

GST

GOODS AND SERVICE TAX



GST – Good & Simple Tax – Boon or Bane?



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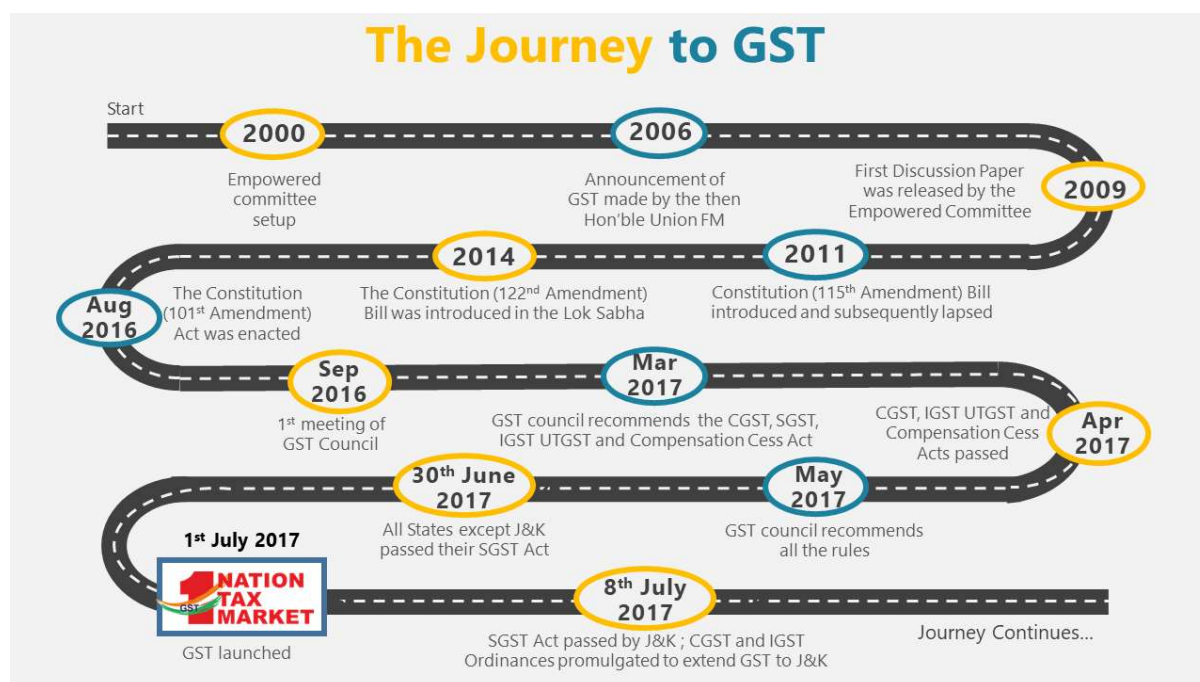
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PART I-INTRODUCTION:



On the historic date of 1st July 2017, the Indirect Tax Structure of India was revamped when the Goods & Services Tax (GST) Law was made applicable by subsuming almost 13+ indirect taxes which included CENTRAL EXCISE, State Vat, Services Tax etc.

The objectives of implementation of GST law, *inter alia*, included –



However, if we look at the scenario today, i.e. after 4.5+ years of experience, the dream of simple indirect tax structure seems to have been shattered. Without any doubt, there are flaws in GST law and its implementation.

Without prejudice to others' view, the reasons in our understanding as to why GST law has not been able to achieve its primary objectives of simplification, would include:

- **Enormous Confusion:** With the existence of 800+ notifications, 170+ circulars, numerous advance rulings, judgments etc., the law has created confusions rather than simplicity.
- **Divergent Views:** Every law is subject to interpretation issues. Similarly placed GST law is not an exception. Consequently, there are possibilities of divergent views leading to disputes.

GST Portal Glitches and many more such reasons could be there.

Through this article, the author wishes to express her views on various issues that still persists under GST, analyse the same from various perspective.

PART II – GOODS & SERVICES TAX IN INDIA – A JOURNEY SO FAR:

Taxpayers' Perspective:

Taxpayers and business houses are the heart of the country from fiscal viewpoint. The primary assessment whether GST law is a bane or boon, should be made from the perspective of the taxpayers. Talking about journey of GST law in India in last 4.5+ years, certain aspects need to be evaluated.

Compliances.

What was promised to the taxpayers, was online and easy compliance mechanism where auto matching of data furnished by supplier with the data furnished by recipient would be there. However, the glitches on GST portal never allowed the implementation of the same. In fact, what has been implemented, could not smoothly be functional as well. Further, changes in returns, promise to bring new returns system (eventually undelivered) etc. are other failures experienced.

Along with that, the provisions related to E – Way Bills, E – Invoices etc. have also been introduced. Despite its positive objectives, these provisions are detrimental to the businesses to the extent that non-compliance attract huge penal provisions even in genuine cases.

Input Tax Credit: Seamless or Seems Less?

