



2022 | A W A R D S

ENRICHING TAX SPACE

PRESENTS

5 YEARS OF GST

**5 YEARS OF GST**

**THE BUGGY  
CHUGS ON!**

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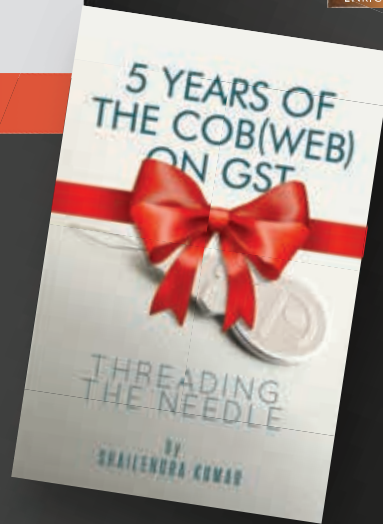
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**Founding Editor**  
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# GST - CANOEING THROUGH THE RIVER OF TIME, SOOTHINGLY!

'Goods and Simple Tax' has gone through five time-cycles of tumults, travails and trepidations laced with traces of 'arsenic' but what earns it plaudits is its inherent muscles to regain harmony in almost all respects, now!



**SHAIENDRA KUMAR**

Founding Editor, TIOL

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**M**ENTAL giant Albert Einstein had once observed that the hardest thing to understand in this world is the income tax! He was probably right for his time! Had he been around in the era of GST, having parsed the signals of neurotransmitters germinating during the initial months of its roll-out in India, he would certainly have found it more chillingly grimmer and a harder nut to crack! Gosh, a short-termist approach, perhaps! Lack of detailed homework against an obscure horizon prodded the 'chickens' to come home too early to roost! Many GST-mascots were seen tiptoeing for rabbit warren to hide their heads!

The Goods and Services Tax (GST) was rolled out on July 1, 2017 with envious pomp and political pageantry from the Central Hall of Parliament - a rare event in Independent India. The DNA of all other taxes, direct as well as indirect, dates back to the Pre-Independent era. Though the GST had a wobbly and sputtering journey littered with flubs during the initial years, none had expected it to spawn a new tune of melody within a short span of five years! Inarguably, it has gone through five time-cycles of tumults, travails and trepidations laced with traces of 'arsenic' but what earns it plaudits is its inherent muscles to regain harmony in almost all respects, now! Poignant memories of the fury-laden taxpayers and also the exasperation of the law-makers now appear to be steadily tumbling over Niagara!

When it was at its embryonic stage of pondering and the pulpit, multiple benefits were bucketed such as a spur to the GDP growth; certainty in corporates' investment decisions; no cascading of

taxes; no check-post on borders goosing efficiency of the logistics sector; diminished burden of taxes on consumers; easy IT-driven compliance ecosystem and overall, an ease of doing business which was to be construed as an additional pull factor for the FDI. For the first two years, what unfolded was kerfuffle and utter quagmire! Sacré bleu! Just too many technical pratfalls! Even the boffins in the policy-making camp suffered bouts of panic and a sensation of whirling - spilling the cup of coffee held by the trembling hands! It continued for a pretty longish time but, thankfully, no blemishing effect! No synthetic tears!

The Council substituted a few sets of 'pantry recipes' and then came the period of all hands on the deck to steady the wobbly caravan of the GST! A new pair of safe hands was licensed to sit in the catbird's seat and let the machine behind the GST not go out of kilter! And the pilot has, Ou la la, demonstrated a fine-grained element of shepherding! The Ship, the GSTN, is back on aspirational tracks and so are the monthly collections averaging close to Rs 1.5 trillion! The compensation era, a potential mother lode of bickerings, has also folded up. The GST fandom is now statistically soaring a la 1.39 Crore taxbase! Nattering 'fiscal nabobs' are back to their favoured 'twittering'! Frigging cool, indeed!

With the GST-buggy back on rail, the mini-parliament, the GST Council, a constitutional creature created by the 101st Constitution Amendment Act, 2016, does not need to look back much and laser-focus on a gaggle of reforms in the next five years! Scaringly, too many challenges appear to be slumbering on the canvas and the Council needs to summon maximalist courage to swim with arduous decisions like expanding the radar for GST on petroleum products, electricity, a 'clawback' on the grisly-chained ITC and a great deal of reliance on big data

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**With the GST-buggy back on rail, the mini-parliament, the GST Council, a constitutional creature created by the 101st Constitution Amendment Act, 2016, does not need to look back much and laser-focus on a gaggle of reforms in the next five years!**

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analytics and AI-produced actionable intelligence. The time has also come for the Council to mull over the feasibility of carving out a GST Federal Service like the All-India Services so that the goal of unification of dual tax administrations is also realised in the coming years. Such a goal was also loudly talked about by one of the prime architects of GST, the late Arun Jaitley!

In order to fathom the mind space of GST-boffins and what needs to be rearranged to make GST the furniture of taxpayer's minds, TIOL invited an assorted group of domain experts from various walks of life and provided them with an unsnarled brush to paint on the reform-canvas! I am indeed as happy as a sandboy to admit that TIOL Knowledge Foundation received an immensely ebullient response from a wide spectrum of authors and I ought to express my gratitude for their meaningfully engrossing pieces on virtually all aspects of GST. Some of them have generously waxed lyrical about the future roadmap and we have chapterised them under five eminently readable heads - 5 Yrs of GST - Is it purgatory?; GST - A treetop view; GST - A fire-bellied journey; Let the Bot do the job and GST - India vs International slivers of experiences! I can say with harmonised sangfroid that the readers of this Special Print Publication would find it an immensely relishable pollinator of new ideas! Aha! A uniquely portable magic! Time to soak in the high tide, now! 🇮🇳

# Taking the Community Along

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CHAPTER - I

**5 YRS OF GST**

**IS IT  
PURGATORY?**



SNAPSHOTS

1

The expression “goods” was defined as meaning all kinds of movable property, other than actionable claims, stocks and shares and securities and included all materials, commodities and articles

2

The Advance Ruling Authority and the Anti-Profitteering Authority are providing more mythical confusion than what an ordinary taxpayer can take

3

The GST Council like the Security Council has tremendous respect and stature but hardly any powers



# TWISTING TURNS

## BEFORE **GST** CAME TO **POWER**

None can stop a bad idea when its time has come. The government is full of wise people who know what you should do and if you simply do what they ask you to do, even if it is impossible, one day or other you will get used to it



**VIJAY KUMAR**  
Editor-In-Chief  
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**W**HEN GST was launched in 2017, I asked a tax pundit whether it would be a happy situation for all concerned. He said, “for the first five years, it would be worse than hell for all”. “After that?”, I eagerly asked. “Everyone will get used to it”, was the laconic reply. If anybody feels today that GST is simple and good, it is because he has gotten used to it. As a nation, we have terrible inexplicable power to sustain any shock and get on with life.

GST was a bad idea to start with. The powers of the Central Government and the State governments to tax were clearly demarcated and mutually exclusive in the First List and Second List in the seventh schedule of the Constitution and there was no power to tax in the third schedule. So, what could be taxed by whom, was very clearly stipulated in the constitution, actually even before the present constitution came into existence.

### **Madras Sales Tax Act**

Look at a case decided 80 years ago in 1942. India was still five years away from freedom, but this question of what to tax by whom became a big issue in *The Province of Madras vs*

BodduPaidanna & Sons - 2002-TIOL-269-SC-CX decided on 8th May 1942.

BodduPaidanna & Sons carried on the business at Vizianagaram in the Province of Madras. Their business consisted of the purchase of groundnut to extract oil from the kernels of the nuts and the making of groundnut cake out of the residue. They sold this oil and cake and since they were themselves the manufacturers, it followed that each sale which they effected was the first sale of the commodity after its manufacture or production.

The Madras General Sales Tax Act, 1939 provided that every dealer, that is to say, every person who carries on the business of buying and selling goods, is to pay each year a tax on his turnover.

The expression “goods” was defined as meaning all kinds of movable property, other than actionable claims, stocks and shares and securities and included all materials, commodities and articles. The tax was to be assessed, levied and collected in such manner and such instalment as may be prescribed by rules made for the purpose by the Provincial Government. The assessing authority under the Madras Sales Tax Act assessed BodduPaidanna to tax. Accordingly, the sum of Rs. 160-11-0 was demanded from them by way of tax and paid by them under protest. They then took proceedings in the Court of the District Munsif at Vizianagaram for a declaration that the Madras Act and certain rules made thereunder were ultra vires the Madras Legislature and for an order directing a refund of the sum of Rs. 160-11-0 together with Rs. 3 interest thereon.

The learned Munsif gave judgement in favour of BodduPaidanna holding that a tax on the first sale of goods manufactured in the Province was a duty of excise which the Madras Government was not competent to impose.

There was an appeal to the District Court at Vizagapatam, but on the application of the Advocate-General of Madras, the appeal was transferred to the High Court of Madras. The Madras High Court upheld the judgement of the lower Court.

The High Court noted the difference between excise and sales tax as:

*The essence of a tax on goods manufactured or produced is that the right to levy it accrues by virtue of*

*their manufacture or production. It is immaterial whether the goods are actually sold or consumed by the owner or even destroyed before they can be used. If a duty is imposed on the goods manufactured or produced when they issue from the manufactory, then the duty becomes leviable independently of the purpose for which they leave it and irrespective of what happens to them later.*

*On the other hand, a duty on the sale of goods cannot be levied merely because goods have been manufactured or produced. Nor can it be levied merely because the goods have been consumed or used or even destroyed. The right to levy the duty would not at all come into existence before the time of the sale. It cannot at all be levied unless the goods are actually sold, and may not be leviable if they are transferred in some other form. Thus a duty on goods manufactured or produced is distinct and separate from and independent of duty on their sale and, (except probably at the stage of the first sale) there seems to be no good reason why the two may not co-exist without overlapping.*

The High Court held, “We hold that a Provincial Legislature in India has no power to tax a sale by the manufacturer or producer as this would mean the imposition of excise duty and the assumption of power vested only in the Centre. Where an entry in the Provincial List overlaps an entry in the Federal List, the Federal List must prevail. Where the interests can be reconciled this must be done because obviously, Parliament could never have intended that there should be a conflict.”

“Moreover, it is to be remembered that a Legislature cannot do indirectly that which it has no power to do directly.”

This judgement was delivered on 5th September 1941.

The Province of Madras took the matter in appeal to the Federal Court of India (the then equivalent of today’s Supreme Court)

The Federal Court observed, “Under the Constitution Act, the Federal Legislature has an exclusive power to impose duties of excise (List I, Entry No. 45) and the Provincial Legislature an exclusive power to impose taxes on the sale of goods (List 2, Entry No. 48).

*The duties of excise that the Constitution Act assigns exclusively to the Central Legislature are duties levied upon the manufacturer or producer in*

respect of the manufacturer or production of the commodity taxed. The tax on the sale of goods that the Act assigns exclusively to the Provincial Legislatures is a tax levied on the occasion of the sale of the goods. Plainly a tax levied on the first sale must in the nature of things be a tax on the sale by the manufacturer or producer, but it is levied upon him qua seller and not qua manufacturer or producer. It may well be that a manufacturer or producer is sometimes doubly hit, but so is the taxpayer in Canada who has to pay income-tax levied by the Province for Provincial purposes and also income-tax levied by the Dominion for Dominion purposes.”

“If the taxpayer who pays a sales tax is also a manufacturer or producer of commodities subject to a central duty of excise, there may no doubt be overlapping in one sense, but there is no overlapping in law. The two taxes which he is called on to pay are economically two separate and distinct imposts.

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**The Madras General Sales Tax Act, 1939 provided that every dealer, that is to say, every person who carries on the business of buying and selling goods, is to pay each year a tax on his turnover**

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There is in theory nothing to prevent the Central Legislature from imposing a duty of excise on a commodity as soon as it comes into existence, no matter what happens to it afterwards, whether it be sold, consumed, destroyed or given away. A taxing authority will not ordinarily impose such a duty because it is much more convenient administratively to collect the duty (as in the case of most of the Excise Acts) when the commodity leaves the factory for the first time and also because the duty is intended to be an indirect duty which the manufacturer or producer is to pass on to the ultimate consumer, which he could not do if the commodity had for example been destroyed in the factory itself. It is the fact of manufacture which attracts the duty, even though it may be collected later; and we may draw attention to the Sugar Excise Act in which it is specially provided that the duty is payable not only in respect of sugar which is issued from the factory but also in respect of sugar which is consumed within the factory.”

“In the case of a sales tax, the liability to tax arises on the occasion of a sale and a sale has no necessary connection with manufacture or production. The manufacturer or producer cannot of course sell his commodity unless he has first manufactured or produced it, but he is liable, if at all, to a sales tax because he sells and not because he manufactures or produces, and he would be free from liability if he chose to give away everything which came from his factory. In our opinion, the power of the Provincial





*Legislatures to levy a tax on the sale of goods extends to sales of every kind, whether first sales or not, and we regret that we are unable to agree with the contrary opinion which has been expressed by the High Court.”*

So, finally, BodduPaidanna lost the 163 Rupees refund claim and both excise duty and Sales Tax came to be legally levied on the first sale of manufactured goods. The two taxes continued and nobody thought of ‘one nation, one tax’ or GST.

Though not in the same case, the Governor General in Council took the issue in appeal to the Privy Council on an identical case. The privy Council observed,

*The Indian Constitution contains what purports to be an exhaustive enumeration and division of legislative powers between the Federal and Provincial Legislatures.*

This principle took several twists and turns and finally we reached GST where excise and sales tax merged into a single tax, but this single tax can be levied both by the Centre and the States. We had to amend the constitution to bring in GST and GST was not included in any of the lists, but was made a separate entity and a new concept emerged that both the Centre and the States could levy the same tax, on the recommendations of the GST Council.

The GST Council was made out to be the new mystical creation that would herald new cooperative federalism. But within five years the walls of the

---

**We had to amend the constitution to bring in GST and GST was not included in any of the lists, but was made a separate entity and a new concept emerged that both the Centre and the States could levy the same tax, on the recommendations of the GST Council**

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edifice are cracking, what with the Supreme Court holding an already well-known fact that the GST Council had only recommendatory powers. The States were free to levy their GST. The GST Council like the Security Council has tremendous respect and stature but hardly any powers.

Well, we have problems with the GST. There are too many changes in law and tariffs – too many and too frequent that we need a supercomputer to keep track. The GSTN is more famous for glitches than solutions and it is being left to Law and courts to sort out the avoidable technical glitches. Machines will fail as do humans, but when they fail, there should be a solution. The Advance Ruling Authority and the Anti-Profitteering Authority are providing more mythical confusion than what an ordinary taxpayer can take. And there is no appellate tribunal. As, when and if a tribunal is set up, it will start with a huge opening balance and will be another judicial institution adding to a large

Anyway, these are minor irritants that you will have to get used to. The government is full of wise people who know what you should do and if you simply do what they ask you to do, even if it is impossible, one day or other you will get used to it. In 1944, they tried to simplify the Central Excise Laws and continued till 2022. Can't you wait for another fifty years before GST settles down? Five years is too short a period to judge a tax. Anyway, the tax is imposed - not for your pleasure; You don't pay taxes – they take taxes. While at it, be happy and get used to it - you will eventually learn to live with it. 🇮🇳

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**SNAPSHOTS**

1

GST has made tax compliance simpler and easier to understand, it has also led to an increase in prices for some goods and services

2

Unlike the earlier regime of separate taxation regulations for goods and services, GST has clubbed it into one uniform regulation

3

Various newer forms and compliances were brought along the GST's journey from 2017 to 2021 with various objectives

# INDIAN GST

# THE 5 YEAR LONG JOURNEY AND WHAT LIES AHEAD

GST is a landmark tax reform that aims to simplify the indirect tax system and make it more transparent. It is also designed to encourage greater compliance and reduce the cost of doing business in India

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**M.S.MANI**

Senior Director  
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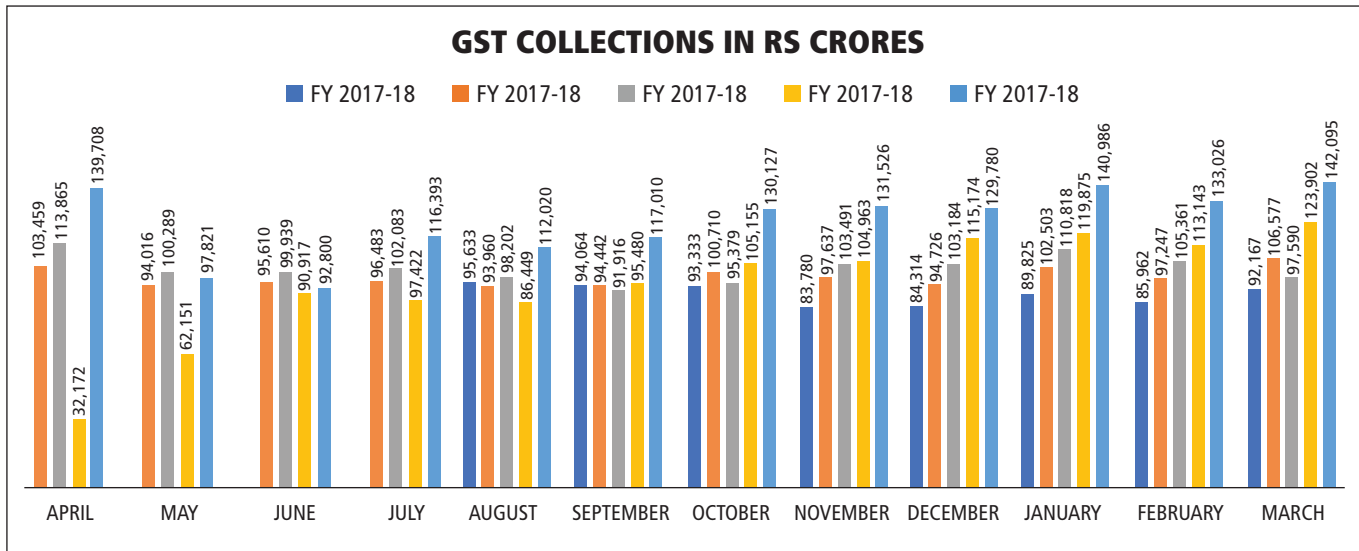
**HARDIK SHAH**

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**T**HE Goods and Services Tax (GST) was implemented in India in July 2017. It is a landmark tax reform that aims to simplify the indirect tax system and make it more transparent. It is also designed to encourage greater compliance and reduce the cost of doing business in India. Significant effort was put in by the government for the smooth implementation of the new tax regime. However, regardless of how much effort goes into implementation, any new set of rules always meets resistance in the early stages. It is no different for GST regulations too. There have been teething troubles along the way, but the impact of this major tax reform is already being felt across the country. In this article, we look at some key highlights of GST implementation.

## **Positives from GST**

Unlike the earlier regime of separate taxation regulations for goods and services, GST has clubbed it into one uniform regulation. Thereby, tax paid on procurements for goods and/or services is eligible to be availed as an input tax credit. The majority of the goods and services are presently charged at 18% GST. However, considering increased credit eligibility, the effective tax rate has been reduced.



GST has also streamlined the indirect tax legislation and compliance across the country. Now businesses don't have to grapple to find out applicable taxes of each state along with additional compliances to be undertaken. Considering the removal of non-creditable Central Sales Tax, businesses, in general, have mended their supply chains by reducing the number of warehouses across the country. The transport sector has been the biggest beneficiary of this change.

With the interlinkage of GST and the Icegate portal, exporters can claim the refund of taxes paid on their procurement with ease and minimal documentation. For other types of refunds, the government has provided consistent and time-bound procedures to be followed by authorities which have significantly reduced the time and effort of a taxpayer. Maximum usage of the GST portal for such cases has also reduced the frequent interaction between the taxpayer and the authorities.

From the government's perspective, the gross monthly tax collections have improved year on year since the implementation of GST. A chart for the monthly collection clearly depicts growth in revenue collection other than the Covid lockdown period. Additionally, the government is using technology tools such as artificial intelligence and machine learning to curb revenue leakage which

may also have played a pivotal role in the increased collections.'

### Initial Problems

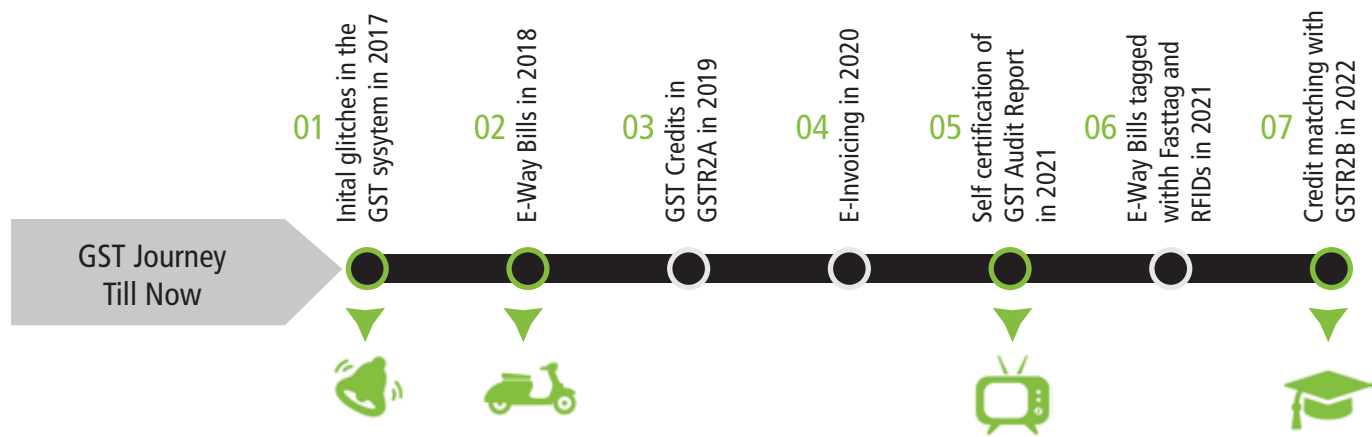
GST has had its fair share of teething troubles and has come under much criticism for being too complex and difficult for small businesses to understand and comply with. GST's system issues for return filing, e-way bill generation etc., were seen as major challenges that the industry faced leading to numerous extensions of deadlines. Various newer forms and compliances were brought along the GST's journey from 2017 to 2021 with various objectives. A brief timeline of important changes is mentioned hereunder for easy reference.

Considering the peculiar nature of administration in GST, several cases of dual investigation/inquiry have been noticed wherein both Central and state authorities are seeking the same information for review. Moreover, credits were blocked in various cases to restrict the utilisation of tax payments. Phased implementation of e-invoicing requirements and restriction on the

availability of credit featured in GSTR 2A and GSTR2B has created an additional administrative burden on businesses. In addition, revenue-biassed advance rulings make it difficult for businesses to determine

**However, regardless of how much effort goes into implementation, any new set of rules always meets resistance in the early stages. It is no different for GST regulations too**





GST liability. However, the government has been taking steps to simplify the system and make it easier for businesses. Various advisories and clarifications were issued along the way for uniform applicability of regulation and to ease out the troubles faced by the industry. Steps have been taken to make legislation and the system more efficient. While these are expected in the initial stages, the good part is that the government has been taking proactive steps to address them.

### Next Steps for Indian GST

It's been 5 years since the implementation of GST in India. GST audits will now be initiated by authorities in most parts of the country. It would be crucial to check the authority's approach towards these audits. Considering the compliance requirement in GST, loads of details will be required by GST audit officers. To fulfil those, a taxpayer would require a robust IT system for providing the details sought by the legislation and tax authorities. Any issues resulting from these audits and/or general inquiry from authorities would merit the immediate establishment of the GST Tribunal which is pending since implementation.

Clarity is required from an administration perspective since instances have been noted wherein multiple authorities have been seeking the same information and investigating the same matter. Suitable guidelines in this respect will ease the burden on taxpayers and can result in faster resolution of issues. The government

needs to ensure that the guidelines issued by them are followed in spirit because there are instances wherein even after a year, blockage of credit is not removed necessitating the Court's intervention. Additionally, efforts should be made to make the advanced ruling authority more efficient and neutral.

With the ever-increasing usage of technology and products emerging therefrom, it would be vital to see how the government will want to administer the same and tax those. Products from new age technology such as cryptocurrency, non-fungible tokens, and transactions in metaverse are going to evolve and hence a fine balance is required in adopting these along with taxing and administering them. For traditional products, timely clarifications should be given to eradicate issues on their classification like papad and papad products, contracts to be treated as work contracts even when no civil work is involved, etc.

### Conclusion

Considering India's size and amount of trade in goods and services, it would not be wrong to say that GST has changed the way businesses were undertaken in the last 5 years. In that time, the implementation of GST has had its share of hits and misses. While it has made tax compliance

simpler and easier to understand, it has also led to an increase in prices for some goods and services. Overall, however, GST has been a positive force for the Indian economy and is expected to continue to be so in the years to come. 🇮🇳

**The government is using technology tools such as artificial intelligence and machine learning to curb revenue leakage which may also have played a pivotal role in the increased collections**



SNAPSHOTS

1

The uniform rate of GST on each product across all states is the single biggest example of tax unification in India

2

The payment of IGST on imports and reverse charge on certain domestic transactions has to be paid in cash mandatorily even though the taxpayer may be having accumulated GST credits

3

The credits for CGST and IGST also need to be tracked state-wise without any fungibility and which seems to be an unintended outcome of how GST gets implemented

# GST IN INDIA

## FROM A 'GOOD AND SIMPLE TAX' TO A 'GREATER AND SIMPLER' TAX

The implementation of GST in a country as big as India with its share of complexities can without a hitch be called the biggest economic reform in recent times



**PRAMOD  
KUMAR JAIN**

Senior VP & Tax Head  
Flipkart

**GST** implementation in a country as big as India with its share of complexities can easily be called as the single biggest economic reform in Independent India. GST with its theme of One Nation, One Tax truly united India and its states despite all cultural and linguistic diversities. In the last 5 years, GST has brought significant changes to how India levies a tax on goods and services and how the tax laws are administered. Let us look at the 5 most significant changes brought about by GST.

### **A single rate of tax across all states on each product**

GST has brought a single tax rate on each product across all states in India and thus, removed tax arbitrage due to different rates across states. In general, the tax cost on each product has come down by 10-12% as against the combined effect of excise duty (with cascading effect) and VAT. The uniform rate of GST on each product across all states is the single biggest example of tax unification in India.

### **States got the right to tax services**

In the pre-GST regime, only the central government had the right to tax services and the states were deprived of the significant portion of revenue despite an ever-increasing share of services in GDP. This also gave birth to the ugly practice of double taxation

where transactions like software, restaurant services etc were being charged to service tax by central government and to VAT by the states, by applying different rules of interpretation.

### **Digitisation of GST Compliances**

The digitisation of entire GST compliance starting with registrations to tax payments and filings through a single platform (GSTN) has been the backbone of GST implementation in India. This paperless and faceless mode of online registrations, tax payments and filings through a single portal can be called as the single biggest initiative and the game changer in GST implementation.

It has done away with the need to seek multiple tax registrations and filings in each state and each central government agency. The digitisation of GST compliances has helped curb tax evasion, ensured smooth flow of credit to the buyers and real time data to various government agencies.

### **Significant increase in speed in Inter-State movement of goods**

The inter-state sales and movement of goods from one location to another in pre-GST regime was subject to compliance with multiple statutory forms like C forms, F Forms, way-bills, road permits etc. under excise, service tax and VAT laws. The verification of these forms used to slow down the inter-state movement of goods in addition to being a source of multiple disputes and a breeding ground for corruption.

The elimination of these forms in the GST regime has increased the speed of inter-state movement of goods by 3 times and thus, significantly reduced cost of warehousing and logistics.

### **Multiple registrations and filings for service providers**

While the manufacturers and traders in goods have every reason to be happy with the introduction of GST, the same may not be true for service providers. GST has hugely increased the compliance burden arising out of registrations with multiple authorities and consequent monthly filings and audit requirements as against a single administration earlier with quarterly filings earlier. In addition, the tax cost on services has also

increased from 15% to 18%.

### **Zeal for a Greater and Simpler Tax in Future**

While the initial 5 years of GST introduction and implementation, with its reasonable share of hiccups, has brought about the adaptation and acceptance from trade and commerce. It has also created a stronger platform and launch pad for bolder reforms in the upcoming years.

Let's take a look at what more can be done:

**Making "Make in India" cheaper vs Imports from outside India**

While a lot has been done for improving ease of doing business in India in the last few years, much more needs to be done to reduce the cost of doing business in India and to make Indian goods and services cheaper vs imported goods. Let's take a look how current tax laws contribute to additional costs:

### **Cost of working capital blocked in GST credits**

A lot of businesses suffer from blockage of precious working capital in GST credits and which results in additional funding costs getting built into the cost of goods and services. The credits for CGST and IGST also need to be tracked state-wise without any fungibility and which seems to be an unintended outcome of how GST gets implemented.

If the GST credits are made tradable through marketable scrips (similar to scrips for export incentives) to free up working capital alongwith fungibility of CGST and IGST across states, it can go a long way in reducing cost of working capital and especially, for MSME sector.

### **Denial of GST credits on Following**

The denial of GST credits on construction of factories, warehouses, logistics parks, hotels etc increase the cost of construction by 8-10% resulting in higher rentals with a cascading effect on cost of goods and services. It is ironic that the services rendered from these warehouses, logistics parks, hotels and goods manufactured in the factories are taxable but the credit for taxes on inputs used in construction of these immovable structures is denied, as part of legacy from the pre-service tax era.

If the restrictions contained in Section 17(5) of GST Act are amended to allow GST credit for construction of immovable properties used for industrial and commercial use, it can significantly reduce the cost for the commercial construction sector. Further, it will also create thousands of jobs as construction and tourism sectors are regarded as the biggest job creators.

In a knowledge and skill driven services sector, the employees play a key role and companies need to provide transportation, catering and insurance benefits as basic amenities to attract and retain talent. However, the GST paid on these services is not allowed as credit and thus, increases the cost of services. It is again quite contradictory that these amenities are considered as business expenses for income tax purposes but not for GST. The removal of restrictions contained in Section 17(3) and 17(5) of the GST Act will make the flow of GST credits seamless leading to reduction in cost of doing business and tax disputes.

### **Compulsory payment of Import IGST and reverse charge GST in cash**

The payment of IGST on imports and reverse charge on certain domestic transactions has to be paid in cash mandatorily even though the taxpayer may be having accumulated GST credits. This again results into more cash outflows from businesses. If these payments are allowed to be made through accumulated GST credits, it can help unblock working capital.

### **Stronger advance rulings mechanism**

The current advance ruling mechanism is quite inadequate and inefficient. Almost, all the rulings seem to be revenue biased as against the correct interpretation of the law. A stronger advance ruling mechanism with non-revenue officials as the jury members is the need of the hour to provide

certainty to taxpayers and to avoid protracted litigation.

### **Simplified audit procedures**

The audit procedures under GST need to be simplified to avoid unwarranted litigation and revenue biased views of the auditors. The audits by the central authorities on each taxpayer may be consolidated under a single jurisdiction. Similarly, any issue arising out of an audit which may have an industry wide effect may be examined by a panel of 3-4 Commissioner Rank officials drawn from Central and State authorities, before being included in a show cause notice.



**The tax payments made pursuant to an audit finding is subject to a prohibitive interest rate of 24% along with penalties. Further, the credit is inadmissible for tax payments even if made voluntarily**


### **Allowing credits for tax payments pursuant to an audit finding**

The tax payments made pursuant to an audit finding is subject to a prohibitive interest rate of 24% along with penalties.

Further, the credit is inadmissible for tax payments even if made voluntarily. In order to reduce long drawn litigation, GST payments made voluntarily at the time of audit finding or pursuant to the decision of the first appellate authority may be allowed as credit. The interest on such payments anyway serves as a punitive lesson to the taxpayers. Further, the penalties should be levied in far and few cases only when the

intent of tax evasion is clearly established.

### **Reducing compliance on MSME sector**

The current turnover threshold for GST registration may be raised from Rs.40 Lakhs to Rs. 1 cr and a token tax of Rs.1,000 per annum may be collected from each of such entities. In order to collect data for statistical purposes, a simplified one pager annual return may be prescribed. Similarly, for composition dealers, the turnover limit may be raised from Rs.1.5 crore to Rs.5 crores with a simplified one pager return to be filed quarterly. 



SNAPSHOTS

1

Enhanced powers under GST have led to increased allegations of misuse of such powers

2

While discussing the fixation of accountability on tax officers, it becomes imperative to draw a line as to where 'good faith' stops, and 'bad faith' begins

3

All officers under the GST law being public servants are obligated to carry out their functions and duties as prescribed

# HOLDING GST OFFICERS’ ACCOUNTABILITY: DELVING INTO THEIR ‘ABUSE OF POWER’



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With GST being a new tax regime, the authorities there have been empowered with enforcement and investigative powers under the Law. But sometimes these enhanced powers of officers under GST have also led to allegations of misuse of it

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*“This tax terrorism in the country is terrifying. One can’t run the government by thinking that everybody is a thief. The alternatives being reported in the media need to be given serious thought. FICCI’s experts and taxpayers should be asked about the problems they face. All stakeholders should sit and brainstorm about tax reforms.”*

**-Shri Narendra Modi**, in 2014, a few months before he became the Prime Minister

**T**HE phrase ‘tax terrorism’ in India is usually associated with the infamous retrospective amendment by the Government of India in 2012 post the Hon’ble Supreme Court’s judgment in Vodafone. While we have now moved away from the tainted legacy of that retrospective amendment, in light of frequent reports of the use of disproportionately strong enforcement measures by GST authorities in the last 2-3 years,

## [ POWER | ABUSE ]

‘tax terrorism’ is yet again being heard in public discourse.

GST being a new tax regime, the officers there have been empowered under the Law with “several enforcement and investigative powers” starting from cancellation of registration, blocking of the input tax credit, provisional attachment of bank accounts, summons, search and seizure, confiscation of goods to pre-adjudication arrests. Some of these powers have been strengthened in favour of the tax authorities over the years. As is often the case, enhanced powers under GST have also led to increased allegations of misuse of such powers.

Article 265 of the Indian Constitution provides that “No tax shall be levied or collected except by authority of Law”. This brief article is the source from which the obligation of tax authorities in India to act fairly and as per the due process of law emanates. Thus, for instance, when GST gets collected coercively (under a threat of arrest) during a search & seizure operation, it falls foul of Article 265.

In May 2022, the Central Board of Indirect Taxes and Customs (CBIC) issued an instruction against such coercive collection – laudable as that step is, it remains to be seen if the said instruction makes any real impact against such illegal recoveries. Even vis-a-vis invocation of Rule 86A of the Central Goods and Services Tax Rules (CGST Rules) for blocking electronic credit ledger, CBIC was forced to issue instructions in November 2021 emphasising that the power of disallowing debit of amount from electronic credit ledger under Rule 86A, being by its very nature extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution and must not be exercised mechanically.

It would appear that the only way to deal with misuse/abuse of power by tax authorities is to ensure and fix accountability for every instance of such misuse/abuse of power through an institutional mechanism.

### **Protection under GST legislation for officers**

In this context, it is pertinent to refer to Section 157 of the Central Goods and Services Tax Act (CGST Act) which reads as follows:



“No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.”

Many other statutes contain such provisions protecting honest actions/decisions taken by officers from any adverse legal consequences.

But clearly, merely because something has been done in the course of official duty doesn’t entitle someone to this protection; this protection is not available if the officer(s) in question have not acted in ‘good faith’.

Therefore, while discussing the fixation of accountability on tax officers, it becomes imperative to draw a line as to where ‘good faith’ stops, and ‘bad faith’ begins. Reference may be made to the Hon’ble Rajasthan High Court’s decision in the case of *BANKE BIHARI LAL AGARWAL - 2003-TIOL-1834-HC-RAJ-IT [1]* wherein the Income-tax officer had lost seized books of accounts of the assessee leading to a substantial loss in business of the assessee.

Similar to Section 157 of the CGST Act, immunity is provided to Income tax officers under Section 293 of the Income Tax Act for acts done in good faith. The Court held that the authorised officer was responsible for the safe custody of seized records and protection under Section 293 would not be available to the officer who has lost books of account so seized, because such an action



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## **The phrase ‘tax terrorism’ in India is usually associated with the infamous retrospective amendment by the Government of India in 2012 post the Hon’ble Supreme Court’s judgment in Vodafone**

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cannot be said to be done in good faith. The relevant extract is reproduced herein below:

“If an officer is entrusted to do a particular duty and if the duty is not performed with due care and caution, the protection under section 293 is not available to him. The Income-tax Department could have taken effective steps for the prosecution of such an officer who is responsible for the loss of the books of account seized under section 132. The loss of revenue in the absence of books cannot easily be determined but, if it is possible to determine such loss, then he can be made responsible for the loss of revenue as well. Personal responsibility cannot be absolved in the garb that the act performed was during official duty. The assessee who has lost his books of account can also claim damages for the loss of the books of account from the officers who had seized the said books of account.”

In the light of the foregoing, it may be possible to conclude that when GST gets collected coercively (under a threat of arrest) in the course of a search & seizure operation or other instances where the non-application of mind/perversity of decision-making apropos invocation of any of the enforcement/investigative powers under GST is apparent on the face of records, the protection under Section 157 of the CGST Act ought not to be available. Discretion of GST officers is not to be exercised arbitrarily and capriciously and must be backed by cogent reasons based on objective materials.

It is pertinent to highlight that it would have to be first established that such an officer has not acted in good faith - the onus to prove such abuse of power will be on the taxpayer.

While Section 157 of the CGST Act has not yet

been dealt with by the judiciary at length, there are a plethora of cases where abuse of power by the tax authorities has been dealt with by the Courts and costs have been imposed for such actions. In this context, it is pertinent to refer to the following two cases:

(i) *Assistant Commissioner ST & Ors. v. Satyam Shivam Papers Pvt. Ltd - 2022-TIOL-07-SC-GST.*

This case is a classic example of blatant abuse of power. In this case, the petitioner had dispatched goods on the auto trolley on 4 January 2020 and the driver of the auto trolley had in his possession a tax invoice as well as an e-Way bill. The distance to be travelled by the auto trolley was only 36 km but on its way, there was a political rally opposing CAA and NRC by political parties, which led to the blocking of roads and the traffic could not move forward or backwards. The driver waited until 8:30 pm. on the road. By that time, having realised that the shop of the buyer would be closed, the driver took the goods to his residence intending to deliver the goods on the next day. The following day being a Sunday, the attempt was made by the driver to deliver the goods to the buyer on 6 January 2020 when it was detained at 12.35 pm by issuing a detention notice. The officer seized the goods and imposed tax and penalties for alleged evasion of tax. Further, the goods were detained and stored at a place of a relative of the officer and not in any other place designated for such safekeeping by the State. The Explanation given by the supplier was not considered and a conclusion was drawn on tax avoidance. The petitioner filed a Writ before the Hon’ble Telangana High Court. The High Court held that tax evasion cannot be presumed on mere non-extension of validity of e-Way bill by the assessee due to traffic blockage and agitation, for which the Government is responsible for not providing smooth passage of traffic. Further, the Court observed that there was a blatant abuse of power by the Revenue authorities and imposed a cost of Rs. 10,000/- on the authorities.

The Tax authorities approached the Hon’ble Supreme Court against the foregoing decision. The Apex Court, while upholding the High Court’s judgement, made certain strong remarks:

“We are clearly of the view that the error, if any, on the part of the High Court, had been of



imposing only nominal costs of Rs. 10,000/- on respondent No. 2 of the writ petition, who is petitioner No. 2 before us.”

“In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs.... This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court. Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation.”

(ii) *Coca Cola India Ltd v. ACIT - 2005-TIOL-163-HC-MUM-IT.*

The Bombay High Court condemned the actions of the Revenue authorities observing as under:

“Before parting, we would like to record our total dissatisfaction regarding the manner in which the authorities below have proceeded to enforce the demand totally ignoring the parameters laid down by this Court in the case of KEC International Ltd.

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**An institutional mechanism will be to introduce a comprehensive “Taxpayers’ Charter” under the GST law, similar to the one that exists in the Income-tax law, to protect the interests of the taxpayers**

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while disposing of the stay applications. Moreover, attaching the bank accounts of the petitioner even before communicating the order passed on the stay application is totally high-handed. We hope that the Revenue shall ensure that in future such instances do not occur again. Otherwise, the Court will have no option but to take appropriate action in accordance with the law.”

**Institutional Mechanism Needed**

While there have been several instances of fixation of accountability by the High Courts apart from the ones mentioned above, what is needed for a systemic change is an institutional mechanism for fixing personal liability on officers who undertake ex-facie bad faith behaviour.

Without such a mechanism, long-drawn adjudications and litigations on flimsy and unsustainable matters lead to substantial loss to the business of the taxpayers and ultimately hurt the Indian economy badly.

One way to introduce an institutional mechanism will be to introduce a comprehensive “Taxpayers’ Charter” under the GST law, similar to the one that exists in the Income-tax law, to protect the interests of the taxpayers. Such a charter will need to establish the basic rights of the taxpayers and specify circumstances where the tax officers will be held accountable for their actions.

Be that as it may, it is also pertinent to ponder if there are any other legal remedies that taxpayers may explore till such charter/any other effective institutional mechanism comes into place (if at all).

**Possible Legal Remedies to hold Tax Officers acting in ‘Bad Faith’ Accountable**

The following remedies may be explored:

(i) Civil remedy –compensation

Recourse may be taken to the law of torts conjointly read with our constitutional principles laying down a duty to act fairly by the State.

The errant officer may be charged with the tort of “misfeasance by a public officer” if such officer’s action is actuated by malice; or for the tort of negligence if negligence is established; or for wrongful arrest and imprisonment.

Even in those cases where the State is protected from vicarious liability for acts done by its employees/officers, the public servant committing the tort is not protected.[4] It is also no defence for the public servant to say that the wrong was committed in the course of discharging some statutory function or carrying out the orders of superiors.[5] In cases where a statutory discretion is conferred, the person entrusted with the discretion is not liable if the discretion is exercised with due care and there is merely an error of judgement; but there would be a liability if he/she either unreasonably failed to carry out his/her duty to consider the matter or reached a conclusion so unreasonable as again to show a failure to do his/her duty.[6] Further, an officer seeking protection of legislation cannot claim that his/her conduct has any relation to the “execution of the statute” if he/she knowingly and intentionally acts in contravention of the said statute’s provisions.[7]

The above principles of law can be invoked to claim compensation for losses or damages suffered due to an intentional act of abuse of power by the GST authorities – when the aforesaid principles get invoked seeking specific amounts of compensation, the Courts may not limit themselves to impose small amounts of cost on the Revenue department/errant officers. After all, the only way to prevent

abuse of power is to ensure accountability and harsh consequences.

(ii) Remedy under criminal law

All officers under the GST law being public servants are obligated to carry out their functions and duties as prescribed. We often come across instances where they fail to do so for ulterior motives.

In extreme cases of such nature, apart from the civil remedies, a criminal action can also be initiated against the officer personally. In this regard, Section 166 of the Indian Penal Code (IPC) may come into play, which is extracted herein below:

“166. Public servants disobeying law, with the intent to cause injury to any person.— Whoever, being a public servant, knowingly disobeys any direction of the law as to how he is to conduct himself as a such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”.

Thus, in cases of malicious abuse of power, a complaint under Section 166 of IPC may be explored provided it can be shown that the actions of the officer were willful. 🔴

[1][1997] 226 ITR 498 (RAJASTHAN)

[2] 2022-TIOL-07-SC-GST

[3][2006 285 ITR 419 BOM]

[4]STATE OF UP VS TULSI RAM [AIR 1971 ALL 162]

[5]VENKAPPA V. DEVAMMA [(1956) MAD 1381]

[6] HOME OFFICE V. DORSET YACHT CO. [(1970) 2 ALL ER 294]

[7]RUNCHORDAS V. MUNICIPAL COMMISSIONER OF BOMBAY [(1901) 3 BOM LR 158]

V. ACIT - 2005-TIOL-163-HC-MUM-IT



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SNAPSHOTS

1

GST is an indirect tax levied on all types of goods and services as a single tax to unify the shared marketplace across the country

2

e-Way Bill and e-Invoicing is a feather to its IT excellence in tracking the movement of goods and services across the country

3

The Goods and Service Tax Network (GSTN) is a non-profit, non-government organisation. It manages the entire IT system of the GST portal

# ENCAPSULATION OF GST JOURNEY

The Goods and Services Tax "GST" was introduced with effect from July 1, 2017, doing away with all the indirect taxes except customs. This is a major shift in the history of taxation in independent India



**M.S. VASAN**

Senior VP, Hinduja Global Solutions

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**GST** enactment is a culmination of the Central government, all state governments and Union territories. It started with a big bang at 12, midnight in the Central Hall of the Parliament. It envisaged a huge IT platform processing data of all taxpayers across India.

