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No. 347

24-August-2021

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**National Institute of Public Finance and Policy
New Delhi**

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Abstract:

Adopted in 2017, the Goods and Service Tax (GST) marked the beginning of a new era in the history of indirect taxation of India – an era aspiring to realize the dream of ‘One Nation, One Tax’ for one of the biggest federal democracies in the world. In line with the fiscal federalism prevalent in India, GST has not only branched into IGST, CGST and SGST with different tax rates, but also has a provision for Centre-to-State compensations to make up for the losses incurred by the States during the transition phase of GST.

For such an elaborate taxation arrangement to face bottlenecks, both at the time of roll-out and its subsequent expansion, is not unusual. A range of tailbacks are observed, ranging from the difficulties of transitioning from the earlier regimes, difficulties in the understanding the GST law(s), various technical, procedural and administrative glitches, and above all the complexity of Centre-State relationships.

On the fourth year of the adoption of GST in India, we revisit the big Indian dream of national integration via a single-spine tax system. We explore the issues in the existing GST systems to suggest probable solutions that can smoothen the way forward.

Key Words: Goods and Services Tax (GST), Value Added Tax (VAT), Input Tax Credit (ITC), Reverse Charge Mechanism (RCM), Input Service Distributor (ISD)

JEL Classification Codes: H20, H71, H73, H77

Acknowledgement: We are grateful to Omkar Singh Ashiya (Ex-Member, Rajasthan Tax Board and Special Commissioner, State Tax, Rajasthan), B.V. Murli Krishna (Additional Commissioner, e-governance, State Tax, Karnataka, Bangalore), Arvind Mishra (Additional Commissioner, State Tax, Rajasthan), Ashish Koolwal and Asha Attal (Assistant Commissioners, State Tax, Rajasthan, Jaipur) and many other officials of the Information Technology section of the State Tax Department, Rajasthan. We express our sincere gratitude to Sunipa Dasgupta for editing the paper painstakingly. The usual disclaimers apply.

1. Introduction

The introduction of GST on 1 July 2017, marked a milestone in the three and a half decade long history of Value Added Tax (VAT) system in India (Mukherjee 2021). In this paper we attempt to understand emerging challenges in the implementation of GST and suggest possible way forward to address the problems.

Mukherjee and Rao (2019a) had found that the erstwhile sales tax system lacked harmonization of tax rules, rates, thresholds, exemptions etc. across Indian States. The system had two major drawbacks. First, there was no system to bring the value addition beyond the first point sale in a good under the ambit of taxation. Second, there was no system to verify whether due taxes are paid at the very first point sale. In the absence of the provision of input tax credit (ITC) adjustment, there was no system for capturing paper trails (or transaction history) to verify the claims of tax payments by the taxpayers, and therefore, the system was prone to tax evasion.

At the Union level, India embraced the concept of Value Added Tax (VAT) in 1986 by introducing the Modified VAT (MODVAT) to replace Union Excise Duties (UEDs) on manufacturing. For state taxes, to overcome the flaws of sales tax system, the need for VAT was conceptualized in the early 1990s and implemented across the States during early 2000s. As the name itself suggests, VAT was multi-point tax on value addition, levied on all levels of transactions. The purchaser of the goods could claim ITC against purchasing of goods and thereafter adjust the same against the output tax liability. However, this system suffered from cascading of taxes (Mukherjee 2021). While there was no provision of adjusting Central Sales Tax (CST) paid on inter-State trade at the origin State, there was also the generic problem of multiplicity of taxes apart from the VAT and CST, like the Entry Tax, Luxury tax, Entertainment tax and so on and so forth.

Designing a destination based dual VAT system for a federal country like India is a challenge and, in this perspective, the Indian GST is unique. While the Indian GST is a dual VAT system with concurrent taxation power bestowed on the Union and State governments (via CGST and SGST), inter-State transactions (including branch/consignment transfers) and imports (in addition to basic customs duty) attract the integrated GST (IGST), comprising of the prevailing CGST and SGST rates and ensuring continuity in the flow of input tax credit (ITC) from the origin (exporting) State to destination (importing) State(s).

A part of apportionment of the IGST proceeds between the Union and State governments is based on utilization of IGST credit to pay tax liabilities of IGST or CGST-cum-SGST in the destination State (Mukherjee 2019), whereas the other part is done on ad hoc basis, in the absence of any mechanism to capture information on the Place of Supply (POS) for inter-State (business-to-consumer) transactions worth less than INR 0.25 million through GSTR-1 return. In addition, the GST Compensation Cess is also levied on some selected goods (mostly demerit, luxury, sin goods) to generate the GST compensation fund for the States in the event of their loss of revenue during the transition period to GST.

