

Fuelling GST reforms – G. Natarajan

ITC matching.

Considering the sheer volume of business transactions, matching of outward supplies by a supplier and the Input Tax Credit availed by the recipient is a daunting task and various attempts are being made by the Government on trial and error basis, to usher in a seamless era, which still eludes. The latest change being, recipients would be eligible to avail ITC, only if their suppliers file their monthly returns (GSTR-1) within the due date. In other words, recipients would be entitled to avail ITC only for those invoices, the detail of which have been communicated to them through GSTR-2B. Further, there is also a requirement already that the suppliers should pay the taxes, in order to make the recipients eligible to claim ITC, though the recipients do not have any means to ensure compliance by the suppliers.

There is no point in lamenting over these requirements, which have come to stay. New business practices should evolve whereby the recipients should come forward to pay to their suppliers, the GST charged by the suppliers, immediately, without availing any credit period for the same, so that the suppliers can pay their tax liabilities within the due date and file their returns. The recipients may avail the credit period only for the basic value of the supplies. Like the provisions available in the MSME Act, mandating payment to MSME suppliers within a shorter time frame, a mandatory requirement of recipients paying their suppliers, the GST component, within 15th of the succeeding month may also be introduced. This will enable the suppliers to discharge their GST liabilities in time and file their returns, so that their recipients can also avail ITC without any hassles.

Karnataka High Court upholds dual tax regime

Certain goods attract a huge measure of taxation and remain as the single largest source of tax revenues to the Governments. Even a massive tax reform like GST can choose to ignore such goods, for the simple reason that any move to bring them into GST would cause a serious dent in the Government revenues. The high decibel political rhetoric over bringing petrol and diesel into GST is often overshadowed by the economic reality. Intoxicating drinks are another species, which has escaped from the GST quagmire, not with any reverence to the boozers but to make them pay through their noses for the drinks.

Tobacco products are unique where phrases like “subsuming of taxes”, “one nation, one tax” etc. are defiantly breached and both legacy taxes as well as GST are being levied on them simultaneously. This was under challenge before the Hon’ble Karnataka High Court, on various grounds, significant among them being, once GST is levied on an item under Article 246 A of the Constitution, no further taxes can be levied on them under Article 246 too, which falls foul of the Constitutional mandate behind the introduction of GST.

The Court was not impressed and held that two levies can simultaneously co-exist, if the legislative scheme decides so. In other words, the power to levy GST on supplies, does not denude the Government of its power to levy excise duties or any other surcharge (National Calamity Contingent Duty, in this case), subject to the legislative fields under the seventh schedule of the Constitution. Thus, the simultaneous levy of Excise duties as well as GST on tobacco products has been upheld by the Hon’ble Karnataka High Court.

There has been a big hue and cry over not bringing petroleum products under GST, though the reasons are obvious. Currently, the excise duty levied by the Union Government and VAT levied by the State Governments together is much higher than the maximum rate of GST,

which is capped at 40 % and that is the reason why petroleum products are kept outside the GST ambit. From time immemorial, the taxes paid on petroleum products are not allowed the benefit of input tax credit, leading to cascading effect of taxes too.

Taking cue from the decision of Hon'ble Karnataka High Court, the Government can think of simultaneously levying a GST on petroleum products at a small percentage (with corresponding reduction in Excise duty and VAT rates to maintain the price at same level) and also allow ITC of such small quantum of GST levied, across the board. This will pave way for a slow and smooth transition of petroleum products before they are seamlessly absorbed in the GST mainstream, over a period. Otherwise, such transition can never happen at one go, considering the economic realities.

(The author is a practicing advocate based at Chennai and senior partner in Swamy Associates)

Fuelling GST reforms

Bringing petro products under GST's ambit

GNATARAJAN

Considering the sheer volume of business transactions, matching of outward supplies by a supplier and the Input Tax Credit (ITC) claimed by the recipient is a daunting task. The government's attempts to usher in a seamless system remains elusive.

The latest change is making recipients eligible to claim ITC only if their suppliers file their monthly returns (GSTR-1) by the due date. In other words, recipients will get ITC only for those invoices the detail of which have been communicated to them through GSTR-2B. Further, there is already a requirement that suppliers should pay the taxes in order to make the recipients eligible for ITC, but the latter do not have any means to ensure compliance by the former.

New business practices should evolve whereby the recipients should come forward to pay their suppliers the GST charged by the suppliers, immediately, without availing themselves of any credit period for the same, so that the suppliers can pay their tax liabilities within the due date and file their returns.

The recipients may avail themselves of the credit period only for the basic value of the supplies.

Like the provisions available in the MSME Act, mandating payment to MSME suppliers within a shorter time frame, a mandatory requirement of recipients paying their suppliers, the GST component, within 15th of the succeeding month may also be introduced. This will enable the suppliers discharge their GST liabilities on time and file their returns, so that their recipients can avail themselves of ITC without any hassles.

Karnataka HC ruling

Some goods that earn huge tax revenues for governments are often left out of tax reform measures. The high decibel political rhetoric over bringing petrol and diesel into GST is often overshadowed by the economic reality. Liquor is another species that has escaped the GST quagmire.

Tobacco products are unique where phrases like "subsuming of taxes", "one nation, one tax" etc. are defiantly breached and both legacy taxes as well as GST are being levied on them simultaneously. This was challenged before the Karnataka High Court on various grounds, significant among them being, once GST is levied on an item under Article 246 A of the Constitution, no further taxes can be levied on it under Article 246 too, which falls foul of the Constitutional mandate behind the introduction of GST.

But the Court held that two levies can co-exist, if the legislative scheme decides so. In other words, the power to levy GST on supplies does not denude the government of its power to levy excise duties or any other surcharge (National Calamity Contingent Duty, in this case), subject to the legislative fields under the Seventh Schedule of the Constitution. Thus, the simultaneous levy of excise duties as well as GST on tobacco products has been upheld by the Karnataka High Court.

On petroleum products, currently, the excise duty levied by the Union Government and VAT levied by the State governments together is much higher

than the maximum rate of GST, which is capped at 40 per cent, and that is the reason why petroleum products are kept outside the GST ambit. From time immemorial, the taxes paid on petroleum products are not allowed the benefit of input tax credit, leading to cascading effect of taxes, too.

Taking a cue from the decision of the Karnataka High Court, the government can think of simultaneously levying GST on petroleum products at a small percentage (with corresponding reduction in the excise duty and VAT rates to maintain the price at the same level) and also allow ITC of such small quantum of GST levied, across the board. This will pave the way for a slow and smooth transition of petroleum products before they are seamlessly absorbed in the GST mainstream, over a period.

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