Automated data processing, tax collection and disbursement similar to the banking channels across all the banks and seamless repository and retrieval as and when required. For the first time, a deep dive into the technological advancement of AI, Machine Learning and Data Science to threadbare analyse taxpayer data in terms of reporting and tax payments. Also, in this process, all the discrepancies are nailed down and the audit process is made more sophisticated to plug the interpretative revenue disputes based on risk analysis. Can the GST law in force show robustness and agility in processing the refunds and auto credit into the bank account of taxpayers based on the tax returns well within 90 days and do audit only upon exception?

## **Is GST law superior to all erstwhile laws?**

GST is an indirect tax levied on all types of goods and services as a single tax to unify the shared marketplace across the length and breadth of the country. A value-added destination tax wherein the tax on services is shared with all the states and union territories for the first time. GST is a uniform tax code in place for State, Central, Integrated and Union Territory (UT) enactments and there is no scope for interpretation of the terms appearing in the GST Act.

i) Tax Collection cost is reduced drastically due to its operation as a national tax system, ii) Uniformity in procedures and tax rates across the country makes the cost of compliance also cheaper

[ GST | A MAJOR SHIFT ]

from the taxpayer perspective, iii) Seamless input tax credit across the entire supply chain in all states under a joint tax base to make it a one nation one tax regime

The Goods and Service Tax Network (GSTN) is a non-profit, non-government organisation. It manages the entire IT system of the GST portal, which is the mother database for every transaction under GST. The government will use this portal to track all the GST transactions and provide taxpayers with all the services – from registration to filing taxes and maintaining all tax details.

GST Network (GSTN) is the nodal IT infrastructure hub for the union and state governments to coordinate the tax return forms filing, data collation, record the collection of funds and act as a clearing house for the transfer of funds among States and Union like a banking system. With fully auto-populated fields in the tax return and tax payments, taxpayer compliance has gone up when compared to the erstwhile indirect tax regime.

With the GST council (a formation of representatives of all States, UT and Central) meeting periodically from July 2017 to discuss,

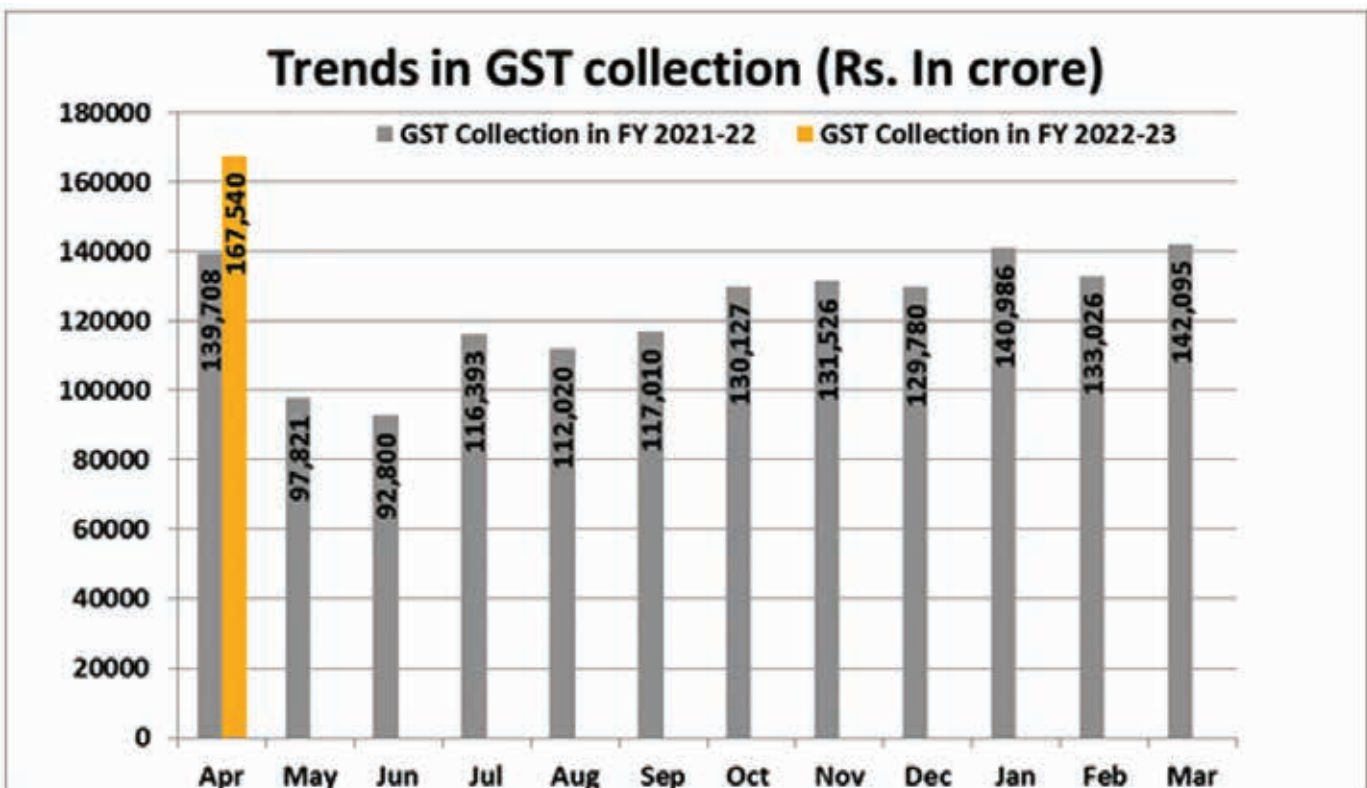
deliberate and decide based on consensus, all the legislative changes, tax rates and other discrepancies are very special. It provides for concurrent powers to all the representatives under a dual system of indirect tax governance.

GST is unique in its functioning by giving a seamless input tax credit to all those taxpayers who are above the turnover threshold. Also, it addresses the MSME sector to opt for a composition levy wherein the input tax credit is not available to the person receiving the goods and services. With the value chain being kept intact, the burden of tax is shared across the channels of distribution.

- i) The distribution chain is not broken under the GST regime as CST and Cenvat are abolished.
- ii) Multiplicity of taxes has reduced including entry tax, cess and other local levies.
- iii) With Central and State Governments working together under the GST Council framework, multiple audits and duplication of issues under litigation are fairly eliminated.

**Tax Rate Rationalisation**

The GST Council in its meeting observed that it has successfully implemented Tax Rate



GST Revenue collection for April 2022 highest ever at Rs 1.68 lakh crore

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**GST enactment started with a big bang at 12, midnight in the Central Hall of the Parliament. For the first time, a deep dive into the technological advancement of AI, Machine Learning and Data Science to threadbare analyse taxpayer data in terms of reporting and tax payments**

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rationalisation including an exempted list of goods and services, seamless input tax credit mechanism, review of special rates, conversion of inverted duty structure, and classification-related disputes. It also commended GSTN for its IT system stability. It also expressed its desire to have checks and balances and use data analytics like BIFA to improve the efficacy and efficiency of GST administration.

With the Centre sharing the service tax revenues with the States, States' Own Tax Revenue should have gone up. But the data shows the other way.

The share of State GST (SGST) in States' Own Tax Revenue (SOTR) at 55.4 per cent during FY18-FY21 compared to 55.2 per cent during FY14-FY17 indicates that the growth in both SGST and non-SGST components of SOTR has been broadly similar. GST implementation did not result in any incremental benefit to the SOTR. Moreover, SGST growth at an average of 6.7 percent during FY18-FY21 has been lower than the 9.8 per cent growth recorded by the taxes subsumed under GST during FY14-FY17.

From June 2022, the Centre will stop giving states any compensation for tax collection shortfall. GST compensation for a five-year period was part of the agreement between states and the central government at the time of the roll-out of the new indirect tax regime in 2017.

GST having subsumed the majority of taxes which were previously imposed, has moved towards a "single unified structure" of taxation regime. In terms of compliance, most of the records are kept in soft form and documents can be retrieved from the GST portal as and when required

by the taxpayer.

The GST council periodically addresses procedural irregularities. GSTN through the use of technology got hold of mismatches in 2A and 3B, e-Way bills and non-filing of transition forms. These are standing tall in front of the taxpayers as disputed issues. A one-time settlement or amnesty scheme like that of the past can clean up the last 5 years of shortcomings and put an end to procedural litigations.

### **Taxpayer issues**

GST in its current form is not flawless. The GST council has to do away with a few recurring issues to ease the business and trade to operate on an all-India basis without any hassles. GST law is copied predominantly from the erstwhile indirect tax laws. Hence, the baggage of historical issues continues to haunt the taxpayers. Jurisdictional issues between states and central agencies have to be resolved and clarified to the taxpayers to not have multiple and repeated audits, submissions, summons, notices, tax demands and litigations.

There is no tribunal to address substantive questions of law. Right now litigation is not much. As years pass by, litigations will grow and historical enactments of the past will also join the bandwagon to make it more complex. Also, a National Advance Ruling Authority is a must and required to address the issues on an all-India basis rather than the State level advance rulings which confuse a lot with contradictory rulings, the entities which are present all India. The companies cannot take different views at the state level and run their business.

Both State GST and Central GST authorities do issue notices and seek replies from taxpayers. There is a mismatch in the grounds taken for appeal and grounds taken for recovery of tax demand. Many times, the GST officer is not clear on how to proceed with regard to the issuance of show cause notices.

Transitional Credits of 2017 are still not available to the taxpayer for off-setting against tax payments due to technical issues in the GSTN portal. Despite furnishing declaration electronically in FORM GST TRAN-1 within the stipulated time, credit could not be availed due to technical glitches in the GSTN.

The eligibility conditions for availing of the Input

[ GST | A MAJOR SHIFT ]

Tax Credit as stipulated under Sec.16 have undergone so many changes. It has become so restrictive that only in respect of Tax Invoices which are auto-populated in GSTR 2B can be availed with effect from January 1, 2022.

A few issues which could be addressed by the GST council but not done from a tax collection angle are :

- Cross charge of employee costs from Head office to branches based on different advance rulings has to be fixed and clarified. The branch operations are more to protect the investments and part of shareholder costs.

- Both Assets under Leasehold and hiring / renting / leasing of assets should not be subjected to GST. Only lease rental income from assets should be under the GST regime and the other should be exempted. In the erstwhile service tax regime, assets were exempt.

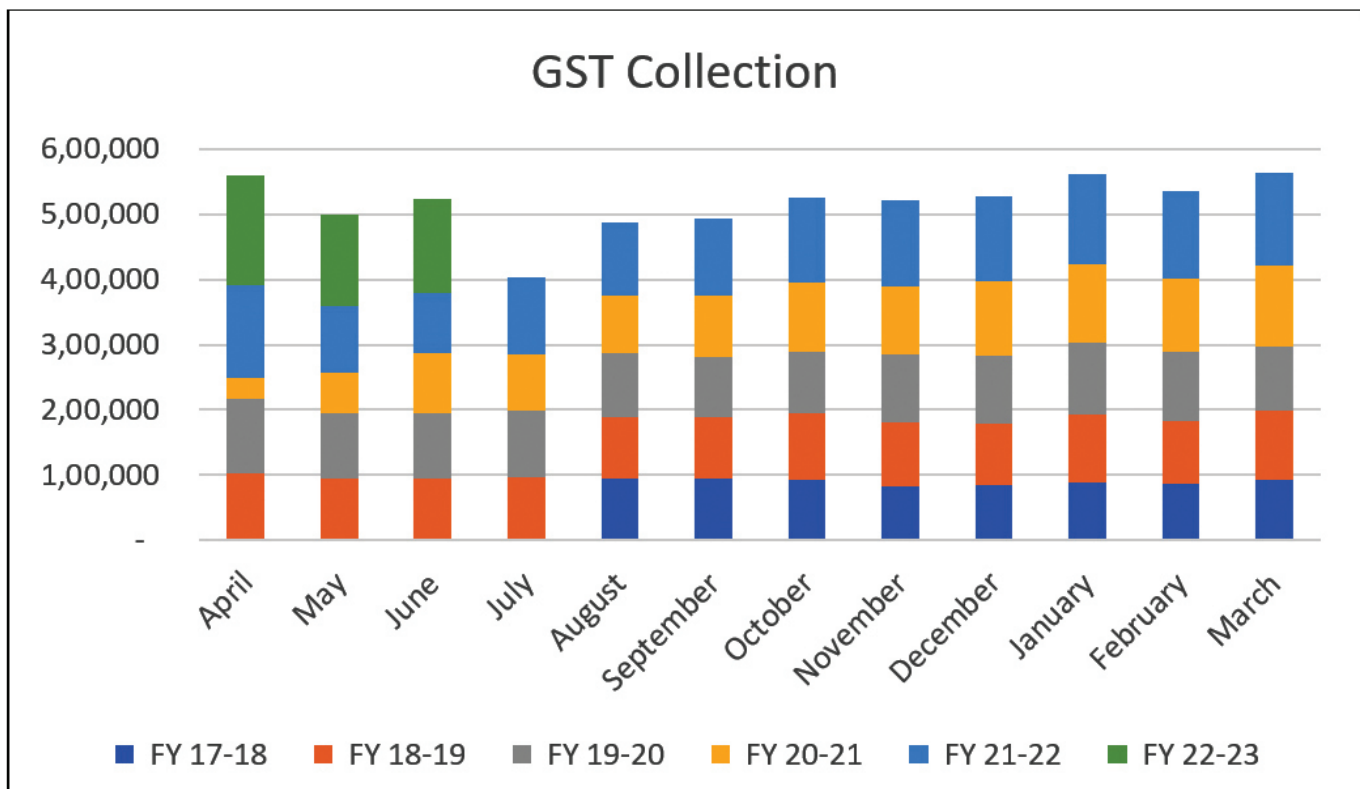
- Clarification is required for Bundled services – exempt and taxable. For example – electricity is charged and reimbursed should not be part of the GST value. The sale of electricity is exempt. If one makes a profit on the sale of electricity, then also it should be exempt.

- Identifiable services shall be given treatment accordingly under the GST law rather than being on abatement like the erstwhile law. Under construction, buildings are subject to GST. Abatement is given for 33%. Why only 1/3rd? It should be based on actuals or 1/3rd at the option of the assessee.

**Model Tax**

With petroleum outside the ambit of GST, a large part of the economy is still outside the tax net. It should be brought under GST at the earliest to keep the VAT chain intact. Revenue Neutral Rate shall be pegged at 15% in line with other countries with the highest rate at 25% and the lowest rate at 5%. The government has enhanced Compensation Cess payment to the States till 31-03-2026. These short-term revenue adjustments should be discouraged and stopped completely.

It is pertinent to mention that the GST Council recommended for creation of a Centralised AAAR to deal with the conflicting decisions made by two or more State AAAR on the same issue. Even the necessary amendments in the CGST Act have been carried out but have not been notified to date.



Unified tax and state sharing of services tax with revenue collection chart



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**GST Network (GSTN) is the nodal IT infrastructure hub for the union and state governments to coordinate the tax return forms filing, data collation, record the collection of funds and act as a clearing house for transfer of funds among States and Union like a banking system**

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There is a huge amount of litigation piled before the High Courts as no GST appellate authority is formed. There are several applications of complaints pending for disposal by the Anti-profiteering authority. The period of the Anti-profiteering Authority has been extended from 4 years to 5 years to give desired benefits to the consumers by investigating the pending application of complaints.

### **Ultimate Indirect Tax Regime**

Seamless Input Tax Credit (ITC) across CGST and SGST after system-based validation every month will help businesses manage their working capital better. It shall be fungible across states, products and services under a single PAN of an entity irrespective of different registrations. It should allow for consolidated single annual GST returns in line with income tax rules.

For exporters of goods and services, an automatic refund mechanism shall be in place to credit the exporter bank a/c within 90 days of the filing of refund returns.

Alternatively, if the government wish to grant duty scrips like SEIS / MEIS schemes and be allowed to be set off against its own output taxes irrespective of registration within the same PAN or transferred to other businesses and encashed.

Input service distributor registration shall be encouraged for any cross charges across offices and other premises to transfer GST credits and utilisation. Also, there shall be a mechanism to utilise the surplus in one place against the other within the same PAN-based registration.



### **User-friendly Law**

The merger of State and Central Administration to avoid duplication of work and smooth functioning of the GST system. The tax administration shall understand the business model of each taxpayer, store it in the permanent database and ensure that the same is updated annually along with the annual tax returns filed. Bring all the goods and services under GST without any exclusions. Alignment of the financial records and system maintained by the taxpayers and auto-population of data to fill up the tax return with minimal human intervention. Bring in a withholding tax system for those B2B / Ecom transactions to effectively manage GST levy and track the GST transactions. Refund of excess taxes paid or erroneous payments within 15 days of payment and upon the filing of monthly returns. Refund for input tax credit availed upon payment to vendors automatically within a timeframe to the taxpayer. Robust audit process virtually / faceless with the help of data analytics / AI tools and avoid visiting the premises of the taxpayers. Also, the assessments shall be time-bound and not open-ended. Timely binding clarifications be issued for taxpayers and tax administration to follow and implement which shall result in minimal litigations. 🚫



SNAPSHOTS

1

The reformed tax system, GST, has brought with it some novel concepts such as e-Way bill, e-Invoicing, auto-populated returns, etc

2

GST in India is a quadruple tax slab system comprising mainly — 5%, 12%, 18%, and 28% slabs

3

Despite its shortcomings and cravings for immediate attention to plug serious concerns it still provides an unwavering hope for a better tax administration system

# QUINTUPLETS CHRONOLOGY

Irrespective of complexity in administration and the melange of tax slabs, GST has reformed the fiscal system of the country and replaced the earlier system marred with cascading effects and division of tax topography

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**RAJAT CHHABRA**



**KETAN TADSARE**



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The authors are Partner, Associate Partner and Associate respectively at Taxcraft Advisors LLP

**J**ULY 01, 2022, marks Fifth anniversary of Goods and Services Tax (GST). This ambitious tax reform sparked debates much before it was even implemented, and despite all that has passed, one notion remains constant and unanimously agreed across the country that it has been a bumpy yet remarkable ride just as much ambitious as it was. Since implementation this law has evolved remarkably, and it continues to grow and adapt at a rapid pace. As a matter of fact, law cannot be a 'constant' in that it becomes rigid and irrelevant. No doubt, despite years of legacy many laws around the world keep changing with the ever-evolving norms of morality, righteousness, and expectations of mankind.

While we all indulge in debating strengths and shortcomings of GST – one fundamental characteristic always remained overlooked until Hon'ble Supreme Court reaffirmed the recommendatory nature of GST Council's decisions and left us all to wonder how fantastically the co-operative federalism has played out its job in these five years. Kudos!

## **Origination**

The concept of GST was first mooted in 1999 as the 'One Nation One Tax' phenomenon. It envisaged a 360-degree tax reform to replace erstwhile system marred with cascading effect, compartmentalisation of tax topography, multiplicity of taxes, overwhelming compliances and the list is endless. The words were -this reform would boost India's GDP rate by at least 1% which was dwindling around 6%-7% at the time. The predictions were mainly based on competitive pricing of commodities in the domestic market as well as export market, by eliminating cascading effects across the value chain of production, supply, and distribution.

This reformed tax system brought with it some

novel concepts such as E-way bill, E-invoicing, auto-populated returns, etc. E-way bills ensured effective monitoring of movement of goods and pegged clandestine removals to the minimal. To top it, a penalty equal to 200% furthered the deterrent. E-invoicing coupled with auto population of returns reduced tax evasion and unwarranted use of input credit mechanism.

### **Disentanglement of Tax Slabs**

GST in India is a quadruple tax slab system comprising mainly — 5%, 12%, 18%, and 28% slabs. Although these are significantly a smaller number of slabs compared to erstwhile regime, this system is still seen as one of the most complex



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**Governance is, in all fairness and beyond an iota of doubt, exchequer's responsibility. While certain exceptions in the form of TDS, TCS and reverse charge are reasonable exceptions; however, absolutely shifting this burden on a recipient is not only unreasonable but also showcases Governance deficit**

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compared to single slab tax rate preferred globally. Besides complexity in administration, multiplicity of tax slabs is also a root cause for classification disputes which are unprecedentedly high in the last few years.

These tax slabs have long been expected to be done away with. Considering that slab rationalisation is already hinted at in the 47th GST Council's press briefing, perhaps the government can also consider bringing down the number of tax slabs to align the Indian GST rate structure with that of other global jurisdictions.

### **Compliance Burden – Why?**

The Compliance burden under GST has been a talk of the town right from the word go. First for its ambitious GSTR 1 – GSTR 2 – GSTR 3 matching, later for its absolute failure and eventually for making a recipient responsible for supplier's compliance and withholding recipient's tax credit as a deterrent.

Governance is, in all fairness and beyond an iota of doubt, exchequer's responsibility. While certain exceptions in the form of TDS, TCS and reverse charge are reasonable exceptions; however, absolutely shifting this burden on a recipient is not only unreasonable but also showcases Governance deficit. The necessity to monitor sufficiency of supplier's compliances has turned the taxpayers into Compliance BPOs themselves. Wide acceptance and adaptability of a legislation is not limited to specificity of its design but substantially extends to its effective implementation, and on this count compliance provisions of GST law have been found to be wanting, to say the least!

### **Tribunal – When?**

Another area that requires immediate attention is the setting-up of Tribunals. Despite the indispensable position of the Tribunal in administering Justice in the Indirect tax space, its establishment has not seen light of the day in the GST regime. In absence of a Tribunal, the High Court's Writ Jurisdiction continues to bear the additional burden. While tax disputes under GST law are on the rise given the ineffectiveness of the adjudication system mired with bias towards revenue, delay in setting-up of Tribunals is only going to prove 'Justice delayed is Justice denied'.

Meanwhile, the Hon'ble Union Finance Minister has announced to constitute the Group of Ministers (GoM) to propose required changes in the existing GST Law for the setting-up of the GST Appellate Tribunal (GSTAT). GoM is expected to recommend necessary modifications to the GST Law to ensure maintenance of federal structure in parlance with the judicial precedents and overall structure of uniform taxation across the country. The report containing the functions of the GoM is due to be submitted to the GST Council by July 31, 2022 for due consideration.

### **Alternative Dispute Resolution**

Even after setting-up of the Tribunal, the Pendency is unlikely to reduce. Historical numbers of pendency before Higher Courts are a testament. This issue may best be addressed by introducing Arbitration in tax disputes. Even though this might prove to be a bit costlier affair, it certainly wouldn't be a pinch compared to the obnoxiously lengthy court proceedings. Besides this will also evaluate the true intent of the Revenue, which many times initiates frivolous disputes with large demands.

### **Perplexity of Advance Ruling**

The Advance Ruling Authority has proved to be the biggest failure of the GST law. Its decisions have been the most inconsistent and completely biased defeating the very purpose for which it was created – clarity and amicable implementation of GST. It is high time that the composition of the Advance Ruling Authority is taken a closer look to make necessary changes, in order to avoid further abuse of this forum.

An alternate way of overcoming this adversity is the setting-up of the Central Appellate Authority of Advance Ruling. While the GST law has already been amended to set-up a National Appellate Authority, its implementation has not even been whispered so far.

### **Conclusion**

While the government has done commendable work in implementing GST in India, few notable concerns have been delay in bringing petroleum products and electricity under the GST net, overlapping notices being issued by the central and state GST wings and clumsy implementation



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**While the government has done commendable work in implementing GST in India, few notable concerns have been delay in bringing petroleum products and electricity under the GST net, overlapping notices being issued by the central and state GST wings and clumsy implementation of anti-profiteering provisions**

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of anti-profiteering provisions.

Despite its shortcomings and cravings for immediate attention to plug serious concerns it still provides an unwavering hope for a better tax administration system. It has indeed paved a clear path by unifying multiple taxable events, creating uniform tax structures across the country, broadening the taxpayer base, setting up co-operative federalism and many more.

A lot is done, a lot is yet to be done, for, the process of evolution is endless. All that matters is whether we follow trails of evolution. With GST the answer is certainly, in the affirmative! 🇮🇳



SNAPSHOTS

1

The topmost success of GST is bringing the Central Government and all the State Governments, under the banner of the GST Council, a constitutional body

2

The functioning of the GST Council is an epitome of cooperative federalism where unanimous decisions are taken in the interest of upholding the principle of GST

3

GST is aimed to remove various bottlenecks in the matter of Input Tax Credit and this purpose has been achieved to a great extent

## GST IN NUTSHELL

# WHAT LIES AHEAD

The GST Council's journey over the past five years shows a rosy picture despite its functioning, but due to failure of the Central Government and the State Governments to come to a consensus, there are many issues, which have to be resolved yet



**G. NATARAJAN**

Advocate

**N**O doubt, the introduction of GST is the single largest economic reform undertaken after our independence. The topmost success of GST is bringing the Central Government and all the State Governments, under the banner of the GST Council, a constitutional body. Both the Central Government and the State Governments have come forward to make several compromises, to make GST workable. The functioning of the GST Council for the past five years would reveal the following.

- i) The GST Council has been very active and 47 meetings have been held so far.
- ii) The GST Council has been highly responsive to the representations from stakeholders, which could be vouched by the number of amendments made to the law and procedures in the last five years and the number of clarifications issued.
- iii) The functioning of the GST Council is an epitome of cooperative federalism where unanimous decisions are taken in the interest of upholding the principle of GST, i.e. 'One Nation One Tax.'

Even though the recommendations of the GST Council are only recommendatory in nature and not binding either on the Parliament or on the State Legislature, which has also been

recently reiterated by the Hon'ble Supreme Court, all stakeholders have so far exhibited utmost maturity and not deviated from the spirit of cooperative federalism. Though the functioning of the GST Council over the last five years, thus depicts a rosy picture, there are several issues which could not be resolved even after five years, due to the failure of the Central Government and the State Governments to come to a consensus.

### **The Elusive Tribunal**

Even after five years, the GST Tribunals are yet to be formed, due to the poor structure of the Tribunal, which was quick to be held ultra vires by judicial forums. There is a feeling in the Central Government as well as the State Governments that representatives from their Government should be part of the Tribunal as Technical members "to protect the interest of the respective Governments". Such thinking itself is highly flawed as the Tribunal is a judicial body and its members are expected to be judicious and neutral. Thus, the Tribunal was created as a

three-member body, with one judicial member and one technical member each from the Central Government and State Government, thus giving a majority to the technical members, which was judicially struck down. There seems to be no concrete proposal to tide over this crisis and recently the issue has been referred to a Group of Ministers. The author has suggested that suitable weightage may be given to the Judicial member and Technical Members of the Tribunal

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**Transitional credit is one of the hotly litigated topics under GST and it is unfortunate that the government, which should have been more benevolent in this regard, is more belligerent on this issue**

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(like the voting pattern in GST Council) in such a way that the two technical members cannot decide on an issue, disregarding the contrary view of the judicial member and the judicial member require the support of at least one technical member, to have views becoming a binding decision. This will ensure that both the Governments have their “representatives” in the Tribunal and also ensure judiciousness in decision-making.

Also needing to have a separate Tribunal only to decide issues relating to “place of supply” needs a look back. The last five years would show that the disputes in place of supply are not far too many. Further, if an inter-state supply is held to be an intra-state supply or vice versa, the taxpayer can simply pay the correct tax and claim a refund of tax wrongly paid, without any interest liability, there is no reason to contest such issues. Further, can a different State, other than the one where the taxpayer is situated, can dispute the place of supply adopted by a taxpayer is a moot question involving jurisdictional issues. Hence, it is not justified to have a separate Tribunal only to deal with the place of supply issues and a single Tribunal can handle such issues also. Maybe the composition of the bench in such cases can be broader.

### **ITC – Is It Seamless?**


GST is aimed to remove various bottlenecks in the matter of input tax credit and this purpose has been achieved to a great extent. But, in one case, the benefit which was available under the erstwhile law has been withdrawn under GST law. Before GST, if a taxpayer avails the services of hotel accommodation in a State other than the State in which he is registered, the Service Tax charged by the Hotel was eligible for Cenvat Credit. But, under GST, as per the place of supply provisions, the Hotel would charge CGST and SGST for the transaction and both these taxes are not entitled to Input Tax Credit (ITC). While allowing ITC of the SGST paid in one state, to a taxpayer in another State may be difficult (though not impossible and to ensure seamless credit flow, even such credit should be allowed and any adjustment between the

respective States should be done at the back end), denying even the CGST credit in such cases is an antithesis to the principle of GST.

### **Dual Control**

One more example is where the unwillingness of the Central Government and the State Governments to give up their hold over taxpayers has resulted in the continuance of the evil of dual control and the absence of single control. The protection available under Section 6 of the GST Acts is very limited, i.e. once an issue is taken up by either the Central Government or the State Government, the other Government cannot take up the same issue. Apart from this, the dual control over the taxpayers is maintained intact, as it was under the old regime. A taxpayer under the administrative control of the State Government can also be subjected to verifications by the Central Government and vice versa. This makes one feel that GST is nothing but old wine in a new bottle.

### **Cross Charge**

Another potential danger lurking over all taxpayers is the so-called “cross charge”. Different registrations of the same entity are deemed as “distinct persons” under GST law, to ensure a seamless flow of credit, when goods are transferred between such registrations. If the transfer of goods between different registrations of the same entity without consideration (stock transfers) is not subjected to GST, the ITC chain would be broken. But, such deeming fiction should have been limited only to the movement of goods between such “distinct persons” but not for any other purpose. This lacuna has given birth to the problem of “cross charge” where the headquarters of an entity is considered as rendering services to its constituent units and valuation of such services, discharging tax on such deemed supply of services, overlapping of such cross charge and provisions relating to input service distributor, etc. have become a nightmare. A simple exemption from payment of GST for the such deemed supply of services between “distinct persons” would go a long way in ensuring ease of doing business. 

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2022 | A W A R D S

ENRICHING TAX SPACE

CHAPTER - II

**GST**

**A TREETOP  
VIEW**





SNAPSHOTS

1

The first two years of GST were stiffly challenging. It was a big task to overcome resistance from millions of small taxpayers

2

It is heartening to note that the Centre did not renege on its promise to find ways to compensate the states for the loss of revenue

3

The pandemic has played havoc with the economy. Revenue streams of the government, the private sector and individuals have been severely impacted

# HIT THE BULL'S EYE

The last five years have been a roller-coaster time for the GST. And the scoreboard shows more on target hits than misses



**SUSHIL MODI**

MP Rajya Sabha &  
Former Deputy CM of Bihar

**GST** has, unrecognisably, transformed India from a state of multiple indirect taxes to a “One Nation-One-Tax” regime. Stitching together 37 different tax jurisdictions, which manifested as 17 different levies and 13 kinds of cesses or surcharges under 8 different constitutional entries, was a dinosaurian exercise.

This grand unification was possible only because of the persuasive skills of the late Arun Jaitley. His leadership ensured that the GST Council functioned in a democratic and consensual spirit.

## Teething Troubles

The first two years were stiffly challenging. It was a big task to overcome resistance from millions of small taxpayers. Compliance was poor due to procedural burden and glitches in the functioning of the GSTN added to the pains.

Despite various challenges and obstacles, GST has fairly stabilised over the 5 years. The tax base has seen a phenomenal increase from 6.39 million to around 13.8 million taxpayers.

On the revenue front too, GST has done pretty well. Monthly average revenues have risen from Rs 70,000 Crores which is the collection of subsumed taxes in the base year FY16 to Rs 92,600 Crores in FY18 to over Rs 1.4 trillion in FY22 despite preceding 2 years being among the worst years because of the pandemic.

This represents a CAGR of around 7.4% since GST implementation. It is expected that in FY23 there may be an average collection of Rs 1.4 trillion per month. This is no mean achievement, given that pre-GST VAT revenue growth averaged just about 8.9% over the 3 years immediately preceding GST.

Fake invoicing posed a big challenge. Aadhaar authentication for new registrations, blocking of GSTR-1, e-Way bills and big

data analytics for targeted action against tax evaders have helped to a great extent in checking round tripping by using fake invoices. Much is being tried to be read in the recent judgement of the Supreme Court in the Mohit Minerals case but the court has only reiterated what has been explicitly stated in the Constitution. No state can afford to not implement GST and no state has ever disregarded a decision taken in consensus by the GST Council. Any state not accepting GST would incur losses.

The Council was always intended to be a recommendatory body; it could not have been otherwise in a democracy where the legislature reigns supreme. But not going by the recommendation of the Council would make a State deviate from the tax rate or compliance mechanism in the rest of the country. However, inter-state trade to and from that State would still be governed under IGST. This would lead to a dual regime in the State, adversely affecting its trade and commerce.

### **New Era New Hope**

GST is now poised to enter a new era where the States have to learn to live without assured revenue growth, much less an unusually high benchmark of 14% CAGR. Even though the compensation levy has been extended till March 2026, almost the entire cess collected during this period will be used for debt servicing and paying off past arrears.

In the absence of compensation, States are staring at gaps of almost Rs 1 trillion during FY-23. A monstrous gap in this order is likely to continue in the absence of sustained tax efforts. But the options are limited especially in the wake of the Ukraine crisis and the galloping crude prices.

Any major overhaul of the GST rate path may not be feasible in the short term. What can be attempted seems to be minor tinkering and tweaks.

Post-compensation, the cess revenue will merge with the tax revenue, yielding an additional Rs 1.5 trillion to the Centre and the states. The real

revenue base too will grow, for which the loopholes in the system need to be puttied. Reporting systems have to move towards self-validating mechanisms for the reporting of liabilities and claiming of credit. The IT systems need to be strengthened to improve and promote compliance.

The experience of the last five years bolsters the belief that GST will successfully straddle this transition. Thus, the fifth anniversary of GST may well usher in attempts to consolidate the gains and strengthen the GST ecosystem.

What can be done, though, is to undertake a review of the exemptions that will help widen the tax base and enable the flow of credit. Rate rationalisations may also be undertaken to remove impediments to the domestic industry.

The biggest step it can take, though, is to streamline the tax administration

process to further plug leakages. Accordingly, audit and scrutiny of returns on the basis of risk analysis are bound to yield dividends. Further controls and validations in the registration regime may be built to prevent fraudsters from entering the system.

The returns process may be further streamlined to ensure payment on account of liability admitted and prevent tax credit misuse and fraud. These

measures are bound to have a salutary effect on the compliance environment and shore up revenue.

It is heartening to note that the Centre did not renege on its promise to find ways to compensate the states for the loss of revenue. Hence he feels that the States too should reciprocate and should come forward and work with the Centre in the true spirit of cooperative federalism that the Council has come to be known for these past few years.

The pandemic has played havoc with the economy. Revenue streams of the government, the private sector and individuals have been severely impacted while the expenditure, particularly of the government, is shooting up with a rise in commitments, he observes. **T**



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**Despite various challenges and obstacles, GST has fairly stabilised over the 5 years. The tax base has seen a phenomenal increase from 6.39 million to around 13.8 million taxpayers**

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# 47<sup>th</sup> Meeting of the Goods and Services Tax Council

28<sup>th</sup> to 29<sup>th</sup> June, 2022

Hatt J... y, Char...



## SNAPSHOTS

1

The ushering of GST has made the Taxation System transparent, since one can no longer do business without invoices

2

The Union and the States have a simultaneous power to legislate on GST

3

In 5 years, the GST Council has almost implemented all its recommendations unanimously



# GST COUNCIL & POOLED SOVEREIGNTY **THE ULTIMATE VICTORY OF FISCAL FEDERALISM**

True to its spirit, the GST Council comprising the Union and States, have worked in harmony to arrive at workable fiscal solutions without inconsistency or repugnancy showcasing to the world Pooled Sovereignty

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**N. VENKATARAMAN**

Additional Solicitor General  
Supreme Court of India

**GST** is a historic achievement; both the Union and all the States have voted for the 101st Constitutional Amendment, unanimously ushering in an otherwise impossible era of Uniform Taxation. The ushering of GST has made the Taxation System transparent, since one can no longer do business without invoices. Secondly, GST is a technology driven levy. From start to finish, the entire supply chain is covered by the Input Tax Credit, which would mean the taxes paid at the anterior stage would be given as a credit to avoid a cascading effect. Technology and transparency are the hallmarks of the GST System.

The biggest beneficiary is Trade and Business. Like Income tax, which is a Uniform Taxation System across India, GST has now become a Uniform Taxation System under the Indirect Tax Regime. In 5 years, the GST Council has almost implemented all its recommendations unanimously. It is important to highlight that the Centre had not used its 1/3rd voting right even once, and through the process of cooperation and collaboration, ensured

decisions were generally unanimous. Genuine requests by the States have been accommodated whenever and wherever necessary and required.

### Secret of Success

The last 5 years of the GST Council's performance has been phenomenal. A clear indication of two aspects, political governance can raise up and converge for a common cause, in this case the best interest of trade and business and secondly this experiment of cooperative federalism is an eye opener for its replication in many more areas of federal intersections.

What is the conceptual secret of this success? To convey it in two words, 'Pooled Sovereignty' in contrast to 'Surrendered Sovereignty'. Is this a mere doctrine or a concept or a Constitutional theme? This pooled sovereignty is a Constitutional reality and this transformation, so beautifully brought out together by the Union and the States, and manifests strongly as Article 279A of the Constitution of India.

When one of the States expressed concern about this doctrine before it got embedded into the Constitution, the then Finance Minister, late Arun Jaitley, spoke the following in the Lok Sabha on 08/08/2016, *"Once you get into the GST pipeline, the States and the Centre will have to interact together; and once they interact together, they will be involved in determining and taking decisions relating to the States. So, none of us is going to be surrendering his or her authority or autonomy. We are both going to be pooling our sovereignty together so that we are able to create a new taxation mechanism."*

This vision transformed into Article 279A(6). This new landscape is so unique for the Hon'ble Supreme Court to declare in Mohit Minerals to be sui generis. The first of its kind architecture is characterised by the following:

a) GST Council is the only Constitutional Body where the Union and the States had agreed to pool their sovereignty for the purpose of a Harmonised Structure of Goods and

Service tax and for the development of a Harmonised National Market for goods and services as envisaged under Art 279A(6).

b) What is conceived under the Constitution is pooling of Sovereignty and not surrendering of Sovereignty.

c) Neither the Parliament nor the States had surrendered their Legislative power. But, they had consented to pool their power, and work together through a Constitutional Body called the GST Council.

d) The 101st Constitutional Amendment which brought Article 279A, namely the GST Council into existence, giving a Constitutional status, has been approved unanimously without a single dissent by the Union, and all the States and Union Territories. There is no surrender of Sovereignty allowing the GST Council to Legislate. Post 101st Constitutional Amendment, neither the Union nor the States can choose to isolate themselves and act independently and indifferently on GST matters, since they are part of the Pooled Sovereignty process.

e) Likewise, the 101st Constitutional Amendment does not envisage either the Union or the States to hold the Dual Status of being part of the Pooled Sovereignty process and also be outside it. The Constitution does not provide a pick and choose mechanism in this regard.

The cardinal Sub- Articles of Article 279A are Art 279A(6), Art 279A(9) and Art 279A(4). Article 279A(6) envisages that the Council shall be guided by the need for a Harmonised Structure of Goods and Service Tax and for the development of a Harmonised National Market for Goods and Services.

The Hon'ble Court in VKC Footsteps, while dealing with Article 279A(6) held as follows, vide Para 34:

34. Article 279A(6) indicates that in the discharge of its functions, the GST Council is to be guided by the need for a harmonised structure of goods and services tax and the development of a harmonised national market for goods and

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**The GST Council is to be guided by the need for a harmonised structure of goods and services tax and the development of a harmonised national market for goods and services. This emphasis on harmony is crucial to co-operative federalism**

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services. This emphasis on harmony is crucial to co-operative federalism...

...It underscores that in a federal arrangement where the States and Union are converging together for the first time to adopt the same event for taxation, both sets of partners must be guided by the overarching need to preserve harmony. Harmony postulates balance, an acceptance of mutual co-existence.....

...The principle of harmony does not postulate exact coincidence in all points of comparison or reference. Harmony is a postulate of cooperative federalism and is founded on the principle of mutual co-existence, deference and equality of the coexisting units.

This position gets reiterated again in the present judgement (Mohit Minerals) wherein this Hon'ble Court, vide Para 48, held as follows:

48...The Union and the States have a simultaneous power to legislate on GST. The GST Council has the power to make recommendations on a wide range of subjects relating to GST. Since the Constitution does not envisage a repugnancy provision to resolve inconsistencies between the Central and State laws on GST, the GST Council must ideally function, as provided by Article 279A(6), in a harmonised manner to reach a workable fiscal model through cooperation and collaboration.

#### **The clear takeaways are:**

a) The 101st Constitutional Amendment, has ushered in a new format of sovereignty called the Pooled Sovereignty, which is neither surrendered Sovereignty nor independent or indifferent

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## **The 101st Constitutional Amendment which brought Article 279A, namely the GST Council into existence, giving a Constitutional status, has been approved unanimously without a single dissent by the Union, and all the States and Union Territories**

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Sovereignty.

b) Decisions have to be arrived at in the GST Council only through the process of voting.

c) It is those voted decisions which transform into recommendations as envisaged vide Article 279A(4)(a) This sentiment is also echoed by the Hon'ble Supreme Court in Mohit Minerals as,

46... The constitutional design of the Constitution Amendment Act 2016 is sui generis since it introduces unique features of federalism. Article 246A treats the Centre and States as equal units by conferring a simultaneous power of enacting law on GST.

Article 279A in constituting the GST Council envisions that neither the Centre nor the States can act independent of the other.

48... The Union and the States have a simultaneous power to legislate on GST. The GST Council has the power to make recommendations on a wide range of subjects relating to GST. Since the Constitution does not envisage a repugnancy provision to resolve inconsistencies between the Central and State laws on GST, the GST Council must ideally function, as provided by Article 279A(6), in a harmonised manner to reach a workable fiscal model through cooperation and collaboration.

True to its spirit, the GST Council comprising the Union and States, have worked in harmony to arrive at workable fiscal solutions without inconsistency or repugnancy showcasing to the world Pooled Sovereignty has gained not just a Constitutional space but a Constitutional Identity and Status. 🇮🇳



**SNAPSHOTS**

1

It is a value-added tax system where credit would be available across the value addition chain and across the taxes

2

Today the entire tax base is on the GSTN portal, a remarkable feat given the technological disparities across States

3

The issue of continuing the compensation cess beyond the five years needs to be addressed

# GST @5: IMPECCABLE JOURNEY

With the bumpy kick off GST has completed five years and 47 meetings (at the time of writing) still, there are squabbles from some States over its structure and design, regressive to tax and thereby impacting the revenue of states

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**NAJIB SHAH**

Former Chairman  
Central Board of Indirect  
Taxes & Customs

**I**NDIA has seen very few tax reforms as sweeping and transformational as the Goods and Services Tax (GST). It was the reform which almost everybody agreed on and was needed. Paradoxically, there are also very few tax reforms which have faced as much opprobrium as the GST. What this reform and the accompanying noises once again demonstrated was that good economics and politics do not always mix.

Thus, even as GST has completed five years and 47 meetings (at the time of writing) of the GST Council, there have been strident voices from some States, about its very structure and design; about the tax being regressive and of revenue of states getting impacted.

The tumultuous journey of introducing GST in a federal set-up like India is well known- but bears repetition because memories are short. The federal structure in India meant that while States had powers of imposing a tax on sales, the powers of levying tax on manufacturing and services were with the Centre. In effect,

this meant that there was no credit available for tax paid on sales when discharging liability of central excise and service tax and vice versa. This resulted in cascading and higher costs -with taxes sticking to the final product. There was a clear recognition that this distortion needed correction. This set the trigger for conceiving a value-added tax system where credit would be available across the value addition chain and across the taxes.

### **Bumpy Kickoff**

The journey began from the LK Jha committee in the late 70s, through the Chelliah and the Kelkar committees, the introduction of the facility of credit on taxes paid in inputs in Central Excise and subsequently Service Tax, to the introduction of VAT in States, to the ambitious Budget announcement of 2006-07 setting an April 2010 deadline for implementing the GST.

Creation of an Empowered Committee of State Finance Ministers under Dr Asim Dasgupta, whose first discussion paper in 2009 set the template of outlined many of the design elements and structure of GST as it is today, to the Standing Committee on Finance, which examined the Constitutional amendment 115th bill leading to the 101st Constitutional amendment and finally the launch of GST in July 2017 has been long and bumpy.

The process involved close cooperation and coordination with the states and necessarily compromises by all concerned to make the tax reform happen. The result was GST, a destination-based, value-added tax levied by both the Centre and States. It required political determination and a huge leap of faith in a fiscal taxation system which was then operated in separate silos.