The credit flow is ensured through the online mechanism developed by the Goods and Services Taxes Network (GSTN) even though there may be variations in the administering

software depending on the Model 1 or 2 States.¹ Under the GST system, all procedures are online and even the concept of assessment is now obsolete as the taxpayers shall be self-assessed, based on the returns filed by them. Only in case of detection of any discrepancy or default, shall adjudication come into picture.

2. Problems in the Implementation of GST

In a federal system, harmonization of tax system vis-à-vis fiscal autonomy is always a matter of contestation between the Union and the State governments, which has delayed India's journey to embrace a dual VAT system. Simultaneously, implementation of the system has also not been devoid of problems.

2.1 The Teething Troubles

There is a tradeoff between tax harmonization and fiscal autonomy in a federal state. As per the present design of GST, individual State can neither increase taxes to augment revenues nor grant exemptions to promote local industries. Even if they intend to promote industry, at best, they can only choose to reimburse the SGST portion of the GST collections from the State. No change in the GST design and structure can be made by individual State without approval of the GST Council,² which is not possible till it is ratified by a majority of the States. This is also the case for the Union government. The 'rigidity' of the GST system may be helping to achieve 'one nation, one tax' objective but it is at the cost of fiscal autonomy implying that there is a tradeoff between tax harmonization and federalism.

Among other issues, has been the training of tax officials. Though several training programmes were conducted by tax officials for taxpayers, it was not possible to cover everyone to get hands-on training.

¹ Model 1 States are those who have developed their own backend IT system and Model 2 States are those who are dependent on the GSTN for backend IT system.

² As per Article 279A(4) added to the Constitution of India vide 101st Constitutional Amendment, "The Goods and Services Tax Council shall make recommendations to the Union and the States on

- (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
- (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
- (c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
- (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
- (e) the rates including floor rates with bands of goods and services tax;
- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- (h) any other matter relating to the goods and services tax, as the Council may decide. "

A major technical hindrance has been posed by the IT platform. This not only exacerbated the difficulty of stakeholders - including tax officials, trade and industry fraternities and the tax practitioners - in coping with and adapting to the new system, but also constrained the transition from erstwhile tax system exemplified by the length of time taken to migrate the data from the existing softwares/ portals to GST portal.

2.2 Transitional Issues

2.2.1 Migration from State VAT and Service Tax to GST

The challenges in shifting to a new tax system that subsumes many taxes from the Union and State tax bases were broadly on two accounts. Firstly, migrating taxpayers from the State-specific IT systems of previous regime to an entirely new IT platform or software under the GST Network (GSTN). Secondly, consolidating and shifting the database of taxpayers from the previous IT platforms to the new one. This was particularly the case for taxpayers dealing with both GST as well as non-GST goods like, petrol, diesel, ATF, natural gas, petroleum crude and alcoholic liquor (for human consumption), who were required to be registered under the GST as well as existing State sales tax/ VAT system. Consent had to be sought from them regarding complete (or partial) migration to the GST system, and a permanent GST Tax Information Number (GSTIN) could only be issued when the registration process of all such tax-payers could be completed based on their consent. This was a long and complicated process and several extensions of deadline had to be allowed for the same.

2.2.2 Adjustment of Transitional Credit (TRAN-1 Form)

The taxpayers willing to migrate to GST from the subsumed Acts were required to submit TRAN-1³ form within the prescribed time period so as to carry forward the surplus (unadjusted) ITC to the GST regime for its adjustment with the GST liability. The available ITC was required to be reduced in proportion to the pending declaration forms, if any, pertaining to the Central Sales Tax (CST) Act. However, inability of taxpayers to furnish correct information and /or submission of the forms within the stipulated timeline, along with the paucity of time for the tax officials for monitoring this tedious process of reconciliation of returns of VAT, CST and TRAN-1 impeded the process of transition from the old to the new regime.

2.2.3 Outstanding Demands

Several cases of outstanding demand under the subsumed Acts existed at the time of introduction of GST. To resolve this issue, the Central Board of Indirect Taxes and Customs (CBIC) and various States had issued schemes/acts for settlement of old demands, which

³ Transition Form or TRAN-1 was required to be filed by those taxpayers who were eligible to claim the credit on the tax already paid in the pre-GST regime. The credit may be of VAT/Service Tax/Excise Duty. So as to claim the complete amount as a credit, TRAN-1 was required to be filed along with the particulars of stock carried forward.

potentially have a revenue effect for the States as the amount recovered under the said schemes being reduced from the GST compensation payment receivable by the States. As many States have been reluctant to come up with any such scheme during the GST transition period, a large portion of these old demands remain outstanding till date.

2.2.4 CST Compensation

The CST compensation assured by the Union government to the States at the time of implementation of VAT, on account of gradual reduction of CST rates is still outstanding for many States. Therefore, the assurance of GST compensation to States was significant for the roll out GST in India. States have also been incurring revenue losses on account of concessional purchase of CST goods (e.g., diesel, natural gas) at a concessional rate of 2 per cent in the GST regime (Mukherjee 2020).

