

Best is the enemy of the Good

-Voltaire

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Introduction

The second half of 2017 following the introduction of the Goods and Services Tax, was a testing period for tax-payers. The initial jubilation of having a single indirect tax law to replace a slew of central and local legislations, was short-lived for a host of reasons. The GSTN portal which was the lifeline and the backbone of GST was just not living up to the volume and variety of transactions that needed to be put through the system. Critical functionalities of the GSTN portal either did not work effectively, or were not enabled in many cases, leaving tax payers at their wits' end. In very many cases, the electronic system was not properly mapped to the GST law. Further, some of the welcome features of the law such as doing away with exemptions, were not accompanied with an efficacious system of granting refund of input taxes. Exporters particularly, saw a staggering amount of refunds pending for months on end, negatively impacting their working capital. Automatic refunds for exporters, and within committed timelines, remained largely on paper. Add to this, the new concept of Supply in contrast to Sale, Reverse Charge Mechanism (RCM), GST on advances against supply of goods - were entirely new to the taxation landscape – making compliance difficult at best and impossible, at worst.

These difficulties have led to the Government taking initiatives to amend the new legislation. With enough powers granted to the Executive to introduce changes without having to place them before the Legislature, changes came-in thick and fast to address the concerns. Let us take a look at some of the notable amendments:

- Suspension of RCM on procurement from Unregistered Persons (URP)

RCM on certain notified services was present in the erstwhile Service Tax regulations. However, RCM on any procurement from URP was a new feature of the GST. Given that tax paid on RCM basis was eligible as an input tax credit, there was nothing for the Government to gain in terms of Revenue, though it entailed huge inconvenience to the tax payer in terms of documentation, payment of tax and then claiming credit thereof. Taking into account the difficulties encountered including the cash blocked in the form of Input Tax Credit, the Government issued a notification suspending this requirement from 13 October till 31 March 2018. We are therefore, back to Square One. One hopes this is permanently removed from the Statute.

- Removal of tax on advances received against supply of goods

Again, while advance received on services was subject to Service Tax in the erstwhile Service Tax Regime, the GST law considered the receipt of advances on supply of goods as the 'time of supply' thereby triggering payment of tax on such Advance. Taking into account the difficulty encountered by the Business Community, the Government has done away with this requirement from 15 Nov 2017 onwards.

- Restoration of benefits in a modified form to Merchant Exporters;

The earlier regulations allowed a domestic supplier to a merchant exporter (popularly referred to as 'Penultimate Exports') to invoice without CST, subject to certain conditions. This meant that the merchant exporter did not have to pay any CST on such procurements. A similar provision was also present in the Central Excise regulations, exempting the penultimate exporter from paying Excise Duty, subject of course to conditions.

Under the GST Law, all exemptions were eliminated. This meant that the merchant exporter had to procure goods from his domestic supplier by paying GST at appropriate rates. This was a huge shift, and blocked the working capital of the exporter till he could claim refunds. The domestic supplier too had to discharge his GST on such supplies, often before he could realize his proceeds from the Merchant Exporter. Thus, both the supplier and the Merchant exporter suffered.

Exporters who accumulated large credits were stuck without being able to obtain Refunds. The Government sensed the difficulties, and introduced a new scheme under which the domestic supplier could charge only 0.1% IGST (or 0.05% CGST and 0.05% SGST) on such supplies, subject of course to conditions. Thus Merchant exporters did not have to lock up their working capital to the extent of the prevailing GST on such goods, but only to the extent of 0.1%. This was a major relief. The domestic supplier too could easily discharge his output liability even with his input tax credits.

Thus, the Government substantially restored the old position even under the GST law.

- Deemed Exports Defined - Refund to Supplier of Deemed Exports:

Through a recent notification, supplies to certain categories of exporters - Advance Authorisation Holders, EPCG license holders and Export Oriented Units – were brought under the definition of Deemed Exports. Thanks to changes in the rules for Refunds, Deemed Exporters have become eligible to claim refund of GST. The supplier of deemed exports will claim refund on his supplies directly from the Government provided *inter alia*, the exporters give an undertaking not to claim refund. By providing refund facility for suppliers of deemed exports, the Government has addressed the concerns of the above category of exporters who could now procure goods without payment of GST.

This restored the old position where such exporters did not have to pay taxes on their procurements.

- Exemption from payment of IGST on imports by certain categories of exporters;

In the earlier era, the above categories of exporters did not have to pay Basic Customs Duty, or Countervailing duty on their imports. With CVD substituted by IGST, the question of claiming exemption did not arise. In other words, exporters were placed on par with other domestic players. They had to clear their imports by necessarily paying IGST to the Customs, and later seek refunds.

Given that this was causing huge problems to the specified category of Exporters, Government has now exempted GST on imports for the above categories of Exporters, *albeit* up to 31 March 2018 only. It is hoped that in one form or the other, Exporters are exempted from paying GST on imports even post 31 March 2018.

- Reduction in GST rates

Last, but not the least, the Government has also acceded to the representation of the Industry in reducing rates for certain goods, putting most leather and leather products in the 5% or 18% bracket – closer to the explicit tax charged in the pre-GST era. This is a marked departure from the recommendations of the Rate Fitment committee, but the move to rationalize the rate structure was required to control the prices of such goods.

GST comes full circle:

With these changes, one gets a feeling that GST has, after all, come full-circle. We are substantially back to the old era in the above aspects. With the return-filing procedures also likely to be simplified, one hopes that we return to a situation where there would be a single return for each month – much the same way as was prevailing in the pre-GST era – but with the benefits of electronic filing of all types of returns. In this process though, it is important that the professed objective of the GST law - in eliminating needless interface with the Department – should not be lost sight of.

Clearly, the intentions of the Government to implement a perfect system of taxation has not borne fruit for various reasons. As the saying goes '**Best is the enemy of the Good!**' As the New Year dawns, one looks forward to a Sane, Simple and Stable tax that works to the mutual advantage of both the tax payers and the Government.