Thus, the States gave up their powers of taxation, as did the Centre, which also gave an unprecedented commitment - guaranteeing compensation to the States for 5 years for possible loss because of implementation of GST.

The fulfilment of the guarantee required the imposition of a cess to finance compensation. So, the design was compromised at the very outset because GST was established to precisely subsume the multiplicity of taxes and cesses.

Incidentally, the guarantee of compensation at the assumed rate of growth of 14% on the 2015-16 revenue was high. As the study by Manish Gupta and Indira Rajaraman shows (Is the 14% Revenue Guarantee to States Justified? - Economic & Political Weekly, Nov 28th, 2020, Vol. LV No. 47) perhaps unwarranted.

### **Appraisal**

All indirect taxes are regressive. The consumer bears the cost of the tax. What GST ensures is that the burden is reduced by facilitating credit on the earlier stages of the chain. Thus, all supplies of goods and services must be in the value chain of GST. This brings us to the distortion created by the exclusion of petroleum products, electricity, and land from GST, and the myriad exemptions which have crept into the scheme. Including petroleum products within GST, so essential for the integrity of the levy, is going to be challenging. Both the Centre and the States collect substantial revenue from petroleum products. Union excise duties contribute about 11.8 percent of the Centre's gross tax revenue. Around 17 percent on average of the non-GST revenue of the states comes from petroleum products. One possible way forward can be the idea that Mr Sushil Modi has floated of bringing petroleum products into the 28% bracket of GST and a commensurate levy of non-creditable excise/VAT duty to offset the loss of revenue. In

effect a dual system of taxation for petroleum products.

The coverage of GST should increase to also include real estate which still remains a potent source of unaccounted money and electricity. This will cut down costs, increase the formal economy and make

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**GST has more than lived up to its promise. It has reduced the cascading effect of taxes, cut down compliance, logistics and transportation costs, given India a common economic market, and provided a technology-driven tax system**

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GST more complete.

The multiplicity of tax rates has been an issue which has particularly attracted a lot of critics. An ideal tax system which takes pride in simplicity should have a tax structure which is not multi-structured; a common rate across commodities, making classification irrelevant being ideal. There is no gainsaying the fact that the lesser the rates, the better, for both the taxpayer and the tax administrator. The pre-GST studies regarding rates had all suggested revenue-neutral rates (ranging from 11.6 percent (IMF) to 12 percent (XIII Finance Commission) to 17 percent (NIPFP) to 15-15.5 percent (CEA). This was never going to be practical. The result was a multiplicity of rates. This was inevitable—but not a good fiscal policy.

It is in this background that the issue of the merger of rates has to be seen. Any move towards convergence will also mean an exercise to rectify the consequential inverted duty structure which has grown steadily because of the random reduction in rates of final products.

The input tax credit, the basic premise of GST has an in-built compliance incentive. The producer who has paid tax on his inputs is keen to collect taxes from his buyer so that he can get credit for input tax paid against the tax he collects. This being so, decisions of the type where rates are

pegged without the benefit of the input tax credit, runs counter to this fundamental premise and should be avoided.

The suggestion that State revenues have been negatively impacted is exaggerated. In any case, they are being compensated. The guarantee of compensation has in fact lulled many a State into fiscal complacency.

The GST Council has been an outstanding collateral benefit of the tax reform. Enshrined in the Constitution, the GST Council is an embodiment of pooled sovereignty, of cooperative federalism. And it is an institution which of late has been taking a lot of beating from opposition party-ruled states. The Centre has a critical role to play in ensuring that all voices are heard. To persuade and be persuaded. To build trust.

### **Road Ahead**

Going forward, the Centre should not put too much burden of revenue on GST. Revenue in any tax regime is a function of the tax base and the rate. Revenue growth will be a natural corollary. And GST revenues have been doing well—a reflection of better compliance, e-invoice, e-way bill and coordination between CBIC and CBDT.

The tax base has to be expanded. The inclusion of at least some petroleum products can be



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**The coverage of GST should increase to also include real estate which still remains a potent source of unaccounted money and electricity. This will cut down costs, increase the formal economy and make GST more complete**

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explored as also electricity and land. The aim ultimately should be to include all supplies within the GST chain.

There has to be a gradual move towards convergence of rates. And take gentle steps toward reaching the pre-GST weighted average rate of 14.8 % from the present 11.8%.

Exemptions should be reduced. They break the credit chain and add to costs. Every reduction in the rate of the final product invariably means an inverted duty impact and should be done carefully. The issue of continuing the compensation cess beyond the five years needs to be addressed. Ideally, it should not be extended-but if extended the rate has to be a more realistic 8-10%. The call will be political.

An area of concern in any tax administration is dispute resolution-it has to be time-bound, consistent with law and with clear channels of appeal. There is an urgent need for establishing a

GST Tribunal as also a national Advance Ruling Authority to handle the different rulings by the States.

Refunds are a perennial area of concern. It is never the government's aim to retain what is not due. The refund process should be transparent and time-bound.

MSMEs are the backbone of the economy. There is a need to ensure communication with the sector and ensure their concerns are heard. The same is the case for exporters. MSME and the export sectors will continue to need a benign eye.

GSTN the technology network has a key role to play. It has settled down well after the initial glitches. Today the entire tax base is on the GSTN portal, a remarkable feat given the technological disparities across States. The focus on technology should continue relentlessly; the USP of GST was that it is technology driven. Processes should constantly be looked at and smoothed; the effort should be to make compliance easy

Any tax regime is as good as how it is administered. In this context, the need for regular and constant training of tax personnel cannot be overemphasised. Training should focus on changes in attitude as much as on technical aspects-we cannot look at every taxpayer as an adversary but as partners who we need to take along with us.

Having said that, we cannot have a tax system where the taxpayer can afford to evade paying taxes with impunity. Enforcement driven by data analytics should continue as also focussed audits.

GST has more than lived up to its promise. It has reduced the cascading effect of taxes, cut down compliance, logistics and transportation costs, given India a common economic market, and provided a technology-driven tax system.

GST is firmly now a part of the Indian fiscal scene. It is here to stay. The Indian Tax payer has settled down to GST. And if ever a validation was required that the Indian business is happy with the GST tax administration, it was provided by the recent survey carried out by Deloitte that 90 percent of Indian CXOs across key sectors have backed 'this dynamic and technologically driven indirect tax regime' which has "made doing business easy and effective for both businesses and taxpayers'.

There can be no better endorsement.🇮🇳

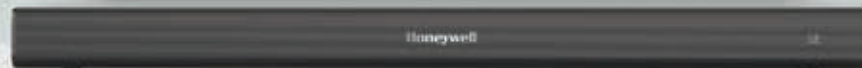


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# ELECTRONIC ESSENTIALS THAT MATTER

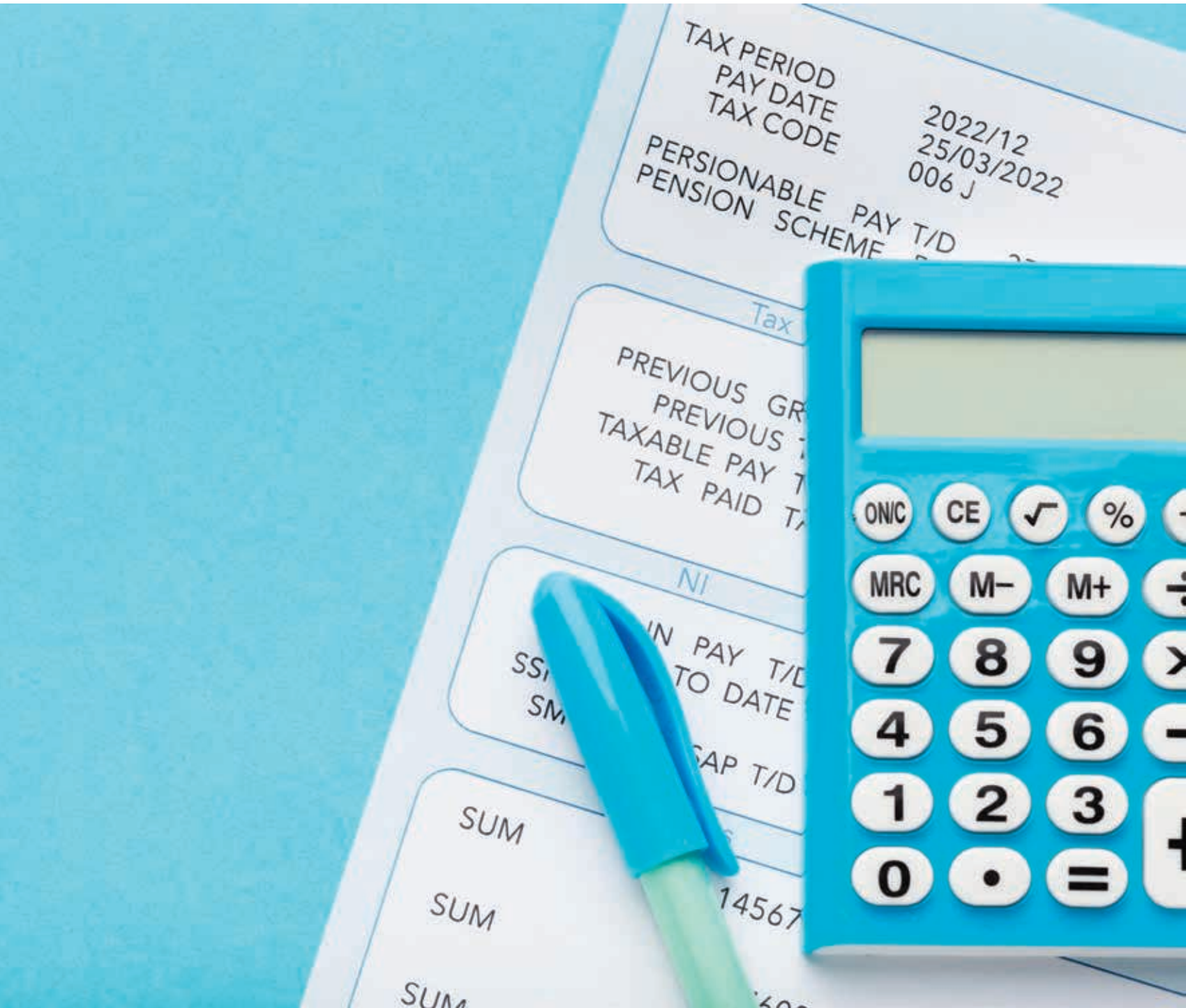
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1

Input Tax Credit (ITC) is an enabler for a multi-point tax which makes GST truly, a value added tax

2

One of the major causes of accumulation of credit in different registrations of the same legal entity is the dual GST model introduced in India

3

The Supreme Court, even in the pre-GST regime has held that credit, by its very nature, is an indefeasible right, and that credit is as good as tax paid

SNAPSHOTS

# ITC – ‘EYE T SEE’ - YUP! TOO DISTANT!

When GST was introduced with the promise of a seamless flow of Input Tax Credit (ITC), no one imagined the provisions relating to restrictions on ITC, which are being made more stringent with each amendment



**TARUN GULATI**  
Senior Advocate

**I** NPUT Tax Credit (ITC) is the lifeline of any Value Added Tax. It ensures that there is no cascading effect of taxes and that ultimately the consumer bears only the final tax charged on goods or services which are consumed. If restrictions are imposed on the entitlement or utilisation of credit, it becomes an additional cost for the supplier which is inevitably passed on to the recipient as part of a higher price. All discussion papers and reports which led to the enactment of GST unequivocally state that the avowed objective of GST was to subsume a variety of indirect taxes and to prevent cascading of taxes by providing a free flow of ITC<sup>1</sup>. But with the unveiling of the GST law and the manner in which it has been implemented in the last five years, it is evident that the free flow and full utilization of ITC remains a distant dream. Unwarranted restrictions on the availment and utilisation of ITC, along with myopic revenue considerations, have virtually led to taking one step forward and two steps back in the tax reform agenda.

#### **Nature of credit**

Denial of ITC arises mainly on account of a difference in perception on what is the nature of ITC. The revenue's thinking that credit is merely a concession provided to a taxpayer and it can be restricted at will, needs to change if India wants to make the Indirect tax reform a full success. ITC is a statutory entitlement provided to the taxpayer. It is an entitlement

statutorily recognized and intrinsically linked to the charge of GST. ITC is an enabler for a multi-point tax which makes GST truly, a value added tax. Sans ITC, there would be a multiplicity of taxes through the value chain, which would defeat the very purpose of introducing GST. Both Section 9 and Section 16 of the CGST Act, the charging provision and the provision for providing for the entitlement of ITC, contain a common ingredient of 'supply of goods or services'. ITC is allowed when goods and services used in "the furtherance of business".

The Supreme Court, even in the pre-GST regime has held that credit, by its very nature, is an indefeasible right<sup>2</sup>, and that credit is as good as tax paid<sup>3</sup>. "Furtherance of business" is a term of wide amplitude and ITC ought to be allowed on the entirety of business and capital expenditure incurred by a supplier for running its business. As far as the expenditure is incurred by the supplier for its business, the challenge to taking of ITC by requiring a direct nexus to outward supplies is completely unjustified. Any artificial disallowance of the tax paid on inputs, input services and capital items, is an additional cost to the business which ought to be avoided. Similarly, while ITC may be eligible, restrictions on its utilization which lead to credit accumulations are also costs to the business, which are avoidable.

### Unutilised credit

One of the major causes of accumulation of credit in different registrations of the same legal entity is the dual GST model introduced in India. The CGST Act does provide for various measures to eliminate accumulation of credit but its implementation is leading to disputes. It provides for refund of ITC in an inverted duty structure. Is there a justification

<sup>1</sup>First Discussion Paper on Goods and Services Tax in India by the Empowered Committee of State Finance Ministers; The Seventy-Third Report of the Standing Committee on Finance; The Statement of Objects and Reasons to the Constitution (One Hundred and Twenty-Seventh Amendment) Bill, 2014; Report of the Select Committee on the Constitution (One Hundred and Twenty-Seventh Amendment) Bill, 2014 presented to the Rajya Sabha; Frequently Asked Questions issued by the Central Board of Excise and Customs.

<sup>2</sup>CCE v. Daichi Karkaria Limited, - 2002-TIOL-79-SC-CX-LB

<sup>3</sup>Eicher Motors Limited v. Union of India, - 2002-TIOL-149-SC-CX-LB



**For many businesses such as airport services, warehousing services, and telecom services, taxes paid on the majority of the capital block is not allowed as ITC as the expenditure is said to be incurred for creation of immovable property. This again, is an artificial restriction which goes against the principles of a value added tax regime**

for allowing refund only on inversion of rates on inputs and keeping tax paid on input services out? The revenue may have succeeded in the Supreme Court<sup>4</sup> in defending the skewed formula, but placing such restrictions is against the very ethos of the GST law? Similarly, the GST law provides for the mechanism of Input Service Distributor. ("ISD") and treating distinct registrations of a person as "distinct persons" so as to enable the transfer of credit to the registrations that have output tax liability. While there are several instances of demands raised on tax payers for not paying tax on supplies made to its own offices, in many cases, where a registration that avails ITC cross charges it to another office, the origin State disputes the cross charge as a distinct supply, and accordingly, disallows the utilisation of ITC. This

<sup>4</sup> Union of India vs. VKC Footsteps India (P) Ltd. - 2021-TIOL-237-SC-GST

leads to a situation where the person is forced to make a cash payment of GST on the output liability in the second mentioned State, while the ITC gets accumulated with the first mentioned registration. The ISD and cross charge mechanisms cannot be relied on selectively by the revenue only to raise demands. They should be allowed to prevent accumulation of ITC. This was the very purpose for introducing these provisions which should not be defeated in applying them selectively.

### **Immovable property**

Section 17(5)(c) and 17(5)(d) of the CGST Act provides for restriction on ITC in case of works contract services for construction of an immovable property, and goods or services for construction of an immovable property on own account. However, for many businesses such as airport services, warehousing services, and telecom services, taxes paid on the majority of the capital block is not allowed as ITC as the expenditure is said to be incurred for creation of immovable property. This again, is an artificial restriction which goes against the principles of a value added tax regime.

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**The CGST Act does provide for various measures to eliminate accumulation of credit but its implementation is leading to disputes. It provides for refund of ITC in an inverted duty structure**

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These assets are used to provide output services and have an integral connection with the supplier's business. Such restrictions are plainly arbitrary. This is more so when the CGST Act treats sale of a civil structure prior to issuance of completion certificate<sup>5</sup> and lease and rental of land and building<sup>6</sup> as a supply of service.

### **Recoveries from recipients for default of suppliers**

16(2)(aa) of the CGST Act provides that the furnishing of the details of the invoice or debit note by the supplier is a precondition to avail ITC by the recipient of such supply. The provision is arbitrary as it makes the taking of ITC by a recipient, contingent upon the actions of a third person, i.e., the supplier of goods or services. The Department already has a recourse against the supplier as it can demand the tax of output supplies from the supplier under Section 73 and 74 of the CGST Act. The supplier is also liable to fine and/or prosecution under Section 132(1)(d) for collecting the tax and not depositing it. Therefore, the easy recourse of denying ITC to the recipient, especially when the recipient is out of pocket on having paid the tax to the supplier, is arbitrary and unconstitutional and prejudices tax compliant recipients who have not breached the provisions of law.

### **Conclusion**

GST was introduced with the promise of seamless flow of ITC. However, the provisions related to restrictions on ITC are being made more stringent with each amendment. When the supplies made by a person are taxable, there is no reason why full ITC should not be made available without imposing unnecessary restrictions on taking and utilization of ITC. This is especially when GST seeks to avoid double taxation and the consequent rise in price of the goods and services. In my view, for the GST laws to succeed, the Government must ensure a free flow of ITC without putting impediments in the taking and utilization of ITC on the tax paid on legitimate business expenditure. **🇮🇳**

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<sup>5</sup> Para 5(b) to Schedule II of the CGST Act

<sup>6</sup> Para 2 and 5(a) to Schedule II of the CGST Act



SNAPSHOTS

1

Renewable energy has reached a capacity of 110 GW by the end of the Fiscal year 2021-22 which is around a quarter of the total installed capacity India has

2

As a part of the amendments announced in 2018, the Government notified that all Solar Projects would be treated as a composite supply of goods and services

3

The GST Council's 45th meeting held in September 2021, recommended a change in GST for Solar products from 5% to 12% dealing another blow to the industry

# TAXATION SUNRISE IN SOLAR ENERGY

With judicious changes in the Taxation of Solar projects, the sheen to rooftop solar solutions could be brought that has tremendous potential for growth and employment across the skilled, semi-skilled and unskilled spectrum

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**SANT KUMAR  
VERMA**

Chief Financial Officer  
Luminous Power  
Technologies Private Ltd

INDIA announced a highly ambitious mission of setting up a renewable energy capacity of 450 GW by 2030 under the 2015 Paris Climate Agreement. This means that 50% of the country's electricity generation capacity would come from renewable sources by 2030. Indeed, a highly ambitious target, which translates to 30 GW average capacity addition each year till 2030. Renewable energy has reached a capacity of 110 GW by the end of the Fiscal year 2021-22 which is around a quarter of the total installed capacity India has. From here on, the addition of another 340 GW capacity till 3030 is an uphill task by any standards.

India's Ultra mega solar parks and mega solar parks have been a great success in bulk capacity addition in renewable space. Despite this, the capacity growth in Solar energy is far from the target of 300 GW by 2030. Moreover, most of the capacity created is concentrated in a few states as opposed to the decentralisation requirements across the country. The capital cost of land and land acquisition-related challenges pose another set of challenges. There is no doubt that India has taken upon itself the responsibility of leading the efforts of increased Solar Energy Generation in the world, however, we are far behind the target. The core elements of market creation viz. demand, supply-side economics & policy frameworks at Union and State levels are yet to fully fall in place.

### Scope of Solar Power

Besides large-scale solar power capacity addition, there is a massive scope of solar power generation by residential, commercial and industrial buildings through a rooftop solution which doesn't require any investment in land. In the two Phases of the Solar Rooftop Policy announced by the Government of India and subsequently the State Governments, attempts have been made to spur consumer demand, especially in the residential segment (limited to residential only under Phase II) with Central Financial Assistance supplemented by some states with additional assistance.

All things considered, the fact is that India fell

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**India's Ultra mega solar parks and mega solar parks have been a great success in bulk capacity addition in renewable space. Despite this, the capacity growth in Solar energy is far from the target of 300 GW by 203**

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short of its 2022 milestones - 100GW of installed Solar Capacity with 40GW coming in from solar rooftops and 4GW of that being residential by well over half.

A big part of that and rightfully so may be attributed by many to the COVID-19 pandemic that raged across the world for the better part of 2020 and 2021. That said, some attention needs to be drawn to the confusing signals that the Government sent by its Taxation Policy as far as the Solar category is concerned. Specifically, the three changes listed below were introduced during the period 2018-2022.

### Taxation Treatment of Solar Projects

As a part of the amendments announced in 2018 to the Central Goods and Services Tax Act of 2017, the Government notified that all Solar Projects would be treated as a composite supply of goods and services. Resultantly, the 70% of the project value would be taken as supply of goods {at the time taxed under Schedule I at 5% (2.5%CGST + 2.5%SGST)} and the balance 30% would be deemed as supply of services and taxed at 18%. This was clarified and notified after the proposal





was challenged at various levels.

Confusion concerning the treatment of ongoing projects aside, this change resulted in the smaller capacity consumers in the residential and MSME sectors to shy away as the implication was a 78% increase in the project cost and blocked capital pending the adjustment of input credit. This was complicated given that the GST was new at that stage itself and credit adjustments were taking a long time to reflect. It would be fair to presume that while demand did compress, some part of the impact got adjusted in the “informal” economy.

### **Increase in Duties on Imports - Finished Goods and Raw Materials**

It started with the introduction of Safeguard duty on Solar PV Panels and Cells purportedly to provide an impetus to domestic manufacturing and production in an environment where the bulk of the demand was being serviced by imports. Proposed over 2 years on a reducing basis from (25% to 20% to 15%), while there was a relief for Indian manufacturing, it once again led to yet another significant increase in prices for the consumers as PV Panels account for anywhere between 55% to 65% of the cost of a Solar PV Rooftop solution. A further compression in consumer demand ensued. In 2021 an increase in Basic Customs Duty applicable on import of Solar PV Panels and Cells to 40% and 25% respectively was announced effective April 01, 2022, pushing the upward trend of Solar prices to the end consumer.

### **Increase in GST rate**

The GST Council’s 45th meeting held in September 2021, recommended a change in GST for Solar products from 5% to 12% dealing another blow to the industry.

It may be argued that the aforementioned increase in import duty and GST is well intended to spur domestic manufacturing in a big way. Apparently, a step to becoming self-reliant in such a significant sun-rise sector. However, at the same time, it is also equally important to see the gap between demand and available manufacturing capacity in India before such quantum increases in import duty and GST is imposed.

It may also be argued that with its moves the Government has sought to fund through the higher



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**Besides large-scale solar power capacity addition, there is a massive scope of solar power generation by residential, commercial and industrial buildings through a rooftop solution which doesn't require any investment in land**

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taxes and duties the corpus it is providing via the Central Financial Assistance to the consumers, the DISCOMs and State Nodal Agencies all at the expense of the end consumer who is facing the burning end of the stick. The net result, at this stage, appears in the contraction of demand owing to the high cost of acquisition of rooftop solar solutions.

The powers that be should review, if not already reviewing, measures needed to remedy the situation and bring back the sheen to rooftop solar solutions that have tremendous potential for growth and more importantly for generating employment across the skilled, semi-skilled and unskilled spectrum. As a country, we should not miss the momentum and allow its citizens to proclaim that they are producing their power requirements and contributing to the green energy targets of India.

Let the Sun fully rise and shine! 🌞



SNAPSHOTS

1

The honeymoon period has come to an end and assessing the contribution of the new arrangement for the betterment of the economy and the pitfalls that need correction is quite overdue

2

The states surrendered a key fiscal lever in their hands, being the levy of VAT or sales tax. GST is still a smaller component of the total tax revenue of the states

3

Most states have serious financial stress and the lack of options or imagination to raise resources has clearly been central to this problem

**GST**

# **WEAVER OF FEDERAL FISCAL FIBRE**

The inconceivable outset of midnight child , GST, which was born to bring indirect tax under one umbrella and it is succeeding in it. GST has marked a new beginning that the nation has been longing for many decades



**V. Ranganathan**

Chartered Accountant & CS

**T**HE midnight' child, an unlikely birth at the stroke of the 1st day of July 2017, to herald an uniform indirect tax regime unifying the Union, the 28 States, and the 8 Union Territories that had their individual tax regime in the country, marked a new epoch that the nation was longing for, for many decades.

A change that had little constitutional precedent resulted in the states and the union territories surrendering their minimal fiscal autonomy to raise resources through levy of local sales tax (VAT) and be part of an arrangement where no individual state, despite its size or fiscal potential, has any better say than the rest. The lure of a committed compensation for the first five years lulled the states to a sense of fiscal security to sign up to a grand bargain with the Union.

The honeymoon period has come to an end and assessing the contribution of the new arrangement for the betterment of the economy and the pitfalls that need correction is quite overdue.

Did GST bring about a metamorphosis in the growth in the tax collection? That was an expectation given the policing possibility with the deployment of the state-of-the-art technology and the hope that businesses that suffocated under the previous regime with cascading taxes may be liberated with a system of seamless

**Table 1: Indirect tax growth pre and post GST (Rs tn)**

(the figures pertain only to the union levies in the category of indirect taxes)

PERIOD	2011-12	2016-17	CAGR %	2017-18	2022-23 <sup>2</sup>	CAGR %
GDP	87.4	153.9	12.0	170.9	250.0	7.9
IDT	4.0	9.3	18.5	9.1	13.4	7.9
Cess	0.8	1.0	4.5	1.5	3.6	18.6
IDT less Cess <sup>1</sup>	3.2	8.3	21.0	7.6	9.8	5.1

<sup>1</sup> The cess is the cess pertaining only to IDT which are not shareable with the states. There may be some inaccuracy in the figures as the items of cess and additional levies that are not part of the shareable pool carry varied nomenclature and dispersed in many parts of the revenue budget.

<sup>2</sup> Figures as per Union budget for 2022-23

**Table 2: Gross GST collection (CGST+IGST+SGST+CESS) (Rs tn)**

YEARS	2018-19	2019-20	2020-21	2021-22
IGST	3.08	3.19	2.71	3.85
SGST	2.73	3.09	2.72	3.44
CGST	2.09	2.41	2.25	2.69
CESS	0.87	0.75	0.97	0.98
IGST on imports	2.90	2.67	2.62	3.77
Total	11.67	12.11	11.27	15.74
GDP	188.9	197.46	203.51	232.14

credits.

The proof of the pudding is in the eating. The numbers in Table 1 make it apparent. The pre-GST regime period of 2011-12 to 2016-17 showed a significantly higher indirect tax growth in relation to the GDP numbers. In fact, the position is starker when the cess<sup>1</sup> figures are taken out of the equation. The CAGR in indirect tax of 5.1% during the period when GST operated is even lower than the growth in direct tax of 7.2% per annum.

#### The Collections

The monthly reporting of GST collections in the last few months has set the media on fire and both the official quarters and the tax experts have been



**Did GST bring about a metamorphosis in the growth in the tax collection? That was an expectation given the policing possibility with the deployment of the state-of-the-art technology and the hope that businesses that suffocated under the previous regime with cascading taxes may be liberated with a system of seamless credits**

effusive that the new tax is besting the high expectations set. The data in table 2 is as per the figures in the GST portal. Unfortunately, the information is not easy to decipher. Different excel sheets exist and IGST on imports is shown in a separate document and leads to the confusion whether it is to be added to the main excel sheet

**Table 3: SGST as a % of SOTR  
FY 2021-22 (Rs tn)**

STATES	SOTR <sup>1</sup>	STATE GST
Tamil Nadu	1.22	0.49
Karnataka	1.11	0.46
Maharashtra	2.27	1.07
UP	1.53	0.57
Gujarat	0.99	0.43

<sup>1</sup> States own tax revenue including SGST, other taxes on petrol, alcohol etc., but doesn't include any central grants and transfer

**Table 4: Total GST collections in  
select states and SGST portion  
(2021-22) (Rs tn)**

STATES	TOTAL COLLECTION	STATE GST
Tamil Nadu	0.85	0.49
Karnataka	0.96	0.46
Maharashtra	2.18	1.07
UP	0.74	0.57
Gujarat	0.97	0.43

**Table 5: Key data showing the profile of the different taxes**

YEARS	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
DT/GDP	5.6	5.6	5.7	5.6	5.3	5.1
IDT/GDP	4.5	4.8	4.4	4.4	5.2	6.0
GST/GDP	-	-	-	-	-	-
CESS/IDT	19.4	19.4	17.8	17.3	21.3	10.3

YEARS	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
DT/GDP	5.9	6.0	5.1	4.8	5.4	5.7
IDT/GDP	5.3	5.0	4.6	5.5	5.5	5.3
GST <sup>1</sup> /GDP	-	3.1	2.9	2.8	2.6	3.1
CESS/IDT	17.0	19.3	20.5	34.5	37.6	27.2

<sup>1</sup> This represents the portion recognised in the union revenue budget as accruing to the central government, including the cess collected for compensating the states for the guaranteed GST growth

given state-wise on monthly collections. For this analysis it has been added as a separate category of IGST.

The CAGR of GST over the period is about 10.5% and the GDP growth is 7.1% exhibiting a positive tax buoyancy. The growth in all union taxes is only 6% during the same period. There is reason to draw a more positive inference that GST at an aggregate level (both union and states' share) has turned in a robust performance. Unfortunately, the comparison with the tax collection pre GST at state level is not enabled as data is hard to get from the public domain.

The states surrendered a key fiscal lever in their hands, being the levy of VAT or sales tax. However,

they retained the power to tax items like petroleum products, alcohol and tobacco by keeping them out of the GST net. This has proved salutary though has festered political tension especially on petroleum! The data pertaining to a few developed states brings home the criticality of this dual dispensation with some products outside the GST net.

GST is still a smaller component of the total tax revenue of the states. Table 3 captures the data for a few key states whose collective GDP may be almost 50% of the country'. The SGST component is lower than 50% of the state' own tax revenue. This factor is predominantly due to taxes on petroleum products. The push from the industry to

bring these under GST to enable tax credit to be more appropriately captured may yet not bear fruit as states will be wary of further losing their fiscal autonomy.

As a way forward, the architecture needs to be tweaked in a way that the states see the buoyancy in collection reflect in more fiscal headroom for themselves. There can be different solutions to this. But interminably continuing the compensation scheme is certainly not one! The tax should have a predictable rate structure and eliminating cess and subsidiary levies should be part of the tweaking to ease compliance.

There is a case to consider sharing the entire GST collections with the states based on actual contribution and origination of the taxes. Presently, CGST accrues to the central government. Table 4 gives an inkling of the total collections made in a few sample states and the SGST share they get to retain. It may be fair to allocate the entire amount to the state concerned

It is a fact that the total taxes shared with the states in each annual budget is much more than the total GST collected by the union. Therefore, letting go of the CGST portion will at worst bring down

**The monthly reporting of GST collections in the last few months has set the media on fire and both the official quarters and the tax experts have been effusive that the new tax is besting the high expectations set**

**Table 6: CAGR of rolling 8 year periods of key fiscal parameters**

PERIOD COVERED	P1	P2	P3	P4
GDP	11.1	8.9	9.5	9.0
GTR	10.7	8.8	10.4	10.4
DT	9.9	6.8	8.7	9.3
IDT	11.6	10.7	12.3	11.8
CESS	12.3	19.0	23.3	18.2

P1 Represents an eight-year period from 2011-12 to 2019-20. P2 represents the next year period of 2012-13 to 2020-21. P3 is 2013-14 to 2021-22. P4 is 2014-15 to 2022-23

the divisible pool.

There is considerable tension between the union and the states, especially those ruled by opposition parties and the reasons are not far to seek. Most states have serious financial stress and the lack of options or imagination to raise resources has clearly been central to this problem.

Table 5 gives a snapshot of the fiscal picture over the last twelve years and the need to improve the contribution of the direct taxes to the overall strengthening of the finances is obvious. Ideally, the union should let the individual states keep the entire GST collections and rely on direct taxes for its resources.

**Endnote**

Reconstituting the GST council as a national fiscal council (with due constitutional backing) with a mandate to look at all aspects of financial devolution and replace the Finance Commissions that are set up every five years is thought to close this article with! While the concept of each state having a vote is democratic, it is not equitable. 🚫



SNAPSHOTS

1

Five years is too short a period for such a complex system of a dual levy involving multiple tax administrations to be accepted as perfect

2

Goods and Services Tax is mainly dependent on an audit-based compliance verification system

3

GST did bring uniformity and a reduction in the complexities of dealing with multiple levies and tax administrations



# SUCCESS OF GST HINGES ON SCIENTIFIC AUDIT

The GST scheme is unique, and this is often forgotten in the din about compensation, wherein every step taken to enhance revenue collection by either the Central tax administration or the State tax administration benefits both but an institutional mechanism of coordination between both would definitely yield better results

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**M. VINOD KUMAR**

IRS, Chief Commissioner  
(Retd.), Former JS, TRU  
CBIC, Ministry of Finance

**GST** in India has successfully crossed its fifth milestone. The steady growth in GST revenue during a period when the economy was struggling to emerge from the doldrums induced by the pandemic has been heartening. At the same time, there has been considerable turbulence created by the demand of many states for an extension of the Compensation mechanism beyond the 5 years provided in the law and, broadly, the twists and turns of the narrow flight path which it has to traverse within the cooperative or competitive federal structure in our country.

Five years is too short a period for such a complex system of a dual levy involving multiple tax administrations to be accepted as perfect. Changes in the law are also inevitable to cope with emerging challenges. This is as it should be. What makes one sanguine is that its overall unique design with the GST Council at its center has now stabilized and is not under threat. The dynamics of Center-State relations will always see the States

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**A system of a coordinated, multi-locational audit which was put in place for large taxpayers under the umbrella of LTUs in the pre-GST regime would be an ideal solution, especially for certain crucial sectors such as banking and finance**

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demanding more and the Center having to play a balancing role. It's the transition issues of compensation and implementation glitches that have dominated the discussion in the recent past.

#### **Finding Balance**

It would be appropriate at this stage of consolidation of the new indirect tax regime to relook at some of the aspects of tax administration which were not looked at in the right perspective at the initial stages of implementation of GST when a fine balance had to be maintained

between the center and the states in order to get all states on board the bandwagon. The dual levy and dual administration of the levy which had perforce to be adopted within the federal framework led to complexities which were exacerbated by the apprehension among the states and cadres of both the state and central tax administrations that they would be ceding territory that was rightfully theirs. With the significant increase in the tax base of the center and states in terms of the number of taxpayers administered by each of them as well as the steady growth in revenue, these apprehensions have since been allayed.

The GST scheme is unique, and this is often forgotten in the din about compensation, wherein every step taken to enhance revenue collection by either the Central tax administration or the State tax administration benefits both the Center and the



State in equal measure. However, with a few exceptions, each of these agencies operates within its own silos. An institutional mechanism of coordination between them at the field level transcending state jurisdictions would definitely yield better results. Further, this could be achieved without any changes in the law. One such aspect of tax administration which deserves a relook is discussed below.

GST did bring uniformity and a reduction in the complexities of dealing with multiple levies and tax administrations. However, GST is a destination-based tax which necessarily had to be so to ensure that the revenue flowed ultimately to the state where the goods or services, or both, were consumed. This gave rise to a new concept of a 'distinct person', not to be confused with the 'related person' concept which was in existence earlier under indirect tax laws and continues even now. To put it in simple terms, a member of an undivided joint family remains a part of the family as long as he is within the same state but ceases to be a part when he crosses the state border. This 'distinct person' concept was introduced in the GST law to ensure the flow of credit of taxes across state borders to the ultimate point of consumption.

The consequences of this deemed distinction led to the policy reversal under the GST of a very progressive step taken by the Central Indirect Tax administration in the pre-GST era to allow service providers operating in multiple states to go in for a single centralized registration for the entire country. With the introduction of GST, these entities had to cope with the sudden mushrooming of registrations from a single registration to multiple state-wise registrations as well as maintenance of accounts, etc. on a state-wide basis. However, the uniform laws and procedures throughout the country and the single national portal have enabled a fairly smooth transition.

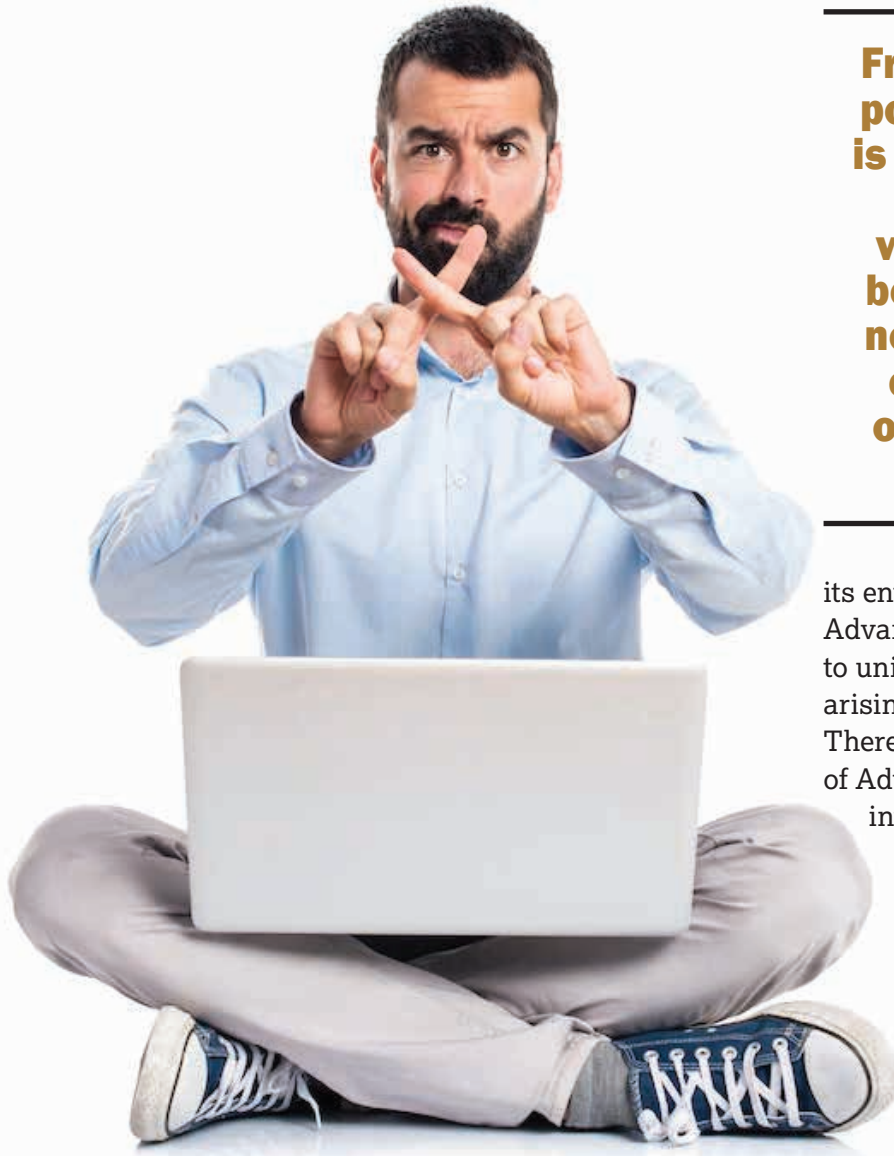
### **Systematic Auditing**

There was another progressive measure which was introduced in the 1990s by the CBEC (now CBIC), the Large Taxpayer Unit (LTU), based on models adopted in other countries such as South

Africa. It had offered large companies, above a certain prescribed threshold, a single window for dealing with the tax administration for Central Excise, Service Tax and Income Tax i.e. both indirect and direct tax administrations under a single roof. There were five such LTUs based in Bangalore, Chennai, Mumbai, Delhi and Kolkata. Of these, the LTUs at Bangalore and Chennai, which were the first two to be set up, were by all standards, extremely successful and appreciated by the large corporates which opted in. A few states also had similar units dealing with major VAT taxpayers within their jurisdictions. However, the GST regime did not countenance the existence of such entities and these were wound up in early 2017.

These two facilities viz. centralized registrations and single-window LTUs had offered a considerable enhancement of ease of doing business for large companies with a pan India presence in the pre-GST era. There is, however, no possibility of restoring these taxpayer-friendly facilities in the GST regime given the state-wise registrations and the change in the nature of the taxes themselves depending on whether the supplies are interstate or intrastate. The complexities which have arisen for such business concerns such as in the financial sector are not merely in the multiple registrations and returns to be filed state-wise. These issues have been managed to a large extent through digitization and end-to-end automation. A major challenge arises in the case of audits of such firms.

GST is mainly dependent on an audit-based compliance verification system. A systematic and scientific audit is more crucial concerning such large firms which have complex business models, supplies between Head or Corporate offices and between units, Input service distribution from HO/CO to units, etc. Where there are multi-locational units/registrations in more than one state, it is not clear how the entity as a whole would be audited. For the purposes of audit, each unit would come either under the Central or respective State jurisdictions where they are located, as per the division between the Center and States at the time of transition and later as



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**From the tax administration's point of view also this system is imperfect. There are various issues such as those of valuation since the supplies between distinct persons are not for consideration and the company has the choice to opt for alternate methods of valuation**

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allotted on an alternate basis automatically by the system. The head office/one unit in state 'A', for instance, could fall under the Central tax audit while the unit/s in state 'B' could fall under the State tax audit, 'C' under another state, and so on. A company could land up dealing with multiple audit parties, each looking at different parts of the whole at different times, which reminds one of the poems, 'The blind Men and the elephant.'

From the tax administration's point of view also this system is imperfect. There are various issues such as those of valuation since the supplies between distinct persons are not for consideration and the company has the choice to opt for alternate methods of valuation. The distribution of Input Credit by the corporate or head office(CO/HO) to its branches/units needs to be looked at in

its entirety. Recently, there have been several Advance Rulings on services provided by CO/HO to units with even basic interpretational issues arising whether these amount to supplies at all. There would also be, as has been seen in the case of Advance Rulings, divergent views and interpretations being adopted by multiple audit parties of different States and the Center.

A system of a coordinated, multi-locational audit such as that which was put in place for large taxpayers under the umbrella of LTUs in the pre-GST regime would be an ideal solution, especially for certain crucial sectors such as banking and finance. A higher level of coordination would no doubt be called for with multiple tax administrations involved for which a mechanism would have to be put in place. The risk-based selection of units for audit would also have to be re-engineered for this purpose. This can be done without infringing on the statutory powers of each of the tax administrations to carry out an audit of the taxpayers allotted to them. It would basically entail sharing the results of audits conducted of a specified period of distinct persons with a common PAN number, out of which a more comprehensive picture would emerge. The Goods and Services Tax Council, of course, would have to arrive at a consensus on this system of audit, which would enhance the ease of doing business for taxpayers while enabling a more effective, meaningful and productive audit by the tax administrations. 🚫



2022 | A W A R D S

ENRICHING TAX SPACE

CHAPTER - III

**GST**

# A FIRE-BELLIED JOURNEY



SNAPSHOT

1

The revenue from GST has grown up steadily over the last 5 years and currently risen to a handsome near 1.5 lakh crores per month

2

e-Invoices is also a novel feature of GST. It has helped curbing tax evasion in a big way

3

The absence of a GST Tribunal has further accentuated the misery of the taxpayers looking for some finality of their tax liability

**GST**

# PERFECT TAX, IMPERFECT IMPLEMENTATION

GST is an ideal tax to tax value addition at different stages of production and supply of goods and provision of services. Its inherent power of eliminating the cascading effect of tax on tax, enabling the governments to correctly estimate the revenue collections, and providing a stable source of revenues are well known



**T. R. RUSTAGI**

Former Chief Commissioner &  
JS, TRU, Ministry of Finance

**VAT** was introduced in France for the first time in 1954. Now, more than 170 countries worldwide—including all European countries—levy a Value-Added Tax (VAT) or GST on goods and services. India debated the introduction of GST for long, involving the economists, central and state governments, tax administrators and industry.