2.2.4.1 CST Purchase of GST Excluded Goods

One related issue was that of allowing concessional CST purchase of GST excluded goods (especially diesel) against C-Forms in the GST regime. The definition of “goods” under the Central Sales Tax Act had been amended vide the Taxation Laws Amendment Act, 2017 and a plain reading of Section 8(3)(b) of the said Act, as existed prior to the ratification of the Finance Act, 2021, makes it obvious that the benefit of the said concessional purchase was limited only for the purposes of resale or manufacturing of the six goods (petrol, diesel, ATF, natural gas, crude petroleum and alcoholic beverages for human consumption) remaining under CST or for use in mining, telecommunication or generation or distribution of power. Further, a reading of Section 7(2) along with 2(i) of the CST Act reveals that the taxpayers having migrated to GST and having no tax liability under CST Act, cease to be eligible even for registration under the CST Act and hence for all benefits provided thereunder. However, ever since the onset of GST, this issue of concessional purchase had been troubling the States since the taxpayers registered under GST have been seeking the said benefit and even the courts have been giving rulings in favor of taxpayers like the one given by Hon’ble Punjab and Haryana High Court in the matter of M/s Caparo Power Ltd.⁴ and the one given by Hon’ble Rajasthan High Court in the matter of M/s ASI Industries Ltd.⁵, both upheld by the Hon’ble Supreme Court. This was not limited to just those engaged in mining, telecommunications or generation or distribution of power but also to manufacturers and works contractors registered under GST, thereby causing huge loss of revenue to States. Since the issue pertained to inter-State sale, it was in the sole purview of the Union government as per the Constitutional assignment of taxation power in India. So, the States were arguing for an amendment in the CST Act so as to remove the confusion and limit the benefit of concessional purchase only to the manufacturers or the reseller of the six goods remaining in the purview of CST Act (i.e. petrol, diesel, ATF, crude oil, natural gas and alcoholic liquor for human

⁴ CWP No. 29437 of 2017 (Caparo Power Ltd vs State Of Haryana And Ors on 28 March, 2018, Punjab-Haryana High Court).

⁵ S.B. Civil Writs No. 5475/2018 (Asi Industries Limited vs Union Of India And Ors on 28 September, 2018, Rajasthan High Court)

consumption). Until recently, it was a dual revenue loss for States. Firstly, the allowance of concessional CST rate of 2 per cent for inter-State purchase of the six goods kept out of the purview of GST was eroding the tax base of the consuming State. Secondly, taxes on goods kept outside the purview of the GST cascades along with goods manufactured using these inputs. Therefore, allowance of concessional tax rate of 2 per cent was helping manufacturers of goods taxable under GST, works contractors, mining companies, telecommunication companies and businesses engaged in generation of power to reduce their tax burden under GST through the mechanism of price build up in their supplies (Mukherjee and Rao 2015). In the Union Budget 2021-22, the problem has been partially resolved in the Union Finance Act, 2021 where the section 8(3)(b) of the CST Act has been amended so as to limit the benefit of the said concessional CST purchase for manufacturing and resale of the said six goods only.

Similarly, issues like the taxability of Extra Neutral Alcohol (ENA), which is used as raw material for manufacturing of IMFL (Indian Made Foreign Liquor) and the inclusion of Natural Gas under GST have also been the subject matter of debates. Such differences in opinions have been leading to differential treatment of same goods by different States and causing all confusion among the taxpayers as well as the tax officials..

2.2.5 Works Contracts

Another challenge in the transition to GST is posed by works contracts, especially the ones that had been initiated in the old regime and continued even after the introduction of GST.⁶ First, no common guidelines or clarifications were issued by the GST Council with regards to the taxability of such contracts whose payments were made in advance but works carried out during the GST regime, or work had been done previously but payment to be made in the GST regime; and the States had to address the ensuing issues at their own level.

Second, the definition of “works contract” as per section 2(119)⁷ of the CGST Act, is limited to contracts for building, construction, fabrication etc. of immovable property only, and will be considered as supply of services, in the main. While anything done with respect to any goods it would be treated as composite supply. For example, in the installation of solar power generation system, the solar panels were liable to 5 per cent GST, while other equipment were under 18 per cent GST, thereby leading to a hike in the project costs.

While the GST Council has made an attempt to resolve this issue by deeming 70 per cent of the gross value of the project as the value of supply of goods, attracting 5 per cent GST and the 30 per cent of the aggregate value (viz. engineering, procurement, and

⁶ Works Contract has been defined in section 65B of the Finance Act, 1994 as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of such goods.