At the very outset, a dream of seamless Input Tax Credit (ITC) was shown to the taxpayers. The primary purpose was to remove cascading effect of taxes and reduce the overall burden on taxpayers. However, considering the current position of law, there seems a huge gap between what was promised and what is being delivered. The reasons for such comments would be:

- Denial of ITC to genuine recipient because of the fault of supplier.
- Blocking of ITC electronic ledger of the taxpayer even on grounds of default by the supplier.
- Impractical expectations from recipient to check payment of taxes by supplier to Government, to claim ITC.
- Blocked credit even in genuine cases.

Government's Perspective:

Eradication of Fraud Cases – Analysis.

With an intention to curb tax evasion cases, a new indirect tax era was expected. Despite the fact that there have been instances where tax authorities have unearthed fraud cases in GST. Entities like Manpasand Beverages, WAZIR X and many more have been alleged of tax evasion of crores of tax, the question on reduction in fraud cases is still

unanswered. Further, none of such cases have attained finality and none of the accused has been prosecuted yet. This raises a question on the genuineness of allegation as well.

Whether Litigation Reduced?

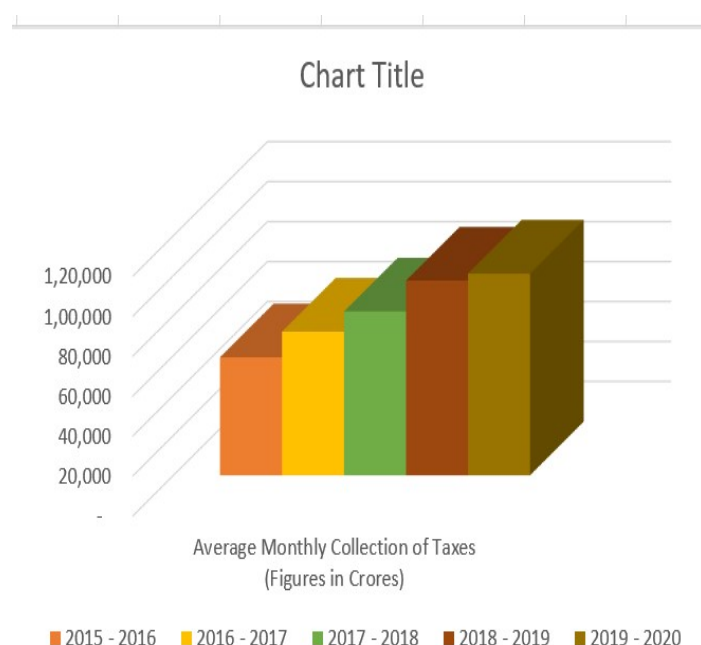
The answer to the question might be subjective. However, the primary aim of simplifying the indirect tax law seems to have been hibernated. If we look at practical cases, there are 100s of judgments from High courts or supreme courts deciding various issues related to law. These litigations are only products of complexity and some sort of repugnancy.

Economy's Perspective:

Ease of Doing Business?

Certainly, the law does not seem to have achieved its objective of promoting ease of doing business. Undoubtedly, the law is new and needs time to settlement. However, in the experience so far, taxpayers seem to have been feeling like its “end of doing business” and not “ease of doing business”. Sometimes, the reasons is complex law, while sometimes its bureaucrats’ activities.

Revenue Collection.



Although the GST collections were not as robust as expected in the initial years, there has been a steady increase every year on account of the efforts put in by the government in rationalizing the law as well as using technology to detect fraud and tax evasion.

Further, if we exclude the first six months of FY 21 which were impacted due to the first wave of COVID-19, the second half of FY 21 witnessed an average GST collection of approximately Rs. 1.13 lakh crore per month.

PART III – 3. ISSUES AND CHALLENGES IN GOODS & SERVICES TAX LAW:

Interpretational and Constitutional Issues:

Taxability of Liquidated Damages.

In case of a contract, if as a part of contract, one party agrees to pay certain some of money on account of da mages caused to another party by non / improper fulfilment of a contract, whether the same shall be treated as a consideration by the payer for a supply and thus taxable?



The definition of “supply”, read with the definition of “services” includes the same. Further, Entry 5(e) of Schedule II provides that “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”. Now, the person accepting the damages can be said to be tolerating an act of non fulfilment of contract by another party. However, some may be of the opinion that the said consideration is not for a separate supply, but a condition to the main contract.

Presence of multiple verdicts and interpretation in this regard create dispute and leads to litigations.

Blocked Credit in Case of Construction of Immovable Property.



Pursuant to Sec 17(5)(c) / (d) of CGST Act, 2017, ITC on goods / services or works contract services for construction of immovable property is not allowed. In fact, ITC in such case is disallowed even if such immovable property is used in normal course of business. This leads to cascading effect and seamless flow of ITC does not seem to be there.

Excessive Delegation Exercised by Rules.

It is not debated that Government has powers to make rules for carrying out provisions of CGST Act, 2017. However, can rules be made without getting powers conferred from the Act itself? Certainly no. However, following are some situations where Rules have overridden the Act.