Reportedly a single national GST was proposed and approved in 1999 during a meeting between the then Prime Minister Atal Bihari Vajpayee and his economic advisory team, which comprised 3 former RBI governors IG Patel, Bimal Jalan and C Rangarajan. Some attribute the beginning of the GST journey to the year 2000 when a committee was set up to draft law. It took 17 years from then for the law to evolve a GST Bill. It was passed by the Lok Sabha and Rajya Sabha in 2017. GST was finally launched during a grand ceremony at the midnight of 30th June and 1st July 2017. Addressing the joint session of Parliament to usher in GST, then Finance Minister Arun Jaitley described it as one of India's biggest and most ambitious tax and economic reforms in history that would awaken India to limitless possibilities.

### Unique Aspects

The GST introduced in India is, however, unique in certain respects. The task to persuade the states to give up their taxation powers and agree to introducing one single national tax-subsuming 17 central and state taxes-was not easy. A novel constitutional mechanism--the GST Council established under Article 279A of the Constitution--formalised the agreement between the centre and states to introduce the GST. As the then finance minister put it, "The unanimity of the Constitutional amendment and the consensus of the GST Council highlights that India can rise above narrow politics for the nation's interest. With the GST neither the state nor the Centre loses its sovereignty. In contrast, they will pool their sovereignty on decisions on indirect taxes." The Council is to "make recommendations to the Union and the states on important issues related to GST, like the goods and services that may be subjected or exempted from GST, model GST Laws". As of now 47 meetings of the Council have taken place and it goes to its credit that practically all decisions have been taken unanimously.

### GSTN

The other important aspect of GST is that it has been administered as a modern digital tax through a unique and hugely complex project called the Goods and Services Tax Network (GSTN) which provides shared IT infrastructure and service to both central and state governments including tax payers and other stakeholders. The Frontend services of registration, Returns and payments to all taxpayers are provided by GSTN. It is the interface between the government and the taxpayers. The GSTN captures voluminous data in the form of records, returns filed and invoices issued by the taxpayers, as loaded on the GSTN platform. Never before in India's history of taxation, this size of data has been captured. The GSTN has had several hiccups affecting efficient operation in the beginning.

### e-Invoices

e-Invoices is also a novel feature of GST, not heard or known in pre-GST tax regimes in India. It has helped curbing tax evasion in a big way. e-Invoice is a system in which B2B invoices are authenticated electronically by GSTN for further use on the

common GST portal. Under the electronic invoicing system, an identification number is issued against every invoice by the Invoice Registration Portal (IRP) managed by the GST Network (GSTN). e-Invoice resolves and plugs a major gap in data reconciliation under GST to reduce mismatch errors. e-Invoices created on one software can be read by another, allowing interoperability and helping reduce data entry errors. Real-time tracking of invoices prepared by the supplier is enabled by e-Invoice.

e-Invoicing was made mandatory in a phased manner. To begin with, it was made mandatory for companies with turnover higher than Rs.500 crore to issue e-Invoices from 1st October 2020. The turnover limit was thereafter gradually reduced, requiring companies with a turnover of more than Rs 20 crore to issue e-Invoices from 1st April 2022. In the fifth phase, the system applies to those businesses with a turnover of more than Rs.10 crore to begin e-Invoice generation from 1st October 2022.

### Flaws in Implementation

In theory, GST is an ideal tax to tax value addition at different stages of production and supply of goods and provision of services. Its inherent power of eliminating the cascading effect (tax on tax), enabling the governments to correctly estimate the revenue collections, and providing a stable source of revenues are well known. However, much of the success depends on the rate structure, efficiency of administration, ease of understanding the legal tax, and compliance level.

The GST as implemented in India has lacked in deriving its advantages to the maximum.

The chequered history of administration of central excise duties only confirmed that a tax structure comprising multifarious rates strewn with too many exemptions leads to distortions, confusion, litigation and uncertainties. The GST rate structure suffers from similar drawbacks. Too many GST rates have led to the problems of tax evasion or tax avoidance, inverted duty structure and perpetual demands from other sectors for favourable treatment. This situation ought to have been avoided, at least learning from the long experience of administration of central excise duties.






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**As of now 47 meetings of the GST Council have taken place and it goes to its credit that practically all decisions have been taken unanimously**

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**Tribunal Badly Delayed**

The administration of GST through GSTN is no doubt efficient and a big success. However, despite GSTN, the manipulations indulged in by certain unscrupulous taxpayers and the failure to check input tax credits frauds leading to very significant loss of revenue to the exchequer is worrisome, indicating the need for a stronger anti-evasion and audit network at the field level.

As of now, the GST administration system also lacks adequate dispute resolution infrastructure in as much as the GST Tribunal has yet to see the light of the day, and only recently the Group of Ministers have applied its mind and formed its recommendations for consideration of the GST Council. The inordinate delay in putting a national Tribunal in place is incongruous with the enthusiasm with which GST was ushered in.

**Advance Rulings, a Half-Hearted Step**

At the ground level, the Commissioners of CGST/

SGST or their subordinates are not empowered to issue any clarification. For any lurking doubt on classification of goods/services, admissibility of tax input tax credit or interpretation of law, the taxpayer is compelled to approach the concerned Advance Ruling Authority which comprises two officers, one from the centre and the other from the state, to issue the ruling which is binding upon the applicant. There is an Appellate forum for appeal against the ruling of the advance ruling authority. However, the rulings have been for too many and in several cases the ruling given by the one state authority differs from the other state authority leading to confusion and uncertainties and prolonging litigation. The absence of a GST Tribunal has further accentuated the misery of the taxpayers looking for some finality of their tax liability.

**Audit Delays**

The Audit ought to have started functioning much earlier and not much after the introduction of GST. Prolonging the audit for a longer period of time span, apart from keeping the taxpayers under fear of demands or penalties, is fraught with the risk of loss of revenue to the central and state governments. Timely Audit is the hallmark of an efficient tax system.

**Tax Gap is Worrisome**

The revenue from GST has grown up steadily over



the last 5 years and currently risen to a handsome near 1.5 lakh crores per month. However, while it is good news, given that strong administrative measures taken to check evasion have contributed to sudden jump in revenue, it also underlines the seemingly high tax gap [that is, the difference between the amount of tax that should, in theory, be paid to the government, and the amount that is actually paid] that is adversely affecting revenue collection in a big way. While no serious studies measuring the GST gap in India seem available, the fact that even in the UK, the VAT tax gap in 2020-21 was 7% (of total theoretical VAT liability) gives enough hint to guess the GST tax gap prevailing in India. Undoubtedly, it would require sustained efforts to reduce the GST tax gap; it took 15 years for the UK to reduce the tax gap from 14.1% to 7.0% from tax years 2005-2006 to 2020-2021.

### Conclusion

In conclusion, GST has no doubt come to stay in India and it is irreversible. However, the criticism of the manner of its implementation is hard to brush aside. The rate structure, comprising too many rates, is far from desirable. The political repercussions that have arisen from the recent withdrawal of some exemptions, including on certain essential items sold in packages beyond specified limit, is an indication that the task before the GST Council to expand the tax base and


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**Prolonging the audit for a longer period of time span, apart from keeping the taxpayers under fear of demands or penalties, is fraught with the risk of loss of revenue to the central and state governments**

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converge the GST rates is going to be far more challenging. In all likelihood, GST is likely to be an important political issue in the next General Elections. The legal text of GST laws and procedures is too voluminous and beyond comprehension of an ordinary taxpayer. Taking CGST alone, a formidable combination of 174 sections, 162 rules and about 175 Circulars is too threatening in itself, leaving aside hundreds of advance rulings. The large number of amendments carried out in the GST Act and rules after July 2017, as considered necessary despite the extremely commendable hard work done by the Central and State Tax Officials through several committees to assist drafting the GST Act and Rules, is something disheartening. Verily, this has prompted the critics to sharpen their attack on GST, which according to them, was hastily introduced. 🚫

# WHAT IS THE USE OF FIGURES, IF YOU DON'T PUBLISH THE FACTS?



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SNAPSHOTS

1

The government, aware of the menace and the scales of the fake ITC, has amended the law and procedures to plug the loopholes

2

Relaxation in return filing, non-matching of invoices, restrained enforcement measures etc led to rampant tax frauds, mainly availment of fraudulent Input Tax Credit (ITC)

3

Misuse of Input Tax Credit has always been an attractive proposition for unscrupulous tax entities under the GST regime

# ITC FRAUD: BLOTCH ON THE FACE OF GST

Certainly, the GST regime has proved to be a great relief to law-abiding taxpayers however, it seems that the absence of effective enforcement has encouraged the unscrupulous persons to exploit the loopholes and game the system



**O.P. DADHICH**

Former Member, CBIC

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**T**HE introduction of GST has indeed been a transformational development in the taxation history of India. Apart from the unique feature of ensuring One Nation, One Tax and One Market the most significant relief to the taxpayer is One Tax Authority.

Before the advent of GST, the taxpayers had to deal with numerous tax officials for different taxes and duties such as Central Excise, Service Tax, VAT, Octroi etc. One registration, common return, common portal and one jurisdictional tax officer (central or state) is by far the biggest relief and convenience to the taxpayer under the new regime.

With so many thoughts gone into the making of GST law and unprecedented use of IT, one was justified in assuming that it would be free from tax leakage and evasion but the system has been abused very badly, at least in the initial phases.

No doubt the GST regime proved to be a big relief to law-abiding taxpayers, especially the medium and larger ones, as it led to seamless Credit, one authority to deal with, single invoice, single valuation base and IT-enabled filing of returns with almost zero interface with the tax officials.

But in retrospect, it seems the conscious decision to initially soft-peddle of GST and the absence of effective enforcement emboldened the unscrupulous persons to exploit the loopholes and game the system.

Relaxation in return filing, non-matching of invoices, restrained

enforcement measures etc led to rampant tax frauds, mainly availment of fraudulent Input Tax Credit (ITC) which came to light when the intensive enforcement drive was launched in the later part of the year 2020. It is interesting to note that most of the big-scale ITC frauds were perpetrated during the years 2018 and 2019 and once the enforcement measures were intensified and legal and procedural changes were carried out to curb such frauds, the frauds did abate, though evasion can never cease in any tax system.

The entire GST regime is based on an intricate IT platform where every transaction viz. registration, return filing, e-Way Bill, duty payment, refund etc are IT enabled, therefore the solution to reining in the ITC fraud could not have been found within the old framework employed by the department in the erstwhile tax regime. Therefore it would be apt to say that the department also reinvented itself in terms of data analytics, intelligence development and enforcement. The period has witnessed focused enforcement actions led by the GST Intelligence Wing and the field formations, with deep data mining and analytical inputs developed in-house or provided by the Analytics and Risk Management wing of the department. The period has also witnessed unprecedented coordination between the CBDT and the CBIC which could not have been possible without the directive at the government level. The exchange of information between the two departments has been on a real-time basis.

### **Contours of Tax Evasion under GST**

Though the concept of tax evasion is as old as the tax itself, some ingenious people keep on inventing new ways of tax evasion and abuse of the law by exploiting the loopholes.

The most common forms of tax evasion under any indirect tax regime are clandestine supply or sale of goods or services, under-invoicing the supplies, claiming wrong exemption, and misclassification of the goods or services, but under the GST regime, the most prominent modus of evasion has been through the use of fraudulent Input Tax Credit.

Misuse of Input Tax Credit (known as Cenvat Credit under the erstwhile Central Excise and Service Tax Laws) has always been an attractive

proposition for unscrupulous tax entities, however, under the GST regime, it has acquired higher dimensions. The credit of tax and duty paid on the inward supply of inputs and services is available for paying tax/duty on the outward supplies, therefore it is as good as cash and does not necessarily require knowledge or complicity of the buyer unless there is collusion between them to share the gains.

Under the erstwhile regime, the chain of cenvatable invoices was not very long and it was comparatively easy to detect the frauds as only the manufacturers, First Stage/Second Stage Dealers, Input Service Distributors, importers and service providers, which were rather limited in number, could issue cenvatable invoices, but under the GST regime the supply chain can be very long and the ITC travels at every stage when invoice is issued.

Taking benefit of this scenario most common modus operandi is to get a large number of registrations in different names and make an intricate web of cross supply of invoices among such units, obviously without any supply of goods or services and finally encash the credit at one stage by utilising it for paying tax on domestic supplies, claim refunds of IGST through customs route or claim refund of accumulated ITC on zero rated supplies. This has made the task of investigators very daunting as they have to traverse the entire chain of fake supplies and it becomes difficult to trace and confront each person to complete the investigation and establish the fraud. Even if the actual mastermind is identified it becomes very difficult to recover the amount.

It can't be denied that such invoice scams were also prevalent in some states under the VAT regime where syndicates used to operate for supplying invoices for commission but due to the territorial limitations, the scales were not too high.

Undoubtedly the ITC frauds are primarily planned and carried out to evade GST by utilising the fake ITC for payment of GST or encashing it by way of refund on zero-rated supplies, yet there are instances in good number where the circular supplies of invoices of huge amounts are organised and at every stage the fake ITC is first availed and then passed onto the next stage in such a way that the credit comes back to the originator, thus cancelling out the fake ITC.

Such circular transactions resort to artificially inflating the turnover for negotiating loans from the banks or even raising capital through Public issues. One more typical modus of fraudulent ITC relates to the booking of certain expenses against a fake supply of goods or services for reducing the Income Tax liability or to generate huge amounts of cash for off-accounts payments (for a bribe, protection money etc) or for personal gain of the owners/promoters.

Against such fake invoices, without any supply of goods or services, the ITC is availed and payments are made to the suppliers.

The initial payment against the fake invoices has to be made through banking channels but by a maze of transactions in smaller amounts routed through several stages, the money is eventually withdrawn in cash at some stage. Under this modus, the main purpose is to generate cash and reduce income tax liability and the fake Input Tax Credit comes as an added benefit.

There are certain sectors such as iron steel and other metals where the fake ITC is more rampant. These sectors are those where raw materials are normally procured from the market, but without GST invoices, therefore the

manufacturers manage to procure only invoices, without any accompanying goods against which ITC is taken, thus getting goods from one source and invoices from another.

The government, aware of the menace and the scales of the fake ITC has amended the law and procedures to plug the loopholes and also intensified the enforcement measures. Now the ITC in respect of the invoices not uploaded in the supplier's account and not auto-populated in the recipient's account has been restricted to 5% of the eligible ITC reflected in their GSTR-2A return. A taxpayer cannot file the GSTR-1 if he has not filed GSTR-3B for two consecutive months, thus blocking him from passing on ITC based on GSTR-1. The proposed lowering of the online

e-invoice threshold limit from 20 crores to 10 crores turnover from 1st October would also prove to be a good deterrent against ITC frauds but only complete e-Invoicing would put a reasonable degree of stop to such frauds.

There are certain inbuilt anomalies and challenges even for genuine taxpayers in availing the ITC which need to be addressed. Presently as per section 16(2) (d) of the CGST Act if the recipient has not paid the value of the invoice along with GST payable to the supplier GST

within 180 days from the issue of the invoice

he has to show it in the Return as liability and reverse the ITC. Still harsher provision is under clause (c) of section 16(2) according to which the recipient shall not be entitled for the ITC unless

the supplier has paid the amount of GST into the government account but this provision is presently not capable of being enforced as the recipient has no proper mechanism to find out whether the supplier has deposited amount of GST. Moreover, the ITC can be taken based on GSTR-1 which precedes the filing of GST- 3 which coincides with the payment of GST.

Actually, the foolproof provision would be to allow

the supplier to pass on the ITC to the recipient only after he has paid the GST amount into the government account, as the credit represents the amount the government has got and unless the government has received the payment no legitimate claim can be made for the ITC. However, at this stage, no one would be receptive to this idea.

Since fake ITC cases are complex and involve penalties as well as the demand of GST it would be very interesting to see how such cases are adjudicated and how the law gets settled by the Tribunal and Courts. In the meantime, Circular No. 171/11/2022-GST dated 3rd August 2022 issued by the CBIC clarifying the legal position in fake ITC cases is welcome. 📌



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### **The most common forms of tax evasion under any indirect tax regime are clandestine supply or sale of goods or services, under-invoicing the supplies, claiming wrong exemption, and misclassification of the goods or services**

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**SNAPSHOTS**

1

A big win of GST has been the elimination of check-posts to remove impediments in the movements of goods across the country

2

The government needs to establish GST Tribunals to reduce litigation timelines and the pressure on Courts

3

The complexity of returns and the technical glitches have resulted in difficulties in availing of the input credit seamlessly



## 5 YRS OF GST

# STILL WORK IN PROGRESS

The implementation of GST is a major reform and no transformation of this scale and complexity can be achieved without its share of hiccups and challenges.

Even after five years, GST has been evolving with changes being made to the structure from time to time



**RENU NARVEKAR**

Regional Tax Lead, India  
& South Asia, Standard  
Chartered Bank

**T**HE implementation of the Goods and Services Tax (GST) in India on 1st July 2017 has been described as a 'one country-one tax' and a 'game changer' reform. GST has been implemented with very high expectations of achieving a simpler, more transparent, more revenue productive and less tax distorting regime.

Based on the one country - one tax ideology, GST has eliminated the race to the bottom indulged in by the States to attract trade and investments into their jurisdictions. Since there are no differences in the tax rates between States, the practice of inter-state consignment transfer or having branch offices in different States has been made redundant, whilst creating efficiencies in the supply chain management. A big win of GST has been the elimination of check-posts to remove impediments in the movements of goods and enable the same to move unhindered across the country. With the multiplicity of taxes being subsumed in GST, it has met the objective of reducing the cascading effect of taxes, due to the comprehensive ITC mechanism. Also, the multiplicity of compliances under various indirect taxes has been reduced. Hence, it would be fair to say that introduction of GST in India has brought in efficiencies in the overall indirect tax compliances.

The advantage of having a common tax law unifying the entire country set the path for digital reforms. The automation of compliances through electronic means by way of the GSTN portal, being a single interface was the beginning of introducing

technology in tax. This was followed by the introduction of e-Ways bills in 2018 to track the movement of goods and to check tax evasion. Subsequently, in 2020, to enable the government to authenticate the electronic invoices generated by the taxpayers through an e-Invoice portal, e-Invoicing was introduced.

However, GST implementation has been nothing short of a roller coaster ride over the last five years. As, even after five years post-implementation, the tax has been evolving with changes being made to the structure and operational details from time to time. It is fair to say that it is still a 'work in progress' with a need for some more structural changes to ensure a more stable and hassle-free system.

So, while the buggy chugs on, what lies in the road ahead? While GST has changed India's indirect tax regime for the better, there are still some improvement areas that can be addressed to enable it to be a more robust and efficient GST.

### **GST Structure & Design**

- i) **Rates:** Adopting excessive rate differentiation complicates the structure, and increases administrative and compliance costs. Levying GST at four main rates makes it complicated. Moreover, high tax rates incentivise evasion of tax by creating a grey market for such goods. Another important consequence of the multiplicity of rates is the possibility of input taxes claimed for credit exceeding the output taxes payable resulting in a refundable position for the taxpayer.
- ii) **Exemptions:** The best practice approach is to keep the list of exemptions in GST minimum. While the rationale for exemptions or for levying low rates of tax on items considered necessities is to ensure equity in the distribution of the tax burden, these could in effect result in a larger absolute benefit to high-income groups. Also, exclusions such as motor spirit and high-speed diesel, which contribute over 35 percent of revenues, impact meeting the objective of reduction in the cascading effect of taxes.
- iii) **Input Credit Matching:** The complexity of returns and the technical glitches have resulted in difficulties in availing the input credit seamlessly. The basic problem arises from the ambitious plan of having 100 percent of matching invoices to avail input credit. The current system of withholding the

input credit of the buyer, till the seller deposits the tax collected from the buyer, seems unfair and unreasonable. There should be a mechanism in place to ensure the tax collected by the seller is deposited by him, rather than putting the onus on the person availing the credit.

One of the important reforms that the GST Council should undertake is to have a proper technical and a research team to analyse and design the structure of GST including exemptions, rates, revenue, and economic implication of changes in rates, matters dealing with administration including registration, forms, filing of returns, payment of tax, assessment, audit, and enforcement.

### **Input Tax Credit**

GST promised to accord a wide interpretation to inputs, input services and capital goods for the purpose of the availment of credit compared to the restricted credit structure under the erstwhile Indirect tax regime. However, the legislation has failed to live up to the expectations, set at the time of implementation of GST. Restriction of credit on goods and services used in office construction activities, on food & beverages consumed by employees at the workplace, on insurance premiums for employees etc, has no logical reasoning as these services are consumed for the furtherance of business and not otherwise. The credits restricted under Section 17(5) of the Act forms a substantial cost base of the companies leading to higher cost and products and services and ultimately pinching the end consumer.

The GST council must comprehensively review the restrictions placed on the availment of credit and undertake corrective actions to enable the seamless flow of input tax credit.

### **Compliances**

GST was very attractive at the time of implementation as it was expected that the GST legislation would push the assessee towards being tax compliant and reduce the tax compliances. However, the plethora of monthly or quarterly and annual compliances for each GST registration in the form of GSTR 1 and GSTR 3B and GSTR 9/9C has taken the charm out of GST and has created a compliance monster that

assesseees keep fighting against with significant investment of time and resources. GST compliances have become an end rather than a means to achieve the revenue and growth objectives of the nation. The GST council must work overtime to provide a more simpler GST compliance mechanism that would relieve the burden of the assesseees and secure the revenue and fiscal goals.

### Technology

The technology platform needs to be stabilised to ensure better compliance, achieve higher revenue

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**The plethora of monthly or quarterly and annual compliances for each GST registration in the form of GSTR 1 and GSTR 3B and GSTR 9/9C has taken the charm out of GST and has created a compliance monster that assesseees keep fighting against**

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productivity and minimum economic distortions. Stabilising the technology and the real-time reporting system will substantially improve the compliance of tax and reduce the problem of evasion through fake invoices. It will also help in discharging refunds speedily and make compliance less cumbersome. Development of technology to match invoices to validate input tax credit must be expedited. It may be advisable to give up the task of matching 100 percent of the invoices to create a functioning platform first and then extend the coverage.

### Dispute Resolution

GST lacks a robust dispute resolution system. The government needs to establish GST Tribunals to reduce litigation timelines and the pressure on Courts. There have been several instances of contrary judgements passed by Advanced Ruling Authorities in different States, resulting in unnecessary litigation. The State authorities for Advance Ruling should ideally have an independent jurist member apart from a representative from the tax department. Also, expedite the setting up of a National Appellate Tribunal for Advance Ruling. Currently, due to the absence of a GST Tribunal, the High Courts are inundated with Writ Petitions filed by aggrieved taxpayers.

The implementation of GST is a major reform and no transformation of this scale and complexity can be achieved without its share of hiccups and challenges. The government undoubtedly needs to be applauded for the 5 years of GST journey and the significant achievements. Given its outreach, there is still some work to be done and hence, it remains an ongoing reform.

With the recent spate of State wise circulars and rulings, there is an apprehension of an increase in litigation, audits, assessments, and disputes, in the short term at least. However, reducing the number of tax rates, reducing the number of exemptions, rationalising input tax credit restrictions, reducing the compliance burden, firming up the technology platform and providing a suitable dispute resolution mechanism, will surely achieve transparency and ease in tax compliance, envisioned by both, the government, and the taxpayers. 🇮🇳



1

SNAPSHOTS

There is no gain in saying that an effective and efficacious dispute resolution mechanism is the sine qua non for the success of any tax reform or tax regime

2

The major flaw in the dispute resolution mechanism in the GST laws is about the constitution of the GST Tribunal

3

Indeed it is indefensible that even after the lapse of more than five years since the introduction of GST, the dispute resolution mechanisms are yet to see the full light of the day

# DISPUTE RESOLUTION IN GST

## INFIRMITIES, INACTIONS AND ADVANCEMENTS

Given its quasi-federal structure in a diverse country like India, especially when GST was introduced, States and the Union considerably relinquished their respective taxation powers and vested them in the GST Council. They have done so in the spirit of cooperative federalism



**R.K.SINGH**  
Former Member  
CESTAT

**G**OODS and Services Tax (GST), a path-breaking indirect tax reform was introduced in India, w.e.f 1.7.2017, in the wake of the 101st amendment to the Constitution. Not expectedly, its considerable teething troubles continue well beyond the teething stage. However, the purpose of this article is not to critique the entire GST 'per se' but to critique only its dispute resolution mechanism, its infirmities and the way forward.

There is no gainsaying that an effective and efficacious dispute resolution mechanism is the sine qua non for the success of any tax reform or tax regime; it is even more so in a diverse country like India given its semi-federal structure particularly when the introduction of GST required the States and Centre to give up their respective taxation powers to a significant degree and vest them in the GST Council in the spirit of cooperative federalism. It is therefore a matter of surprise that the dispute resolution mechanism under GST has not received the attention and priority it deserved and continues to be neglected with the result that



even after 5 years, for the most part, it is not yet in place.

### **Dispute Resolution Mechanism**

Under GST, two types of dispute resolution mechanisms are stipulated:

- (i) To resolve the disputes (a) between the Government of India and the state(s), (b) between the Government of India and any state(s) on one side and one or more States on the other side and (c) between two or more States;
- (ii) To resolve disputes between the governments and the assesseees.

As regards the resolution of the first type of dispute mentioned at 3(i) above, the Constitution in Article 279A (11) stipulates that the Council shall establish a mechanism to adjudicate such disputes. However, no such mechanism has yet been established by the Council. Thus far all the decisions of the Council have been taken by consensus and the States were guaranteed a revenue growth of 14% ( the shortfall if any to be compensated by the Centre out of the Compensation cess) and therefore the first type of disputes requiring the said mechanism have not come to a head. Also before the recent judgement of Hon'ble Supreme Court in the case of Mohit Minerals, there was a general impression that the

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**National Bench and Regional Benches would hear appeals against orders passed by the appellate or revisionary authorities in cases where place-of-supply is one of the points in dispute while the State Benches (and their Area Benches) would hear appeals in the other cases**

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recommendations of the council are binding on the central and state governments and their respective legislatures. However, now it is settled by Supreme Court that the Council's recommendations as far as the primary legislation is concerned to have only persuasive value and even though the Council's recommendations regarding secondary legislation ( rules, rates and exemptions) are binding on the governments, in effect, under section 166 of CGST/SGST Acts, even those recommendations can be scuttled by Centre/ state(s). Thus de facto there is no legal bar against defiance to the recommendations of the Council by States.

Given the political scenario in the country and in the wake of the judgement of the Supreme Court in



the case of Mohit Minerals, it will be no surprise if the era of consensus comes to an end sooner rather than later. Therefore the mechanism as provided for in Article 279A(11) must be put in place forthwith failing which the disputes of the first type can snowball into defiance of the Council's recommendations by the aggrieved state(s) which will throw the edifice of GST into disarray, a scenario too dreadful to contemplate.

As regards the second type of dispute mentioned in para 3(ii) above, GST laws provide for the adjudication of cases involving duty evasion, erroneous refund and/or violations of other provisions of the said laws. The provisions contained in sections 73 and 74 of the GST laws concerning the determination of the duty short levied or short paid or erroneously refunded are certainly an improvement over the corresponding provisions in the earlier laws (ironically called the existing laws) inasmuch as now there is a time-limit prescribed for adjudication of the show cause notices issued thereunder beyond which the proceedings would be deemed to have been concluded. In the corresponding earlier laws, the upper time limit was prescribed only for issuance of show cause notice with the result that several show cause notices remained pending for adjudication for decades keeping the assesseees on

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**Acknowledging the fact that the States would not give up their legitimate rights including the right of appointing their officers as technical members (which perhaps lead to the compromise that each Bench would have two technical members), it is eminently possible to protect the legitimate rights of the States even with a single tribunal dealing with all the cases not only of Customs, Excise & Service Tax but also of GST**

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tenterhooks.

However under the GST laws, the primary adjudication has been kept only upto the level of Additional Commissioner regardless of the amount of tax involved. This is a major departure from the corresponding earlier laws inasmuch as earlier high-value show cause notices were adjudicated by Commissioner/Principal Commissioner and consequently appeals there-against directly went to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) bypassing the stage of Commissioner (Appeals). Now all the primary adjudication orders will have to be first appealed against before the Commissioner (Appeals). Thus under the GST laws, an additional layer gets added to the dispute resolution, which can only be called a retrograde step.

### **Structure of Tribunal**

The major flaw in the dispute resolution mechanism in the GST laws is about the constitution of the GST Tribunal. Briefly speaking, the law stipulates that the GST Tribunal will have a National Bench in Delhi (with its Regional Benches) and State Bench (with its Area Benches) for each state and union territory. National Bench and Regional Benches would hear appeals against orders passed by the appellate or revisionary



authorities in cases where place-of-supply is one of the points in dispute while the State Benches (and their Area Benches) would hear appeals in the other cases. The National Bench will have the President and one technical member ( Centre) and one technical member ( state). All other Benches will have one judicial member, one technical member (Centre) and one technical member (state). The selection of the technical members would be done by a committee not headed by a judge of any Constitutional Court. Also, lawyers are not eligible to be appointed as judicial members while the senior officers of the Indian Legal Service are.

It is evident that such provisions must have been drafted by those not adequately familiar with the basic jurisprudence with regard to tribunalisation. In several cases including the cases of L. Chandrakumar and R. Gandhi, Supreme Court has stressed that although tribunals are not courts 'per se', they must have all the trappings of a court, especially with regard to their independence and neutrality. Predominance of technical members on a bench and the selection of technical members by a committee not headed by a judge of a Constitutional court offend the fundamental principles relating to tribunalisation laid down by

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**Indeed it is indefensible that even after the lapse of more than five years since the introduction of GST, the dispute resolution mechanisms are yet to see the full light of the day**

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the Supreme Court in the said judgements. Similarly making the officers of the Indian Legal Service eligible for the post of judicial member is patently illegal because it is directly in conflict with the Supreme Court judgement in the case of R. Gandhi in which it was inter alia held that officers of Indian Legal Service, being government servants, cannot be appointed judicial members. Further not making lawyers eligible for the post of judicial members made no sense at all when lawyers are eligible for appointment as members of practically all the tribunals including CESTAT. The predominance of technical members in a tribunal bench unacceptably adversely impinges upon its neutrality. Sure enough, these provisions were struck down by Madras High Court and even the Supreme Court has expressed its unhappiness about them.

Apart from the above-mentioned legal infirmities, the proposed structure of the Tribunal is hugely problematic. The State (and Area) Benches would hear cases which do not involve the dispute regarding the place of supply and the National ( and Regional) Benches will also hear cases involving disputes other than place-of-supply disputes so long as the place of supply is one of the points in dispute. Thus National (including Regional) and State (including Area) Benches will in effect end up dealing with overlapping issues which can only create divergence and confusion and also harassment of the assessee. As if that much of divergence/confusion/harassment was not enough, even the existing CESTAT would hear the issues involving classification and rate of IGST in respect to the imported goods because the levy of duty (equal to IGST) under section 3(7) of the



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**The Chautala Committee set up (as a result of the welcome though much-delayed initiative by the GST Council) for early operationalisation of the GST Tribunal does not seem to be showing the signs of much-needed urgency**

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Customs Tariff Act would squarely fall within its jurisdiction.

### **Divisional Benches**

Thus even after the legal infirmities pointed out earlier are corrected, the overlapping jurisdiction of National (including Regional) and State (including Area) Benches of the GST Tribunal is avoidably inefficient and problematic, rendered even more so by the fact that CESTAT jurisdiction is also not entirely excluded.

Acknowledging the fact that the States would not give up their legitimate rights including the right of appointing their officers as technical members (which perhaps lead to the compromise that each Bench would have two technical members), it is eminently possible to protect the legitimate rights of the States even with a single tribunal dealing with all the cases not only of Customs, Excise & Service Tax but also of GST. It is pertinent to note that even GST cases involve classification/ rate of duty, search and seizure with which CESTAT is eminently familiar. Therefore CESTAT can be easily designated as the tribunal for GST also to become GCESTAT. The posts of technical members could be divided between the centre and the States so that the latter would not have any grievance concerning their right to have their officers represented in the Tribunal. However, a Division Bench of GCESTAT should comprise only two members, one judicial and one technical; the technical member could be either of a State or of a Centre except that the Benches hearing customs, excise and service tax cases will have technical members of Centre only. Needless to say that additional locations and benches of GCESTAT



can be created to meet the workload.

It is that simple and not deceptively so. As stated earlier, GCESTAT as proposed above will, apart from being in conformity with the nonderogable principles of tribunalisation laid down by the Supreme Court, be able to efficiently utilise the existing infrastructure of CESTAT, avoid multiplicity of indirect tax tribunals and will hit the ground running. Early operationalisation of GCESTAT will save the assessee the travails of approaching the High Courts which are already struggling with the huge pendency.

Indeed it is indefensible that even after the lapse of more than five years since the introduction of GST, the dispute resolution mechanisms are yet to see the full light of the day. The Chautala Committee set up (as a result of the welcome though much-delayed initiative by the GST Council) for early operationalisation of the GST Tribunal does not seem to be showing the signs of much-needed urgency with the result that even Supreme Court on Sept 12, 2022, felt constrained to direct the Union government to file its response in a petition for early setting up of the said Tribunal. Hope this much-needed nudge by the Supreme Court will have the desired effect. 🚫



**SNAPSHOTS**

1

The Goods and Services Tax Network (GSTN), the electronic backbone of the tax system, is another perfect example of how technology can be leveraged for the public good

2

A study undertaken by the Finance Ministry has shown that consumers saved at least 4% on their household monthly expenses on an aggregate after the launch of GST

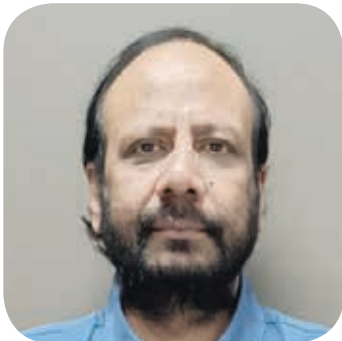
3

An Anti-profiteering mechanism has been put in place to ensure that the benefits of the GST regime are effectively provided to the consumer

**5 YRS OF GST**

# CATAPULTED DRIVING FORCE TOWARDS THE FUTURE

With the historic tax reform, GST, the concept of One Nation One Tax has been implemented which has transmitted efficiency across sectors and helped businesses and consumers. The scale and scope of this tax reform measure has been unprecedented and the results are visible across sectors



**J. P. SINGH**  
Principal  
Commissioner, GST

**T**HE Goods and Services Tax (GST), the historic tax reform measure, has completed five years. It has been a journey of great significance and has demonstrated how a complex indirect tax system can be cleaned up and consensus forged by all the stakeholders to collect buoyant revenues for both the Centre and states.

The “Good and Simple Tax” as it has been popularly monickered, has ushered in several changes and has promoted the concept of ease of doing business across the country. The concept of One Nation One Tax has been implemented which has transmitted efficiency across sectors and helped businesses and consumers.

The scale and scope of this tax reform measure has been unprecedented and the results are visible across sectors. The tax base has doubled from 6.64 million to close to 14 million while corruption and discretion have been smothered. The first real test of the system came in the form of a never before seen drop in revenue due to Covid-19, but the system showed its robustness with an unprecedented recovery of revenue figures, even to the tune of Rs.1.4 Lakh Crores.

The notorious delays that trucks used to be subjected to are now in the past and there is the smooth and hassle-free

movement of goods as the numerous checkpoints have been removed and the use of technology with the e-Way bills has ushered in a new era for the logistics sector.

It must also be acknowledged that the five years journey has not been smooth and several hurdles had to be crossed.

### **Creating Institutions**

One of the important aspects of this tax reform has been the partnership between the Centre and States and the proactive nature of the GST Council to listen to grievances and move swiftly to undertake changes. During its five years journey, it has helped create and strengthen an institutional framework that will aid the country's indirect tax policy for decades. For example, the GST Council which has representatives from states and the Centre has set a new benchmark in policy-making and is a shining example of cooperative federalism.

All decisions in the Council have been through consensus after rounds of deliberations. The success of the GST Council has already sparked off demands for such an entity to deal with crucial issues involving the Centre and States. The tax administration at the Centre and States has been working jointly to ensure a smooth indirect taxation system. The true potential of cooperative federalism has been unleashed by the success of the GST Council.

The Goods and Services Tax Network (GSTN), the electronic backbone of the tax system, is another perfect example of how technology can be leveraged for the public good. After the initial glitches that the system faced, a massive effort was launched by the authorities that ensured a hassle-free experience for taxpayers. The volume of data that the GSTN has been able to generate is helping the department to navigate the tax in a much more efficient manner. In this ever-evolving and dynamic taxation regime, the department has lived up to the herculean task and has fine-tuned the filing process based on feedback and active consultation with stakeholders.

The benefits of the success of GST are numerous. For example, for small and medium-sized enterprises it has been a great enabler. The new system unveiled the composition scheme which allowed small businesses to pay a fixed rate

on their turnover without any paperwork. The compliance burden of small businesses has reduced as several options have been provided including quarterly filing for those with an annual turnover of Rs 5 Crores. Thanks to the coordination between states and the central tax administrations, the GST system stood firm during the pandemic and lent a helping hand to the taxpayers. The entire system withstood the challenge posed by the pandemic thanks to every single individual in the tax administration.

### **Benefits & compliance**

End consumers have also benefited significantly from the rollout of GST, a fact often missed out. The average tax rates have displayed a downward trend and a study undertaken by the Finance Ministry has shown that consumers saved at least 4% on their household monthly expenses on an aggregate after the launch of GST. The Centre and the States have been very responsive and agile in rationalising rates to benefit the consumers.

Another hallmark of GST has been the measures undertaken to protect consumer interest. An Anti-profiteering mechanism has been put in place to ensure that the benefits of the GST regime are effectively provided to the consumer.

The transparency ushered in by the tax system has helped plug the loopholes significantly. The indirect tax machinery must also be complimented on the enormous efforts that have been mounted to plug the gaps and ensure greater compliance. Evaders have been nabbed and their nefarious activity shut out. This is an area of work in progress in the months ahead. It has also brought to the fore the cooperation between the direct and indirect tax wings of the government to identify the evaders and raise compliance. Again, technology and data emanating from the electronic systems have also been used effectively to precisely identify the evaders and get them to pay their due taxes. The tax administration has worked tirelessly to pursue the evaders and ensure that compliance increases while causing minimal distress to the honest taxpayer. Fraudsters availing input tax credit through devious means have been pursued and brought to book. The results are there for everyone to see.

The reform has benefitted micro, small and

medium enterprises significantly. Previously VAT exemption and composition scheme thresholds were marginal but with GST, the threshold was fixed at Rs 20 lakh and then raised to Rs 40 lakh for goods. The composition allows small businesses to pay a fixed rate on their turnover without any paperwork and the threshold is at Rs 1.5 crore a year for goods and Rs 50 lakh for services.

There are other benefits that the MSME sector has provided through the tax reform measure. GST has opened up new avenues through quick bill discounting and loans to them and the compliance burden has been cut with the introduction of the option of filing quarterly return filing for those with an annual turnover of Rs 5 crore.

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**In future, we might see some significant enhancement on the technology front in GST which will back the idea of ease of doing business for taxpayers particularly micro & medium taxpayers**

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A survey by consulting firm Deloitte showed that a significant majority of industry leaders appreciated the government's approach of proactively issuing instructions, clarifications, and streamlining the entire process. The survey further points out that the industry believes these measures have helped avoid any unnecessary pile-up of litigation and unending disputes. While automation of tax compliances emerged as the top area (80 percent) where the government has helped, upgrading technology remains a key task (with 61 percent) requiring the government's attention. In the future, 28 percent of leaders look forward to using high-level automation, with no manual interventions, in their businesses, according to the survey.

#### **The way forward**

The next steps for GST in the months ahead would be to use the learnings of the past few years to make the system stronger. Work is on to make the process simpler and easy for the stakeholders and of course pursue the task of increasing compliance.

In future, we might see some significant enhancement on the technology front in GST which will back the idea of ease of doing business





for taxpayers particularly micro & medium taxpayers. In GST the taxpayers are distributed amongst the States and the Centre, so a feature of “Investigation Alert” at the taxpayer as well as at the Tax officer Dashboard may be enabled which will indicate by whom the investigation is initiated whether it is State GST officials or Centre GST officials. This will help the taxpayers in the course of the investigation. In addition to this, a functionality of intimation at the taxpayer dashboard may be provided which will intimate the taxpayers about the fake taxpayers found by the tax officials(during the course of any investigation).

Soon, a functionality of “Auto Refund Calculation & Intimation to the taxpayer” could be created at the taxpayer dashboard that will be of immense help to small & medium taxpayers of GST by way of making the capital available at the earliest to them.

The GST Council has flagged its intention on rate rationalisation and this is an area that will engage the attention in the months ahead. Demands have been pouring in to further smoothen and simplify the filing system along with the input tax credit classification.

Then there is the larger question of bringing under the taxation umbrella some key sectors such as electricity, alcohol and petroleum products under the ambit of GST. There have been demands from several quarters to include petroleum products under GST but so far states have been reluctant to move on this crucial issue due to their own revenue

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**GST has opened up new avenues through quick bill discounting and loans to them and the compliance burden has been cut with the introduction of the option of filing quarterly return filing for those with an annual turnover of Rs 5 crore**

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implications. Then there is the work on setting up GST Appellate tribunals to ensure a smooth filing of appeals and strengthening the transparency that the GST system has provided. The GST Council has set up a group of ministers headed by Haryana Deputy Chief Minister Dushyant Chautala to suggest changes that are required for setting up of the GST Appellate Tribunal and the report is expected to be submitted by the end of the month. There are expectations that considerable progress would be achieved on this critical issue.

There are expectations that considerable progress would be achieved on this critical issue in the coming years. In a nutshell, five years is a short journey in the lifetime of such a landmark tax reform but it has helped lay a robust foundation for the future and the role of the state in facilitating robust economic activities & their byproducts – tax collections! 🇮🇳



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1

GST is not merely a tax reform but a milestone in realising Sardar Vallabhbhai Patel's dream of building 'Ek Bharat – Sreshtha Bharat'

2

The introduction of e-Invoicing from October 2020, provided a system that allows real-time data reporting by taxpayers

3

GST Amnesty Scheme should be there to declare and correct the initial mistakes made by the dealers while filing the GST returns

SNAPSHOTS



# GST

# POTPOURRI OF QUAGMIRES AND ACHIEVEMENTS

GST is a revolutionary taxation system conceptualised with a dream of building '*Ek Bharat – Shreshtha Bharat*' and with an aim to provide a complete overhaul to the erstwhile indirect taxation regime



**KAVITA JHA**  
Advocate

**I**N the words of Prime Minister Narendra Modi, the Goods and Services Tax (GST) is “a path-breaking legislation for New India”. This revolutionary taxation system was rolled out on the midnight of 1 July, 2017 in a ceremony held in the Central Hall of Parliament. GST is not merely a tax reform but a milestone in realising Sardar Vallabhbhai Patel’s dream of building ‘Ek Bharat – Sreshtha Bharat’. With the objective of providing a complete overhaul to the erstwhile indirect taxation regime, GST was rolled out. However, to that end, some of its main objectives included the ‘One Nation One Tax’ mantra, simplification of indirect taxes including compliances, digitisation of processes, rate rationalisation, and seamless credit to businesses.

Before 1 July 2017, the Indian indirect tax regime was highly fragmented. The Centre and States were separately taxing goods and services. There were many taxes like Excise duty, Service Tax, Value Added Tax (VAT), Central Sales Tax, Purchase Tax, Entertainment Tax etc. In addition, there was a multiplicity of rates, laws and procedures. This caused a heavy compliance burden. Imposition of tax on tax was another serious problem. For example, VAT was levied on a value that included excise duty. The Input Tax Credit chain broke as goods moved from one state to another, resulting in hidden costs for the business. There were tax nakas at every inter-state border, creating bottlenecks in inter-



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**The robust unified e-Way bill system introduced in 2018, has facilitated dispensing with the archaic check-posts, thereby reducing supply chain lead time and associated costs for companies**

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state transport of goods. Every state was effectively a distinct market for the industry as well as consumer. Industry's choice of locating factories or warehouses was heavily influenced by the prevailing tax regime rather than pure business consideration, making the industry uncompetitive.

With the overall objective of simplifying the tax structure and reducing the cascading effect of taxes, it has been a roller coaster ride so far for the industry and the government in the last five years. GST's journey can be marked with some significant victories along with moments of worry as well. Herein this article we would analyse both:

**Significant Victories**

**'One Nation One Tax' Mantra:** While subsuming multiple taxes into one tax, GST has lived up to its objective of 'One Nation, One Tax' as the GST rates across states remain uniform. Thus, unlike pre GST regime, tax rate is not a key criterion for a business while determining where it wants to set up operations. A business can base its decision purely on commercial considerations and fiscal packages that states offer to promote investment.

**e-Way Bill System:** The robust unified e-Way bill system introduced in 2018, has facilitated dispensing with the archaic check-posts, thereby reducing supply chain lead time and associated costs for companies and helping the tax administration monitor tax compliances and potential revenue leakages better.