⁷ The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as - “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

construction (EPC) contract) as the value of supply of taxable service attracting 18 per cent of GST, the vendors have been resorting to separate contracts for goods and services due to such differences in the taxation rates of goods and services. Determination of tax liability in such cases is, therefore, likely to be erroneous.

2.2.6 Difference in Tax Rates

Apart from the difference in tax rates arising from the altered definition of “works contract” under GST, certain other situations leading to tax rate differentials under the GST regime, making the transition from the erstwhile tax system challenging.

First, exemption of erstwhile taxed goods and services from GST, which makes unadjusted ITC no longer available for adjustments. Further, the transitional provisions may mandate that ITC on stock may be available, but it is difficult to prove that the goods in stock have incurred particular tax or that it has not been utilized. An example of similar transitional bottlenecks is observed for tobacco products in majority of Indian States, which used to attract a single point State VAT (e.g., 65 per cent in Rajasthan), without any hassle to claim ITC.⁸ Under GST, not only the State’s share in tax rate of 28 per cent is reduced to half (or SGST of 14%), it also has no direct share (but only GST compensation) in the GST Compensation Cess rate of (upto) 204 per cent.

Second, this is related to GST rate setting. Case at hand is that of taxation on steel, which was at 5 per cent under State VAT, but escalated to 18 per cent under GST.

Third, and in tandem to the first two points, distortion of markets, penalization of so far compliant taxpayers and consumers consequently, tax evasion resulting from excessive variation in the tax rates across and / under tax regimes are important to highlight.

Another area of inter-State variation has been that of entry tax, while States like Madhya Pradesh were allowing setting off of entry tax against the liability of VAT, while others like Rajasthan were exempting the goods from the liability of entry tax in case of VAT being already paid on the same goods. However, under GST, the entry tax liabilities as well as ITC adjustment against entry tax on goods imported from outside the State before introduction of GST but consumed or sold after 1 July 2017 largely continues. Some States have addressed this issue by exempting even those goods from Entry Tax on which GST has been paid.

3. Issues with GST Law

The GST law, despite borrowed from the erstwhile service tax regime, and /or an extension of the VAT laws, challenges emerged with new concepts like “supply” replacing “sale”. The definition of “supply” being broad and complex in scope has led to several difficult situations for ascertaining whether or not a supply has taken place – e.g., the case

⁸ There was no provision for ITC in Rajasthan on tobacco products beyond the first point sales.

of “agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act”; or for activities in Schedule I and II that would be considered as supplies irrespective of the element of consideration, and held to be neither as supply of goods nor services, respectively - leave aside assessing its value. To add to this difficulty, came the concepts of ‘time of supply, ‘value of supply’ and above all, ‘place of supply’ with complicated rules of determination attached to them.

One of the biggest challenges for the State Tax officials has been learning about the taxation of services hitherto beyond their domain, and for the Central tax officials learning about taxation of goods beyond manufacturing. Of these too, administering the tax on services is far more difficult especially not just due to their being intangible but also their complex and wider scope.

3.1 Reverse Charge Mechanism (RCM)

RCM transfers the liability of tax payment to the recipient/receiver instead of the supplier of goods and services.⁹ In most of the cases of RCM, the suppliers of the goods or services are not even registered and so it is difficult to ascertain whether any supply has taken place at all. Even though the concept of purchase tax was in vogue prior to GST, applying RCM to certain specific cases and administering it practically in the stipulated manner has so far not been feasible. In fact, there are also cases wherein the rate of GST payable on input goods or services under RCM is more than that on the output, thereby leading to inverted duty structure. For instance, GST is payable at the rate of 18 per cent under RCM by the mining lease holder for which he is eligible for ITC. But the rate of GST on the goods supplied by him is only 5 per cent. One more difficulty with RCM is that even though ITC is allowed to the recipient for the tax paid under RCM, it cannot be utilized for adjusting the liability under RCM, which has to be paid in cash only. Monitoring of this is difficult for the tax officials. Ascertaining reverse charge in case of online advertisement in social media, import of services like watching movies, listening paid music on online/ digital platforms by individuals, is another challenge for the tax officials.

3.2 Composite and mixed supply

Supplies of two or more goods or services can be either 'composite supply' or 'mixed supply'. This has gained central stage in the GST regime, especially since goods and services are often bundled together and it becomes difficult to segregate their values for the purposes of levying tax especially when integrated invoice has been issued. However, even though both “composite supply” and “mixed supply” have been defined in the Act with examples, it is not always easy to classify a supply between the two categories and there is always a likelihood of error and litigation.

