

## **HOW TO SECURE THE INTEREST OF GOVERNMENT REVENUE UNDER PROPOSED GST REGIME**

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Present regime of multiple taxation is not working to the satisfaction of both assesseees and Government Revenue. Therefore, one of objectives for switching over to the proposed Goods and Service Tax [**"GST"** in short] Regime is to safeguard the interest of Government Revenue. Before discussing the various ways of securing the interest of Government Revenue under proposed GST Regime, the following quote of eminent lawyer **Nanabhoy "Nani" Ardeshir Palkhiwala** is worth remembering:

*"Taxes are the life blood of any Government but it can not be over emphasized that the blood is taken from the arteries of the taxpayer and, therefore, the transfusion has to be accomplished in accordance with the principle of justice and fair play. Every Government has a right to levy tax but no Government has a right in a process of extracting tax, to cause misery and harassment to the taxpayers and the gnawing feeling that he is made victim of palpable injustice."*

The various ways of securing the interest of Government Revenue under proposed GST Regime are briefly discussed below:

### **1. Simplified and unambiguous Law**

GST is essentially based on Value Added Tax [**"VAT"** in short] concept. The concept of Modified Value Added Tax [**"MODVAT"** in short] was first introduced in Central Excise Act, 1944 on 01.04.1986. On the other hand, the concept of VAT at State Government level has been in practice since 01.04.2005. Thus, both Central Government as well as State Governments has sufficient experience in dealing with VAT concept. As a consequence of such experience, simplified and unambiguous law should be devised under proposed GST Regime. Every GST assessee should be allotted a PAN based Unique Identification Number both the purpose of Central GST and State GST. All legitimate claims of the assesseees regarding **Tax Credit [TC in short]** should be allowed under proposed GST Regime and assesseees should not be harassed unnecessarily. It is worth highlighting that simplified and unambiguous law will not only help the assesseees but also the authorities administrating the concerned law.

In order to ensure simplified law, Government should issue a clear-cut and comprehensive list regarding those goods and services on which Tax Credit will not be admissible. The said list will assist the Government in avoiding possible litigation. In fact, when assesseees are clear about the nature of goods and services on which they are not eligible to avail Tax Credit, they will properly pay their output tax liability [**"OTL"** in short] and resultantly Government revenue will increase. Looking from a different perspective, clarity regarding the following points will go a long way in mitigating the difficulties of both the assesseees and the Government Revenue:

- (i) Eligibility of items on which Tax Credit will be available under proposed GST Regime;
- (ii) Availability of proper duty paying documents;
- (iii) Adjustment of eligible Tax Credit against OTL; and
- (iv) Most importantly, how the said Tax Credit will be allowed to be used for discharging the OTL?

Further, in order to secure the interest of the Government Revenue under proposed GST Regime, it is necessary that there should be harmony in GST Laws both at the Central and State levels. Taking lessons from the rich experience of MODVAT/CENVAT /VAT, Tax Credit in respect of State GST and Central GST should be made mutually available/adjustable.

In addition, there should be harmony in respect of various procedures such as Levy, Assessment, Collection and Dispute Resolution etc. between Central GST and State GST.

## **2. Strong Information Technology Infrastructure**

Government is conscious of the fact that that under proposed GST Regime Tax Credit ["TC"] in short] will be available in respect of large number of Goods and Services and there will be voluminous number of transactions having Tax Credit implications. As per the knowledge of the author of this article, Central Government has already asked Mr. Nandan Manohar Nilekani to develop comprehensive software for GST purposes. However, once developed the foregoing software is required to be regularly updated and upgraded.

It is also worth appreciating that interest of the Government Revenue can not be fully secured by means of strong Information Technology ["IT" in short] infrastructure alone. In order to take true care of Government's Revenue, watchdogs [concerned officers and their subordinates] of Government must be adequately equipped with suitable IT training. Since IT field is subject to frequent technological changes, training programmes for all concerned Government officers and their subordinate staff are required to be conducted on regular basis. Moreover, participation in such programmes should be made mandatory. In case of non-participation by some officers / staff, their accountability needs to be fixed. In addition, the mind-sets of the Government Officers and their subordinates also need to be changed. A sense of belongingness, constant dedication and personal feeling must be inculcated in them. Unless the mind-set of concerned Departmental officers and their staff is changed, the interest of Government Revenue can not be secured to the optimum extent. On the top of it, whatever procedure is laid down, it must be followed by all Government Officers and their staff without any exception.

It is a well-known fact that unless there is a fool-proof system of cross verification of documents, the assesseees have a tendency of avoiding tax payment by claiming undue tax credit. Thus, in order to secure interest of Government Revenue under proposed GST, it is necessary on the part of the Government to put in place a fool-proof IT based system of cross-verification of documents.