**e-Invoicing:** The introduction of e-Invoicing from October 2020, provided a system that allows real-time data reporting by taxpayers. The availability of real-time and relevant data helped in the detection of tax frauds and curbing evasions.

**Challenges Ahead**

Even though it has been five years since the much awaited legislation has been brought into effect,



still there are a lot of challenges in the GST law and these challenges are creating a lot of problems for the taxpayers. In this regard, we are enumerating herein below few areas where solutions are required to improve the situation to make the GST a taxpayer friendly and simplified Tax: –

**i) Compliances:** While a digital push in compliances was much-needed nevertheless it has presented taxpayers with a burden of multitude of compliances. While the compliances have become automated, the multitude of filings and processes remain a cause for concern.

**ii) GSTR 3B Issue:** While filling GSTR-3B, there is no modification or amendment facility available. Thus, in case, if any changes are to be made, the same can be effected in the subsequent month(s), thus entailing payment of interest, as the case may be.

**iii) Challenges for small traders:** GST implies additional operational costs for small businesses. In a developing country like ours, not all small businesses will be able to afford the cost of computers and accountants required to implement GST (make bills and file Tax Returns).

**iv) GST Amnesty Scheme** should be there to

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**GST implies additional operational costs for small businesses. In a developing country like ours, not all small businesses will be able to afford the cost of computers and accountants required to implement GST**

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declare and correct the initial mistakes made by the dealers while filing the GST returns.

**v) GST Appellate Tribunal** should be established as soon as possible.

GST evolved and started gaining stability in the last 5 years, the stakeholders have been proactively working closely to remove the hurdles, which is inevitable for the massive transformative exercise of redrawing the country's indirect tax horizon. By learning from the experiences of half a decade, the remaining gaps between the expectation and progress so far, can be addressed to further simplify the tax structure and make GST a successful tax structure. 🚫



SNAPSHOTS

1

The talks about the introduction of GST as a federal tax reform had begun in the year 2006

2

Changes in tax structure and law were also made to meet the aspirations of states, as was the requirement of a consensus-based modern tax structure

3

GST was thus carried forward like a rafting boat in turbulent waters without allowing it to overturn by those on board

# SUMMARISING GST SAGA

# HAS THE CHILD LEARNED TO SWIM?

The journey of GST so far has been full of bottlenecks, but strong shock absorbers, now, have been made available to the system. Technology has played a vital role in making GST successful by offering instant solutions and clarifications



**SOMESH ARORA**

Member, CESTAT

**I**T has been five years since GST was introduced on July 1st, 2017, with much fanfare and celebratory mood in the nation, befitting ushering in of such a big-ticket tax reform. It is worth mentioning that GST was born by subsuming 17 levies like excise duty, service tax, VAT and 13 other cesses prevalent in the country. The early few months of implementation and numerous glitches being faced even by the taxpayers to file GST returns, left one to feel that perhaps the launch of GST was akin to a small child being splashed in the swimming pool. Albeit, under the watchful eyes of parents and coach. The possibilities were either it will learn to swim with effort and support or drown. The reasons for this state of affairs in the year of commencement and its immediate aftermath were multifarious.

### **Powerful IT System**

The ones that clearly stood out were the absence of a robust IT System at the time of introduction capable of catching transactions and returns in one of the largest GST tax systems in the world, frequent changes both in law and procedures which are common for any evolving tax regime were another. From the government's perspective, it was a call to be taken as to whether what was already delayed could be delayed further. The talks about the introduction of GST as a federal tax reform had begun

in the year 2006. Since then things were going topsy-turvy, due to either lack of a political will or a lack of numbers, including of states required, willing to join the federal tax structure. Various issues were red-flagged, which, inter-alia, included the requirement of a robust IT System which was emphasised even by Mr. Nandan Nilekani, the IT network of GST way back in 2011 as the UIDAI Chairman. As things stood later, he had to go back to Infosys to steer the GST network, which was on a bumpy road of glitches, to ensure a smooth ride for taxpayers joining the network bandwagon. A task largely achieved now. The other issue which was red flagged was the possibility of the use of fake invoices and consequent frauds and revenue leakage in the event the GST System is not e-Invoice based (doing system-based instant matching of debits and credits in the GST Network).

In the years 2006 and 2008 frauds had already started emerging of considerable magnitudes of rebate amounts floating in the erstwhile Central Excise system, mainly between Surat and Thane-II jurisdictions, on account of fake invoices and non-existing/ fictitious units. Despite all efficiencies, it took years to detect the fraud through backward verification in a system, which was predominantly manual. For the Government of the day, perhaps the choice was either to delay further despite having political numbers and large federal consensus with states being on board or to postpone so as to start with a robust IT System and fairly evolved e-Invoice capturing system right from the beginning.

### **Fine-Tuning**

Taking a bold initiative, the Government adopted the former course of action. And the GST was introduced on 1st July 2017 to be improved and improvised based on needs. From 2017, till this year, it has been a systemic approach of crossing the bridge as and when it comes. The technical glitches in filing returns were removed, the number of returns to be filed were reduced for small taxpayers, and threshold limits were fine-tuned by raising limits for goods as well as a composition levy scheme, so that small taxpayer can focus on their hardcore and time needing requirement of doing business, rather than

compliances. Fiddling and fine-tuning with tax structure was done to meet the aspirations of small businesses as well as for reducing and keeping in check the price of essentials. Changes in tax structure and law were also made to meet the aspirations of states, as was the requirement of a consensus-based modern tax structure. One of the significant achievements of the GST in the last five years of operation has been that there were very few points of dissension or negative votes to any proposal in discussions in the GST Council meetings. The credit for the same must go to the constant executive and even political level pre-consultations that generally happen on any proposal being brought to the GST Council.

The task of executive officers involved has not been any different from the floor managers, who do their job in the Parliament. The officialdom even in 2016-17 and even thereafter rose to the occasion and burned the midnight oil to promptly clarify numerous ticklish issues that led to the quick evolution of the tax system. Technology was also used like never before to offer instant solutions and clarifications. The then Revenue Secretary himself clarified various issues by using his Twitter Handle. All this was unprecedented in the annals of tax history. It was overall an admirable job both by the executive as well as the political establishment. GST was thus carried forward like a rafting boat in turbulent waters without allowing it to overturn by those on board.

### **Controlling Fraudsters**

The other distressing aspect was that fraudsters seized an opportunity of floating fake firms and fake Invoices within the system. While the initial mood in Government over large numbers of registrations taking place during the transition phase was of euphoria. It soon gave way to the need for strict enforcement, when it was realised that the fraudsters by using the system took fake multiple registrations, to use fake Invoices to indulge in fake input credits. The detection time for concerted efforts by enforcement agencies, even using data analytics (but the absence of a not-so-great IT System), was one to two years. But finally, a hard blow of detections and arrests was dealt with by the Finance Ministry, by the end of the year 2020 by launching a campaign against

fake invoices and fake registrations. Before the deep cleansing effort took place, the figures of fraud in most cases had crossed Rs. 5 crores, and therefore a slew of arrests was made. The trend continues even to date.

The revenue till January 2020 was generally trending between an average of Rs. 90000 crores to one lakh crore. A strong enforcement action, coupled with a simultaneous reduction in threshold limits of mandatory e-Invoicing (for units having turnover of Rs. 100 crores and above, being brought down from 1st January 2021 to Rs. 50 crores from 1st April 2021 and now to Rs. 20 crores from 1st April 2022) had a salutary effect on revenue. Through these measures along with the betterment of IT Systems and resolute Government will exhibit, the desired effect of raising revenue was achieved. The same has now touched and crossed even the level of Rs.1.50 Lakh crores per month and averages up to Rs.1.35 lakh crores through these two measures. All pending compensations to the states have been stated to be cleared up to date. The threshold limit of Rs. 20 Crore which may already be covering 80% of the highest tax-paying units, can easily be further reduced to 10 crores or even lower as and when GSTIN is sufficiently geared up and Government so requires. One more positive aspect of the GST as an evolving tax system has been fewer meetings of the GST Council, of late, leading to less frequent changes in tax laws as compared to earlier years, when even the lawyers and practitioners were having more GST Manuals on the table compared to GST litigation files.

### Seeking Attention

The areas which still need to engage attention are, making aggregate turnover defined threshold limit

easy to comprehend for commoners. At present, unlike Income tax one virtually needs to understand the whole GST law to understand the concept of threshold including concepts like taxable turnover, exempt turnover, reverse charge liability, the differential between service and goods threshold, interstate supply of goods and services, export turnover, state wise differential turnover criteria etc. to know the applicability of tax on oneself. There is also logic in doing away with unnecessary accounting as in income tax notional income criteria without elaborate



**Various issues were red-flagged, which, inter-alia, included the requirement of a robust IT System which was emphasised even by Mr. Nandan Nilekani, the IT network of GST way back in 2011 as the UIDAI Chairman**

accounts is applied up to turnover of Rs. 2 crores for goods, but in GST the limit for composition scheme is Rs.1.5 crores. This requires that for the purposes of GST elaborate accounts and returns will be required to be maintained and filed by businesses falling in the bracket of Rs.1.5 crores to Rs. 2 crores. So whatever is given by one hand of the tax systems is taken away by another hand.

There is thus a case for raising the composition limit to Rs. 2 crores as and when the Government finances so permit to achieve ease of business.

The GST journey so far in India has been one of the hitch hops, but with strong shock absorbers now having been made available to the system. The evolution further may be easy and smooth. If service tax evolved in 18 years, it can be reasonably expected that a much lesser period may be

required for the Indian GST tax system to become exemplary for others.

Our GST baby in the pool now may not be the world aquatic champion at the moment, but has already left behind the fear of its drowning and has certainly learnt to swim, to the joy of all watching.

Kudos to all those who had faith in its capabilities!!! 🇮🇳



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2022 | A W A R D S

ENRICHING TAX SPACE

CHAPTER - IV

# LET THE BOT DO THE JOB



SNAPSHOTS

1

GSTN, as an immediate task, chose a capable IT partner as a managed services provider (MSP) to develop the bespoke application and run it on a captive infrastructure owned by GSTN

2

GSTN has continually brought about improvements in the facilities and exploited the power of digital to the hilt – in favour of taxpayers!

3

A new Quarterly Returns Monthly Payment (QRMP) scheme was specifically created for small taxpayers to file quarterly returns but pay monthly tax

# COMPLEXITIES OF TAXATION MADE EASY BY DIGITISATION

Digitisation has proved a boon for tax administrators since it provides them information at a click. Big data has brought about a new paradigm shift for the tax administration as well as businesses. The size of data that is captured is possible to scale to a size that was unthinkable till a few years back



**MANISH KUMAR SINHA**

CEO, Goods and Services  
Tax Network (GSTN)

**T**HE Digital India program ([www.digitalindia.gov.in](http://www.digitalindia.gov.in)) has the objective of making government services available to citizens electronically by online infrastructure improvement and to empower the country digitally in the domain of technology. The key ingredients of the 9 pillars of this Digital India campaign include e-governance, reforming government through technology and most importantly electronic delivery of services that shall lead to the empowerment of citizens. If we take a look at just a few of the major initiatives of the government in the last few years we can notice the huge impact of the Digital India campaign in the domain of taxation.

## **Technical Advisors**

In 2011, the Government of India constituted a Technical Advisory Group for Unique Projects (TAGUP). The report of this group recommended the establishment of National Information Utilities (NIU) that would implement large and complex information technology system development projects. Of the five projects enumerated by the TAGUP, the GST implementation in India through an ICT system was the first. The GST implementation was tasked to be carried out by the first NIU of India – the Goods and Services Tax Network (GSTN). GSTN was

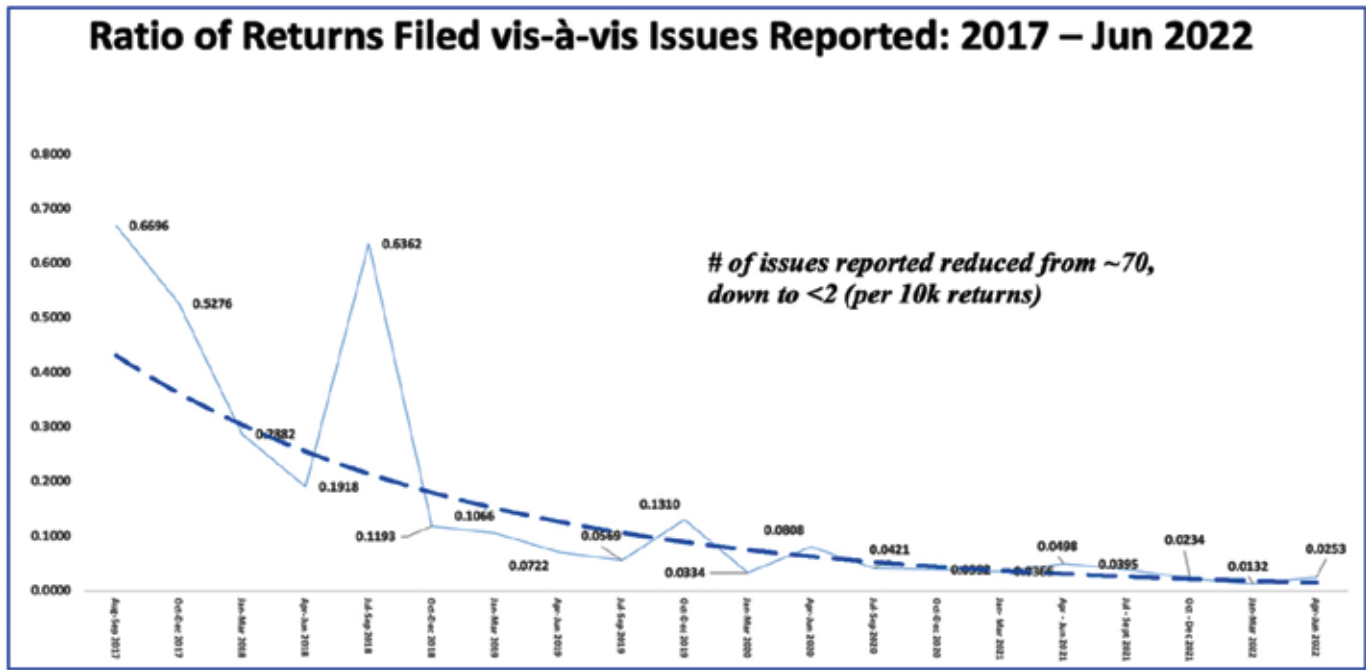


Fig. 1. Steep reduction in issues reported by taxpayers

the first SPV (a Section 8 company) set up as an information utility by the government, with the specific task of establishing the IT platform for the new GST regime. GSTN, as an immediate task, chose a capable IT partner as a managed services provider (MSP) to develop the bespoke application and run it on a captive infrastructure owned by GSTN. This single MSP was made accountable and responsible for the end to end objective of providing infrastructure and applications that would translate the laws and rules into an IT platform for taxpayers and tax administrators.

The MSP began with the implementation of the GST e-governance information system that was the single largest and unitary technology platform that united the indirect tax systems of the 37 States, UTs and the Centre, after promulgation of

**The key ingredients of the 9 pillars of this Digital India campaign include e-governance, reforming government through technology and most importantly electronic delivery of services that shall lead to the empowerment of citizens**

the constitutional amendment. This had a feature of seamless and virtual communication between the tax administration and the taxpayer. The sub-components of the GST reform include the e-Way bill system and the latest rollout of the e-Invoice registration – also a by-product of the digitisation and technology driven innovations.

### Digitisation Leads

Technology led digitisation achieves integrated systems that are capable of pre-population (reducing effort and eliminating transcription), real time information dissemination (like # of returns filed, taxes collected), searchable audit trails of transactions and efficiency and availability of information in single repositories.

For citizens, since tax compliance is a challenging and time consuming effort, the government has rightly taken the leap in using technology to ease the compliance burdens. This has also been helped by the reducing cost of technology and user friendly and intuitive applications made available on the tax platforms. Digitisation has been possible, also because of availability of big data that enables persistence of humongous amounts of data and retrieval as well – for analytics and administrative purposes. The digitisation is a boon for tax administrators since it provides them information at a click. Research also

shows that while digitisation and technological innovation helped reduce compliance costs, it also was used to simplify processes, rules and procedures since duplication of information is efficiently handled by the information systems.

GSTN has continually brought about improvements in the facilities and exploited the power of digital to the hilt – in favour of taxpayers! Some of the prominent examples of innovative features provided are, for example, facilitating taxpayers to file NIL returns through SMS, creating GSTR 2B to provide available ITC (based on GSTR1), providing a tool to view the GSTR-2B and to match ITC with their purchase register, creation of GSTR 3B based on GSTR 1 & GSTR 2B, and many more. A new Quarterly Returns Monthly Payment (QRMP) scheme was specifically created for small taxpayers to file quarterly returns but pay monthly tax. Tax administrators have also been provided with checks where Aadhar authentication has been linked to certain types of taxpayers applying for new registration, and e-Way Bill generation is blocked in case the taxpayer fails to file consecutive returns for > 2 months. A few more changes to make filing easier for taxpayers and which are anticipated in the coming months are:

- Single click NIL Filing of GSTR1
- Enable unregistered persons to supply through

e-commerce

- A utility to extract the granular data from JSON for the SCN to be raised by the Tax Officer and the corresponding reply by the taxpayer.
- Settlement of ITC reversed ( inadmissible or ineligible) reported in table 4(B)(1) and 4(D)(2) of GSTR-3B
- Invoice level data download of GSTR-1 through Back office.
- Changes in 3B to capture e-commerce supplies.
- Reversal of the negative balance in cash ledger of composition taxpayers

### Role of Machine Learning

The focus of GSTN is always on how to enable and facilitate taxpayers and provide better and more features to ease the compliance process. This constant resolve and focus has helped bring down the issues faced by taxpayers drastically, in the 5 years that the GST system has been live. The graph below amply and suitable demonstrates the efforts of GSTN that have borne fruit.

Along with the business changes, GSTN continues to upgrade its technology stack to keep pace with cutting edge technology. The recent upgradations include a capacity upgrade to allow upto 3 lakhs taxpayers to file concurrently, increasing the parallel processing at application and data processing layer for higher throughput,

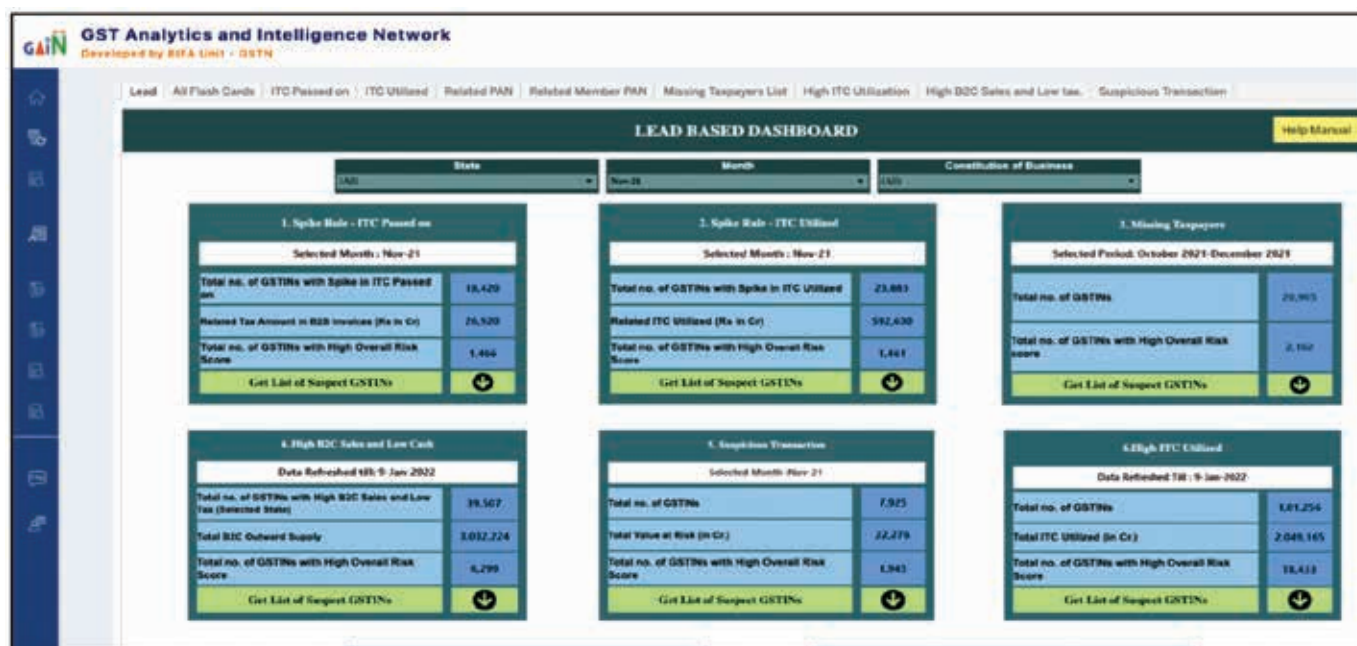


Fig. 2. Samples of dashboards available to tax officers

optimization of software configurations to ensure equitable distribution of load across the compute layer, tuning of databases to ensure faster query responses and now onto a large scale technology refresh for the GST system stack to sustain the futuristic requirements.

Big data has brought about a new paradigm shift for the tax administration as well as businesses. The size of data that is captured is possible to scale to a size that was unthinkable till a few years back, as far as the tax officers are concerned. The details and the granularity available makes it possible to use ML and AI to arrive at effective conclusions about frauds and evasions and at speeds that are near real time. GSTN has developed a GST Analytics and Intelligence Network (GAIN) for use by tax administrators. The use of GAIN enables access to specific and actionable intelligence to tax administrators through simple dashboards.

The combined use of AI/ML and advanced graph creation tools (e.g. neo4j) help the BI teams of GSTN to create relationship networks of sellers and buyers and sift through multiple layers in order to extract the meaningful and real transactions and segregate them for the fraudulent and evasion focused trades amongst the millions of businesses and billions of transactions that are collected in the GST system on a daily basis. It can be well comprehended that a manual analysis of same would take months if not years to yield meaningful

data and that too with team of resources that would run into dozens – and that too with the required skills. An example of the graph based relationships generated by the AI/ML system of the GSTN analytics team is given in Fig 3.

Skilled data scientists and data engineers have come together to create customised algorithms based on AI to parse and run deep learning models using rule-based feedback on the modus operandi in the field. The algorithms create relationship networks that run on high capacity computers to yield timely results. There are scores of use cases that were developed by GSTN. The results and outcome from some of these use cases are depicted pictorially in the graphs.

Based on collaborative work with the central and state tax administration more use cases are in development. The BI work has helped the tax administration in computerised selection of entities for audit, intelligence development, detection of cases, policy formulation support and post investigation data support. The presentation of outcomes of analytics are in easily comprehensible graphical/map/tabular form, which often helps field formations to argue their cases, with authentic digital data.

### The GST Suidha Provider

The financial technology companies (fintech) have used the GST system, their own enterprise and

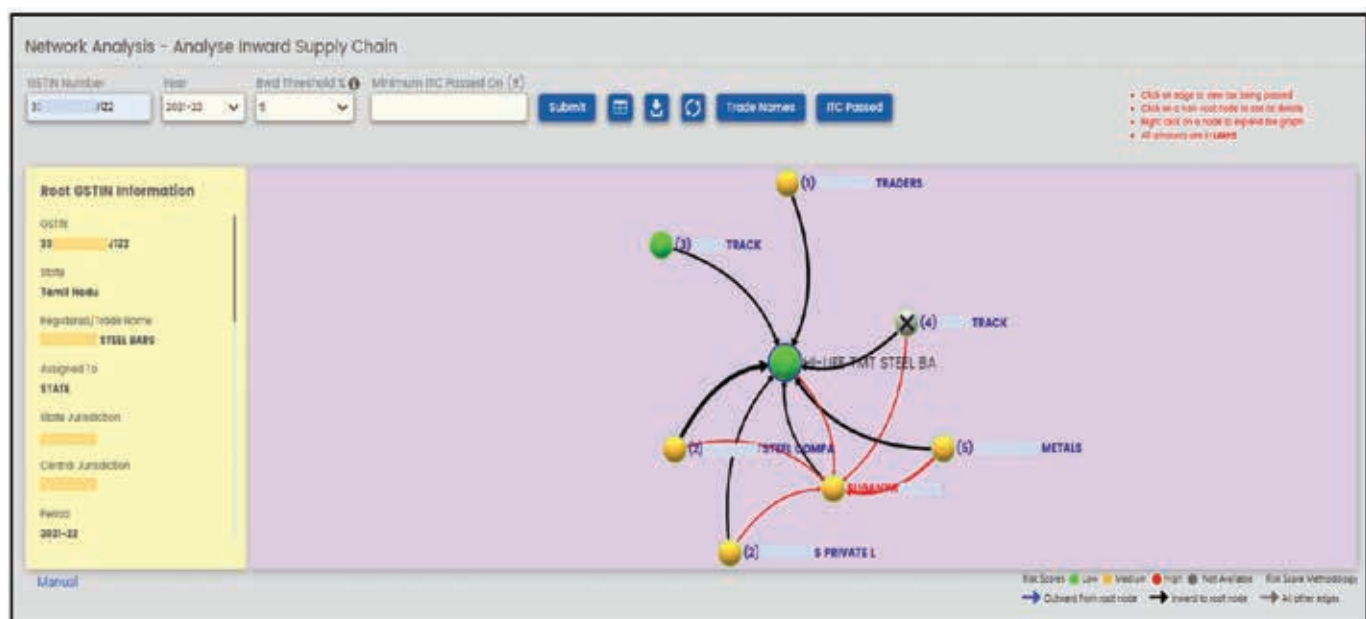


Fig. 3. Indicative supply chain network drawn using neo4

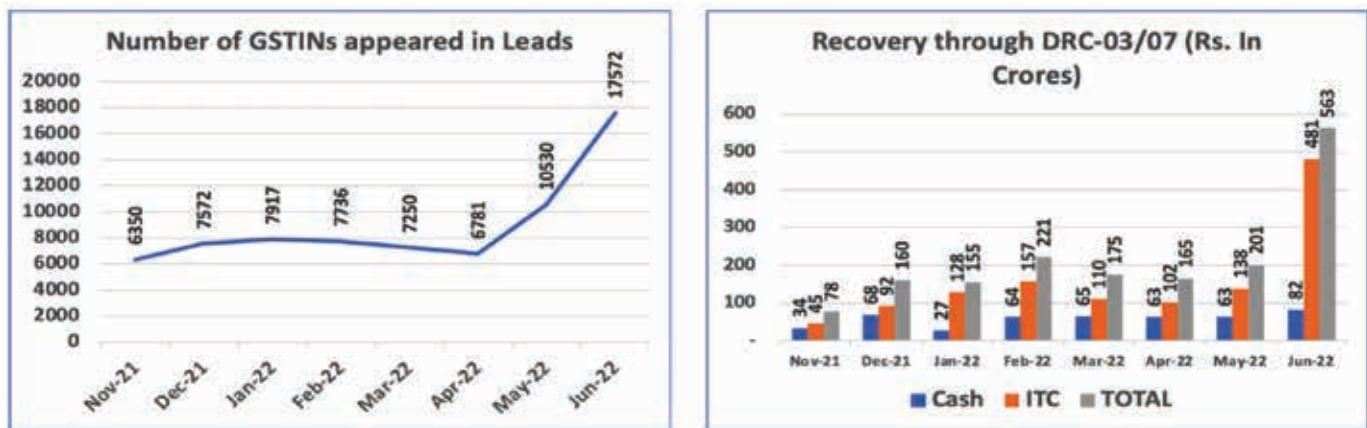


Fig. 4. Leads generated by the BI team on suspicious transactions, leading to tax recovery

capabilities using their application teams and infrastructure and made available a host of services to the taxpayers – whether big or small. The GSP eco system was developed with the partnership of such fintech companies in order to provide bundled services to the large variety of taxpayers available, since the plain vanilla GST system was meant to cater to the regulatory compliance as per the rules and regulations. The fintech companies pitched in with a tightly coupled integration with the GST system which allowed them to add flavours that suited their client businesses. A large base of taxpayers are today served by these fintech partners and are a source of enhanced service to the businesses and industry. The eco system has nudged up the compliance rate to GST of the Indian businesses.

NIC (National Informatics Centre) was entrusted with the task of establishing the e-Way bill system, by GSTN. The e-Way bill is the digital waybill that is carried by all goods vehicles that enables seamless travel across India without the need to be stopped and inspected at the States' borders (as it used to happen prior to GST). This digitisation of the way-bill has provided a great amount of

**Research also shows that while digitisation and technological innovation helped reduce compliance costs, it also was used to simplify processes, rules and procedures since duplication of information is efficiently handled by the information systems**

efficiency to the logistics sector, greatly reducing the travel time of goods from city to city, manufacturing facility to warehouses, whole sale to customer, etc.

The most effective utilisation of digitisation is visualised to arrive in the coming future, even though it has already made a modest beginning viz. the e-invoice and its registration. The digitised version of the single most important transaction document for businesses will herald a plethora of products and eco systems that shall interact amongst each other bringing about a synergy that shall provide a tremendous fillip to the fintech product evolution in India. The registered e-invoice will be the authentic document that shall provide the businesses, lenders, NBFCs, MFIs, FIs, banks, insurers and so many others with a document that is authenticated to be valid with the digital signature of the government. This authentic document series could be used to ascertain the net worth of businesses to assist with loans through the AA (Accounts Aggregator) framework. The document could be the instrument to integrate with the TReDs system to allow the factoring of invoices for partial payments to small businesses. The linkage of these multiple eco-systems and frameworks themselves would lead to multifarious products to be used in the trade and industry.

The introduction of technology and digitisation is ushering in a new wave of information availability, integration of diverse and disparate systems, enabling synergy, bringing about transparency and accountability. As an outcome the tax administration can know who is spending what and where and how much. The benefits associated with digitisation shall be the oil that propels the Indian economy to the next level. Collections of higher taxes are a welcome by-product of this journey. 🇮🇳



1

Simplification of ITC by removing all restrictions with a small negative list is another suggestion by many experts

2

The e-Invoice program started with a threshold on turnover of Rs 500 Crores bringing 16% of invoices under it

3

e-Invoicing has proved to be a game changer for GST in tax collection

SNAPSHOTS



# BOTS ARE NEW CARETAKERS OF GST

India is shifting its focus from man to machine for improving speed and quality. And GST has ushered in a new era of digital tax platform which provides one interface to users for all their work



**PRAKASH KUMAR**

Former CEO, GSTN

**GST** has not only removed the cobweb of indirect taxes but also ushered in a new era of digital tax platforms which provides one interface to users for all their work like registration, payment of taxes, filing a return, filing a refund, and answering queries of tax officers. However, there are still a few things which need to be done either to improve taxpayers' experience or the ones, which are being recommended by tax policy experts or those which can be built on existing modules to take the GST to the next level. The article attempts to examine these from the perspective of the IT system of GST.

## **Improving User Experience**

A need has been felt to provide a single GST login and password to those who have multiple registrations on the same PAN as that will do away with the need for businesses to manage state-wise login and password. This can be done by GSTN to enable a taxpayer having pan-India operations, to access the GST portal with a single click for all the states and see the status of return filing, tax payments, notices, audits etc. This one change itself will provide a huge relief for making GST compliance more user-friendly.

However, this should not be confused with another suggestion to make PAN as the single GST identification number and do away with the State-based GST registration requirement. How will inter-state supplies be handled in such a scenario? This

suggestion was debated a lot while GST processes were being designed and after a lot of deliberations, the current system of state-level registration and IGST as a levy on inter-state supplies was accepted. The dual nature of GST brings in this additional requirement, especially to manage inter-state transactions and for the flow of credit.

Another facility which could be provided to taxpayers is simple analytics on the growth of gross turnover, taxable turnover etc. Sudden change in turnover, the average incidence of tax, the ratio of outward and inward supply etc. may give the user an alert as many times it happens on account of data entry error. A dashboard showcasing these and enabling the taxpayers to decide the threshold of change for alert generation will go a long way in improving taxpayers' satisfaction.

Uniformity of processes across the country for audit, enforcement /intelligence initiatives by tax officers across the country has been suggested by many. 35 out of 36 States/UTs, use the same IT Platform developed by GSTN for all backend processes used by tax officers and thus, all processes in the system are the same for 35 States/UTs. However, these may be different from processes followed by Central Tax officers and there is a logic in bringing uniformity in processes across all tax authorities whether central or state.

### **Policy Led Changes**

Many GST Pundits have recommended a reduction of the number of tax rates as also bringing petroleum products, electricity, potable alcohol, and real estate fully under the GST net, to lessen the cascading of taxes on these products. Since the

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**A need has been felt to provide a single GST login and password to those who have multiple registrations on the same PAN as that will do away with the need for businesses to manage state-wise login and password**

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change in tax rates and the addition of commodities/services happens often under indirect taxes, the GST System has been designed to handle it. Such changes have been made in the past and these can be done once approved by the legislature.

Simplification of ITC by removing all restrictions with a small negative list is another suggestion by many experts. If done, that will allow taxpayers to claim ITC of almost all the goods and services procured for supplying taxable goods and/or services. Implementation of this suggestion has no bearing on the system design and can be done quickly. In fact, it will make the reconciliation of ITC by the GST System better.

The early constitution of the GST Tribunal has been suggested by many and a Group of Ministers (GoM) has been constituted by the GST Council. When the GST and first appellate system are totally digital, the GST Tribunal also needs to be digital from the day it becomes operational. The entire process of adjudication to appeal has been developed as a case management file system where all notices issued, replies filed, interim orders or final orders become part of the case file. While filing an appeal, the taxpayer is not required to file certified copies of the order of the jurisdictional officer being appealed against. All he needs to do is to provide the unique number assigned to the order, against which the appeal is filed. Relevant information gets transferred to the first appellate authority from the case file. The final order passed by the first appellate authority also gets linked to the same case file and the effect of the order gets incorporated into the GST system. The appeal module also has provisions to create a cause list, order sheet etc.

The GST Tribunal can also use the same software with little modification. In this case, too, taxpayers will be required to provide only the unique number of the order of the first appellate authority against which the appeal is being filed. The relevant information from the case files will automatically flow to the Tribunal System. Also, the order passed by the Tribunal will immediately get into the GST System for implementation. While designing care was taken that the case file of the first appellate authority or that of the Tribunal can't be accessed by others.



In other words, the existing appeal software, with little modification, can be used for GST Tribunal, thus, eliminating the need for the development of separate software and linking that software with the GST System for the exchange of data.

### **Building upon Existing Applications**

e-Invoicing has proved to be a game changer for GST. Bringing more taxpayers under e-Invoice reporting and strict control on the use of ITC has been a major contributory factor to an unprecedented increase in tax collection since Oct 2021. The e-Invoice program started with a threshold on turnover of Rs 500 Crores bringing 16% of invoices under it. The reduction of the threshold to Rs 20 Crores brought 40% of the B2B invoices under the program. As per notification dated August 1st, 2022, the threshold will be further reduced to Rs 10 crores bringing an additional 10% of invoices under the net. There is a need to reduce the threshold further to Rs 5 Crores so that 10% more invoices also get reported ensuring better compliance and auto-generation of returns for the taxpayers. The government may also make it optional for those below the threshold to report invoices to IRP. This will help ITC reconciliation of buyers from such taxpayers apart from getting the returns of these taxpayers auto-drafted on the GST portal.

A related suggestion is to enable reporting of

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**Today, e-Commerce sellers generate crores of paper invoices, as those are to be sent mandatorily along with goods, even though the buyer gets an electronic copy**

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B2C invoices by large taxpayers like e-Commerce sellers. Today, e-Commerce sellers generate crores of paper invoices, as those are to be sent mandatorily along with goods, even though the buyer gets an electronic copy. In case e-commerce operators are given the option to report B2C transactions to the e-Invoice portal and for such cases and exemption is given from printing of paper invoices, this will lead to saving on tonnes of paper and ultimately lakhs of trees. It will be a great green step, which could be used by the GST Council to claim carbon credits. This could be started with large e-commerce players on a voluntary basis first and then more B2C invoice generators could be gradually brought under the net, as done for B2B invoices. With five more IRPs getting operational, this should not be a challenge at all.

Implementation of these suggestions will take GST closer to the goal of a Good and Simple Tax. 🇮🇳



1

The total taxable value, integrated tax and central and state taxes are automatically taken from the GSTR1

2

The portal has started a facility of giving system generated statements of ITC (GSTR-2B) and GSTR-3B

3

The ITC claim is allowed only if the vendor has entered the invoice in his GSTR-1

**SNAPSHOTS**

# BEAVER AWAY FOR TAXPAYERS WHO FILE RETURN THEMSELVES

However, using a technology platform for filing returns was an audacious move as internet connectivity in India is still weak. But getting the complete detail of each challan is a truly commendable feat



**SIRAJ HUSSAIN**

Former Secretary  
Agriculture, Government  
of India

**S**UBMISSION and filing could be different. I was not aware of this simple thing when I filed my first return of Good and Services Tax (GST) as a service provider. When a notice was received from the GST department of Government of Uttar Pradesh, I realised, after quite some effort, that submission of a return did not mean that it had been filed. There have been several more learnings in the last four years of my experience with the GST portal and there is no doubt that the experience as a taxpayer has improved over time.

It was in 2005 that the Task Force headed by Dr Kelkar recommended a goods and services tax in place of value added tax levied by the state governments. Though the GST came into effect on 1st July 2017, efforts were made earlier also to bring it into force. At that time it was the BJP ruled states who were in opposition.

It came only a little while after demonetisation and in the beginning it was highly disruptive. It is doubtful if the Government led by any other party would have been able to legislate on this. The opposition from traders, small businesses, manufacturing units and service providers would have been easily used to oppose its legislation and implementation.

#### **Tech-Driven**

The use of a technology platform for filing returns was in itself an



there are areas in which the portal needs refinement.

While filing GSTR 1, the GST number of the recipient has to be entered along with invoice date, invoice number and amount of invoice. Once the entry has been made, it has to be saved. For any additional entry, there is a plus sign. However, when the plus sign is selected for entry of another invoice, the details of the previous invoice are still displayed, instead of blank fields. The entries made for the previous invoice have to be deleted manually. It will help if blank fields are

displayed when a new invoice is to be entered, after selecting plus sign.

Earlier, the GST portal used to take about half an hour to display all the invoices entered in GSTR 1. The portal has improved in the last few months and now it takes less time for GSTR 1 to display the invoices entered.

Once the GSTR-1 has been filed, the portal should automatically provide a facility for downloading the return. Sometimes, it does and many times, it does not. Then one has to go to Services, returns and view filed returns. I am asked about the financial year, return filing period and month but the month field shows “undefined”. Name of the month is not displayed.

It will help if the filed return can be downloaded from the same screen from which the return is filed. It should not be difficult for GSTN to easily allow downloads of returns filed by the taxpayer.

### **Input Tax Credit Claim**

Over the last four years, filing of GSTR-3B has become somewhat easier. The total taxable value, integrated tax and central and state taxes are

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**It was in 2005 that the Task Force headed by Dr Kelkar recommended a goods and services tax in place of value added tax levied by the state governments. Though the GST came into effect on 1st July 2017, efforts were made earlier also to bring it into force**

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audacious move. Several areas of India have only patchy internet connectivity. Online capture of the entire information of each invoice is an achievement which is really praiseworthy. It is no mean achievement that 1.38 crore businesses are now registered under GST and Rs 46.6 lakh crore of tax has been paid online.

However, it seems that very few taxpayers file the returns themselves. They may be taking the services of professionals for the same. Even now

automatically taken from the GSTR1. Once these figures are confirmed, the box of eligible Input Tax Credit (ITC) is to be selected and the ITC to be claimed is to be entered. The values are automatically picked up from the return filed by the supplier.

In the last few months, the portal has started a facility of giving system generated statements of ITC (GSTR-2B) and GSTR-3B. I find that these statements are correctly populated. It means that the real objective of matching data is now being met.

The ITC claim is allowed only if the vendor has entered the invoice in his GSTR-1. The data uploaded by my vendor has to be reflected in my GSTR-2B. If the vendor has not entered the invoice, I am not able to claim the ITC. Many times, there is a delay on part of the vendor to upload the invoice due to which I have not been able to claim the ITC in the month subsequent to my purchase. At least once, I had to go to a vendor and ask him to file his return so that it is reflected in my GSTR. For small businesses, it means that their working capital is held up.

The system generated taxable inward supplies



**Earlier, the GST portal used to take about half an hour to display all the invoices entered in GSTR 1. The portal has improved in the last few months and now it takes less time for GSTR 1 to display the invoices entered**

received from registered persons is an excel file in which GST number, invoice number and other details are given. But this excel sheet repeats the same entry twice in two rows. It is confusing as it gives an impression that the same purchase was made twice. The first row gives the rate of GST but the second row does not show the rate. I find it quite confusing.

After submitting the GSTR-3B, the portal takes you to payment of GST. Quite often the payment does not go through and the portal goes back to the login window.

If the payment is successful, it has to be 'offset' which I did not understand in the beginning. If the offset is done successfully, the GSTR-3B is ready to be filed. One can use either the digital signature or an SMS. The digital signature also fails sometimes and the SMS has to be used for filing the return. Getting an SMS is, however, always smooth and it has never failed.

Once the GSTR-3B is filed, the portal should automatically allow it to be downloaded. Most of the time, it does not happen and one has to go to services to download the return. In July 2022 the download of final GSTR-3B was, however, smooth.

Once I made the mistake of paying my tax as SGST instead of IGST. It took quite some effort to get the refund. The officers of the State GST department had to manually send the request to the Central GST Commissionerate.

In the case of one news portal, the payments I receive for my articles are not for the full amount of invoice and GST. They pay the invoice amount first and the amount of GST is paid only after I have filed the GSTR-1. Since the amount in my invoice is very small, it doesn't really matter. I do not know how common this practice is but the cash flow of small businesses would be very adversely affected if most of the receivers of services/buyers do not pay GST along with the amount of invoice.

My total turnover is nowhere near Rs 2 crore, but I am still not sure if I am required to file an annual return. If it is not needed, the GST portal should mention it clearly on my screen of returns.

To sum up, the GST portal has been an admirable success. One hopes that the Government will not come up with a new portal, as it did in case of income tax! 🇮🇳



1

GST was implemented with the “one nation one tax” motto and an objective of providing a complete overhaul to the erstwhile indirect taxation regime

2

Recovery of tax during investigation has been a rampant issue in the GST regime and if not checked will derail the GST regime

3

Transitional credit has been one of the most fiercely fought battles in courts. Courts too have dilly dallied in giving relief to the assessee

SNAPSHOTS



# SLOTHFUL HEADWAY

Five years back, when GST debuted, there was enthusiasm and zeal about the dynamic changes it would bring. But due to shortcomings and slow progress in the journey, to date, the response to its success or failure has been mixed

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**V. Raghuraman**

CA, Senior Advocate &  
Indirect Tax Litigation  
Management Expert

**U**SHERED in on July 1, 2017, with a mid-night session of Parliament, the Goods and Services Tax (GST) has completed five years. It was implemented with the “one nation one tax” motto and an objective of providing a complete overhaul to the erstwhile indirect taxation regime. To that end, some of its main objectives included simplification of indirect taxes including compliances, digitisation of processes, rate rationalisation, and seamless credit to businesses. The goal, in simple terms, was to make it easier to do business by doing away with multiple taxes and making it simple for small and large businesses to buy/sell products or services pan-India.

## **Smorgasbord**

On looking back to the journey so far, the reaction on success or failure of it is a mixed bag. There are many hooraying this dynamic change in the Indian indirect tax system, which represents an unprecedented exercise in fiscal federalism, and which has undoubtedly streamlined the taxes and compliances for taxpayers. The pre-GST era, with its cascading effect of taxes, led to 31% as effective tax payable, on an average, for a consumer. However, the GST, with its four-rate structure, exempts or imposes a low rate of tax of 5% on essential items, with 12% or 18% slab being the most common.



However, on the other side, there are also illustrations highlighting the challenges under the GST regime, such as technical glitches on the GST portal, delays in refund issues, the horrendous rulings of the advance authorities, non establishment of Tribunals etc.

The GST has had several let downs such as a shortfall in GST collections in comparison to the projection, accumulation of IGST credit, technical glitches, delay in refunds, etc but also provided recommendations on structural changes in the system. One of the major concerns was the dependence of States on compensation from the government for making up for the shortfall in revenue.

