaded for some sort of centralised registration like in the case of Service Tax but no call was taken on this issue. And the IGST Model Law has been passed, leaving blank the **definition of jurisdiction of a State** which is going to be discussed and closed at the next meeting on January 16. Technical brains associated with the exercise confided in TIOL that it is now not a major bottleneck with the Centre showing unmistakable overtures to take a step backward over the issues. In other words, before the IGST bill is tabled in the Parliament, the definition of a State can be fleshed out by including 12 nautical miles of the territorial waters for the Coastal States. It also seems that although the landlocked States would lose revenue as they would not get any share in such collections but they seem to have agreed to support their cause so that early breakthrough is achieved.

The second major success which has come out of this meeting is the ever disputed subject of compensation. With demonetisation leading to tangible contraction in the economic activities in the past two months and its impact likely to linger on in the coming months, the States have suffered loss of revenue. Some States wanted the quantum of compensation to go up from Rs 50,000 Crore to Rs 90,000 crore. In fact, with the GST likely to be implemented from September, 2017, many States demanded that the five-year compensation clock should start ticking **only from the date of implementation and not financial year-wise**. A suitable wording was demanded to be inserted in the Bill. And the Council has agreed to calculate 60 months from the month of implementation.

The second point of dispute was the levy of CESS on demerit goods. A good number of States wanted that the CESS alone should not be the source of revenue for the exclusive Compensation Fund. They wanted that some funds should be committed from the Consolidated Fund of India. In this context, they insisted that the Compensation Bill should make it clear that it is not only CESS but also ***'some other means'*** which are to be found and resorted to for raising more funds if needed. The Centre accepted the amendment and the same is going to be inserted in the Bill which was approved by the Council.

With the Model Laws being approved by the Council except for the legally-vetted versions which would once again come back to the Council for final stamping, the major milestones have been achieved. Given the fact that the Ministry of Law has been working overtime along with the CBEC team of officials, the legally-approved versions may be tabled before the Council at its next meeting.

Now, only two issues that remain to be officially resolved are the territorial waters and the cross-empowerment. The first issue is expected to be clinched at the next meeting but the issue of cross-empowerment may take at least **two more sittings** of the Council. Dual control is a little ticklish issue as some States are still of the view that even if there is a vertical split of the tax base, 60% of the assessees should go to the States. A solution apparently lies between 50% to 60% and the same is likely to be found at the next two meetings.

A minor issue where the Council is yet to officially take a view is the tax rate for the Composition Scheme. Earlier it was said that it could be between 1% to 2%. The latest to be heard in the corridors of power is that a special rate of **less than 1%** may be fixed for small traders - not for manufacturers and service providers. A new category is likely to be carved out where the tax rate could be 0.5% or 0.8%.

In this backdrop, it would be wrong to say that the GST Council continues to be stuck in a quagmire and no headway has been made. The remaining two issues are certainly not without solutions if there is a political will and most State Finance Ministers told me that Mr Jaitley has the required federal spirit and the necessary ounce of courage to sort them out. Let's hope that Mr Jaitley lives up to the expectations of his State colleagues and speed up the roll-out of the much-delayed indirect tax reform caravan!