Will GST be a boon or a bane?

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Like it typically happens while introducing a tax legislation—packaged as a 'tax reform' that has the potential to change the way business is done—GST has been popularised both by this government as well as the previous regime by dubbing it 'tax reform of the country', an 'instrument of ease of doing business' and 'a single factor which can increase GDP growth rate by 0.5% per annum'. While the last claim will be tested with time, it is clear that the first two will be difficult to achieve, especially if what has been cooked up by the drafting teams of the Centre and states is allowed to remain as it is.

While Parliament is preparing for the grand monsoon wedding between the Centre and states via a Constitutional Amendment in this session, the draft GST Bill has created a furore amongst taxpayers. A cursory look at the provisions indicates that what has come out is one of the toughest tax legislations, even worse than the Customs Act, 1962. Though the legislation has a provision for self-assessment, it has been literally reduced to a farce, as there will be scrutiny of returns, assessment of non-filers, assessment of non-registered persons and summary assessment in special cases. Then there will be audit, special audit, inspection and verification by a computer system of mismatch of transactions, if any, relating to input and output supplies. Apart from this, there are normal provisions relating to search, seizure and arrest offences and penalties, and prosecution of cognizable and non-cognizable offences. The worst is that the 'burden of proof' of input credit has been shifted to the assessee, showing that nervous authorities have plugged the loophole of instant data capturing by information technology. Distrust in the assessee has been shown by introducing Section 121, which pertains to 'Test Purchases of Goods and Services' by using decoy customers.

The scope of 'Advance Ruling Authorities', though widened, has been made litigation-prone by providing for an appeal. But the whole exercise may become redundant as a difference of opinion between two members of the Advance Ruling Appellate Authority will nullify the decision.

Many definitions are superfluous and 'business vertical' has been defined with reference to Accounting Standard 17 of the ICAI. Not only are such standards in a state of flux, there is no complete reference of volume or year by which such accounting standards shall be known. There is a reference in various provisions relating to 'Generally Accepted Accounting Principles', on which even chartered accountants can differ and the assessee will have to approach a chartered accountant time and again. Such accounting principles could have been easily listed in the 'Schedule'.

The Act stipulates taxing of a casual taxable person for all business-related transactions and the net result is that even when an old and obsolete asset is sold, one may require paying of taxes through temporary registration. For this, there is not even any exemption limit available. By the spirit of law, even *raddi* sold by government departments, business entities and professionals will incur tax payment. Similarly, when both supply of goods and services are going to be taxed, the purpose of defining 'works contract' is defeated and will create confusion.

As it often happens within two arms of the same government, while income tax allows notional income to be worked out without maintaining detailed accounts to have ease of business and less compliance cost for small businesses for an amount up to ₹2 crore, the composition levy not requiring detailed accounts under GST is confined up to ₹50 lakh limit, thus requiring detailed accounting thereafter. There is an automatic condition that any explanation added in any provision within one year will have retrospective effect from the date of provision. The concept of 'Pure Agent', with its 11-odd conditions and which had attracted lot of legislation before the concept of taxing gross receipts was struck down by the Delhi High Court in *Intercontinental Consultants*, has been brought back.

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A registered person even for a non-taxable service has to issue prescribed bill of supply, leading to unnecessary documentation. Unjust enrichment provision will henceforth cover even interest. Compliance rating for every registered unit has been introduced, though no accountability for non-compliance of officer(s) has been fixed. For every litigation, even though done by the department, the assessee is required to keep the accounts till finality. Hopefully, this will mean more space available in government departments and only files with the assessee. The period of limitation has been effectively increased up to six years. Two stages of appeals have been provided with 10% mandatory deposit at each stage. Recovery provisions have been made so elaborate they can lead to duplicity. Recovery can be made through lien, attachment, recovery from the successors, distrain of property and through certificate action of the collector and even through the magistrate by attachment of any moveable or immovable property of offender. Through a non obstante clause in Section 57, tax dues have been made first charge in the property, even though similar laws exist for EPFO, banks, etc. This will lead to a situation of, inter se, litigation between various departments. A closed factory may be sealed by five different departments with each fighting as to who will have primacy under its own non obstante clause. There are many such tedious provisions to make life difficult for the assessee. It will be, therefore, in the fitness of things that the GST draft is put to detailed scrutiny before it is notified. Any haste in this regard is bound to be counterproductive.

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