TAXATIONEXT - II

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In the first leg of this sequel, in a trilogy, the First Draft Paper by the Empowered Committee, released on 10/1/2009 was analyzed. In this second leg of the sequel, once again in a trilogy, the report of the Task Force (The Thirteenth Finance Commission) and also the Commentary by the Department of Revenue on the First Draft Paper of The Empowered Committee are addressed.

GST – THE SYMMETRY

Prologue: *"I like to pay taxes. With them I buy civilization."*

- *Oliver Wendell Holmes, Jr.*

The Report of the Task Force on GST was released on 15/12/2009! On the fundamentals, it syncs with the First Draft paper of the Empowered Committee on both policy and issues like having a DUAL GST regime in India in consonance with the federal structure of the country comprising of a Central GST (CGST) which would be levied by the Centre and a State GST (SGST) which would be levied by the States on all goods and services up to the final consumer point. It also concurs that the Centre and the State would have concurrent jurisdiction over the levy and that the CGST would be administered by the Centre and the SGST would be administered by the respective States. It also concurs that there shall be both CGST as well as SGST on imports. There is also a concurrence that the GST shall be on a destination principle so that the SGST on imports shall accrue to the consuming State. The report also agrees to the policy that the exports shall be zero rated but there shall be no exemption to either the units in Special Economic Zones as well as to its developers.

Further the report also agrees to the propositions by the First Draft paper of the Empowered Committee (FDP for short), whereby, the CGST shall be credited to the Central Government and the SGST shall be credited to the respective State Governments and also to the set – off scheme, whereby, the Input Tax Credit (ITC) of the CGST shall be used for the CGST and the ITC of the SGST shall be used for the SGST and the cross utilization of ITC between CGST and SGST shall not be allowed.

Further the report also state that the Centre and State shall adopt a common consumption – type GST where there would be no distinction between inputs as well as capital goods, in respect of allowing the Input Tax Credit (ITC). It also recommends that the ITC of the CGST as well as the SGST on both the inputs as well as the capital goods shall be allowed on the year of procurement itself, unlike the present CENVAT credit scheme for the capital goods, whereby only 50% of the CENVAT credit is allowed in the year of receipt and the balance in any subsequent years. It also specifies that any subsequent transfer of credit availed goods shall also attract appropriate SGST as well as CGST at the time of their transfer, like all other goods and services.

On exemptions, the report is in line with the FDP, whereby, it discourages any exemption from CGST as well as SGST, in ordinary course. However, if in case, it is considered necessary to provide exemption, the Centre and the States should draw up a common exemption which should be restricted to the following, namely:

a. All public services of Government (Central, State and municipal/panchayati raj) including Civil administration, health services and formal education services provided by Government schools and colleges, Defence, Para-military, Police, Intelligence and Government Departments. However, public services will not include Railways, Post and Telegraph, other commercial Departments, Public Sector enterprises, banks and Insurance, health and education services;

b. Any service transactions between an employer and employee either as a service provider, recipient or vice versa;

c. any **unprocessed food article** which is covered under the public distribution system should be exempt regardless of the outlet through which it is sold; and

d. **education services** provided by non-Governmental schools and colleges; and

e. **health services** provided by non-Governmental agencies.

The report also recommends that the small manufacturers, dealers as well as service providers shall be kept out of the levy of both CGST as well as SGST upto a turnover of Rs.10 lakhs, with an option for such persons to voluntarily register and pay. It also recommends uniformity in the above threshold among all States. The report also recommends a compounded levy of one percent (1%) on the aggregate turnover of both goods and services, for small players upto an annual turnover of Rs. 10 lakhs to Rs. 40 lakhs without ITC. Similarly a moderate one percent (1%) levy is recommended on high valued goods like bullions, precious stones as well as gold/silver/platinum jewellery. The report also negatives any threshold exemption to the manufactures, over and above the one prescribed above, like the present existing exemption of Rs 1.5 crores. Further, while agreeing in principle that the Central Board of Excise and Customs has to administer the CGST and the SGST has to be administered by the respective State tax administration, it also recommends that for SSI manufacturers, the scrutiny/audit/enforcement shall be done by the State tax administration itself, for both CGST as well as SGST.

Further the report also concurs with the FDP that the area based exemptions shall not be continued in the GST regime and it recommends that, in case if it is considered necessary to support a region, an appropriate direct investment linked cash subsidy can be thought of.

Regarding the rates for GST, the report, in sharp contrast to the recommendation in the FDP, whereby, multiple layer rates are prescribed, has suggested that only a single positive rate @ 5% for CGST as well as a single positive rate of 7% for SGST for all the goods and services.

With regard to the subsuming of various taxes into the CGST and the SGST basket, apart from the recommendations contained in the FDP, the report has suggested that the following taxes shall also be subsumed in the SGST, namely;

- Stamp Duty
- Taxes on Vehicles
- Taxes on Goods and Passengers
- Taxes and duties on Electricity

In respect of the goods comprising of emission fuels except industrial fuels, tobacco products and alcohol, the report recommends a dual levy of GST as well as excise and there shall be no input credit of excise. Apart from the above, the report also recommends that all entry and Octroi shall be abolished.

Regarding the administration of GST, it has been recommended that it shall be based on audited accounts and not on the basis of any form of physical controls. Since the tax base will be common, there should be a **common appellate authority.** Similarly, the Authority for Advance Ruling should also be common. It is also suggested that best international practices should be embedded in the GST, particularly in respect of laws relating to levy of penalties, and circumstances and method of prosecution and no authority should have any power to make preventive detention for the purposes of CGST and SGST.

It’s all about symmetry! Let’s see asymmetry in **Part II**