In fact, this fear was realised when, on account of economic slowdown, especially on account of Covid-19, state's GST revenue gap in 2020-21 was expected to be about Rs. 3 lakh crores, while cess collections were only projected to reach Rs. 65,000 crores, leaving a shortfall of Rs. 2.35 lakh crores. The Union government decided to pay Rs. 1.1 lakh crore by borrowing from RBI under a special window. The interest and repayment were to be paid / are being paid from compensation cess to be / being collected by extending the life of GST

(Compensation Cess) Act, 2017.

The exorbitant tax slab of 28% on certain luxury and sin items was another major hiccup.

Some of the highlights in the journey so far has been, among others:

(i) unprecedented revenue collections [Rs 1,67,540 crores in the month of April 2022[1]].

(ii) extension of statutory timelines for GST compliances and waiver of late fee for delay in filing GST returns.

(iii) reduced GST rates on specified items used for Covid-19 relief such as ventilators, oxygen concentrators and select essential drugs/ medicines.

(iv) extension in timelines/limitation for filing appeals, replies, completion of proceedings, passing of orders/notices during covid-19. Below are other highlights of the GST journey hitherto.

### **The AARs**

Setting up of advance ruling authorities at different states has created more confusion than bringing clarity on GST issues. In spite of more than 1300 Advance Rulings being delivered, the objective to have better clarity on the tax determination and avoid litigation is far from being achieved. The

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industry has been demanding a National Advance Ruling Authority, which would only be replacing one with another. A constitutional challenge against its composition (comprising both revenue members) is pending before several High Courts. If there is one thing which has made GST look a farce it is this system of advance ruling.

### **Anti-Profiteering**

Anti-profiteering provisions were one of the most promising inclusions in GST laws; however, it has become another litigation-prone area with ambiguous rules and procedures. The omissions in the methodology adopted by the National Anti-Profiteering Authority (NAA) have been pointed out by most companies while challenging the NAA orders before various High Courts.

In the case of Jubilant Foodworks Ltd Vs Union of India (2019-TIOL-1017-HC-DEL-GST) the Delhi High Court stayed the NAA order against the company on the grounds there was a “prima facie” case of a lack of methodology to determine profiteering.

Abbott Healthcare Pvt Ltd Vs Union of India (2019-TIOL-1016-HC-DEL-GST), Delhi High Court has stayed the order passed by the National Anti-profiteering Authority wherein NAA had rejected the plea that CGST Section 171 was not applicable to reduction in rate of tax as compared with pre-GST indirect tax regime, and that only reduction of tax rate in GST regime can be considered. NAA had ruled that assessee had indulged in profiteering as tax incidence was reduced from 30.06% during pre-

GST to 28% and later 18% under GST regime. The petitioner, however, undertook to pay a certain sum along with interest in the Consumer Welfare Fund. About 51 companies have filed petitions against anti-profiteering provisions under GST. Besides, Subway Systems, Hindustan Unilever, Abbott, Johnson & Johnson, Philips, Acme Developers, Samsonite, Jubilant Foods, Nestle, Whirlpool, Samsung, Subway, Reckitt Benckiser and Patanjali are the petitioners. The court has clubbed the petitions which are still pending in the court. We cannot understand how only input tax credit can bring about price fluctuations when so many factors are simultaneously present.

### **The GST Appellate Tribunal**

Due to non-constitution of an appellate tribunal under GST, the first level of appellate decisions is piling up against assesseees who are relying on the higher judiciary to obtain certainty on a host of issues. Thus, setting up the GST Appellate Tribunal will provide much-needed certainty. In *Apex Leather Vs State of UP* (Writ Tax No. 96 of 2022) the Allahabad High Court has referred the issue of creation of GST Appellate Tribunal, as well as the formation of four area benches in various cities throughout the state, to a larger bench. A division bench in *M/s Torque Pharmaceuticals Pvt Ltd Vs Union of India-2021-TIOL-322-HC-ALL-GST*, directed the GST Council to form the tribunal in accordance with its resolution. Simultaneously, the second division bench *Awadh Bar Association Vs Union of India - 2019-TIOL-1168-HC-ALL-GST* by interim order, has restrained the tribunal’s formation without the court’s permission. As a result, despite the passage of five years since the GST law was enacted, the constitution of state tribunals and area benches is in jeopardy. The division bench has recommended that the larger bench rule on three legal issues.

In *Revenue Bar Association Vs Union of India - 2019-TIOL-2188-HC-MAD-GST* it was held that weightage in favour of the technical/tax members or expert members and value-discounting the judicial members would render the tribunal less effective and efficacious than the regular adjudicatory mechanism prescribed in the CGST

Act, the avoidance of which was the very objective of setting up the tribunal. For a tribunal to inspire confidence in the assessee the members must have legal training, experience, judicial acumen, equipment and approach. On this basis, provision in the CGST Act mandating two technical members and one judicial member for tribunals was struck down. A disconcerting feature is the absence of tax practitioners in higher judiciary making it extremely difficult to come to timely conclusion of disputed questions of fact and law.

### Input Tax Credit

One of the main objectives of GST was to transfer ITC seamlessly. However, in the last three years, we have seen retrospective amendments in GST provision to deny transition of Cesses such as Krishi Kalyan Cess, Education Cess, and Secondary and Higher education cess<sup>[2]</sup>, etc and the introduction of Rule 36(4)<sup>[3]</sup> and Rule 86B<sup>[4]</sup> to impose restrictions on availment and utilization of credit. It goes without saying that denial of CGST tax paid in one state as credit in another state is clearly worse off than the previous regime of service tax and excise.

A fundamental issue which needs immediate attention is denial of input credit to honest taxpayers due to default at the end of suppliers. This is a little harsh and unjust. The recovery mechanism, in such cases, should be directed only towards such defaulting suppliers. The government should bring a provision for not denying ITC availed by the recipients for default of the supplier depositing GST to the department.

The most significant judicial ruling in the context of ITC has been in Safari Retreats Pvt Ltd Vs Chief Commissioner of CGST - 2019-TIOL-1088-HC-ORISSA-GST, which read down, though not declared ultra vires, the provisions of Section 17(5) (d) and had allowed the ITC on goods and services consumed in construction of shopping malls which are rented out by the assessee.

<sup>1</sup> Tara Exports Vs Union of India [2018] 98 taxmann.com 363 (Mad); Siddharth Enterprises Vs Nodal Officer [2019] 109 taxmann.com 62 (Guj); Brand Equity Treaties Ltd Vs Union of India [2020] 116 taxmann.com 415 (Delhi); SKH Sheet Metals Components Vs Union of India [2020] 117 taxman.com 94 (Delhi); and Adfert Technologies Pvt Ltd Vs Union of India [2019] 111 taxmann.com 27 (Punjab & Haryana).

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**The e-Way bill system, especially, was intended to reduce hindrances for logistics, and use of technology has provided for smooth movement of consignments and fewer confrontations with the tax officials at check-posts**

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In ARS Steels & Alloy International Pvt Ltd Vs State Tax Officer - 2021-TIOL-1393-HC-MAD-GST, it was held that a loss that is occasioned by consumption in process of manufacture is one which is inherent to process of manufacture itself and needs no reversal under Section 17(5)(h).

Transitional credit has been one of the most fiercely fought battles in courts. Courts too have dilly dallied in giving relief to the assessee. While in few cases<sup>1</sup> tax department was directed to open portal, so as to enable assessee to file the TRAN-1 electronically for claiming transitional credit or accept manually filed TRAN-1, in few other cases<sup>2</sup>, the High Courts have denied relief to the assessee who failed to file form TRAN-1 on time but by and large, the issue thus far is in favour of the assessee giving large relief to the tax payers. It is shocking to see revenue argue that input tax credit is a concession and largesse quite contrary to the Constitutional amendment objectives and the very concept of value added tax which makes an input tax credit system integral to the same.

### Refund

Some case laws decided by the courts throw light on how refund provisions have been administered by the authorities. Timely refunds are as important as timely collections. Dishonesty of the tax officials is best analysed by looking at what grounds are used to deny refunds.

Section 54(3) of the CGST Act, read with Rule 89 of the CGST Rules, provides for a refund in case of accumulated ITC where duty on output supplies is

<sup>2</sup> Nelco Ltd Vs Union of India [2020] 116 taxmann.com 255 (Bombay); Willowood Chemicals Pvt Ltd Vs Union of India [2018] 98 taxmann.com 100 (Gujarat).



less than that on input supplies subject to certain conditions, i.e., inverted duty structure. In *Union of India Vs VKC Footsteps India Pvt Ltd - 2021-TIOL-237-SC-GST*, denial of refund of unutilized input services in the case of inverted duty structure was upheld albite with a recommendation to the GST council the remove this anomaly of law. It appears that what is an enabling provision worded negatively was interpreted to be an exception going by strict rules of construction.

Rule 96(10) has been tinkered with several times. It essentially says that exporters with advance authorization license in terms of Notification 79/2017-Cus, cannot claim refund of unutilized ITC in terms of Section 16(3)(a) of the IGST Act; that must necessarily opt for refund with payment of tax on exports under Section 16(3)(b) of the IGST Act. This provision was upheld in *Cosmo Films Ltd Vs Union of India - 2020-TIOL-1801-HC-AHM-GST* without much discussion as issues presented seem to be truncated.

In *Amit Cotton Industries Vs Principal Commissioner of Customs - 2019-TIOL-1443-HC-AHM-GST*, it was held that in absence of any provision of law, refund of IGST paid on zero rated supply of goods that were exported could not be denied solely on the ground that the assessee had availed drawback on full instead of customs only

rate, particularly when the application for refund had been filed within time and the so-called excess drawback had already been returned to the exchequer with interest by him.

In *Jian International Vs CCGST - 2020-TIOL-1235-HC-DEL-GST* deficiency memo not being issued in Form RFD-03 within timeline of 15 days, refund application was presumed to be complete in all respects and the department was said to have lost the right to point out any deficiency, in the petitioner's refund application, at this belated stage.

### **Returns & Compliances**

Before the GST assesseees were required to file multiple returns and were assessed by various tax authorities. With the implementation of GST, there has been (or is supposed to have been) ease in undertaking tax compliance because of the automation in the tax compliance.

However, this has been one of the most troublesome areas for both taxpayers and tax department in view of the failure to implement the matching system effectively. In *Union of India Vs Bharti Airtel Ltd - 2021-TIOL-251-SC-GST*, the Supreme Court did not allow the petitioner to rectify Form GSTR-3B in the same months in which tax of Rs. 923 crores were paid through electronic cash ledger. It was held:(i) that such a rectification

could be allowed only in the month in which the errors are noticed and not in the month to which the error/omission pertains in terms of Section 39(9); (ii) assessee cannot unilaterally rectify returns otherwise in accordance with law as it would affect obligations and liabilities of other stakeholders because of cascading effect in their electronic records; (iii) assessee cannot be fully dependent on auto generated information in common portal so as to claim non-operability of portal as being reason for his omission to take credit and must primarily rely on self-assessment based on books of accounts and records; (iv) having once exercised the option of paying tax through cash rather than through credit, assessee cannot rectify return in such a way as to show the same in electronic cash ledger from where he can take refund; and (v) GSTR-3B was a 'return' ascribable to Section 39 r/w Rule 61 in view of the retrospective amendment to Rule 61(5) vide Notification dated 09.10.2019.

It was based on point (v) above that the Supreme Court, in Union of India Vs AAP & Company -

2019-TIOL-543-SC-GST, upheld a press release clarifying that last date for availing ITC for invoices issued from July, 2017 to March, 2018 was last date for filing return Form GSTR-3B for month of September, 2018 in accordance with Section 16(4). We are not sure whether these decisions reflect the correct position in law but to blame is the umpteen amendments made to the law which when we fail to understand cannot be explained to judges.

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**With the upgradation of technology to allow auto-population of returns and simplified annual returns forms, the government is perhaps doing its best to bring out a robust input tax credit reconciliation mechanism as well as to reduce tax evasion and frauds**

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However, with upgradation of technology to allow auto-population of returns and simplified annual returns forms, the government is perhaps doing its best to bring out a robust input tax credit reconciliation mechanism as well as to reduce tax evasion and frauds. Effective from 01.01.2021, Quarterly Return Scheme ('QRS') for small taxpayers whose aggregate turnover was below Rs. 5 crores in previous FY was also introduced. To further ease the process, the government replaced the requirement of an annual reconciliation statement between annual returns and financial statement by a chartered accountant with self-attestation.

### **e-Way Bills**

The online GST ecosystem has sought to reduce personal interface in the processes and brought transparency in operations for taxpayers. An online GSTN portal has been introduced for the entire country covering e-Way bill, e-Invoicing and a real-time, reporting-based GST return compliance platform.

The e-Way bill system, especially, was intended to reduce hindrances for logistics, and use of technology has provided for smooth movement of consignments and fewer confrontations with the tax officials at check-posts. However, fixed places of nuisance were transformed to mobile nuisances.

In Synergy Fertilizer Pvt Ltd Vs State of Gujarat - 2020-TIOL-445-HC-AHM-GST, it was held that while section 129 provides for deduction, seizure and release of goods and conveyances in transit, section 130 provides for their confiscation and, thus, section 130 is not dependent on or subject to section 129. It was further held that for issuing notice of confiscation under section 130, mere suspicion is not sufficient, and authority should make out a very strong case that assessee had definite intent to evade tax. At the stage of detention and seizure of the goods and conveyance, the case has to be of such a nature that on the face of the entire transaction, the authority concerned should be convinced that the contravention was with a definite intent to evade payment of tax. The action, in such circumstances, should be in good faith and not be a mere pretence.

The High Courts have quashed proceedings relating to e-Way bill initiated on account of minor

and clerical errors. For example, typing 470 kms as the distance instead of 1470 kms<sup>3</sup>; minor detours enroute<sup>4</sup>; mistake in vehicle no. in part-B of e-Way bill when all other documents were in place<sup>5</sup>; wrong valuation or classification of goods at the time of interception<sup>6</sup>, etc.

While various High Courts have been proactive in this front, we do not find that reflected in the following decisions of the Supreme Court. For instance, in State of Uttar Pradesh Vs Kay Pan Fragrance Pvt Ltd - 2019-TIOL-517-SC-GST, High Court had passed an interim order directing State to release seized goods, subject to deposit of security other than cash or bank guarantee or in alternative, indemnity bond equal to value of tax and penalty to satisfaction of Assessing Authority. The Supreme Court held that the order passed by High Court was contrary to section 67(6) and authorities would process claims of concerned assessee afresh as per express stipulations in section 67, read with relevant rules in that regard. Similarly, in Assistant Commissioner of State Tax Vs Commercial Steel Ltd - 2021-TIOL-234-SC-GST-LB, Competent Authority by an order passed under section 129(1) detained goods of assessee under transport and served a notice on person in charge of conveyance and High Court, on writ petition filed by assessee, set aside action of Competent Authority. However, it was held that since assessee had a statutory remedy under section 107 and there was, in fact, no violation of principles of natural justice in instant case, it was not appropriate for High Court to entertain a writ petition and impugned order of High Court deserved to be set aside and assessee was to be permitted to take appropriate remedies which were available in terms of Section 107.

### **Demands, Recovery, Arrest & Prosecution**

Recovery of tax during investigation has been a rampant issue in the GST regime and if not checked will derail the GST regime. Self boasting is one

<sup>3</sup> Tirthamoyee Aluminium Products Vs State of Tripura [2021] 127 taxmann.com 680 (Tripura)

<sup>4</sup> RK Motors Vs State Tax Officer - 2019-TIOL-431-HC-MAD-GST  
<sup>5</sup> K.B. Enterprises Vs Assistant Commissioner of State Taxes & Excise [2020] 115 taxmann.com250 (AA- GST - HP)

<sup>6</sup> K.P. Sugandh Ltd Vs State of Chhattisgarh - 2020-TIOL-640-HC-CHHATTISGARH-GST

area where the revenue department cannot be paralled. If you are collecting 144000 crores and you attribute it to the efforts of the revenue officials rather than the honest taxpayers, what do you call it?

Further, while in PV Ramana Reddy Vs Union of India - 2019-TIOL-873-HC-TELANGANA-GST, the contention that the prosecution for offences u/s 132(1) can be launched only after completion of assessment, was held to be not acceptable. Per contra, in Jayachandran Alloys Pvt Ltd Vs Superintendent of GST & Central Excise, Salem - 2019-TIOL-1021-HC-MAD-GST, it was held that the power to punish set out in section 132 would stand triggered only once it is established that an assessee has 'committed' an offence. It has to necessarily be after determination of demand due from an assessee which itself has to necessarily follow process of an assessment. The correctness of both the above cases is pending before a larger bench of the Supreme Court in Union of India Vs Sapna Jain 2019-TIOL-217-SC-GST.

Radha Krishan Industries Vs State of Himachal Pradesh - 2021-TIOL-179-SC-GST was clearly a milestone which provided an exhaustive interpretation of provisions relating to provisional attachment. It was held that power to order a provisional attachment of property of taxable person including a bank account is draconian in nature; exercise of power for ordering a provisional attachment must be preceded by formation of an opinion by Commissioner that it is necessary so to do for purpose of protecting interest of government revenue.

The rampant use of provisional attachment and recovery provisions shows tax terrorism.

### **Other important judicial rulings**

In Dharmendra M. Jani Vs Union of India - 2021-TIOL-1326-HC-MUM-GST, the Bombay High Court rendered a split verdict on constitutionality of section 13(8)(b) which makes the place where of supplier the place of supply in case of intermediary services. Now, it is pending before a larger bench. However, on the same issue, the Gujarat High Court has upheld its validity in Material Recycling Association of India Vs Union of India - 2020-TIOL-1274-HC-AHM-GST, but to be fair to the latter, the submission made before the Bombay High Court

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**Businesses are hopeful that the government will continue to take measures to mitigate the cascading impact of taxes, reduce ambiguities in the law and rationalise legislation. Have we not heard these conclusions umpteen times being written over and over again?**

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were more elaborate.

Builders Association of Navi Mumbai Vs Union of India - 2018-TIOL-2767-HC-MUM-GST, the question was whether City Industrial and Development Corporation of Maharashtra Limited ('CIDCO'), an agency created under an act of the government, was liable to collect GST on the total one-time lease premium amount payable by the successful allottee. It was held that activities performed by CIDCO cannot be equated with activities performed by sovereign or public authorities under the provisions of law, which are in the nature of statutory obligations are excluded from the purview of the CGST Act. Therefore, it was taxable under the CGST Act.

In Union of India Vs Mohit Minerals Pvt Ltd 2022-TIOL-49-SC-GST-LB, the court did not agree with the argument that the recommendations of the GST council are binding on parliament or state legislatures. The Government, while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A(4) are binding on the legislature's power to enact primary legislations. Ultimately, it was held that notifications which make the importer of goods as the person liable to pay IGST on supply of services by a person located in a non-taxable territory to another person who is also located in a non-taxable territory, by way of transportation of goods by vessel from a place outside India upto the Customs Station of clearance in India, are ultra vires the provisions of IGST Act. The supply of





service of transportation of goods by a person in a non-taxable territory to another person in a non-taxable territory from a place outside India upto the Customs Station of clearance in India, is neither an inter-State supply nor an intra-State supply; thus, no IGST can be levied and collected from the importer. A simple case made enormously complex by the legal minds involved.

In *Munjaal Manishbhai Bhatt Vs Union of India* 2022-TIOL-663-HC-AHM-GST, where land value is ascertainable, paragraph 2 of Notification No. 11/2017-CT (Rate) which mandates a deduction of 1/3rd value on land, was held not sustainable. It can be applied only at the discretion of the taxable person or in circumstances where the true worth of property or an undivided stake in land is unknown.

### **Conclusion**

One will have to commend the government for introducing this reform and there is no two ways about it. Now, with all the strides and pitfalls of GST laid out above, it can only be said that it is still

a long way to go for the GST administration to achieve the full potential of GST and make it a true “good and simple tax”. Businesses are hopeful that the government will continue to take measures to mitigate the cascading impact of taxes, reduce ambiguities in the law and rationalise legislation. Have we not heard these conclusions umpteen times being written over and over again?

If GST has to be a success, the State government officials will have to be trained in GST adequately and the “intelligence” officers should be stopped from displaying their arrogance. Tax payers must be treated with respect and it is clear that if you are collecting a huge amount of GST, 99% of it comes from honest tax payers and less than 1% from enforcement. Recognition of this principle would go a long way in establishing trust in action than in words. Further, timely setting up of tax tribunals with judicial members from the tax background along with abolition of the advance ruling facility as it presently exists will go a long way in building trust in the system. 🇮🇳



SNAPSHOTS

1

The initial period of GST saw challenges to every other provision of the good and simple tax as being ultra vires but this phase soon fizzled out

2

The Supreme Court, as always, is the beacon of hope for the taxpayer as well as the taxman

3

Lamda (The Language Model for Dialogue Applications) is a breakthrough technology that Google says can engage in free-flowing conversations

# GST LOVE IN THE STARS

GST is a game changer for the Indian economy and the sooner one realises it, the better. GST was born by subsuming 17 levies like excise duty, service tax, VAT and 13 other cesses prevalent in the country

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**SUNIL ACHUTAN**  
Senior Editor, TIOL

**1**ST JULY 2017 was the 26th Saturday and the 182nd day of the year 2017 leaving only 183 days for the rest of the year. GST was born by subsuming 17 levies like excise duty, service tax, VAT and 13 other cesses prevalent in the country. Something odd, yes...the numbers 1, 07, 13, 17 and 2017.

The Zodiac sign of the new born is Cancer.

The prediction - *Cancerians born on July 1 are extraordinary people who spend their entire lives striving for perfection. They have great emotional fragility, yet their spirit is actually strong. Even though they are good-hearted and generous, these people seem to draw complications and controversy into their midst.*

## **Teething Problems**

Five years down the line and the prediction comes somewhere closer to the truth!

Many go head over heels in calling GST a good and simple tax. So, I too thought, once in a while, it is good to call it a good and simple tax! And likewise, feel it too!

Actually, the play with the words upon the introduction of the simple tax was something I labored the most.

The magic words - One Nation, One Tax – do not mean a single rate of tax in the entire country – it only means, a single type of Tax and this single tax can metamorphose into various forms viz. CGST, SGST, UTGST, IGST, Compensation Cess and many more as the years go!

Not that even after five years the fact that GST does not have a Tribunal of its own or for that matter borrowed from an existing body to redress its disputes, is much of a concern as our High Courts are adept at taking the disputes head on. Supreme Court, as always is the beacon of hope...for the taxpayer as well as the taxman!

The initial period saw challenges to every other provision of the good and simple tax as being ultra vires but this phase soon fizzled out. Then came challenge to notifications and the CBIC Circulars just like what used to happen in the pre-GST era. There may be many notifications/Circulars awaiting their fate – an existential crisis of sorts! May be, by the time we become a USD five trillion economy, these issues too would be sorted out.

The imposition of late fees for the delay in filing a return is/was an enigmatic issue.

On some occasions, the late fees were waived and on other, the return filing date itself was extended. The primary aim – to grant relief to an assessee for the tax is as good and simple as it gets!

### **Advance ruling orders – a worth read!**

As for the illustrious body giving rulings in advance, may be, it is time to bring in some uniformity – no, not in the judgments per se but the preamble; the drafting of the orders passed, to be precise.

Every other authority has his own sweet way of penning an order, running into a dozen or more pages - the more the submissions by the applicant, the more the paragraphs, not to mention retaining the same font as far as possible – copy paste at play!

But then, tell me frankly, what does a reader do – no, not pore over the cumbersome order, but only the first and the last paragraph – the question on which a ruling is sought and the ruling – everything in between is for the applicant, not for anyone else! After all, the law says that the ruling is for the applicant only. This is what is meant by Simple tax.

I always wonder as to why the fee for filing an application for advance ruling is Rs.5000/- x 2 when the fact of the matter is that another august body like the Customs, Central Excise and Service Tax Settlement Commission only charges Rs.1000/- as application fee. Incidentally, there is no provision for refund of the application fee if the application is rejected at the threshold.

### **Bogus invoice industry**

Be that as it may, I always ogle at the figures (in crores) of bogus invoices and ITC fraud that is regularly splashed across the national and regional newspapers and tell myself – our country is not at all poor, the only thing is that money is only with the rich! These figures are never in single digits but always in two or three digits – in some of the model states these figures aim to cross the fourth digit too. Many are arrested and we do not always aim to know what happened thereafter. Even the pink newspapers are not that keen to follow up. Each such news item/press release ends with the following profound words - *CGST officers are using data analysis and network analysis tools to identify and trace the potential fraudsters. The CGST officers will intensify this drive against the tax evaders in the coming days.*

So, may be, data/network analysis tools are the weaponry that is currently available with the officers and once the drive is intensified, the tax evaders would be banished from our land.

I recall the poor cousins of these ‘tools’ which were called Annexure-D in the days of yore.

### **Flashback**

The procedure back then was a straight forward one. With every RT-12 (return), the assessee would along with the duplicate copy of the manufacturer’s gate pass/invoice bring an Annexure-D duly filled with the details of the gate passes/invoices and the duty payment on the raw materials/inputs on which MODVAT credit had been taken, during the month. The Range Superintendent will deface the duplicate copy of the manufacturer’s invoice or the subsidiary gate pass or registered dealer’s invoice indicating the receipt of the goods with the words “MODVAT ALLOWED - INVOICE NOT TO BE USED AGAIN”.

Subsidiary gate pass was another monetising phenomenon in those days. The jurisdictional Range Superintendent issued these subsidiary gate passes at the request of the dealer who sought to clear either the entire quantity procured by him from the manufacturer or a part of the consignment. The Subsidiary gate passes helped the consignee in getting his due share of MODVAT credit for the inputs procured from the dealer.

The photocopies of the input gate passes/ subsidiary gate passes/dealer’s invoice always

accompanied the return.

The Annexure-D, in reality, was meant to be sent by registered post AD to the consignor's jurisdictional Range Superintendent for ascertaining the veracity of the document particulars and the duty payment thereon. More often than not, the consignee assessee himself used to get this Annexure-D duly signed by his jurisdictional R/S and get it cross-verified by the consignor's jurisdictional R/S.

So much for honesty and transparency and more importantly ease of doing business!

On the only occasions when a MODVAT credit

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**The magic words - One Nation, One Tax – do not actually mean a single rate of tax in the entire country – it only means a single type of Tax and this single tax can metamorphose into various forms viz. CGST, SGST, UTGST, IGST, Compensation Cess and many more as the years go on!**

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availment fraud was detected by the premier investigating agency DGCEI, it would send ripples down the spine of many an assessee and many an officer but there were no social media then to spread this message far and wide.

Trust was of primordial importance those days and assessees tried to follow honest business practices excepting, of course, those who could not live with it!

### **Artificial Intelligence - Lamda**

May be, newer tools of sniffing out the rotten apples by using AI would soon be seen in the CGST armoury what with the sacked Google Engineer Blake Lemoine claiming that Lamda [The Language Model for Dialogue Applications - a breakthrough technology that Google says can engage in free-flowing conversations] was showing human-like consciousness (impersonating humans).

Till then, let us comfort ourselves with the fact that as per available reports, the volume of ITC fraud vis-à-vis the total GST collection was only 1.01 % in 2018-19; 0.65% in 2019-20 and 1.51% in 2020-21. In April-June period of 2021-22 FY, 818 such fraud cases were booked involving Rs.4002 crores.

As if to bolster the fact that the good and simple



tax is working miracles for the Indian economy, the gross GST revenue collected in the month of July 2022 stood at Rs 1,48,995 crore, which is the second highest ever since the introduction of GST and up 28% year-on-year, as per the communique brought out by the Finance Ministry.

Okay, fine...what next.

Every five years, many good things happen on the Indian political map.

### Separate Tribunals

The GST Tribunal is going to take some more time to happen. And maybe, it may again encounter some opposition/challenge regarding its constitution.

Perhaps, we need to find an easy solution to this Tribunal conceiving. Let us have separate Tribunals in every State which cater exclusively to cases booked by the State GST authorities as well as the Central GST authorities respectively. Constitution of each Tribunal Bench can follow the same yardstick as that followed by CESTAT.

### Solutions in sight

The Apex Court has [2022-TIOL-57-SC-GST] directed the GSTN to open the common portal for filing forms concerned for availing transitional credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f 01st September 2022 to 31st October 2022. [By its order dated 2nd September, 2022 [2022-TIOL-75-SC-GST], the application filed by UOI seeking extension of time was allowed by the Supreme Court. The time for opening the GST common portal is now extended for a further period of four weeks.]

These forms were supposed to be filled and filed upon introduction of GST in FY 2017-2018. Technical and a host of other glitches, which cannot be described, resulted in many missing the ITC bus or just landing on the footboard. Now, they have a chance to redeem in the coming festival months. Thankfully, for the department, although the apex

Court has granted a 90 days window period to verify the veracity of the claim of transitional credit, they know that in respect of the epoch making FY 2017-2018, they have many aces up their sleeve insofar as making any recoveries, if needed, is concerned.

Just for the record, Section 44, which prescribes filing of Annual return, before its substitution by the Finance Act, 2021, declared that the annual return for the period from 1st July 2017 to 31st March 2018 shall be furnished on or before the 31st January 2020. So also, by the notification 13/2022-CT dated

5th July 2022, the Government, on the recommendations of the Council, has extended the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the CGST Act, 2017, for recovery of tax not paid or short paid or of Input Tax Credit wrongly availed or utilized, in respect of a tax period for the Financial year 2017-2018 up to the 30th day of September 2023.

If it seems a bit confusing, blame yourself. Because GST is so simple!



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**Trust was of primordial importance those days and assessees tried to follow honest business practices excepting, of course, those who could not live with it!**

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### Simplicity personified

What better example of simplicity than the meticulously crafted three verbose CBIC Circulars 177, 178 and 179, all dated 3rd August 2022, clarifying in plain English the many pertinent issues which, somehow, the assessee failed to find a solution to and for which they had made representations to the Board.

For the record, taking pains and issuing almost 180 Circulars and many more instructions etc. in sixty

months is no mean task. Not to mention the hundreds of notifications that also took birth in this cacophony.

After all, this is too small a penance undertaken for the benefit of the Trade – an outpouring from the heart's core. GST is a game changer for the Indian economy and the sooner one realises it, the better.

Naysayers, excuse. Please find something else to chew upon! 🚫



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2022 | A W A R D S

ENRICHING TAX SPACE

CHAPTER - V

**GST**

**INDIA VS INTERNATIONAL  
SLIVERS OF EXPERIENCES**



SNAPSHOTS

1

GST was never meant to be a one-size-fits-all tax. Like shoes, each person tries to find his best fit. But its essential attributes are contained in International VAT Guidelines

2

75% of the countries implementing VATs after 1990 have a single rate. India is in the company of four other countries that have 4 or more rates - Ghana, Italy, Luxembourg and Pakistan

3

Social justice is best addressed through the instrumentalities of direct tax or DBT. Expecting a simple and C-efficient GST, would be like having the cake and eating it too

# GST: GOOD & SIMPLE OR TROUBLESOME

Lack of harmony in pivotal tax provisions and rates, origin-based taxation (Octroi, Purchase Tax and CST), loss of credits on inter-state movement of goods, and absence of cross utilization of tax credits between Central and State-taxes were just a few of the contributors to the bad cholesterol of cascading resulting in blockage of the economic arteries



**V.K.GARG**

Ex-IRS Tax Professional  
Presidential Medal winner

**A**NYONE who had driven in the past in Chandni Chowk in Old Delhi would know that it was amongst the toughest places to drive anywhere in the world. The presence of practically all modes of transport, from the hand-pulled carts and manual rickshaws to expensive cars, with hawkers occupying the sidewalks, made it a nightmare for even the best of the drivers. Ushering GST in India faced a somewhat similar navigational challenge.

Lack of harmony in pivotal tax provisions and rates, origin-based taxation (Octroi, Purchase Tax and CST), loss of credits on inter-state movement of goods, and absence of cross utilization of tax credits between Central and State-taxes were just a few of the contributors to the bad cholesterol of cascading resulting in blockage of the economic arteries.

The top five states collected more than half the taxes while the bottom half accounted for less than 10%. Successful persuasion of all the states to give up their sovereignty in an area of immense

state influence and power and to join a common platform is an example with no parallel anywhere in the world. To that extent, GST deserves credit, celebrations and commendations.

But many feel that the goodness of Indian GST ends with the dictum: Any GST is better than no GST. Their concern arises from the understanding that VAT systems are difficult to repair and Indian GST may have missed the proverbial bus.

### Weighty VAT

GST was never meant to be a one-size-fits-all tax. Like shoes, each person tries to find his best fit. But its essential attributes are contained in International VAT Guidelines: burden of VAT should not fall on businesses, similar businesses should suffer similar taxation, VAT should not impact business decisions and imports and exports should be neither advantaged nor disadvantaged. The key instrumentalities to achieving these are fewer tax rates and exemptions, liberal input credits and a technology-reliant system of compliance.

Many judge VAT by its Collection-efficiency (C-efficiency) Ratio also known as VAT Revenue Ratio (VRR) i.e. ratio of actual to potential revenue.

Lower the ratio, the higher the distortions. Just to provide a global context of this ratio: New Zealand: 0.95 (near perfect), Japan: 0.72, EU: 0.56 and Canada: 0.49. India is likely to be close to 0.40. A modern GST ushered in 2017 should have aimed for a number not less than 0.60.

The following discussion will address some of these key areas while remaining mindful that the best should not become an enemy of the good. Nearly 75% of the countries implementing VATs after 1990 have a single rate. India is in the unenviable company of only four other countries that have 4 or more rates: Ghana, Italy, Luxembourg and Pakistan. It also has the second highest tax rate behind Chile. Apart from the multiple levies, it is the distorting character of rates across similar and substitute supplies that remains a big concern. Supplies are distinguished based on a brand, price, end-use, ITC taken or not, distribution channel, location and/or status of the supplier, location of supply, nature of the fuel used in case of certain vehicles and the impact on society. Tax liabilities may also change depending on how goods are packed or marketed.

A rather glaring example is the transport sector

TRANSPORT MODE AND GST RATES			
TRANSPORT MODES	GST RATES	TRANSPORT MODES	GST RATES
Road (except GTA, Courier)	Nil	Rail	5% with some ITCs (for Govt.) & 12% with all ITCs (for Pvt.)
GTA	5% (without ITC) & 12% (with ITC)	Air	Nil (domestic) and 18% (international)
Hiring of vehicle	12% & 18% (with or without fuel)	Pipelines	5%, 12% & 18% (depending on material transported and ITC taken)
Courier	18%	Inland waterways	Nil
Multimodal	18% (domestic) & applicable rate for main mode for rest	Ocean transportation	5% (with ITC of vessel & input services) taxed once if CIF but twice if FOB/Charters



which has taken it to the complete extreme with little rationale in a situation where the goods are merely being moved from one place to another (See table).

### Number Is Issue

Another example is land. Though the sale of land is outside GST, its leasing by Govt. agencies for industrial parks are taxed at @5% while the rate of leasing by others is @18%, which understandably are ineligible for the tax credit. It is felt that such distortions in basic factors of production are entirely unnecessary.

Tax rates were initially set largely as a summation of the average of various taxes applicable before GST to minimize possible disputes within the Council and protect revenues. This resulted in the import of all the pre-GST imperfections in the new GST rates. For example, there was no need to exempt transportation by road and inland waterways, which was a constitutional necessity in the previous regime (relevant entries fell in List II). A classic case was fully exempting Prasad (normally, sweets offered at places of worship) while taxing sweets @5%, Chikki (also another kind of sweet) @ 12%, many eatables @18% and those with chocolates @28%.

The problem of multiple tax rates is further accentuated by too many exemptions and

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## Many judge VAT by its Collection-efficiency (C-efficiency) Ratio also known as VAT Revenue Ratio (VRR) i.e. ratio of actual to potential revenue. Lower the ratio, the higher the distortions

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exclusions. The exclusions are in two categories: (1) By Constitution: Alcohol; and (2) By GST enactment: petroleum, agriculture, land, completed buildings, securities and actionable claims to bar some exceptions. Furthermore, several other areas are exempted: electricity, basic food items, newsprint, hand tools, healthcare, education, social welfare, culture, religion, recreation, justice delivery, leasing of residential property, non-fee-based financial sector, government and non-profit institutions and transport in certain sectors. The number of exclusions and exemptions, when compared to any global regime of some significance, is too large and their coverage too wide. Additionally, there are reduced rates without input tax credits in the case of restaurants, rail transportation, GTA, residential real estate, hospital rooms (> Rs 5,000), and the distribution



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**The world is fast embracing the technologies of the Fourth Industrial Revolution. These technologies can help in making GST compliances driverless if the irritants in the law requiring manual interventions are removed**

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sector up to Rs 1.5 cr. per annum and services-suppliers up to Rs 50 lakhs per annum. Nearly 50% of the basket constituting the Consumer Price Index is exempt and more than half the GDP is either outside the GST or tax credit chain.

While the GOM constituted on rate rationalization may address some of these issues by reducing both the number of rates and/or exemptions, the larger issue of micro-managing the economy and delivering social justice through GST requires some serious thought. Social justice is best addressed through the instrumentalities of direct tax or DBT. Expecting a simple and

C-efficient GST, while retaining such rate-distortions and exemptions, would be like having the cake and eating it too.

Every tax credit denied in respect of legitimate business costs imparts this otherwise indirect tax the character of a direct tax. Indian GST is far more regressive when it comes to denying tax credits even in respect of bonafide business expenditures e.g. construction of civil structures, telecom towers, transportation pipelines, gifts for business promotion, business samples, goods lost in fire and CSR expenses. There are other indirect denials too: bad debts, credits due to place of supply issues, inputs used in the manufacture of supplies which are taxable under a law other than GST law or vice versa, invoice mismatches due to supplier-end issues and payment delays.

Another equally disturbing feature is to deny tax credits to many sectors altogether (by taxing at lower rates), practically taking these sectors outside the tax credit chain. This creates huge opportunities for diversion of tax-paid invoices to other businesses, the incentive for self-supplies, and attempts to bundle supplies to avoid tax (e.g. transportation of fruits and vegetables by a

restaurant as CIF contracts).

A rather glaring distortion is a denial of tax credits relating to the use of power as it is presently exempt. However credits are admissible to inputs going into the generation of power by way of self-supply through captive power plants running on environmentally unfriendly coal, but not on natural gas which is outside GST. Also, the concessional C-form for procuring non-GST inputs for GST supplies has been discontinued thereby further adding to cascading.

It would be reasonable to assume that the incremental tax burden of all these measures would place an additional burden of 2% to 5% of the taxable value on businesses depending on the sector. That's the advantage the imports would have over domestic supplies and the disadvantage the exports would suffer in global markets.

### **Indispensable Simplicity**

A GST with few tax rates and exemptions, and with liberal tax credits, is a sine qua non for a simple GST. Even though it's tough to imagine India adopting a single rate, the minimum that India should try is to have not more than two rates for a Chapter, ideally even a Section. There are alternate methods (e.g. option-to-pay-tax scheme) to maintain the sanctity of input tax credit chains of many excluded and exempt sectors into GST without effectively taxing them and thereby impacting either the states' autonomy or their revenues.

The GST Council could also think of exempting and thus eliminating intermediaries like distributors, brokers, agents and their respective sub-distributors, sub-brokers and sub-agents who provide B2B services and thus bring the effective tax base to a more manageable number with little, or perhaps positive impact, on tax revenues.

It appears that close to 75% of the GST revenue accrues from less than 5% of the taxpayers and close to 50% from less than 1%. Is it fair to expose them to the vagaries of the same compliance system that is targeted at fly-by-night operators? They can be given treatment on the lines of the Authorized Economic Operator scheme of Customs allowing them accelerated refunds and adjudications, centralized clarifications on contentious issues (ARA are often revenue-driven),

and eliminating irritating interventions like blockage of credits for petty reasons. Thus close to 75%, or even higher, revenue can be liberated from the rigor of the GST and monitored through periodic audits and, in exceptional cases, through enforcement actions. They can also be exposed to higher penalties in case of willful transgressions.

Centralized registrations across geographical territories and common registration for a business group of multiple related parties will further help in eliminating intra-business and distinct party transactions without impacting either revenues or their respective distribution to States. This will also pave the way for comprehensive audits on a nationwide basis thereby eliminating multiple audits of the same entity while enabling the tax officers to see and appreciate the big picture for meaningful interventions.

The world is fast embracing the technologies of the Fourth Industrial Revolution. These technologies can help in making GST compliances driverless if the irritants in the law requiring manual interventions are removed. It is always a tough call to strike the right balance between the needs of facilitation and enforcement. However, the contours of enforcement of economic law, still in its nascent stage, have got to be much different from laws that deal with criminal offenses. The government would do well to make the process of enforcement far more transparent with due accountability to ensure that various tools available at the hands of officers are put to judicious use only after carefully and holistically weighing the seriousness of the challenge and the consequences of their actions, both direct and collateral.

Eventually, the taste of the GST would be in the eating. Raising the C-efficiency of GST on the one hand and reducing the cost of compliance for businesses on the other will make this pudding tasty. Chandni Chowk may have been given a facelift and become more hospitable to some but its make-over to be truly meaningful will have to be such that the common man finds it tempting enough to visit in preference to the swanky malls which have mushroomed all around and continue to charge hefty margins taking advantage of the surmountable constraints and limitations of a market like Chandni Chowk. 🚫



SNAPSHOTS

1

VAT has been popularised in developing countries, since the 1980s, especially by the IMF, as a major source of revenues, and for modernising tax administratio

2

There are similarities in recent major reforms to the VAT systems in China and Mexico, with very different political systems

3

Following the 2008-10 financial crisis, countries like Portugal replaced distortive direct taxes, including on payrolls, by the VAT to reduce costs and encourage exports



# VAT: TIGHTER DESIGN KEY DETERMINANT FOR SUSTAINABLE GROWTH

There is a need to rethink the design and administration design and administration of VAT (known interchangeably as GST) to ensure sustainable development, based on the recent experiences of countries with very different political systems

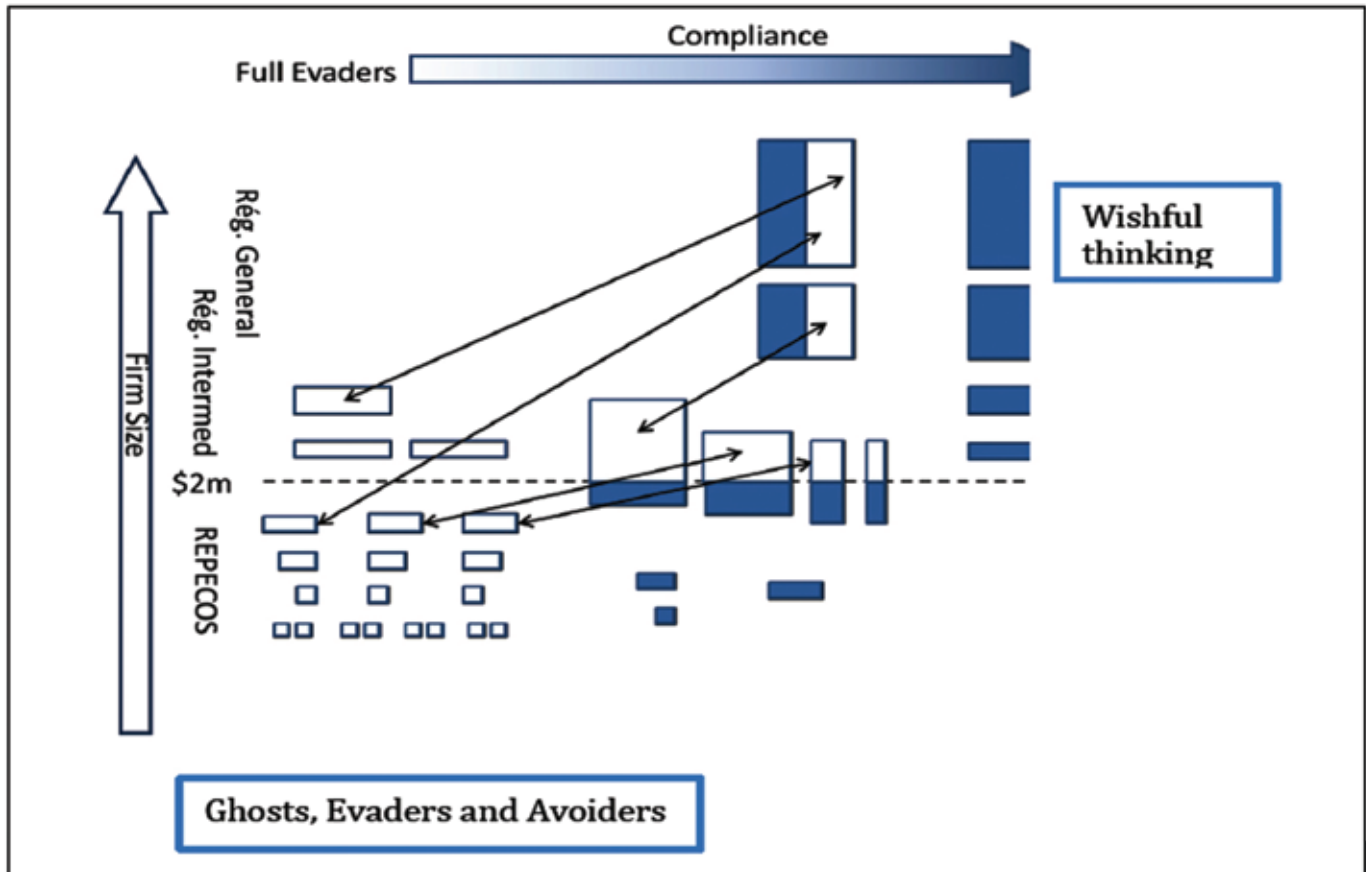


**EHTISHAM AHMAD**  
Formerly with IMF, London  
School of Economics

**T**HE design and administration of the VAT (referred to interchangeably as GST) need to be reconsidered to ensure sustainable development, drawing on recent experiences from countries with very different political systems. It is important to balance revenues with distributional implications, environment, and efficiency (Ahmad and Stern 1991). This is warranted to take advantage of the information generation capabilities of VAT with full coverage to address issues of spatial integration, SEZs, and addressing tax avoidance, cheating, and leakages in the income taxes. This brief note draws on experiences from federal Mexico, together with a unitary but multilevel state China to inform the debate in South Asia.