3.3 Electronic ledgers

⁹ For complete list, may refer to <https://www.cbic.gov.in/resources//htdocs-cbec/gst/Reverse%20charge%20Mechanism.pdf>;jsessionid=93D381239A0D7C5FA9EFC8B929EFBB7D

Under the GST mechanism, three kinds of ledgers are available for the taxpayers, namely the electronic cash ledger, the electronic credit ledger and the electronic liability register. While the electronic cash ledger acts as an online passbook for all cash available to the taxpayer for payment of liabilities under GST, availability of balance in the cash ledger does not mean that tax liability is met. In other words, the date of payment by the taxpayer would be the date of credit of the amount in the Government treasury from the cash ledger and not the date of credit in the electronic cash ledger. Thus, even though the tax officials could see the amount in the electronic cash ledger, they cannot access or utilize the balance against tax liability of the taxpayer unless the taxpayer makes payment to the government exchequer using the balance. Inter-changeability of ledgers and realization of tax in the government exchequer is creating problem especially for quarterly return monthly payment (QRMP) scheme. In case of QRMP scheme, though tax payment is to be made on monthly basis, unless tax returns are filed by taxpayers tax liability cannot be ascertained and therefore tax payment need not be reflected in the government exchequer (therefore cannot be accessed by tax officials as realization of revenue). On the other hand, despite sufficient amount in electronic cash ledger tax liability of taxpayer would not be considered discharged unless it is applied to electronic liability ledger. Also, until a year ago, it was very strenuous to reallocate the amount inadvertently deposited under a wrong head in the ledger. However, now the problem has been solved by issuance of notification no. 37/2020 by CBIC whereby the process has been made simpler.

Electronic credit ledger is an online account of all the credits available to the taxpayer for adjusting against output tax liability. However, the utilization of credits shall be restricted not just to the liability of tax (and not interest, penalty or other dues) but also to the corresponding rules regarding the cross-adjustment of IGST with SGST and CGST, which have been discussed later in this paper. Electronic liability register shows the details of liabilities of a taxpayer under GST. Monitoring of these registers is all the more significant, especially after the insertion of rule 86(b)¹⁰ in the CGST Act that restricts the payment of output liability upto 99 per cent through credit ledger. It means at least 1 per cent of tax liability needs to be paid in cash (for tax payers having monthly turnover above INR five million) even if ITC is available for adjustment. However, monitoring of the ledgers is an additional burden for the tax officials, as discrepancies have been observed therein.

3.4 Input Service Distributor (ISD)

The concept of ISD is borrowed from the CENVAT Credit Rules, 2004 and it is completely a new concept for the State Tax officials. Since GSTIN is State-specific, a taxpayer having a single Permanent Account Number (PAN) may have different GSTINs in different States. The term ISD is used to denote an office of the supplier of goods, or services, or both, which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST, SGST/UTGST or IGST paid on the said services to a supplier of taxable goods or services or both having the same PAN as that of the ISD. In simple words, companies may have their head office at one place and units or branch offices at other locations, which may be registered separately. The services which are procured by the head office against bills raised to the head office are

¹⁰ Notification No. 94 /2020 – Central Tax dated 22nd December, 2020.

often concurrently utilized by the branches or units. In such cases, it is only desirable to apportion the credit of input services among all the beneficiaries or consuming units/branches and this is precisely what the ISD mechanism enables. For instance, if certain software is purchased by a company having head office in Delhi for use by the head office as well as its branches at Mumbai and Jaipur, the credit of the purchase would be attributed to the three offices on pro-rata basis in proportion to their monthly turnover. However, monitoring of the distribution of credit by ISD is another challenge posed before the tax officials, more so, since the taxpayers have been resorting to “cross-charge”¹¹ by the head office and vice versa and have thus been avoiding Input Service Distribution.

3.5 Imports

In GST, being a destination based tax, another new concept is introduced and it is related to taxing goods and services supplied from a place outside the territory of India to a person within the country. Under this, both the supply of goods and services is covered and it is deemed as inter-State supply. While IGST on import of services is required to be paid under RCM¹² that on import of goods is required to be paid in accordance with the provisions of the Customs Tariff Act, 1975¹³. While monitoring of imports of goods is easier, being intangible it is difficult to monitor import of services and therefore levy of tax. Even if tax officials manage to assess the same, administering the tax itself would pose challenges in absence of real time monitoring of consumption of services originating from a place outside India.

3.5.1 Online Information Database Access and Retrieval services (OIDAR)

This is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. The IGST Act defines the term in Section 2(17). OIDAR services can be provided online from a remote location from anywhere inside the country or outside. In case, the service is provided by an Indian Service Provider, from within the taxable territory, to recipients in India, it would be taxable. In case, the service is provided by a service provider outside the territory of India and is received by a registered entity in India, it would also be taxable (under reverse charge). Now if the supplier is located outside the territory of India and the recipient is a non-taxable entity in India, the supplier would have had an unfair tax advantage had the services provided by them be left out of the tax net. It was because of this reason that in addition to the Equalization Levy levied on such services beyond an annual threshold of INR 20 million, under Section 165A of Income Tax

¹¹ In a *cross-charge* mechanism, expenses incurred by a distinct person (like Input Service Distributor) for the purpose of availing services or carrying out activities for the purpose of benefitting other distinct persons is required to be *cross charged*.

