
GST Rapprochement - Is everything lost for CBEC?

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THE much-vilified logjam over the issues of territorial waters, dual control and cross-empowerment was overcome so effortlessly by the GST Council's Chairman, Mr Arun Jaitley last Monday that it did not go down the throat of many a GST watcher so easily. In fact, the same was the case even with the West Bengal Finance Minister, Mr Amit Mitra who registered his official dissent note, and the Kerala Finance Minister, Mr Thomas Issac who, unlike Mr Mitra, was present in the Council's meeting by proxy. Much to their chagrin and also the surprise of many political **pundits**

, Mr Jaitley bridged the valley of differences persisting over half a dozen meetings of the Council by conceding a major swathe of the administrative turf to the States. In fact, one Finance Minister told me that they had never expected that the Centre would really concede their demand without giving an 'honourable' fight!

So true! But, what took away the fighting spirit of the Union of India? Mr Jaitley would not have done it without obtaining a clear-cut **farman** from the Prime Minister's Office (PMO). But, why should the PMO do so? There are many theories floating around. One of the realistic ones is that although the Modi Sarkar has been putting up a brave face on the issue of demonetisation but their internal analysis is that it was a serious political **faux pas**

which has resulted in contraction of the economy and a great deal of pain and distress to the common man. What goes to reflect such a calculus of realisation is a series of projections where external agencies have been indicating lower growth for India not only in the current fiscal but also the next fiscal. With demonetisation doing more damage than having some marginal salubrious effect, the Modi **Sarkar** has been entertaining the acute realisation that the GST was their last big-bang reform item which can help the economy partly recover its attraction as a favourite investment destination. So, obviously, the PMO had a role in giving the last mile push to Mr Jaitley to swim across the pool of differences and put the GST caravan back on track.

No doubt, the credit goes to Mr Jaitley but can it be said that it was a pyrrhic 'credit' to be availed? Perhaps **YES**

! The compromise was evidently hammered out at the cost of CBEC interests. To be more precise, it was at the cost of the interests of the Union of India. In constitutional terms, it was at the cost of the Unitary Bias elements

which the fathers of India's constitution had laboured hard to earn in favour of the centripetal forces. Given that India is a federal democracy only by form and its Constitution possesses the requisites of a unitary bias so that the forces having centrifugal tendencies could be defeated, the Modi Sarkar's decision to concede the turf **not only under the CGST but also IGST** may be seen as the weakening of the unitary spirit of the Constitution.

Let me now turn to the nitty-gritty of the decisions approved by the GST Council. Territorial waters jurisdiction was a major bone of contention for the littoral states (Please see [The Cob\(Web\)-531](#)

). Although such a jurisdiction was largely interpreted by legal experts as the one closely integrated to the sovereignty aspect of India but **to pacify**

the opposing bunch of State Finance Ministers or to earn the support of the fence sitters, Mr Jaitley conceded the Central turf or call it, the CBEC turf to the littoral States

. So, the decision is to amend the definition of the 'State' which would now include 12 nautical miles of the territorial waters and they would have the powers to tax high sea sales and production of gas and petroleum products

under the IGST and also retain the revenue so collected. In other words, the Centre has allowed cross-empowerment of SGST authorities under the IGST.

Let's now see how the unitary bias elements were compromised. Although vertical split of the tax base would have been the ideal solution but the States stubbornly held on to their demand for 100% exclusive jurisdiction over the assesseees having turnover up to Rs 1.5 crore. To solve this problem the Centre had to come up with some sharing formula and it could have been 30:70 or 20:80. Given the fact that the Centre had conceded the demand of the littoral States for granting jurisdiction over the transactions taking place in the territorial waters, they would have

used this as a **bargaining rope**

. But, in a hurry to send a positive message that India is GST-ready, the duo of Mr Jaitley and Dr Hashmukh Adhia, the Centre's representative, **sacrificed the interests of the Union of India**. To be precise, the interests of the CBEC.

True, one may ask that what was the role of the **non-voting Member**

or permanent invitee of the Council who happens to be the CBEC Chairman. It appears that like many other State Finance Ministers, he was also **not prepared for such a surprise**

. It was so sudden that his overtures probably missed the clock. And since the CBEC war-room was perhaps not ready with alternate sets of solutions

, Mr Jaitley went with the flow of the proceedings. And that is how the Centre could get only 10% of the turf below Rs 1.5 Crore. And 90% of small assesseees were bagged by the States insofar as the monitoring tool of audit goes. For above Rs 1.5 crore, it was predictably 50:50. And it must be remembered that from administration point of view audit is the most effective weapon for the GST revenue. And, so far as the activity of anti-evasion goes it is uniform across the tax base for both the parties.

But, everything is not lost for the CBEC. If one considers the tax base below Rs 1.5 Crore even 10% of that is not a small number. After removing the chunk of assesseees which now fall below the new threshold of Rs 20 lakh, the total assessee-base should be in the region of about 44 lakhs. And 10% of that would be about four lakh. If we take into consideration the assessee-base of above Rs 1.5 Crore it is likely to be more than **seven lakhs** for each of the parties. Overall, the CBEC would have an active assessee-base of **over 11 lakh** which is a significant number if one goes by the present assessee-base. Going by the historic experience of handling the assessee-base from both the audit and anti-evasion perspectives it would be quite a huge workload for the existing Central Excise and Service Tax Commissionerates. But, yes, it is going to be a case of a historic opportunity missed for the CBEC leadership which could have got 'some more' if it could have been a little more proactive.

Now the fact that the dual control and cross-empowerment issues stand sorted out and the official roll-out date extended to July 1, 2017, too many other issues also need attention for quick resolution. First, the Committee working on classification of goods and bucketing of the same under the various tax slabs, including the CESS, needs to expedite its **tarrif structuring work** and share the same with the industry and trade. Secondly, the Ministry of Law also needs to wind up its examination of the Draft Model Laws so that the same could be vetted by the Council at its next meeting on February 18. After the Parliament meets post-polls in March, the Centre should be able to table the GST Bills for the parliamentary approval. After the same are passed, the States would have to go through the drill of passing the SGST laws. It also means extra bout of workload on the GST Network which seems to be a laggard by the present set of milestones achieved.

If the GST Council is serious about giving some time to the industry and trade to tweak their ERP or other accounting software and get set for the GST roll-out it would be much more ideal to further postpone the roll-out by another two months. And, in place of July 1, it should be September 1 which appears to be more realistic from all perspectives. Let's wish good luck to all the stakeholders who are so close to ushering in a new indirect tax regime for which India has been on the wait for more than a decade.

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