Besides, for the purpose of cross-verification of Tax Credit, Government should set standards for input-output ratios of tax liability for various industries. Besides, standards may be laid out in respect of

aforementioned input-output ratio in respect of a particular firm/industry over a number of years [Intra-firm ratios]. It is suggested that before finalizing foregoing standards, Government should take suitable feedback from the concerned industry. Subsequently, in case of any abnormal variations in the said input-output ratio, Government must make suitable enquiry and take appropriate action against the concerned assessee. However, it is cautioned here that said input-output ratio is only a guiding factor and must not be applied blindly in every case. To say it differently, opportunity must be given to the concerned assessee to prove his case of abnormal variation in input-output ratio on the principle of natural justice. The foregoing variation may be due to genuine reasons. Thus, abnormal variation may be the reason for suitable enquiry. However, such enquiry should not be conducted with preconceived notion that abnormal variation is due to tax- evasion only.

### **3. Use of Composition Scheme preferably to be avoided**

Presently, under different State VAT Laws, Composition Schemes for discharging of tax liability are being permitted. However, in order to secure interest of Government Revenue under proposed GST Regime the use of Composition Scheme should ideally be avoided because Composition Scheme breaks the chain of Tax Credit and consequently becomes weakest link of the chain. It is said that strength of the chain is judged by the strength of its weakest link. Moreover, with increase in threshold exemption limit under proposed GST, there is no justification for continuation of Composition Scheme under GST. However, if at all Composition Scheme is to be kept alive under proposed GST Regime due to any compulsions, then the scheme should be made applicable to all dealers having turnover of less than Rs. 50 lac.

### **4. Scope of items on which taxes should be levied**

Taxes should continue to be imposed not only on the amount of sales but also on stock transfer transactions at the place from where the goods are moving under GST Regime. On the basis of relevant documents, Tax Credit should be allowed in the state where the goods are destined. In addition, situs provisions should be clearly spelled out in respect of all six categories [particularly in respect of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration] of deeming sales as given in Article 366(29A) of Constitution of India.

### **5. Prompt Refund of Tax Credit**

In many situations [for instance in case of 100% exporter of services] Refund of Tax Credit has to be granted. Rules for grant of refund should be clear-cut and unambiguous. Besides, explicit procedure for claiming Refund of Tax Credit should be laid down so that assessee gets prompt refund of tax credit. Looking from another perspective, refund of Tax Credit should not be denied in genuine cases. Refund for Tax Credit at standard rates under proposed GST [on the lines of grant of refund of Tax Credit under Central Excise and Service Tax] seems to be only solution looking to past experience.

### **6. Setting up of a common & prompt dispute resolution mechanism**

There is no doubt that a common & prompt dispute resolution mechanism is very useful both for the Assessees and Government Revenue. The prompt dispute resolution mechanism will help the government in quickly realizing its tax dues which otherwise would have remained blocked in litigation for long periods of time. There is another crucial dimension of this point. With the widening of tax base, the number of assesseees and consequently number of disputes is expected to increase many-fold under proposed GST Regime. In order to ensure that ever-increasing number of disputes between the Department and Assessees are resolved in a time-bound manner, Government must suitably increase the number of Appellate Tribunals and Courts. However, in the process of resolving disputes in a time-bound manner, possibility of some cases involving injustice can not be ruled out. Nevertheless, the author strongly believes in the old-age proverb of 'bhujan hitaay bhujan sukhay' i.e. Majority should be benefitted and prosper. In the present context, the foregoing proverb implies that prompt dispute resolution mechanism will prove to be beneficial for large number of assesseees. Moreover, as administrative wing of the Government, **Central Board of Excise & Customs ["CBEC" in short]** [which is a part of the Department of Revenue under the Ministry of Finance, Government of India] must be made powerful and active. Further, with a view to bring greater clarity in understanding and application of relevant complex statutory provisions CBEC should be asked to issue detailed circular [on the lines of Taxation of Services-An Education Guide dated 20.06.2012] on monthly or quarterly basis. Moreover, CBEC must reply all queries received by it in a time bound manner and such reply should be binding on concerned assesseees as well as on concerned statutory authorities.

#### **7. Balance between information sharing and business secrecy**

Under proposed GST Regime, assesseees are expected to share plenty of information with the Department. Some of the information [for instance Source(s) of purchase of items on which Tax Credit will be available, Respective Prices of various items on which Tax Credit will be available, Respective selling Prices of Final Products/Services of the assessee] shared with the Department may be of confidential nature for the concerned assesseees. Thus, Government is required to strike a balance between information obtained by it during the course of its statutory functioning and business secrecy of concerned assesseees. This step will go a long way in maintaining the confidence of the assesseees in Government's functioning. Resultantly they will not hesitate in passing on the true and complete information to the Government which, in turn, will promote and secure the interest of the Government Revenue.

#### **Conclusion**

In the opinion of author, if Government implements above-mentioned ways, its revenue will be secured to a great extent. In addition, it will be able to win the confidence and trust of honest tax-payers under proposed GST Regime.

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