There are similarities in recent major reforms to the VAT systems in China and Mexico, with very different political systems. These experiences illustrate that integrating the VAT base and administration is key to creating a level playing -field,

**FIGURE 1: INCENTIVES TO CHEAT IN MEXICO**



Source: Ahmad (2021)

encouraging economic integration and domestic linkages, especially with respect to SEZs, and generating additional revenues as well as investments. Digital approaches to tax administration and cash management facilitate the needed transformation. However, political economy considerations require that VAT reform measures be determined jointly with transfer design, and new own-source tax handles need to be developed for subnational governments to access sustainable credit for financing needed investments.

**Design of VAT/GST**

VAT was originally designed in Europe with efficiency in mind, to remove the cascading with then predominant turnover taxes, which added to the cost of doing business and discouraged exports. Harmonisation of the VAT was a key element in establishing a common economic space in the EU. VAT has been popularised in developing countries, since the 1980s, especially by the IMF, as a major source of revenues, and for modernising

tax administrations (Tait 1988). To “ease” administrative burdens, the IMF typically recommended raising the registration threshold and concentrating on the largest taxpayers.

Following the 2008-10 financial crisis, countries like Portugal replaced distortive direct taxes, including on payrolls, by the VAT to reduce costs and encourage exports. A similar argument was made by Santiago Levy (2008) for Mexico, to use the VAT to replace the formal sector payroll tax that added to the cost of doing business and contributing to informality. However, the Mexican VAT prior to 2013 was not very effective in raising revenues, given exemptions and multiple rates (often for the same goods), and the base was split with the states administering the small taxpayer regime (REPECOS). This split permitted large taxpayers, under the Federal SAT to disguise activities, employment, and profits by engaging with largely invisible REPECOS supplies. This made it easy to evade VAT, excises, and income taxes (see Figure 1 and Ahmad 2021). This led to a

tax/GDP ratio of just over 10% (like Pakistan).

The adoption of the VAT in the federal countries in South Asia was hampered by the pernicious legacy of the Government of India Act 1935 that split the major tax base between the colonial central government and elected provincial/state governments. Customs and excises were retained by the centre and the less tractable sales taxes on goods were assigned to the provinces/states, and this was maintained in independent India[1].

The problems with the distinction between goods and services in India are well known, including an increasingly blurred distinction between the two, and complexity facing taxpayers (see e.g., Ahmad and Poddar, 2011).

Increasing administrative burdens and legal disputes over the base led to the landmark 2017 GST reforms integrating the VAT bases and excises and eliminating 13 other charges. While there has been improvement in the business climate and revenue performance (Kelkar et al., 2021), issues remain concerning “compensation” or own-source revenues for the states, the impact on informality, and attracting FDI.

The central GST on goods in Pakistan operated much like an excise, often with use of reference prices, leading to backward shifting of the tax onto producers. Extensive exemptions were introduced leading to breaks in the value chain—reintroducing cascading as cumulative input taxes could not be offset against VAT liabilities on sales. This also led to difficulties in providing adequate export refunds, damaging export potential, and opening the gates to corrupt practices.

### **Political economy of Multilevel VAT reforms**

One of the best examples of the political economy of major tax reforms was in China in 1994, when a VAT (on goods) was introduced along with the establishment of a central tax administration for

the first time. A set of intergovernmental transfers was needed to ensure that no province would lose as a result—with a lump-sum stop loss transfer in perpetuity to guarantee 1993 levels of provincial revenues; origin-based share of the new VAT that benefitted the advanced provinces; and an equalisation transfer system to benefit the poorer provinces (Ahmad 2018). The 2000 Australian GST reform also used the principle of linkage with the equalisation system to ensure political acceptance as state level sales taxes were eliminated.

Attempts to reform the Mexican VAT by successive governments from the mid-1990s to 2012 failed given opposition by some states and vested interests able to block measures in

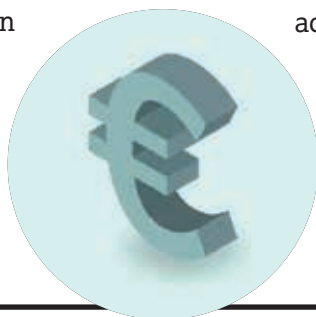
Congress and the Senate. A less ambitious effort was passed in 2007 to block cheating in the income taxes by introducing a minimum tax on a value-added principle credited towards income tax liabilities. It used the Chinese example of adjusting intergovernmental transfers to ensure that no state would lose as a result.

### **Integrating the VAT base for Investment and**

#### **Stopping the Cheating**

A comprehensive reform was carried out in Mexico in 2013/14, and the political economy issues were handled by a combination of taxes offsetting gainers and losers. This also led to a rationalisation of the VAT coverage and rate structure for business-to-business transactions (non-processed foods were not taxed). A key element of the reform was the integration of the REPECOS regime with the regular VAT with the requirement of electronic invoices, effectively eliminating the registration threshold. This made it more difficult for the large taxpayers to hide transactions, for all taxes including the VAT, excises, and income taxes.

The Mexican tax/GDP ratio increased to almost 15% in three years. Not surprisingly much of the



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**VAT was originally designed in Europe with efficiency in mind, to remove the cascading with then predominant turnover taxes, which added to the cost of doing business and discouraged exports**

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increase was generated on account of large taxpayers who found it harder to engage in “informal” transactions. Also, an improved income tax was a consequence of a tighter VAT design. The result was a huge expansion of FDI in Central Mexico, well beyond the northern maquiladora (SEZ) zone. Full VAT refunds regardless of location of sourced inputs, made the whole county an effective SEZ. The use of e-Invoicing by the retail sector makes it easier for US companies, like Walmart, to “nearshore” supplies from Mexico.

In 2015, to retain competitiveness in the face of rising wages and appreciating exchange rate, China integrated the subnational business tax mainly on services with the national VAT. This reform was expected to lose revenues or be revenue neutral at best. But revenues increased, as in Mexico, due to the tighter operation of the VAT and its impact on the income taxes. This reform enabled China to remove the borders around the main SEZs, like Shenzhen, and is a key element in the agenda to create high-tech zones with interactions between several hubs (e.g., nine cities in the Greater Bay Area; or across three provinces in the Yangtze River Delta). All taxes are now collected by the STA.

### Further Work Agenda

Sustainable growth requires subnational access to credit to finance public infrastructure. Shared revenues and central transfers, even if untied, are not appropriate to anchor subnational borrowing, as revenues cannot be increased by a recipient jurisdiction to service liabilities. More appropriate handles could include a state/provincial surcharge

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**One of the best examples of the political economy of major tax reforms was in China in 1994, when a VAT (on goods) was introduced along with the establishment of a central tax administration for the first time along with revenue sharing and a fiscal equalisation system**

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or piggy-back on an integrated income tax, or a national carbon tax (or excise on petroleum products). This is part of a research agenda in all the multilevel countries mentioned in the note, including in India and Pakistan. ⓘ

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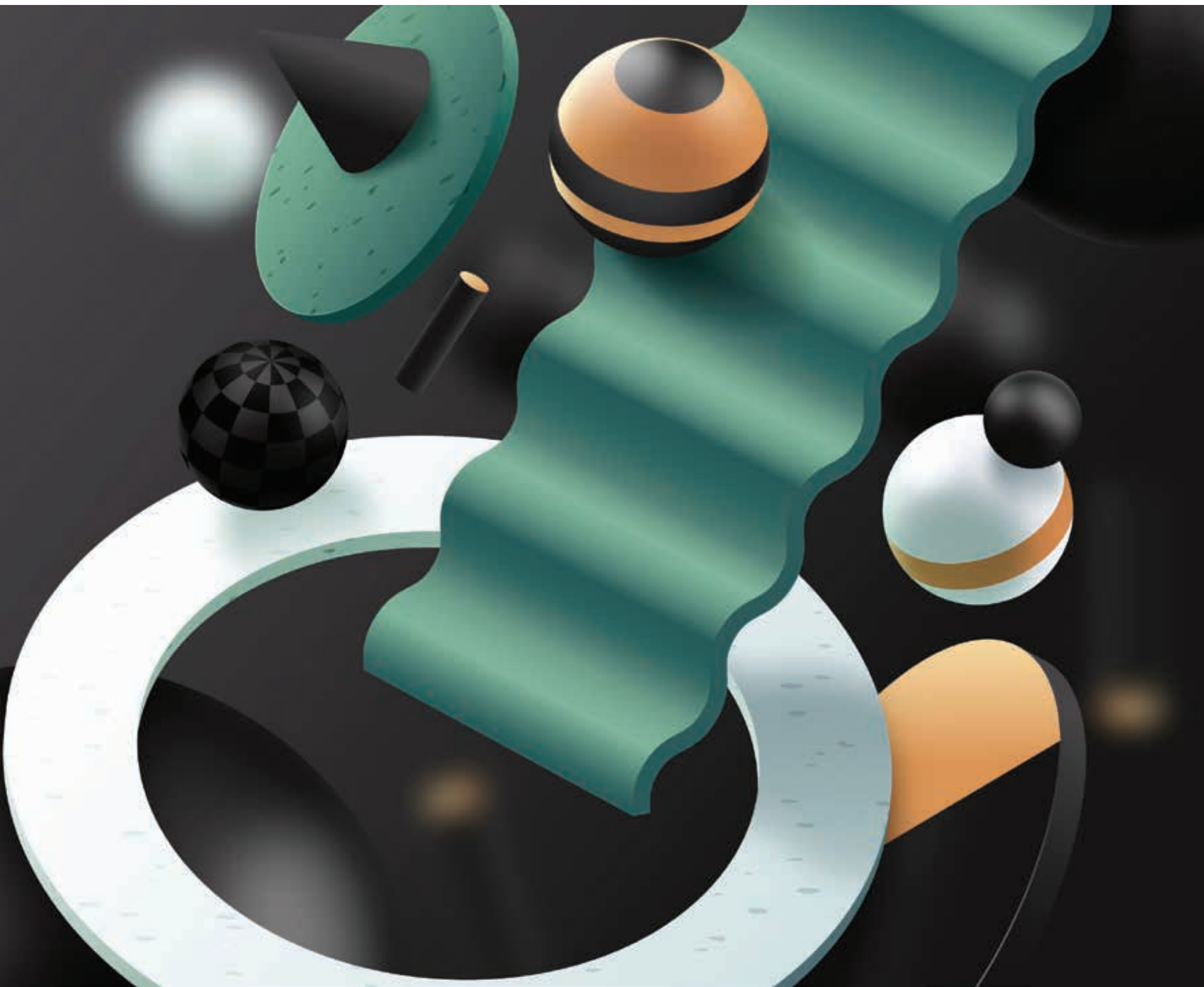
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SNAPSHOTS

1

Blockchain has emerged when many in the tax world are speculating about the efficacy and relevance of the current tax system in the modern digital era

2

3D printing, a revolutionary process of making solid objects from the instructions in a digital file, is creating unprecedented opportunities to customise products and reduce manufacturing cost

3

A heated debate on 'whether to tax robots or not' continues worldwide since robotic technology is feared to result in mass unemployment

**GST**

# SHAPING THE NEW TAX CULTURE

Just as independent India was born with many congenital disabilities, the birth of GST was also plagued with many defects. These flaws were ignored amidst the enthusiasm, hopes and aspirations born of the 'birth' of this 'promising child', which soon started showing up



**SHAILESH SHETH**  
Advocate

*“The biggest tax story of the last third of the 20th Century was the Value-added Taxes (VAT). From its tentative beginnings in the reform of the French Production Tax in the early 1950s, by August 2000, some form of VAT existed in at least 123 Countries. Few fiscal innovations have been adopted so widely and quickly.”*

- [Bird and Gendron; 2001]

**A**T midnight on June 30, 2017, India made a grand attempt to unshackle herself but this time, from the irrational, archaic and complex indirect tax regime that had prevailed since independence and ushered in a truly revolutionary and transformative tax regime called 'Goods and Services Tax' (GST) and to join the 'VAT Club International' having more than 160 countries as its members then. However, just as independent India was born with many congenital disabilities, the birth of GST was also marred by many defects. These defects, ignored amidst the excitement, expectations and euphoria created by the 'birth' of this 'promising child', soon became visible and have haunted and continue to haunt all the stakeholders to date!

## **The Fault Lines**

The fault lines threatening the very structure of GST are myriad. Exclusion of several commodities from GST and the resultant

distortion of the credit chain, significant but unreasonable restrictions placed on the entitlement of ITC leading to a cascading effect of tax, multiple tax rates, a long list of ever-present exemptions, low threshold, deceptive and distortive composition schemes, and complex and cumbersome business processes are but a few of the ills that have plagued the GST design from its inception. The badly conceived, poorly drafted, hastily implemented, blatantly misinterpreted and arbitrarily executed GST laws have only added to the taxpayers' woes! The lack of awareness, preparedness, education and training of taxpayers, particularly in the MSME sector and the tax officers (particularly the state tax officers) about the fundamentals of this tax policy, its objectives, its short-term and long-term effects and the essential characteristics of GST laws have only added to the chaos and confusion witnessed in the last five years.

As if this was not enough, the GSTN Portal - the backbone of this 'Digital Tax' - started playing truant from day one! It soon became evident that those in charge had created an illusion about the capacity and preparedness of the GSTN Portal for the successful implementation of the new regime.

A mega reform like GST is a paradigm shift for a federal country like India. However, a fact sadly lost on almost everyone is that considering the psyche of the tax policymakers, tax officers and taxpayers and their set 'mindset', GST was going to be a 'Cultural Reform' and not merely a 'Tax Reform' or 'Business Reform' or 'Economic Reform'! The roots of many issues confronting all the stakeholders since the introduction of this reform probably lie in this lack of understanding about the true nature of this 'Mother of All Reforms' and its impact!

### **GST Design – Crying for a makeover**

What then, is the ideal 'GST Design' for India? As Rao [2011] puts it, "There is no unique or universal GST that is applicable in every country." The IMF's Fiscal Affairs Department, the leading 'change agent', has over the years evolved its own 'model' of an appropriate VAT for the Developing and Transitional Economies (DTE). However, the 'NOSFA principle' ('No One Size Fits All') has now been universally acknowledged as far as VAT design is concerned.

As Bird [2005] explains, "The questions that must

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**The lack of awareness, preparedness, education and training of taxpayers, particularly in the MSME sector and the tax officers (particularly the state tax officers) about the fundamentals of this tax policy, its objectives, its short-term and long-term effects and the essential characteristics of GST laws have only added to the chaos and confusion witnessed in the last five years**

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be answered in designing and implementing any VAT are in principle the same in all countries. But since the context within which they must be answered differs significantly from country to country (and indeed over time within any one country), it is only to be expected that different tax designs may be 'best' for different countries." Putting it in zoological terms, Bird and Gendron [2007] quips ".....GST is not a Gorilla or chimpanzee but a species of primates which allows them to choose the design which suits every country."

It is now acknowledged by all that the design of the Indian GST was seriously flawed and afflicted by severe congenital disabilities since its inception. No doubt, despite all its handicaps, this 'child' can still be credited with quite a few sterling achievements in a short span of 5 years. However, can we rest on our laurels over these achievements and continue to gloat over them ad infinitum? As this child is attaining maturity, it is time to take a serious look at the defects in the design. It is also vitally important to eliminate them as far as and as early as possible.

There is no gainsaying that the Indian GST design and structure desperately need a complete makeover. What it needs to have, to start with, are a minimum number of rates, moderate tax rates, minimum exemptions, a high exemption threshold, a seamless credit chain, comprehensive coverage of all goods and services to the extent possible, and





neatly defined key expressions, unambiguous laws, simple and clutter-free business processes, robust, independent, pragmatic and forward-looking dispute prevention and dispute resolution mechanisms. A truly historic tax reform like GST often gives rise to two broad categories of inconveniences, foreseen and unforeseen. Most of the inconveniences suffered mainly by the taxpayers were of the 'foreseen' category and could have been avoided. Nevertheless, now is not the time to cry over what it could have been but to concentrate on what it should be.

### **Changing Global Tax Horizons**

"Once a new technology rolls over you, if you're not part of the steamroller, you're part of the road."  
[Steward Brand]

Even while the GST Council faces formidable challenges of finding that elusive GST design that might fit the bill and a suitable matrix of business processes and of building a solid GST structure, the global tax landscape is going through a period of fundamental change. Changes have been triggered by the unimaginable advancement and rapid spread of technology, digitalisation, new supply chains and increased scrutiny of international tax practices! These changes will undoubtedly have a destabilising – if not devastating – impact on taxation worldwide, including the Indian GST, and will inevitably bring

forth formidable new challenges.

In the ensuing paragraphs, these technology-driven changes and their likely impact on the VAT system are briefly discussed.

### **Tax Challenges of a Digital Economy**

On March 16, 2018, OECD released 'Tax Challenges arising from Digitalisation – Interim Report 2018'. The Interim Report is a follow-up to the work delivered by the OECD in October 2015 under Action 1 of the Base Erosion and Profit Shifting (BEPS) Project, which was focused on addressing the tax challenges of the digital economy.

The Report states that digitalisation is transforming many aspects of our everyday lives, as well as at the macro-level in terms of how our economy and society are organised and function. The Report acknowledges the far-reaching impact of digitalisation and its disruptive effects, beyond the international tax rules, on other elements of the modern tax system, bringing forth opportunities and challenges. The digital economy has become increasingly entwined with our physical world. Is the Indian GST system fully geared up to address the challenges and seize the opportunities presented by digitalisation?

### **Blockchain Technology and Its Impact on the Tax World**

'Blockchain' – a relatively obscure technology until only a few years ago – has already stepped out of the theoretical world and entered the practical world. It is fundamentally changing the way businesses, people and governments operate.

'Blockchain', to put it simply, is a secure distributed ledger that simultaneously records transactions on a large number of computers in a network. In this type of secure, shared database, participants have their copies of the stored data. Strong cryptography ensures that transactions can be initiated only by certified parties, that changes are validated by participants collectively and that the outputs of the system are immediate, accurate and irrevocable.

### **Blockchain and Indirect Tax**

Indirect taxes like VAT are 'transaction-based taxes' and often follow chains of transactions and

their tax liabilities. Obligations are often “triggered” by critical events that must be documented and recorded securely.

However, by and large, the indirect tax systems have their foundations in physical transactions and trade. Blockchain has emerged when many in the tax world are speculating about the efficacy and relevance of the current tax system in the modern digital era. While the financial and business world is naturally excited about Blockchain, tax is one area in which this technology may profoundly impact. Blockchain’s core attributes, namely, transparency, control, security, real-time information and the ability to detect fraud and error, mean that it has significant potential for use in tax regimes.

Some of the possible near-term uses of Blockchain that could have an impact on indirect taxes are:

**a. Blockchain Regimes**

VAT and customs administrations could create blockchains for transmitting tax data and payments between taxpayers and government portals involving taxpayers in a single jurisdiction, or even multiple jurisdictions.

**b. Real-time Compliance and Reporting**

Blockchain could greatly increase the speed, accuracy and ease of collecting this data, thereby improving the quality of VAT compliance while reducing the cost of compliance.

**c. Tax Invoices**

In a Blockchain-based regime, a valid VAT invoice will require a digital fingerprint derived through the VAT blockchain consensus process. The entire history of the commercial chain (forward and backwards from a transaction) could be followed and scrutinised by a tax official sitting in his office, by a robot or by a customs officer at a border.

**d. Customs Documentation**

Blockchain can enable the customs officer to verify, with complete accuracy, various information and the origin and nature of the goods at every stage of the chain. The use of immediately verifiable information could also allow taxpayers to support claims for VAT deductions(or ITC) and customs rebates and reliefs.

**e. Combating Fraud**

Blockchain technology could also be useful in tracking if and when VAT has been paid and



reducing VAT fraud. Blockchain could also help to drive behavioural change because of the risks and consequences of non-compliance, which may even lead to ‘permanent exclusion’ from the blockchain network. In these ways, blockchain could likely help reduce the ‘tax gap’ to some extent.

**f. Smart Audits**

Using blockchain technology, indirect tax administrations could carry out independent risk analysis facilitated by artificial intelligence.

To sum up, Blockchain technology has tremendous potential to transform not only businesses but also tax regimes across the world. Blockchain has the potential to streamline and accelerate business processes, improve cybersecurity and reduce or eliminate the role of trusted intermediaries in industry after industry.

**3D Printing and its Impact on Taxation**

In 3D printing, we again have a new technology that could upend supply chains, business models, and customer relationships – entrepreneurship itself. 3D printing – a revolutionary process of making solid objects from the instructions in a digital file – is creating unprecedented opportunities to customise products and reduce manufacturing costs. The technology also raises tax, legal and policy implications for corporate leaders and global policymakers.

3D printing also presents a minefield of challenges for tax authorities worldwide. This is because almost all of the taxable value for a

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**For the Indian GST system, the frequent changes made post-introduction of GST indicate that the government is learning from its mistakes. In the words of Deng Xiaoping, it is ‘crossing the river by feeling the stones’. But let us not lose sight of the above formidable challenges that lie over the taxation horizon even while we shape (or reshape) our GST design and structure!**

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business selling a product to be 3D printed is contained within its intellectual property (IP) – namely, the digital file’s ownership and authorisation of its use rather than the manufacture, transport and point of sale of the product so manufactured.

### **Disrupting Long-Standing Business Models**

The question ‘where is value created’ lies at the centre of any discussion about the taxation of goods and services under the VAT regime. 3D printing disrupts the prevalent assumptions by transferring manufacturing from factories to printing devices located nearer the consumer, potentially even in their homes.

### **Intellectual Property Takes Centre Stage**

IP sets the stage for any discussion of 3D printing and taxation. Any 3D printing tax strategy must consider that IP ownership and authorisation will account for much more of a product’s value, and the tax authorities’ focus on IP is expected to intensify.

### **Transfer Pricing and Geographical Challenges**

Another tax challenge is the effect of 3D printing on transfer pricing within multinational companies since every time a company changes its supply chain, it must change how it shares costs related to taxable functions.

### **Double Taxation**

In a 3D printing world, the value of a product becomes more intangible than tangible. So, when tax authorities in different geographical locations ask where the base of a product’s profit is located, and who gets the right to tax it, they could come up with very different answers, setting the stage for double taxation.

### **Global Jurisdictional Challenges**

The businesses will also face location-sensitive tax questions related to globally distributed manufacturing via 3D printing, including permanent establishment (PE), exit taxes and “substantial contribution” provisos.

### **3D Printed Products can Confound Customs**

3D printing could also change the cross-border tax equation for the value of raw materials and components. To sum up, 3D printing, yet another ‘disruptive technology’ will surely turn the business world upside down and the tax profile of a business inside out!

### **Robots and Taxation**

We appear to be at a technological ‘tipping point’ in the diffusion of robotic technology across commerce, industry, professions and households. It could spread like wildfire and could unleash what the economist Joseph Schumpeter apocalyptically described as a “gale of creative destruction” and set into motion a “process of industrial mutation that incessantly revolutionises the economic structure from within, incessantly destroying the old one, incessantly creating a new one”.

A heated debate on ‘whether to tax robots or not’ continues worldwide since robotic technology is feared to result in mass unemployment. However, even while the issue is being debated, it is imperative that as a first step in taxing robots, the legislation clearly defines what a robot is. There is currently no clear or agreed definition of a ‘robot’. As David Poole has noted, ‘A robot is not a unit equal to a human. Most are not physical robots, and they’re software robots. It’s no different, really, to a spreadsheet!’.

Given the range and sophistication of robots likely to come into development, the definition

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**‘Blockchain’ – a relatively obscure technology until only a few years ago – has already stepped out of the theoretical world and entered the practical world. It is fundamentally changing the way businesses, people and governments operate**

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needs to be ‘form neutral’; i.e., it should include all autonomous robots, bots and similar smart AI machines. Any definition proposed by the legislature should be tested not just from legal perspectives, but also from economic, technological, and constitutional approaches. To conclude, governments will be required to develop a legislative definition and an ethical-legal-regulatory framework for robots urgently.

### Final Thoughts

After 75 years, VAT may now be standing at a crucial juncture. At this juncture, the rapidly changing climate poses severe challenges for policymakers, lawmakers, economists and tax experts, and the GST Council also cannot ignore these challenges. The challenge lies in predicting the intersection of two key developments – the first being the profound changes we are witnessing to the economies through technological developments that have been labelled as the ‘Fourth Industrial Revolution, and the second being an increasing reliance of the governments across the globe on indirect taxes as their chief source of revenue as these taxes mature into a dominant form of taxation in the 21st century.


For the Indian GST system, the frequent changes made post-introduction of GST indicate that the government is learning from its mistakes. In the words of Deng Xiaoping, it is ‘crossing the river by feeling the stones’. But let us not lose sight of the above formidable challenges that lie over the taxation horizon even while we shape (or reshape) our GST design and structure!

The GST Council, led by the Union Finance Minister, seems to be working only on the system’s immediate challenges. However, the world is



changing at a speed one cannot comprehend. What, therefore, is urgently required for the Council, even while it fixes the short-term challenges, is to identify the long-term challenges posed by the technological advancements and ensure that the country’s tax systems keep pace with the seismic-level changes sweeping the taxation landscape.

“We must develop a comprehensive and globally shared view of how technology is affecting our lives and reshaping our economic, social, cultural, and human environments. There has never been a time of greater promise or greater peril.”

-Klaus Schwab, Founder and Executive Chairman, World Economic Forum 

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SNAPSHOTS

1

GST also preserves the federal nature of the polity while at the same time adhering to harmony that is so crucial to any levy in a federation

2

Federations across the globe, have the unenviable task of crafting a tax system that is transparent and plays out evenly

3

The Brazilian variant is again multiple levies (with some taxing powers, albeit minor, to the municipalities too) and is a complex maze of VAT on certain sales and services, an Excise levy, Service tax, etc

# INNOVATIVENESS OF INDIAN GST

The daunting challenge was to preserve the federal nature of the Indian polity while framing the structure and design of the GST. It would be no exaggeration to say that the Indian GST is the only true dual GST in the world. The need for a dual levy is a natural corollary and concomitant to a federal polity with even some semblance of the division of taxing powers

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**ARUN KUMAR MISHRA**

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**T**HE biggest tax reform in independent India, GST has transformed India from a state of multiple indirect levies to a “One-Nation One-Tax” regime. This multiplicity of levies spanned the same value chain which was artificially fragmented for purposes of taxation by the federal, State and, in some cases, even by the local authorities. While levying taxes, legislative “competence” was the only limitation on the Union Parliament or the State Legislatures. This permitted very wide latitude to the legislatures leading to simultaneous and multiple levies on the same part of the value chain.

Manufacturing is a classic example where either the inputs or the output or, worse, both suffered UED, service tax and State VAT/Sales Tax while there was no levy on certain aspects of the value chain (certain services which even went for final consumption). There was considerable horizontal diversity (some would say ‘chaos’) in as much as some States levied entry tax, some others levied purchase tax, most of the States levied luxury tax while some levied taxes on betting and gambling in addition to this under the same Constitutional entry. It did not stop at this and some of the States levied surcharges/additional taxes on the VAT, which could be collected with the price in some States while in some others they had to be borne by the supplier. Some of these levies not only conflicted with each other at times but also created a complex maze that cast onerous compliance burdens, called for considerable administrative measures and fostered disputes.

## **GST's Uniqueness**

Creating a common indirect tax code in a country with 37 different tax jurisdictions, 16 different tax levies and 15 kinds of cesses/surcharges under 8 different constitutional entries called for a grand unification across legal frameworks, IT systems and tax administration systems. That is why it took more than a decade to roll GST out as a pan-India destination-based consumption tax and that is why the Indian GST has acquired a character that makes it unique. One look at the GST implemented in other federal jurisdictions will demonstrate just how herculean a task it was.

While charting the structure and design of the Indian GST the challenge was to preserve the federal nature of the Indian polity, (a 'basic feature' of the Constitution), and it shows in the 101st Constitutional Amendment Act.

Article 246A confers concurrent jurisdiction on both the Union and the States to levy tax on the supply of goods and/or services. Quite clearly, resorting to the letter of Article 246A either by the Union or by any of the States would, at best, have led to a European Union (EU) style common system of VAT, wherein the tax statute in each State need only comply with a "Model" (a la the EU Directives which too harbour 'derogations' to permit some leeway to individual levies); at worst, it would probably have been only slightly better (if that) than the chaos that pervaded the indirect tax scene in the country pre-GST.

However, Article 279A provides the institutional framework for the exercise of the concurrent authority conferred by Article 246A. The Council makes recommendations to both the Union and the States on the framework and the guiding principles of this levy. Clause (4) of the said Article lists the subject matter of the recommendations of the Council and, in effect, entrusts the Council with the task of guiding the structure and design of GST in India. Clause (6) enjoins upon the Council to keep in mind the 'need for a harmonised structure of GST and 'the development of a harmonised national market for goods and services while making its recommendations.

## **How is the Indian GST different?**

Accordingly, the concurrent jurisdiction is to be exercised by the States and the Union under the

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**Pre-GST, the States were at vastly different levels of automation wherein there were manual returns in a few States requiring return filing at the counters of their tax units and some other States had graduated to a system of online filing**

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aegis of a constitutional body which will make "recommendations" (as opposed to a "diktat") concerning the structure and design of a "harmonised GST". Further, unlike in the EU, clause (9) of Article 279A provides for decisions to be made by a majority of votes, as opposed to the "consensus-through-unanimity" model of the EU which acts as a drag on the decision-making process. It is these features that have invested the Indian GST with some of its unique features, not found anywhere else in the world.

Apart from the institutional framework outlined above, dual and concurrent levy, uniform Statutes with common business processes and Forms, treatment of inter-state trade, institutional mechanism for compensation to the States, an IT platform common to both the national and subnational levels and cross-empowerment of tax authorities are some of the other features of the Indian GST which make it unique in the pantheon of the international GSTs.

It would be no exaggeration to say that the Indian GST is the only true dual GST in the world. The need for a dual levy (or even multiple levies, 'a la the subnational sales tax/VATs in India, pre-GST) is a natural corollary and concomitant to a federal polity with even some semblance of the division of taxing powers. Running a subnational levy alongside a national levy invariably induces a multiplicity of levies and complexities, with attendant distortions, besides casting onerous compliance burdens—precisely what Canada witnessed pre-HST. Federations across the globe thus, have the unenviable task of crafting a tax system that is transparent and plays out evenly.





The EU has multiple levies (one by each Member State) even though such levies have to conform to predefined standards of uniformity in such characteristics of the levy as the charge of tax, exemptions, rate path, etc. Accordingly, every EU levy has to abide by the provisions of VAT Directives issued by the European Council on the basis of consensus among the Members. The revenue accrues to each Member State on consumptions in that State and intra-Community supplies (from one Member State to another) are zero-rated.

By contrast, the Canadian HST is actually the outcome of an agreement between a 'willing' province (a "participating Province") and the Federal Government and, in such an eventuality the Federal VAT and the Provincial Sales Tax merge in that particular province, to be called the Harmonised Sales Tax. Thus, it is a single levy, not only in effect but also in letter and spirit. Accordingly, the tax is collected from a single levy and is apportioned, first between the Federal Government and all the participating Provinces and then between the participating Provinces inter se, in accordance with consumption in each of them, based on detailed consumption data.

The Australian GST is actually a National GST, levied under the authority of one statute at one rate by the Federal Government and the proceeds

whereof are shared by the Federal and the State Governments, primarily in accordance with a system of vertical fiscal imbalance. The Brazilian variant is again multiple levies (with some taxing powers, albeit minor, to the municipalities too) and is a complex maze of VAT on certain sales and services, an Excise levy, Service tax, etc.

The Indian GST, on the other hand, is a levy, under identical statutes, charged and administered by both the federal and State Governments concurrently, simultaneously and in an identical manner on every transaction. Accordingly, every transaction 'within' a State has two components of the GST viz. the CGST and the SGST and is charged in the same invoice and reported on a common declaration. It remains a dual levy running concurrently and administered by both the Union and the State.

Another distinguishing feature of the Indian GST is that even though there are 31 different statutes (29 for the States, 1 UTGST and 1 CGST), all of them are identical (not just similar, but identical), except for absolutely minor and insignificant differences in the Transitional and Repeal/Savings provisions. While such a phenomenon is natural and logical in the context of a national levy (like the National GST in Australia or the HST in Canada), but in a regime with multiple levies, this is probably unheard of (just think the EU and Brazil). Not only



the respective Statutes but also the rules of business, the tax rates, the notifications, the orders, and the circulars/instructions are virtually identical. All the above instrumentalities comprising the legal framework are issued on the recommendation of the GST Council by 30 different authorities (the Centre for the CGST and the UTGST and 29 different States for the SGST); this is possibly the best example that there can be of unity in diversity. It also preserves the federal nature of the polity while at the same time adhering to harmony that is so crucial to any levy in a federation.

### **Treatment of Inter-State Levy**

Perhaps the most interesting and discerning feature of the Indian GST is the treatment of inter-state trade and the levy of IGST, which could well be India's contribution to the world of taxation. The best GSTs of the world would have loved to do it, if only they had thought of it. The destination principle operating in a consumption tax regime warrants a taxing jurisdiction/authority to limit its tax to consumption taking place within its geographical jurisdiction. However, designing a system which effectively and efficiently achieves this objective is a very complex element of tax design. Applying a 'zero' rate of tax on output in

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**The Australian GST is actually a National GST, levied under the authority of one statute at one rate by the Federal Government and the proceeds whereof are shared by the Federal and the State Governments, primarily in accordance with a system of vertical fiscal imbalance**

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case of cross-border supplies and refunding the taxes on the corresponding inputs is warranted in a consumption tax but the tax arbitrage involved in taxation of 'local' supplies and zero-rating of cross-border supplies makes it prone to misuse since it is difficult to monitor without a system of Government-validated declarations (like the erstwhile C/F Forms). However, the system of validating declarations has its own set of problems and compliance issues which are only too well known to Indian taxpayers. The only way the arbitrage could have been eliminated was by taxing inter-state supplies at par with local supplies in the originating jurisdiction and simultaneously providing credit for the same in the destination

jurisdiction. This is easier said than done since in such an eventuality even intra-entity supplies will be saddled with the burden of tax, funds involved in such taxes could be blocked for such an entity and the mechanism for regularly transferring funds from one tax jurisdiction to another entails a process that is akin to the withdrawal of funds from the consolidated fund of the Union/States. While this problem does not arise in a national GST scenario, it is the bone of contention in a federation which has not harmonised its levy.

Zero-rating of inter-state trade (as is done in the EU) or flow of credit across jurisdictions (Canada) is not unknown but the use of such a mechanism to transfer taxes from the jurisdiction of origin to the destination jurisdiction is unique to the Indian IGST. The genius of the IGST model lies in the facility of cross-utilization of credit in both the originating and the destination State. Since the State and the Central components of a tax on local supplies do not mingle, there is no cross-flow between these two components but the IGST levied on inter-state supplies is adjustable with both these components and only the net quantum of cross-utilisation (a single figure) need be transferred between the IGST account and the SGST account. Furthermore, the IGST is not a tax vis a vis B2B supplies where credit is fully available but it reverts to being a tax in case of B2C supplies or where credit is not fully available statutorily. In its totality, the IGST mechanism is the most unique feature of the Indian GST.

The institutional arrangement for compensating the States for loss of revenue on GST implementation, albeit for a fixed period is yet another unique feature of the Indian GST. Only Canada has been known to offer some incentive to the Provinces for participating in HST, but this was only meant as an inducement to get the Provinces to participate, and was of a very limited order of magnitude (as opposed to not only compensating the entire loss, but also assuring a compounded annual growth rate of 14% to the States) but, in the Canadian case, also had to be paid back to the federal Government upon the concerned Province quitting the HST.

### **Pre-GST Chaos**

Pre-GST, the States were at vastly different levels

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## **The most interesting and discerning feature of the Indian GST is the treatment of inter-state trade and the levy of IGST, which could well be India's contribution to the world of taxation**

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of automation wherein there were manual returns in a few States requiring return filing at the counters of their tax units and some other States had graduated to a system of online filing. Back-end processes like scrutiny of returns/assessment, audit, appeal, enforcement etc. were largely manual even though some States had mandated migration of this data to their systems. With the onset of GST, all major processes like registrations, returns, payments and refunds were fully automated and were to be conducted through a common portal which was also entrusted with the task of building common systems for all the back-end processes as well for most of the States. This integration of compliance measures and administrative processes for almost the entire tax ecosystem is a unique phenomenon in the context of a multiple jurisdiction tax federation.

Administering a tax with identical legislations by 30 different tax administrations with vastly different administrative set-ups was another major challenge which was solved uniquely in the Indian GST. The instrument of cross-empowerment is a uniquely Indian construct in the world of tax administration whereby all enactments had built-in features, cross-empowering different tax administrations to carry out all functions by conferring jurisdiction qua a taxpayer on a single authority. This has ensured a single interface for a taxpayer even though such a taxpayer has obligations to comply with the provisions of all enactments that are applicable to him.

All said and done, the Indian GST is still evolving but the fact that a common legal and administrative code with uniform processes has been set up in a federation from the word go is an unprecedented measure in the world of taxation. 🇮🇳



SNAPSHOTS

1

Despite the impact of the COVID-19 pandemic on the overall economy, GST revenues have continued to remain buoyant

2

The survey revealed that about 90% of Indian CXOs across key sectors, backed this dynamic and technologically driven indirect tax regime

3

Automation of tax compliances by the government has been a massive win and it has worked efficiently, especially in comparison with the erstwhile regime

## 5 YEARS OF GST

# SUCCESS TALE OF INDIA'S INDIRECT SYSTEM

Our country is at a crucial stage in the GST journey as it enters its sixth year, with the dynamic growth of business activity and tax collections, it seems well-timed as international businesses are exploring new ground. GST as a 'One Nation, One Tax' reform has brought down barriers across the country and made doing business easy



**MAHESH JAISING**

Partner & National  
Indirect Tax Leader with  
Deloitte India

ON 30 June, 2022, the Goods and Services Tax (GST), India's largest tax reform since Independence, completed its first half-decade in implementation. It has been a transformative journey for both the government and businesses alike. The tax reform, which underwent some difficult and challenging issues in reaching stakeholder consensus, is today regarded as one of the most successful reforms in the country.

Despite the impact of the COVID-19 pandemic on the overall economy, GST revenues have continued to remain buoyant. In fact, it has witnessed a consistent strong upswing, touching a record high of Rs. 1.68 lakh crore in April this year. Additionally, there has been a significant increase in the average monthly GST collections, which has increased from Rs. 0.95 lakh crore in 2020-21 to Rs. 1.24 lakh crore in 2021-22.

*"GST is the taxation system of New India, of the Digital India. It is not merely Ease of Doing Business. It is demonstrating Way of doing Business. GST is not just a tax reform, but it is a landmark step towards economic reforms. Beyond the taxation revamp, it is also paving the way towards social reforms. It is an avouchment for corruption free taxation system. In legal parlance GST may be known*

*as Goods and Services Tax. But the benefits of GST will positively ensure it to be 'Good and Simple Tax' for the citizens of India."*

- Hon'ble Prime Minister Shri Narendra Modi on the launch of GST (July 01, 2017)

- It took over 10 years to ideate, deliberate, formulate and implement this Act;
- 47 GST Council meetings have been held so far with over 18000+ hours of deliberations and 1000+ agenda items;
- 20+ sub-groups and committees formed for improvement of legal as well as procedural aspects of the law;
- 15+ Group of Ministers ('GoM') have been formed of which 10+ GoMs have accomplished their target;
- 700+ Notifications and 150+ Circulars issued.

### **Deloitte GST@5 Survey**

Deloitte undertook a survey to understand the GST journey so far and help organisations prepare for the future. The study focused on assessing the impact of GST across sectors at the end of 5 years of GST.

The survey revealed that about 90% of Indian CXOs across key sectors, backed this dynamic and technologically driven indirect tax regime. Industry leaders confirmed that the 'One Nation, One Tax' reform has certainly brought down barriers across the country and made doing business easy and effective for both businesses and taxpayers. The survey also established that GST has positively affected prices and costs of goods and services, to end consumers, along with helping companies optimise their supply chains. Respondents also believed that the government's continued adoption of progressive concepts, such as e-Invoicing and establishing GSTN (which is transcoded with advanced analytical tools to use taxpayer data), has resulted in positive outcomes for businesses and tax authorities. This move has increased transparency and helped control tax evasion in the country.

### **Key Areas To Determine GST Future**

Here are the key 5 areas under GST that would be critical and determine the future of GST in the

coming years, as revealed by the survey results:

**a) Cooperative Federalism** – The implementation of GST as mentioned earlier, was after years of consultation between the Centre and states. This "cooperative federalism" has continued well into the initial years of GST. However, a recent decision of the Supreme Court which said that the recommendations of the GST Council were not binding on the Central and State governments, has sparked a fresh set of debates. This was also recently discussed in the Rajya Sabha<sup>[1]</sup> where it was clarified that recommendations pertaining to the GST laws are implemented through the normal legislative process and to that extent, have persuasive value. However, State and Central Acts provide that rates, exemptions and rules would be prescribed only on the recommendation of the GST Council.

There is little doubt that the GST Council fosters a spirit of cooperative federalism. This has also lasted the test of time as we have seen the GST Council time and again come together to amicably and fruitfully resolve disputes and issues. The GST Council serves as an outstanding example of how progress can be achieved under a cooperative federal structure.

**b) Digitisation in Compliance** – Automation of tax compliances by the government has been a massive win and it has worked efficiently, especially in comparison with the erstwhile regime. This has been possible because of the introduction of a 'one-stop-shop' portal i.e. GSTN, for all compliances under GST. The first phase was focused on building core functionalities needed by taxpayers and officers. With that in place, GSTN's next focus was to leverage technology and make data available to improve compliance, detect frauds and support policymaking. To this end, GSTN formed a Business Intelligence and Fraud Analytics (BIFA) unit in March 2019, which employed artificial intelligence and machine learning to develop the BIFA tool which has emerged as one of the bigger achievements in the last five years of GST. GSTN also distributes numerous internal reports to tax officers on a daily basis to assist them to improve day-to-day tax administration.

**c) Seamless Flow of Credit and Blocked**

**Credits** – Seamless flow of input tax credit is the backbone of GST. With GST, over 17 taxes, cesses, and surcharges imposed by the Centre and states have been subsumed under GST. However, GST continues to carry vestiges of the erstwhile regime in terms of credit restrictions. The GST laws currently have specific restrictions on the construction of an immovable property, despite such expenses being incurred for taxable output service. Companies incur huge investments in warehousing and logistics, data centres and large factories across sectors. Denial of such credit adds to the cost of doing business. Hence, it is imperative that the government consider revisiting the rationale for blocking such input tax credit, which is recognised as *infra status*.

**d) Cross Empowerment and Division of Taxpayers** – After multiple deliberations over multiple Council meetings, the states finally

reached a consensus in the 9th GST Council

Meeting, on the final manner of division of taxpayers between the Centre and states. Both the Centre and states have always been in agreement that initiation of action by one authority should be intimated to the other

authority through GSTN so that no other proceeding is initiated against the same taxpayer. With 5 years since the implementation of GST resulting in audits and assessments, taxpayers continue to face challenges of dual administration and multiplicity of proceedings.)