¹² As per Notification No. 10/2017- Integrated Tax (Rate) dated 28th June, 2017

¹³ Section 5 of IGST Act, 2017.

Act, 1961, special provisions have been made vide Section 14 of the IGST Act for payment of tax by a supplier of online information and database access or retrieval services (popularly known as the digital transaction tax) and specific procedure has been laid down for tax payment by him. At the same time, since the service provider is located overseas and may not be having a presence in India, the compliance verification mechanism becomes difficult.

3.6 Input Tax Credit, cross adjustment and blocked credit

The adjustment mechanism of Input Tax Credit is one of the most complex issues in GST. Not only there are restrictions with reference to sequence of utilization of available ITC but also there is no provision of cross utilization of ITC between SGST and CGST. Available SGST credit is adjustable with SGST as well as IGST liabilities. Similarly, available CGST credit is adjustable with CGST as well as IGST liabilities. In case of IGST liability, available IGST credit is adjustable first and then CGST and at last SGST credit. The formula for calculation of the common credit as laid down in rule 42 and 43 of the CGST Rules, 2017 is very tedious and highly complicated. Moreover, it appears pointless too since the States were already having a mechanism for allowing ITC on similar lines under VAT but bereft of such a complex calculations. Also, there are some instances where the credit is blocked¹⁴ like in case of renting a cab, sake of membership of club and so on and that makes it all the more tizzy.

Tracking the chain of ITC is another challenge where ITC transfer is often multi-stage, across a number of States, which could be Model 1 or Model 2. Moreover, the taxpayers who are responsible for claiming correct ITC are not accountable to the government especially in cases where the default is on part of the supplier. Tax officials who are held accountable for allowance of excess or fake ITC are not responsible for the same since neither they are the claimants nor do they have any control over the system which is actually responsible for detecting the discrepancies in the credit flow.

Another challenge that has been one of the most talked about issue in recent times is the proportionate allowance of unverified credit on account of non-filing or erroneous filing of returns by the suppliers, as provided in rule 36(4) of CGST Rules, 2017. Taxpayers are allowed to claim additional ITC beyond what is already appearing (or available) in the taxpayer's GSTR-2A.¹⁵ The limit to claim excess utilization of ITC over and above the ITC available has been revised from time to time, initially it was 20 per cent and subsequently it is reduced to 10 per cent and then 5 per cent. While the taxpayers have been opposing the consecutive reduction of the same, for the tax departments, the concept of allowing excess ITC is against the revenue interest.

¹⁴ Refer Section 17(5) of CGST Act, 2017.

¹⁵ GSTR-2A is auto populated for individual taxpayer based on information filed by suppliers. Suppliers of goods and services file monthly GSTR-1 return of their outward supplies. The amount of ITC that can be claimed in GSTR-3B shall be the total of actual ITC in GSTR-2A and provisional ITC upto 5% of actual ITC in GSTR-2B.

In a recent move, businesses with annual turnover of INR 60 million and above (or monthly turnover of INR 5 million and above) are required to pay at least 1 per cent of GST liability in cash. This move is expected to rein in fake invoices led evasion of GST.

3.7 Tax Deducted at Source (TDS)

TDS refers to the tax which is required to be deducted when the recipient of goods or services is a department or establishment of the Central Government or State Government or local authority or Governmental agency which makes some payments under a contract etc. and total value of which exceeds INR 0.25 million. However, no deduction is required to be made in cases where the location of the supplier and the place of supply is in a State or Union territory which is different from the State, or as the case may be, Union territory of registration of the recipient. The measure has been introduced to bring the contractors under the tax net and has been made effective from 1st October 2018. However, neither the registration data nor the data pertaining to revenue collection under TDS in a State is shared by the GSTN.¹⁶ Therefore, tax enforcement and substantiation with tax payment is not possible for State Tax administration.

3.8 Tax Collected at Source (TCS)

One measure is taken to ensure covering the e-commerce operators in the tax net by making the e-commerce operators liable to deduct one per cent tax on proceeds (beyond a certain threshold) of suppliers making supplies through their platform. This measure is effective since 1st October 2018. However, administering and monitoring of TCS is also a cumbersome exercise, especially since no data sharing as regards to the Tax Collected at Source is done by GSTN with the State Governments. It is evident that in absence of individual vendor (or supplier)-wise information from the e-commerce operators and integration of the information with GSTN database, this provision may not be of much help in tax enforcement.