- Sec 37 empowers rules to prescribe manner for filing form GSTR – 1. However, Rule 59(6), without any power from Act, restricts on filing GSTR – 1 in case GSTR 3B for previous period is not filed.
- Sec 16(2)(aa) provides that ITC is allowed to recipient if supplier communicates the same in the manner provided in Sec 37 (it does not mention time limit). However, Rule 36(4), w.e.f. 01st Jan 2022 prescribes that ITC shall be allowed to recipient only if it is reflected in GSTR 2B (time bound static form).
- Sec 54(1) provides that Rules may prescribe the form and manner of application for refund. However, Rule 89(4), in case of refund related to ITC on zero rated supply made without payment of taxes, provides maximum capping on the value of “Zero Rated supply of goods” for the purpose of calculation of refund.

Punishing Genuine Recipient for the Fault of Supplier.

Whether we talk about Sec 16(2)(aa) where recipient can take ITC only when details of such supplies have been furnished by supplier in GSTR – 1, or we talk about Sec 16(2)(c), where ITC can be taken by recipient only when tax has actually been paid to the Government by the supplier, or we talk about Rule 86A where ITC of recipient is blocked in case the supplier is engaged in fraudulent activity, the of the question in dispute is why genuine recipient is punished for the fault by the supplier?

Issues Arising During Assessment Proceedings:

Well, in a self - assessment based tax structure, it is imperative that the revenue department assesses the details furnished, taxes paid, input tax credit claimed etc. by the taxpayer and to ensure that everyone is complying with the law as required. While exercising the duties related to assessment and adjudication, many times, department also creates a situation of unnecessary litigations. This includes:

Extra - Ordinary Powers to Officers in Certain Cases.

“Power Corrupts and Absolute Power Corrupts Absolutely”. This statement suits very well in tax laws. With the imposition of powers like blocking of credit ledger of the recipient u/r 86A or cancellation of registration, demands and recovery etc., the GST law has left the taxpayers exposed to harassment and disruption in business.

Baseless Notices by Officers in Some Cases.

This is the main problem of our adjudication system, as SCN is a first level or beginning state of any litigation and the department without any proper grounds or basis are initiating the same. This has led to unnecessary litigation in the country. For instance, notices are still being issued for paying **Interest on Gross Liability instead of Net Liability** even after retrospective amendment in the law. Such notices per incuriam are detrimental to the economy as a whole.

PART IV-IMPORTANT MEASURES BY GOVERNMENT SO

FAR:

As mentioned earlier, the implementation of GST law was with the ray of hope that it will promote ease of doing business, reduce burden of small businesses and improve overall economy of the country. Undoubtedly, the Government has been continuously working to bring out changes in the law, for the favor of the economy. This would include:

Reducing the Claim of Fake ITC.



With the provisions like Sec 16(2)(aa), Government has tried every possible way, even if harsh for some genuine taxpayers, to make sure that no person should avail any input tax credit, the details of which are not furnished to the Government by the supplier. Further, provisions like Sec 16(2)(c) requires that the tax must be paid to the Government and then only the recipient can claim ITC of the same.

Reducing the Passing of ITC without Actual Payment.

Provisions of Rule 59(6) ensures that no taxpayer shall be able to file GSTR – 1 (to pass on ITC) in case of failure to file GSTR 3B for preceding period.



This however, ensures the filing of GSTR 3B and not actual correct tax payment. To cover that aspect, provisions of Sec 75(12) and Sec 79 are placed as safeguards. So, if a person discloses liability in GSTR – 1 but does not pay the same through GSTR3B, the same may be recovered u/s 79.

E – Way Bills and E – Invoicing.



Provisions like e-way bills and e-invoicing bills are in place to ensure that movements of goods can be tracked to some extent, real time reporting of invoices etc. Keeping in mind the interest of small businessmen and also their hardships, these provisions have been made mandatory only above a certain threshold.

Other Provisions FOR Trade Facilitation.

- Common GST portal, instead of multiple portals for filing returns, reply to notices, appeals etc. have reduced hardships to some extent.
- Guidelines issued w.r.t. Rule 86A, Sec 83 to ensure that powers are exercised by officers with due care and regards to law and facts.
- Instruction issued to ensure that mere differences between GSTR 1 and 3B should not be the reason for recovery u/s 79 without hearing the taxpayer's contentions.



PART V-CONCLUDING REMARKS

The discussions made in Part I to Part IV till here makes it crystal clear that GST law lacks simplicity as promised. With such a paradigm shift in the tax structure, both taxpayers and tax administrators are struggling to settle. The steps taken by Government so far are appreciated but at the same time, the burning issues and hardships to the taxpayers cannot be ignored. A wise person would need no explicit explanation whether GST is a bane or a boon. The issues discussed and the probable future litigations are the reasons to form a basis to decide the same.

We hope the law would attain simplicity and settlement soon.

Profound Regards,

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