**e) Dispute Resolution** – Although there has been significant progress in terms of technology and compliance, legal conflicts involving GST are still in the infancy. Multiple instances of conflicting decisions made by regional advance ruling benches have been passed. Such divergent rulings have led to needless litigation for several businesses. With the commencement of audits, there is also an urgent need to address certain views being adopted

by the authorities through clarification/ circulars. The setting up of the GST Tribunal has also seen an inordinate delay, due to larger legal issues on the construct resulting in many writ petitions at high courts, increased cost and pendency of litigation for companies and the efforts involved. The GST Council in its last meeting has decided to constitute a Group of Ministers to address various concerns raised by the states in relation to the constitution of the GST Appellate Tribunal and make recommendations for appropriate amendments. This is a welcome move by the GST Council as there are a lot of pending disputes which is needed early resolution.

**Conclusion**

India is at a crucial stage in the GST journey as it enters its sixth year. With the dynamic growth of business activity and tax collections, this seems

well-timed given that international businesses are looking to explore new bases post the pandemic.

During the last five years of GST, the government has been proactive in issuing a deluge of circulars, clarifications, and orders. These include

clarification on the scope of intermediary services, applicability of GST on notice pay recovery, applicability of GST on liquidated damages and treatment of perquisites provided to employees. Key policy decisions/ announcements also continue to be made including allowing refund of inverted duty rate structure, providing parity between online and offline sellers by extending the threshold benefit etc.

We hope that the government continues paying attention to the concerns raised by stakeholders by streamlining processes which are necessary, to avoid unnecessary pile up of litigation and unending disputes. In the next five years, the positive change in taxpayers' compliance behaviour and government's continued efforts, will ensure a more simplified and smooth GST structure for all stakeholders. 🚫

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**The tax reform, which underwent some difficult and challenging issues in reaching stakeholder consensus, is today regarded as one of the most successful reforms in the country**

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<sup>1</sup> Rajya Sabha – Question hour – Unstarred question no 203 answered on 19 July 2022



SNAPSHOTS

1

Healthcare is one of sectors which has not benefited by GST, as the healthcare services being exempt from tax, the taxes paid on input goods, input services and capital goods could not be offset against output tax

2

In the European Union, the concept of zero-rating is not just restricted to export supplies but is also applicable to a number of domestic supplies of essential goods and services which vary from country to country

3

In Indian GST the benefit of zero-rating is confined only to export supplies or supplies to SEZs for authorised operations



# A CASE FOR EXPANDING THE CONCEPT OF ZERO-RATING IN GST

GST in India is, in essence, a destination-based Value Added Tax on consumption. It operates by taxing the outward supplies of a registered person while permitting credit of the tax charged on his inward supplies of goods or services used or intended to be used by him in the course or furtherance of his business and its utilisation for discharging tax liability on his outward supplies

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**RAKESH KUMAR**

Former Member (Technical)  
CESTAT

**T**HE Goods and Services Tax implemented in India w.e.f. 1st July, 2017 operates by taxing the outward supplies of a registered person while permitting credit of the tax charged on his inward supplies of goods or services used or intended to be used by him in the course or furtherance of his business and its utilisation for discharging tax liability on his outward supplies. While the supplier can pay tax on his outward supplies through Electronic Cash Ledger only to the extent the Input Tax Credit (ITC) available in his Electronic Credit Ledger falls short of his tax liability and discharge the rest of his tax liability by utilising the Input Tax Credit, he can recover from his customers full amount of tax paid, as mentioned in the tax invoices issued by him and in this manner, he recovers from his customers the tax charged on his inputs (input goods, input



services or capital goods) and pays tax only on his value addition.

### **Availment of ITC**

The availment of Input Tax Credit reduces the cost of his inputs and to this extent he can pass on the benefit of reduction in the cost of inputs to his customers by commensurate reduction in price. In fact, this is what Sec 171 of the CGST Act, 2017 mandates. Since availment of Input Tax Credit by a supplier reduces the cost of his inputs, as a corollary, denial of Input Tax Credit for any reason would result in increase in the input cost and as a consequence, increase in the price of the final product, as the input tax, whose credit is not available either for being utilised for payment of tax on the outward supplies of the final product or for being refunded in cash as unutilized credit, is a dead cost to the supplier. Sec 17(2) of the CGST Act denies Input Tax Credit in respect of “exempt supplies” and the term “exempt supply” has been defined in Sec 2(47) of the Act as-

“supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Sec 11, or under Sec 6 of the Integrated goods and Services Act, and includes non-taxable supply.”

If in the value chain from the suppliers of inputs, capital goods and input services at one end to the supplier of final products to the ultimate consumer at the other end, the outward supply is not fully exempt from tax at any stage, every supplier in the chain will pay the tax only on his value addition and pass on its incidence to his customers. It is only the ultimate consumer who will bear the incidence of tax, as being the ultimate consumer, he cannot pass on the incidence of tax on the goods or services purchased by him to anybody. Thus, the Goods and Services Tax in this country is, in essence, a destination-based value added tax on consumption. The only benefit the ultimate consumer can lawfully claim is commensurate reduction in price to the extent Input Tax Credit has been availed by his supplier. But this benefit would get denied if the final product is fully exempt from tax. Sec 17(2), however, makes a distinction between the “exempt supplies” not eligible for Input Tax Credit and the “zero-rated supplies” which along with “taxable supplies” are eligible for Input Tax Credit. The term “zero-rated supply”, while not defined in CGST Act, is defined only in Sec 2(23) read with Sec 16(1) of the IGST Act as-

- “(a) exports of goods or services or both; or
- (b) supply of goods or services or both for

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**The UK VAT has a long list of zero-rated supplies where the person making such supplies at zero rate i.e. without payment of any tax, is eligible for Input Tax Credit which can be refunded to him if the credit cannot be utilised for payment of tax on taxable supplies**

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authorised operations to a Special Economic Zone developer or a Special Economic Zone”;

Under Sec 16(2), credit of input tax may be availed in respect of the “zero-rated supplies” defined in Sec 16(1) notwithstanding that such supplies may be exempt from tax. By Sec 2(120) of the CGST Act, the above definition of “zero-rated supply” in IGST Act has been made applicable to the CGST Act.

Thus, in Indian GST, the concept of zero rating, which permits full tax exemption on a final product without denial of Input Tax Credit, is confined only to export supplies or supplies to SEZ/SEZ developer for authorised operations where Input Tax Credit can be availed in spite of the supplies being exempt. In case of all other supplies, full exemption means denial of Input Tax Credit which neutralises the benefit of tax exemption fully or partially.

However, if instead of full tax exemption covered by Sec 2(47) the CGST Act, a supply of final product is subjected to some tax, even at the lowest rate of 5%, full Input Tax Credit becomes admissible. Section 54(3) of the CGST Act permits cash refund of the unutilised Input Tax Credit which has accumulated either on account of zero-rated supplies made without payment of tax or on account of inverted rate structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies. Since, in the Indian GST, the concept of zero rating is restricted only to the export supplies or the supplies to SEZ/SEZ developer for authorised operations without payment of tax, in case of domestic supplies, the cash refund of unutilised

credit is allowed only when the two conditions are satisfied - (a) the unutilised credit has accumulated on account of inverted rate structure; and (b) the final product is not exempted or nil rated. Thus, even when on account of inverted rate structure on some final product, the Input Tax Credit available to a supplier is much more than the amount of credit he can utilise for payment of tax, because of the provisions of Sec 54(3), he would not suffer, as he can recover the entire amount of tax paid by utilising Input Tax Credit (which is nothing but the tax charged on the inputs) from the customers and the unutilised Input Tax Credit by way of refund. The recovery of the entire amount of input tax would enable the assessee to pass on its benefit to his customers by way of commensurate reduction in prices.

Since the Input Tax Credit is disallowed when the final product becomes fully exempt or nil rated, the question whether full tax exemption is beneficial or otherwise has to be determined by comparing the quantum of tax exempted with the quantum of loss of Input Tax Credit. While the full tax exemption would have positive effect and would result in lower price for the buyers in the cases where input tax is very small and the tax on the final product which has been fully exempted is much more than the Input Tax Credit lost due to exemption, in the cases where the Input Tax Credit lost due to tax exemption is much more than the tax exempted, the tax exemption would be counterproductive and would result in higher price for the buyers. Full tax exemption is, therefore, desirable only in the former category of cases and in the latter category of cases, only zero-rating i.e. full tax exemption with Input Tax Credit benefit intact would be beneficial. But as mentioned above, in Indian GST the benefit of zero-rating is confined only to export supplies or supplies to SEZs for authorised operations.

### **Comparison of Zero-rated Supplies**

In contrast, in most of the countries which have opted for Value Added Tax (VAT)/Goods and Services Tax (GST), the concept of zero-rated supplies has not been restricted only to the export/deemed export supplies but has been extended to the domestic supplies of a number of essential goods and services also.

## [ CONCEPT | ZERO RATING ]

The UK VAT[1] has a long list of zero-rated supplies where the person making such supplies at zero rate i.e. without payment of any tax, is eligible for Input Tax Credit which can be refunded to him if the credit cannot be utilised for payment of tax on taxable supplies. Some of the zero-rated supplies in the UK VAT are sale of medicines by a pharmacist against a prescription, sanitary protection products, incontinence products, maternity pads, certain food items, babywear, children's clothes and footwear, water supply to households and sewerage service, printed books, magazines and newspapers, equipment for disabled persons, low vision aids, protective boots and helmets for industrial use, motorcycle helmets that meet safety standards, equipment for blind or partially sighted people, aircraft repair and maintenance service, ship repair and maintenance, freight transport to or from a place outside the UK etc.

In the European Union also, the concept of zero-rating is not just restricted to export supplies but is also applicable to a number of domestic supplies of essential goods and services which vary from country to country.

In Australian VAT, the concept of zero rating, in addition to export supplies, covers basic foodstuffs, healthcare services, education services, childcare services, water supply service, sewerage and drainage services etc.

In Canadian GST, the zero-rating benefit, in addition to exports, has been extended to prescription medicines, medical devices, such as, wheel chairs, eyeglasses, hospital beds and artificial limbs, basic groceries and a number of agricultural and fishing products.

Thus, in most of the countries across the world, the concept of zero rating, in addition to export supplies, also covers domestic supplies of certain essential goods and services, like, basic food items, prescription medicines and medical devices, healthcare services, education, sanitary products, etc. In fact, exempting from tax the items of essential goods and services for mass consumption is a political necessity in every country.

But in a country having Value Added Tax, where full tax exemption means denial of Input Tax Credit, the tax exemption may not have the intended effect and may result in the consumers ending up paying higher prices for the exempted

goods or services. As explained above, full tax exemption would be beneficial only in case of those final products in which the element of embedded input tax is very small or negligible, like unprocessed and unbranded foodstuffs sold loose. But when the element of embedded input tax in the price of the final product is high, like medicines, vaccines, medical devices, medical diagnostic services and other healthcare services, mass public transport etc, just exempting the product without zero-rating would be counterproductive and the consumers may end up paying higher prices after exemption because of hidden taxes charged on inputs.

4. Vast sectors of Indian economy, namely, power sector ("electrical energy" and "transmission or distribution of electricity by electricity transmission or distribution utility"), printing industry ("printed books including Braille books", "newspapers, journals and periodicals"), healthcare sector ("services by way of- (a) healthcare services by a clinical establishment, an authorised medical practitioner or para-medics; and (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above" and " services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation", education sector ("services provided by an education institution to its students, faculty and staff" and "services provided by Indian Institutes of Management as per the guidelines of the Central Government, to their students by way of certain specified educational programmes") and transport sector ("transportation of persons by rail in a class other than first class and air conditioned coach", "metro, monorail or tramway") are covered by full tax exemption under Sec 11 of the CGST Act and Sec 6 of the IGST Act where because of exemption, the benefit of Input Tax Credit is not available. In many of these sectors, the denial of Input Tax Credit benefit because of tax exemption may be more than the tax exempted and thus the exemption itself may be counter-productive.

As per Ernst & Young study[2] on effect of GST on healthcare sector -

(a) healthcare is one of sectors which has not benefited by GST, as the healthcare services being exempt from tax, the taxes paid on input goods,



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**In Indian GST, the concept of zero rating, which permits full tax exemption on a final product without denial of Input Tax Credit, is confined only to export supplies or supplies to SEZ/ SEZ developer for authorised operations where Input Tax Credit can be availed in spite of the supplies being exempt**

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input services and capital goods could not be offset against output tax;

(b) the embedded taxes which cannot be set off against the output tax liability and remain unutilized in the value chain become a cost and get passed on to the end users, raising the cost of healthcare services and thereby diluting the Government's objective of making India an affordable healthcare destination; and

(c) the embedded taxes in the services provided by Healthcare Establishments and Testing

Laboratories/ Diagnostic centres are in the range of 5.5% to 6%.

#### **Anti-Profiteering Litigation**

How simply exempting a product from tax does not result in any significant benefit for the consumers and is counterproductive is clear from the experience of exempting sanitary napkins. There was huge public outcry against imposition of 12% GST on sanitary napkins at the time of transition to GST w.e.f. 1st July, 2017. The matter was even taken to Delhi High Court and Bombay High Court by filing PILs challenging imposition of 12% GST on sanitary napkins. Though the 12% GST on this item was justified by the Government on the ground that since tax on major inputs was from 12% to 18%, 12% tax on sanitary napkins enabled the manufacturers to offset the input tax against their output tax liability and exempting this item would result in complete denial of Input Tax Credit to domestic manufacturers resulting in increase in their cost of production and thereby making the domestic manufacture uncompetitive as compared to imports without any benefit to the end consumers, because of public pressure, full tax exemption was extended to this item w.e.f. 27th



July, 2018 by Notification no.20/2018-CT(rate) dated 26.07.2018.

While exemption to sanitary napkins may or may not have resulted in any benefit whatsoever for the consumers, it has resulted in huge anti-profiteering litigation on the question as to how the impact of denial of Input Tax Credit benefit is to be quantified, as denial of Input Tax Credit on account of full tax exemption entitled the manufacturers to increase the base price (price excluding GST) of the sanitary napkins to offset the impact of Input Tax Credit denial.

The National Anti-profiteering Authority vide order dated 21.11.2019 in case of M/s Johnson & Johnson Pvt Ltd reported as 2019-TIOL-59-NAA-GST [3] and order dated 23.11.2010 in case of M/s Procter & Gamble Ltd [4] reported as 2020-TIOL-76-NAA-GST has held that these manufacturers have contravened the provisions of Sec 171(1) of the CGST Act as the increase in base price of sanitary napkins by them w.e.f. 27.07.2018 is more than that required to offset the impact of denial of Input Tax Credit benefit and has directed them to deposit alleged profited amount of Rs 42.61 crores and Rs 2 crores respectively along with 18% interest in the Consumer Welfare Fund.

The writ petitions filed against the NAA's orders are pending before Delhi High Court. Similar action under Sec 171 of the CGST Act has been taken against other manufacturers of this product. Thus,

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**Since the Input Tax Credit is disallowed when the final product becomes fully exempt or nil rated, the question whether full tax exemption is beneficial or otherwise has to be determined by comparing the quantum of tax exempted with the quantum of loss of Input Tax Credit**

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while full tax exemption to sanitary napkins may or may not have benefited the consumers, it has certainly contributed to massive litigation and besides this, has made the imports more competitive, as while the imported Sanitary Napkins, being zero-rated in the country of export, do not have any element of embedded input taxes, the domestically manufactured napkins are burdened with the embedded input taxes whose credit has been denied on account of full tax exemption.

During mid-2021 when Covid-19 pandemic was at its peak in India, there was similar clamour for exempting the covid vaccines on which there was 5% GST and Covid related medicines on which

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**During mid-2021 when Covid-19 pandemic was at its peak in India, there was similar clamour for exempting the covid vaccines on which there was 5% GST and Covid related medicines on which there was 5% to 12% GST**

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there was 5% to 12% GST. But this time wiser counsel prevailed and the demand for blanket exemption was not accepted and instead of full tax exemption, the rate of GST on all the medicines, medical grade oxygen, testing kits and other equipment required for Covid-19 treatment was fixed at 5%.

The above example of extending full tax exemption to sanitary napkins and its unintended consequences demonstrates that in the Value Added Tax system, extending full tax exemption to a product is a tricky issue, as full tax exemption results in complete denial of Input Tax Credit which neutralises, fully or partially, the benefit on account of exemption of tax on the final product and it also puts the domestic manufacturers in a disadvantageous position as compared to importers. Therefore, the decision to extend full tax exemption to a product has to be taken only after examining as to whether the embedded tax on the inputs, whose credit would no longer be available in the event of full tax exemption, is more than the tax on final product which is being exempted. Moreover, as the experience of extending full tax exemption to sanitary napkins shows, full tax exemptions can trigger anti-profiteering litigation on the point as to whether the base price increase after full tax exemption to the product is just enough to offset the impact of denial of Input Tax Credit or more than that and the linked issue as to how the impact of denial of Input Tax Credit benefit is to be quantified for which there are no rules framed by the Central Government.

### **Merit Goods Concept**

However, there are “merit goods” whose prices have to be kept low and affordable in the larger public interest and in case of many of such goods



and services, the embedded taxes on inputs may be quite high, making full tax exemption to such goods and services counter-productive. The only solution in such cases is zero-rating such goods and services, i.e., extending full tax exemption with input tax credit benefit for which the necessary amendment would have to be made in the GST Laws. Though there may be administrative problems in zero rating the domestic supplies of certain “merit goods” like health-care services, prescription medicines, education, textbooks for schools/colleges, mass public transport, etc, the economic benefits from this would far outweigh the additional administrative burden involved in administering the zero rating of such goods and services. 📌

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[1]<https://www.gov.uk/guidance/rates-of-vat-on-different-goods-and-services>

[2]A study on embedded taxes in the healthcare sector of India – Ernst & Young – March 2022

[https://r.search.yahoo.com/\\_ylt=Awr1UU\\_aRAA9jtV8KyXm7HAX.;\\_ylu=Y29sbwNzZzMEcG9zA\\_zEEdnRpZAMEc2VjA3Ny/RV=2/RE=1661956370/RO=10/RU=https%3a%2f%2fassets.ey.com%2fcontent%2fdam%2fey-sites%2fey-com%2fen\\_in%2ftopics%2ftax%2f2022%2fey-nathhealth-march-2022.pdf%3fdownload/RK=2/RS=yPxuRJuaGMLgIAy21V3DSmIh9aw-](https://r.search.yahoo.com/_ylt=Awr1UU_aRAA9jtV8KyXm7HAX.;_ylu=Y29sbwNzZzMEcG9zA_zEEdnRpZAMEc2VjA3Ny/RV=2/RE=1661956370/RO=10/RU=https%3a%2f%2fassets.ey.com%2fcontent%2fdam%2fey-sites%2fey-com%2fen_in%2ftopics%2ftax%2f2022%2fey-nathhealth-march-2022.pdf%3fdownload/RK=2/RS=yPxuRJuaGMLgIAy21V3DSmIh9aw-)

[3]<https://taxindiaonline.com/RC2/caseLawDet.php?QoPmnXyZ=MTU0NDIw>

[4]<https://taxindiaonline.com/RC2/caseLawDet.php?QoPmnXyZ=MTYyMzQw>



SNAPSHOTS

1

GST's tax gap is perhaps much higher than 5% of GDP- an overall tax gap for all taxes reckoned by 15th Finance Commission

2

The Central Board of Indirect Taxes and Customs (CBIC) has done good work to subdue the tide of frauds

3

The detection of GST frauds aggregating to Rs.50,000 crore is the tip of the iceberg called the tax gap (TG)



# LET'S DEBATE OVER VOTE-A-RAMA

GST has the potential of being a cornucopia of goodies for all stakeholders. But it requires an innovative constitutional makeover in the true spirit of cooperative federalism



**NARESH MINOCHA**

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**T**HE Goods and Service Tax (GST) requires an innovative constitutional makeover in the true spirit of cooperative federalism. This would help nip in the bud the risk of GST drifting far away from its potential as a cornucopia of goodies for all stakeholders.

**The risks are**

- 1) GST failing to increase the growth rate of States' revenue from the pre-GST rate,
- 2) GST benefitting the net consumer states in revenue collections and hurting manufacturing and minerals States,
- 3) the Centre's reluctance to amend GST Compensation law to extend compensation period beyond 30th June 2022 for fresh relief,
- 4) The Supreme Court's recent Judgement, ruling that GST council's (GSTC's) recommendations are neither binding on the Centre nor the States,
- 5) Inaction on non-binding, sagacious observations & recommendations made by 15th Finance Commission (15thFC) and
- 6) Data opacity and deficiency that makes estimation of huge Tax Gap in GST domain a herculean challenge.

### TAX Gap

GST's tax gap is perhaps much higher than 5% of GDP- an overall tax gap for all taxes reckoned by 15thFC. Those rejoicing over the successful completion of five years of GST might balk at the idea of amending the Constitution 2nd time for GST. They should instead ponder over what Prime Minister Narendra Modi had said. Recall his vision spread over two speeches he delivered on GST in Parliament in 2016 and 2017.

Launching GST during a midnight session of Parliament on 30th June 2017, PM Modi turned his attention to fear-mongers. He said: "If we try to adjust to the new system, we will definitely be able to integrate ourselves with it. It is time to stop the rumour bazaar. It is a time we concentrate on the development and for the betterment of this country".

A dispassionate assessment of the GST saga so far shows that its implementation has fallen

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**A report of the parliamentary standing committee presented in March 2022 says, "Special drive against GST invoice fraudsters shows CBIC detected 6110 cases from 9th November 2020 to 6th February 2022. The fake Inputs tax credit (ITC) detected under these cases aggregated to Rs.44189.10 crores"**

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woefully short of PM Modi's vision. GST's implementation has to be judged against all elements of his vision. As put by 15thFC, "Unique challenges have emerged in the implementation of GST. The less-than-expected buoyancy in revenues and the difficulties in the settlement process have affected both the Union's and the States' finances. Lower GST revenues than what was expected in the initial phase could be attributed to several changes in rates, returns, shifting timelines for filing of returns, delayed introduction of anti-evasion measures such as invoice matching, reverse charge, technical glitches and cumbersome compliance processes".

### Is It Simple or Good?

GST is neither simple nor good for all stakeholders. The simplicity claims falls flat if one goes through the list of rules, notifications, circulars, corrigenda and amendments under four GSTs – CGST, SGST, IGST and GST compensation cess (GSTCC). The last two taxes are a tax on tax.

One often can't understand one notification without referring to an earlier one mentioned in it. This complexity has been the salient feature of bureaucratic communication right from the Raj era. Why can't a notification begin with an explanatory note with earlier relevant notifications tagged as annexures?

Let the 5-years milestone serve as an opportunity for independent assessment of GST. Let the World Bank-IMF-OECD combine and commission a global GST/VAT Complexity Index. It would not be surprising if Indian GST gets the top rank in this index.

Studies from the World Bank and other reputed institutions have observed that Indian GST laws and regulations are one of the most complexes in the world. If complexity was not daunting, why would taxpaying entities hire consultants every year for A to Z services in complying with GST rules? Gujarat's Urban Ring Development Corporation Limited (URDCL), for instance, listed 27 jobs to be performed by a GST consultant in its expression of interest issued in February 2022.

Yet another indicator of the complexity of 'One Nation, One Tax, is the need for taxpayers to secure separate GST registration for each and every office/unit in the country. Consider The case

of India's sole public service broadcaster, Prasar Bharati's GST consultancy EOI issued in March 2022.

In this, Prasar Bharati states that it has separate registrations for its two constituents, All India Radio (AIR) and Doordarshan in each State/ UT. It adds: "Under the GST regime, there are a total of 70 GST registrations (i.e. AIR-36 & Doordarshan - 34) of Prasar Bharati all over India. Similarly, Prasar Bharati has taken 70 registrations (i.e. AIR - 36 & Doordarshan - 34) all over India for GST TDS. The above GST registrations may be subject to change in future".

The claim that GST is a good tax for all stakeholders is contestable. The more than five-year delay in constituting the Goods and Services Tax Appellate Tribunal (GSTAT) is an instance in point. The delay is not a feel-good charm for taxpayers and the judicial domain.

Another case in point is the GST's inability to accelerate both economic growth and increase indirect tax receipts as the percentage share of GDP as compared to the pre-GST period. It is certainly not a good revenue generator for both the Centre and all the States thus far.

It is here pertinent to quote the National Institute of Public Finance and Policy's (NIPFP's) working paper (WP) captioned 'Revenue Assessment of Goods and Services Tax (GST) in India'. WP dated 6th July 2022 contains compiled comparable revenue streams for pre- and post-GST regimes. It compares the revenue performance for the period 2005-06 to 2021-22.

WP says: "Our analysis shows that both the Union and state governments could not reap the benefits of GST in terms of higher revenue mobilisation yet".

The 15thFC made a similar observation in its final report submitted in October 2020. It stated: "Available numbers indicate that GST buoyancy during 2017-2020 was less than that of subsumed taxes during 2011-2017".

Moreover, GST has not proved to be a good tax for the States that are deep into manufacturing and mining and the ones that supply their goods and services to other states. This fact has been acknowledged by different entities as well as GST revenue data.

It is here apt to quote another WP from NIPFP



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## **Studies from the World Bank and other reputed institutions have observed that Indian GST laws and regulations are one of the most complexes in the world**

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released in July 2020 which has probed States' GST tax efficiency as influenced by certain factors. WP says: "states having a higher share in mining and quarrying vis-à-vis agriculture in GSVA (Gross State Value Added) have lower GST capacity". It adds: "erosion of the tax base of minerals rich states is a design problem of the GST regime. This problem may be addressed by careful design of the intergovernmental fiscal transfer system".

WP also noted that a "higher manufacturing base does not necessarily imply GST base would be high. It depends on relative size of domestic sales (consumption) vis-à-vis inter-state sales (or exports). For example, in Himachal Pradesh and Uttarakhand manufacturing bases are high but a large part of manufactured products is exported out of the state to cater all-India markets. Also, realisation of value addition in terms of wages and salaries are not necessarily consumed in the state but spill over to neighbouring states".

### **FC Recommendations**

Big-Bang, new amendments to the Constitution can, however, help New India realise the PM's

vision of GST as a harbinger of corruption-free taxation. While speaking on the GST-enabling Constitution Amendment Bill in Lok Sabha on 8th August 2016, Mr Modi recalled two old “tricks” of evading taxes – “genuine bill and fake bill”. He expected that GST “will completely stop it”. He stated: “It will be stopped altogether. So in a way this system is going to be used in putting an end to both corruption and black money”.

We all know instances of fake invoices, bogus GST-registered firms, Input tax credit (ITC) frauds and corruption during the last five years. Fraudsters have made most of the GST as a ‘good and simple tax’.

GST authorities at the Centre, the States and at the GST network are rising to the challenge of fraud. The Central Board of Indirect Taxes and Customs (CBIC) has done good work to subdue the tide of frauds. It is here apt to appreciate CIBC’s nine-page office memorandum dated 12th May 2019 detailing standard operating procedure (SOP) for preventing and tackling GST frauds. A report of the parliamentary standing committee presented in March 2022 says: “Special drive against GST invoice fraudsters shows CBIC detected 6110 cases from 9th November 2020 to 6th February 2022. The fake Inputs tax credit (ITC) detected under these cases aggregated to Rs.44189.10 crore”.

The detection of GST frauds aggregating to Rs.50,000 crore is the tip of the iceberg called the tax gap (TG). TG is both due to policy deficit that includes data deficit and due to enforcement laxity. Comptroller and Auditor General (CAG) feels handicapped by delayed or limited or no access to online GST provided by certain States – a fact recorded in the State Finances Reports for 2020-21 or 2019-20.

Take CAG’s report on finances of Jammu & Kashmir and Ladakh as Union Territories for the period 31 October 2019 to 31 March 2020. The report released in April 2022 notes: “Not having access to the data pertaining to all GST transactions has come in the way of comprehensively auditing the GST receipts. The access to GST data has not been provided, and the accounts for the period 31 October 2019 to 31 March 2020 were certified, as was done when records were manually maintained”.

Consider now CAG’s two reports on Bihar.

Released on 30th June 2022, the Report on State Finance for 2020-21 says: “Despite the Government of India’s decision to provide access to Pan-India data of GSTN (Goods and Services Tax Network), only limited access to GST data was provided to audit”.

Bihar’s latest Revenue Sector 2019-20 CAG report, released on 29th July 2021, is also enlightening. It says: “In absence of access to the GSTN/GST data, an audit could not examine whether the IT system is properly mapped with the GST rules, whether the returns are filed and payment of tax is done in time, whether the ITC is claimed as per norms, whether interest for delayed payment of tax is done by the dealers etc”.

GSTC should encourage CAG to compare GST data with information available in databases maintained by other entities to identify and probe data gaps. It is relevant to cite CAG’s compliance audit report on Kerala released on 28th June 2022.

The report found substantial differences in the number of Food Business Operators (FBOs) registered with GST authorities, the Food Safety and Standards Authority of India (FSSAI) and with Local Self-Government Institutions (LSGIs).

Data analytics aside, the Government has to unveil a road map to define the tax gap in the GST domain. It should present to the public an annual statement of progress made to bridge this gap. Does the public not have a right to expect a truly independent annual report on the State of GST operations?

The Government ought to pay heed to 15thFC’s recommendation on the tax gap. It stated: “We recommend a series of urgent operational and policy changes to bridge this gap which includes, among other steps, correcting the inverted duty structure in GST, addressing defects in the IT system for GST and facilitating complete invoice matching and reviewing exemptions, thresholds and concessions in income tax”.

Another non-binding 15thFC’s recommendation that deserves GSTC’s decision is to restructure existing GST tax slabs and rates under each slab into a “three-rate structure of a merit rate, standard rate and demerit rate”.

Reading between the lines of 15thFC’s report implies a hint to substituting a dual GST taxation system with a single, federal one.



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**GST has not proved to be a good tax for the States that are deep into manufacturing and mining and the ones that supply their goods and services to other states. This fact has been acknowledged by different entities as well as GST revenue data**

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The report notes: “Since GST revenues are not equalised, they are bound to lead to differences in the revenue-raising capacity among States. Instead, GST revenues have been guaranteed for the first five years, as a transition measure, and the approach does not involve their equalisation using the RTS (Representative Tax System) approach”.

It adds: “This is in contrast with the Australian example, where all GST revenues are allocated among states according to a combined revenue and expenditure equalisation approach. Instead, in India, State GST revenues are allocated based on the principle of destination or consumption”.

Elsewhere in its report, 15thFC observes, “In the longer run, moving to a system of revenue and/or expenditure equalisation has many advantages, given that these are better measures of State fiscal capacity than macro-based measures, and would thereby help achieve fuller equalisation. Using

these to calculate per capita equalisation entitlement would take population fully into account”.

It stated: “State Governments also argued that tax devolution from the divisible pool is the most frictionless means for States to receive their share of resources. Only such unconditional transfers could protect the autonomy of the State Governments, as this federal autonomy is a basic ingredient of the Constitution”.

Taking a cue from the 15thFC report, GSTC should seriously consider the Australian model of GST under which the Federal Government levies 10% GST on the sale of goods and services. It distributes GST revenue among the States on the basis of a statutory formula worked by an independent commission.

According to an official document captioned ‘A brief history of Australia’s tax system’: “In July 2000, the federal government introduced a goods and services tax (GST), based on the value-added tax (VAT) model, as part of a broader package of taxation reform. The GST replaced the WST (wholesale sales tax) and a range of inefficient state taxes, in conjunction with reforms to federal financial relations. Revenue from the GST is paid to the states and territories, providing them with a stable and growing source of revenue and removing their reliance on general assistance grants from the federal government”.

The Union Government should issue a white paper proposing appropriate amendments to the Constitution to make GST a federal tax. This would obviate the need for three taxes- SGST, IGST and GSTCC. This would also make redundant State GST and GST cess laws. The Paper can propose the distribution of GST revenue among the Centre and the State in an equal 45-45 ratio. The balance 10% of revenue should be allocated to a non-lapsable national Fund for financing flagship welfare schemes. These should be operated under the brand Pradhan Mantri-Mukhya Mantri. The Centre and States should reach an accord that they would dole out subsidies and freebies only from the proposed fund to rein in unsustainable debt and worsening fiscal indiscipline.

It is time to realise PM Modi’s 2016 vision of GST as a “Great Step towards Transformation” and a “Great Step towards Transparency”. 🇮🇳



SNAPSHOTS

1

GST is supposed to be levied on supply of goods and services and that is not easy to define

2

Quarter after quarter, GDP growth rate instead of rising has fallen, from 8% in Q4 of 2017-18 to 3.1% in Q4 of 2019-20, just before the pandemic hit

3

GST has not been able to check the growth of the black economy due to multiplicity of rates and complexity of rules

# STRUCTURALLY FLAWED GST DAMAGING ECONOMY: NEEDS OVERHAUL

GST was launched on July 1, 2017 with much fanfare. It was projected as a second freedom for the country since it was said it would create a win-win situation for all. Now, in the seventy fifth year of Independence it is time to review its performance



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IT was said it would create a single market which would unify the nation and bring about ease of business. GDP was expected to rise by 1 to 2%, inflation was supposed to decline and black income generation would decline. Since GST is a last point tax – collected where the final sale occurs- the backward states, the consuming states – were expected to benefit. Officials have recently enumerated the various benefits on the occasion of completion of five years of operation of GST but admitted to problems which they say will get sorted out soon.

The figures for monthly tax collections from GST are showcased as a success. Since October 2021, in spite of COVID, the monthly tax collection has been above Rs.1.3 lakh crore with a record collection of Rs.1,67,540 crore in April 2022. In contrast, earlier the monthly collections were mostly below or around Rs. 1 lakh crore. The problem is that GST is an indirect tax and as more and more of revenue is collected from it, inflation kicks up and that curtails demand and slows down the economic growth.

### Performance Assessed

Quarter after quarter, GDP growth rate instead of rising has fallen, from 8% in Q4 of 2017-18 to 3.1% in Q4 of 2019-20, just before the pandemic hit. GST is not solely responsible for this decline, but it is an important contributory reason since it has damaged the unorganised non-agriculture - a sector that contributes 31% of the GDP. This decline had been set in motion by demonetization, implemented 8 months before GST was introduced.

The conundrum is that the unorganised sector is exempted from GST and yet it has got damaged. The reason is the way input credit (ITC) functions which raises costs for this sector and lowers the tax burden on the organised sector leading to a price advantage for it. Consequently, the unorganised sector demand has been shifting to the organised sector. Resultantly, inequalities have increased which leads to a further decline in demand and economic slowdown.

As the late Arun Jaitley used to say, 95% of GST is collected from the organised sector. So, as this sector grew at the expense of the unorganised sector, GST collections increased. This is corroborated by the big increase in direct tax collections which are collected from the well-off and the organised sector. In effect, the rapid increase in GST collections when the economy is stagnant points to the decline of the unorganised sector and the shift in demand from it to the organised sector.

Further, an increase in indirect tax collections is bound to be inflationary. That is an important reason why WPI inflation has been rising above 10% since March 2021 and has even crossed the level of 15%.

Finally, when GST was initiated, a revenue neutral rate of tax was chosen. But this implies that revenue is not sacrificed, even though the cascading effect is reduced. So, prices are guaranteed to not moderate; unlike what was expected.

### Black Economy and Complexity

GST has not been able to check the growth of the black economy due to multiplicity of rates and complexity of rules. While a good or service has one tax rate nationally, across goods and services

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**GST is structurally not suited to the Indian situation. It has unfortunately been made an issue of national pride. It was said that 160 countries have GST of some form so why not India. Simple reason is that it is not suited to our structures of production and the extreme poverty that prevails**

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there are many tax rates (at least 8). This goes contrary to the requirement of GST that there be one tax rate. But, in an economy like India that is not feasible given the poverty and diversity of production structures. So, as Arun Jaitley popularised, Chappal and Mercedes Benz cars cannot have the same rate of tax. Further, innumerable changes in rules have been announced and Courts have been flooded with cases. Fake companies to claim ITC have been detected. e-Way bills have seen manipulations and corruption.

Due to the complexities and lack of clarity in official pronouncements, businesses and Chartered Accountant complain of difficulties. A company operating nationally, has to file forms monthly for each State of operation – adding up to hundreds of forms. The functioning of the GST network has also caused problems from time to time due to the large volume of data required to be uploaded. Thus, the cost of compliance is high, especially for the unorganised sector since without computerization one cannot be a part of GST. Effectively then, the unorganised sector faces a challenge whether it is kept out of GST or brought under it.

Since the less developed States have a proportionately larger share of the unorganised sector than the better off States they have suffered more due to the decline of the unorganised sector. Thus, inter-State disparities have aggravated even though consuming States are supposed to benefit.

So, *GST is structurally not suited* to the Indian situation. It has unfortunately been made an issue of national pride. It was said that 160 countries have GST of some form so why not India. Simple reason is that it is not suited to our structures of production and the extreme poverty that prevails. No other major economy has such a huge unorganised sector of the economy. Unfortunately, Indian policy makers tend to copy from the West, whether suited to our requirements or not.

### **Difficulties in Implementation of GST**

The structural problem is that in principle, VAT should be simple but in practice it is not. GST is nothing but VAT at every stage of production and distribution of goods and services. So, the problems of GST stem from calculation of VAT in a very complex economy.

At the final stage it is collected from the final buyer, the consumer. But, in the intermediate stages, and there can be dozens of them, a tax is levied and then the buyer at the next stage is given an Input credit. At each stage of production there are inputs, finance, transportation and so on. Each is taxed and then each gets an input credit. So, behind the final tax collected from the final user there may be dozens or even hundreds of stages of tax and input credit.

Further, as the name suggests, VAT is levied on the *value addition* at each of the stages of production and distribution. To calculate value addition which is to be taxed, precise knowledge of both inputs and outputs is required. So, if full data is not available on inputs and outputs or they are deliberately fudged to generate black incomes then calculating value addition becomes difficult. It becomes even more difficult if there are exemptions and different rates of tax on different items. The difficulty is compounded by having different rates of taxes for the same item. Like, in the case of packaged and labelled or pre-packaged or loose. Or in the case of hotel rooms of different tariff.

GST is supposed to be levied on supply of goods and services and that is not easy to define. There are disputes about what constitutes supply. So, what is simple theoretically has become complicated and created all the problems for India.

### **Concluding Remarks**

Hardly any country in the world has a complete GST because of the difficulties enumerated above. India also does not have a full GST. It cannot go in for it because of the large unorganised sector and the huge poverty in the country. In India it will remain structurally flawed and will continue to pull down the economy.

It cannot now be withdrawn but can be reformed by converting it into a last point tax (which it effectively is) and collected from the organised sectors of the economy. This would simplify the tax. Since only 5% of the units would come under its purview it can be monitored more effectively for tax evasion. A detailed scheme for such a reform has been suggested by this author repeatedly since 2015. 📌

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Published by Penguin Random House. 2019*



**GEETA SINGH**

Managing Editor  
Parliamentarian Magazine

# SURGE IN GST COLLECTION: A DRIVING FORCE IN NATION BUILDING

In the midst of rising inflation, GST has been able to become a successful auxiliary to the government by offering relief on the economic front. This is a good sign from the financial point of view

RECENTLY regular basis shall deliver Rs 1.5 trillion revenue for the government.” Recently revenue secretary Tarun Bajaj said he is expecting GST collection to top the Rs 1.5-lakh-crore-mark from October. He said, “For the last couple of months, we’ve been trying very hard to reach that milestone of Rs 1.5 trillion (lakh crore). But we have been failing a bit sometimes by Rs 2,000 crore and sometimes by even Rs 6,000 crore.” The union secretary added, “The revenue that we will collect in October, the data of which will come on November 1, I am sure from that month onwards the CBIC on a regular basis shall deliver Rs 1.5 trillion revenue for the government.”

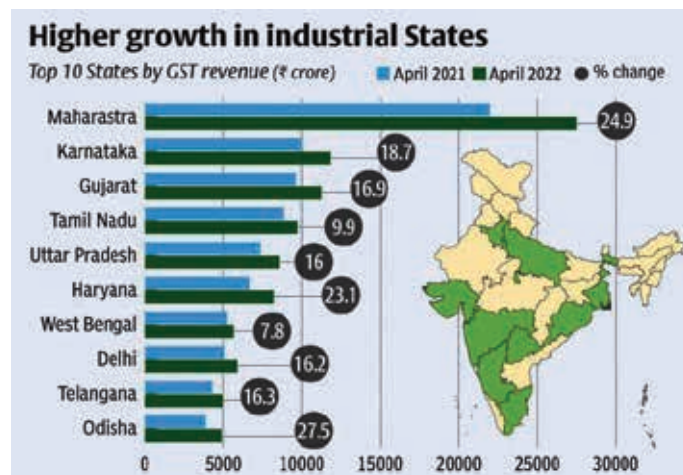
Revenue collection from Goods and Services Tax (GST) has been trending at over Rs 1.4 lakh crore for the past seven months consecutively but has not crossed the Rs 1.5-lakh-crore-mark yet consistently.

It is noteworthy that GST collections rose 26 per cent in September to Rs 1.47 lakh crore, remaining above the Rs 1.4-lakh crore mark for the seventh straight month, aided by rising demand and inflation, higher rates and greater compliance. But the rising numbers amidst uncertain global conditions have raised exasperation and eyebrows of many economic experts to research India’s potential economic growth. Some believe that the numbers are increasing due to increased product consumption and due to the effects of inflation and rising imports.

But there are other factors also, which helped in skyrocketing its collection.

Five years ago, when India’s federal and State governments struck a historic deal, the uniform tax on goods and services was born. But the GST system has undergone some volatile phases since its beginning in July 2017. After initial teething troubles involving return filing in FY18, taxpayers settled down in the following year with average monthly collections improving by 9 percent in FY19 compared to the first year. In FY20, the economy went into a recession due to a contraction in consumption, resulting in GST revenue recording a meagre growth of 5 percent. In FY21, the pandemic and intense lockdowns made the average revenue contract by 8.6 percent. The growth in revenue from the goods and services tax (GST) does not reflect a broad-based economic recovery from the second covid wave shock; rather, it primarily reflects a rebound in specific consumption.

The rise in industrial activities also led to bigger collections. The increased collections in states like Maharashtra, Karnataka and Odisha boost this factor as



they have many industries. Contrastingly, more populous states like Bihar (-2.47 per cent), West Bengal (7.80 per cent) and Jharkhand (4.86 per cent) showed slower growth, indicating that GST collection was undriven by a revival in private consumption. Uttarakhand, which traditionally relies on tourism in its hill resorts, witnessed a gradual decline. During the past three financial years, only one state, Odisha, recorded more than 14% annual growth in its extensive GST collection.

Another key aspect that undoubtedly helped to keep GST collections robust was enhanced compliance. There is also no doubt that compliance levels have improved drastically in recent months with the introduction of e-Invoices and a higher number of taxpayers filing GSTR-1 and GSTR-3B returns. With the uploading of invoices becoming compulsory for larger companies, it is also easier to check excessive input tax credit claims and other kinds of leakages. Greater enforcement actions against anti-evasion activities also brought positivity.

Reclassification of GST collection is another possible reason for the successful jump in IGST collection. IGST collections, which represent tax collected on inter-state sales of goods and services, have increased by 110.74 per cent compared to April 2021. If we see the numbers, IGST accounted for 49 per cent of total GST collection in April 2022, while it accounted for less than 27 per cent between December 2020 and March 2022. Before that, IGST accounted for almost half of GST collections.

Hence, we can wisely say that the GST system seems to have settled down to a steady growth path, and it fits well as a high-frequency indicator of the economy’s recovery. 📈



# Dr Manmohan Singh

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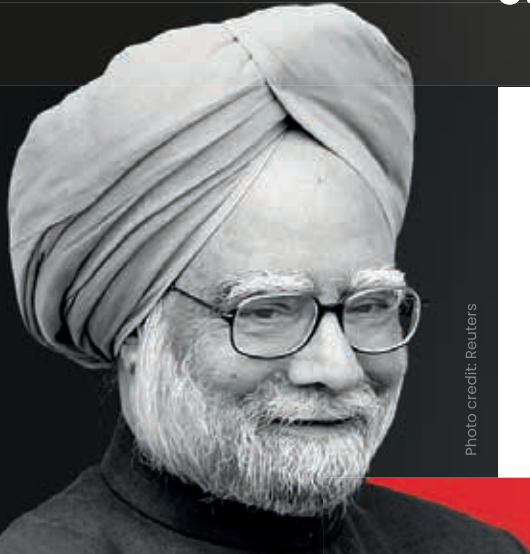


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