3.9 Tax Refunds of Exports

Refunds of input taxes to exporters or suppliers to Special Economic Zones have been another bone of contention. While in the earlier regime, exporters did not have to pay tax at all, rather the sale to exporters was also exempted. In the GST regime, until recently, two options were available to the exporters, namely

- (i) to export on payment of IGST (by utilizing ITC) and later claim refund of the same; or
- (ii) to export under a Bond or Letter of Undertaking (LUT) and claim refund of the excess ITC.

In the first option, blocking of working capital was an issue. However, this option has been done away with the vide Union Finance Act, 2021.¹⁷ For the second option, taxpayers'

¹⁶ GSTN Information Booklet, March, 2019 accessed @ <http://www.gstcouncil.gov.in/sites/default/files/GSTN-INFORMATIN-BOOKLET.pdf>

¹⁷ "123. In the Integrated Goods and Services Tax Act, 2017, in section 16,-

dependence on tax official increases to receive the refund of ITC paid. The process of refunds is yet to be simplified. Provisional refund (90% of the claimed amount) is allowed within seven days of filing of the application for refund but that too is not an easy process. Owing to this, the tax officials are constantly pressed to speed up the process of granting refunds.

Also, initially, there were certain issues regarding the processing of refunds under GST specially those pertaining to exports made under Letter of Undertakings (LUTs). Initially LUTs used to be received and processed manually and those pertaining to export of services were all the more difficult to process as there are no shipping bills generated. However, by and by, the issues have been resolved and process made online and smoothened. The only technical problem which remains is that in case the required document is not correctly uploaded by the taxpayer, the same is sought by mail by the tax officials and enclosed with the order. This manual intervention and submission of documents to the satisfaction of proper officer is time taking. Also, sometimes, it takes long for the documents to be downloaded, causing unnecessary delay in the process and pressure on the tax officials.

3.10 Remission of Duties and Taxes on Export Products (RoDTEP) Scheme

Though this is not directly related to GST, it has impact on tax environment of the country. This scheme is rolled out since 1 January 2021 and it ensures that the exporters receive the refunds on the embedded taxes and duties which are non-recoverable even in the GST regime (e.g., Mandi tax, VAT, Coal cess, Central Excise duty on fuel, electricity duty etc.). The scheme was brought about with the intention to boost exports which were relatively poor in volume previously. The refund will be issued in the form of transferable electronic scrips. These duty credits will be maintained and tracked through an electronic ledger. The tax refund rates under the scheme would be notified time-to-time by the Union government.

3.11 Audit

Audit was a part and parcel of the erstwhile Central and State Tax laws but never before it has been as significant as it is now. In the GST era, audit is the axle on which the whole system will stand. In the GST regime, the concept of assessment has been done away with and the taxpayers' liability is determined only by way of self-assessment. Obviously then, a systematic procedure, a robust mechanism and organized workflow is required for audit but while the CBIC has long started with the work of audit and has already conducted hundreds of Audits, the States have yet to gear up for the same. Besides, even after four years of the implementation of GST, audit manual is yet to be prepared. Many of the States still neither have a separate Commissionerate or mechanism nor appropriate teams for audit. As a result, time is lapsing and little time is left for audit pertaining to 2017-18 for

(a).....;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:— “(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:”

which notices are required to be issued within a period of three years from the actual or due date of filing of annual return i.e. latest by 30 November 2022 since the extended date for filing of annual return pertaining to the period 2017-18 was 30 November, 2019. Also, currently it has been stipulated to have only 5 per cent cases to be audited annually.

3.12 Power to Arrest

The power to arrest is something that was never known to the State tax departments. Even prosecution used to be filed in the rarest of rare cases specific to State Taxes. However, in the GST regime the powers to arrest have explicitly been accorded to the tax officials. Though it is a powerful measure to ensure compliances and also revenue, it may require additional infrastructure like appointment of legal assistance, training on legal issues and sensitization of tax officials. Besides, it would also create additional burden on tax officials.

3.13 Advance Rulings

The concept of advance ruling used to exist in the erstwhile tax laws too, though under various names like 'Determination of disputed question' in some states. However, under GST, it is different in the sense that it is much wider in the scope but narrow in applicability. In other words, while under the VAT Act, once a question was determined in case of a person or a dealer, the determination was applicable for all similar questions all across the State; whereas, under GST, even though the law is same for the entire nation, Advance Ruling authorities are separate for each State and any ruling passed by one Authority applies only to that particular person or taxpayer by whom the ruling had been sought. Here lies the cause of commotion since having State-wise authorities is likely to lead to different and often contradictory rulings on similar issues, as it has been observed in several cases like solar power plant system, remuneration of directors and so on and so forth. Though it is not feasible to have only one Country wide authority, still at least the Central authority could constitute and functionalize the GST Tribunals in all the States and the National Appellate Tribunal (NAT) at the national level for adjudicating over the different views of the various Authorities on Advance Rulings. Alternatively, one common, regularly updated guideline may be issued for Advance Ruling Authorities to refer to and GST annual review may be published for reference.

3.14 GST Appellate Tribunal (GSTAT)

The GST Appellate Tribunal (GSTAT) is the second appellate authority under the GST, before which the taxpayer/ department may file an appeal if aggrieved by the order of the First Appellate Authority. The GSTAT's National Bench and Regional Benches are empowered to adjudicate upon the issues relating to the "Place of Supply" rules [Section 109(5)]. The State and the Area Benches shall be the second appellate authority for all other matters.

However, the Tribunal has yet to take shape even after four years of the roll-out of GST and is itself caught in the clutches of the Courts,¹⁸ thereby, causing hardship for the taxpayers as well as the tax officials as they have either to wait for the constitution of the Tribunal or approach the High Courts for relief, for which higher amounts have to be deposited by taxpayers as pre-deposit for filing of appeals.

3.15 Overlapping sections 73, 74 and 122

Under the CGST Act, there are two sections, i.e., 73 and 74, on penal provisions for willful and non-willful offences respectively. Apart from this, there is a separate section 122 for general penal provisions. Application of the sections becomes difficult, firstly, because it is not always possible to draw a line or distinguish between willful offences from non-willful offences and secondly, there is an apparent overlapping between sections 74 and 122. Clear cut guidelines or instances are required to be drawn for cases to be classified for action under the aforesaid sections.

3.16 Job work (Time bound-supply)

Job work has been specifically defined in Section 2(68)¹⁹ of the CGST Act and Provisions pertaining to job-work have specifically been laid down in the section 143 of the said Act whereby all transfer of inputs, raw material and finished goods to or from the job-worker have been made time bound²⁰, beyond which the said transfer(s) shall be deemed to be a “supply” hence subject to tax. Now, it is impossible for the tax officials to keep a check on the same and prevent revenue leakages.

Though there is no benchmark to compare the complexities of the GST laws with the erstwhile tax system, we present the number of circulars, notifications, clarifications and Removal of Difficulties (ROD) orders etc. issued till 30 July 2021 in Table 1. It is to be noted that concurrent notifications are also issued by the States to match CGST notifications, which are again a cumbersome exercise and often delayed. There is a sign of stabilization of the GST system as over the years total number of notifications, circulars and orders is going down. Moreover, during 2012-2016 annual number of notifications pertaining to Central Excise and Customs ((non-tariff and CVD only) was also very high

¹⁸ Refer to Hon’ble Madras High Court judgment in the matter of Revenue Bar Assn. v. Union of India, 2019 SCC OnLine Mad 8910, decided on 20-09-2019 and Hon’ble Allahabad High Court judgment in the matter of M/s Torque Pharmaceuticals Pvt. Ltd. and others dated 9th February 2021 (WT No. 655 of 2018) and Hon’ble Allahabad High Court, Lucknow Bench judgment dated 4th March, 2021 in the matter of Public Interest Litigation (PIL CIVIL No. – 6024 of 2021)

¹⁹ “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly.

²⁰ Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out. Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the or are not supplied from the place of business of the job worker within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(Table 1). Complexity in tax law not only poses difficulties for the stakeholders to understand and comply but also for the tax officials to administer the tax.

Table 1: GST, Central Excise and Customs Notifications

Year	2017	2018	2019	2020	2021	Total
Central GST Notifications (upto 30 July 2021)	75	79	78	95	31	358
Central GST (Rate) Notifications (upto 14 June 2021)	47	30	29	5	5	116
Integrated GST Notifications (upto 2 June 2021)	12	4	4	6	3	29
Integrated GST (Rate) Notifications (upto 14 June 2021)	50	31	28	5	5	119
GST Compensation Cess Notifications	1	1	1	0	0	3
GST Compensation Cess (Rate) Notifications	7	2	3	0	0	12
Circulars (CGST)	26	55	49	14	13	157
Circulars (IGST)	2	1	1	0	0	4
Circulars (GST Compensation Cess)	1	0	0	0	0	1
Orders (CGST)	11	4	2	1	0	18
Removal of Difficulties Orders (RODs) (CGST)	1	4	10	1	0	16
GST - Total	233	211	205	127	57	833
Year	2012	2013	2014	2015	2016	Total
Central Excise (Tariff) Notifications	41	32	25	46	37	181
Central Excise (Non-Tariff) Notifications	30	18	34	27	50	159
Central Excise (Others) Notifications	0	0	0	4	5	9
Central Excise - Total	71	50	59	77	92	349
Customs (Non-Tariff) Notifications	160	199	192	149	156	856
Customs (CVD) Notifications	1	2	0	0	1	4
Customs - Total	161	201	192	149	157	860

Source: Compiled from the official website of the Central Board of Indirect Taxes and Customs

3.17 GST Rate Structure

Besides the complexities of the law, there are complexities in the rate structure too. At the time of conceptualization of GST, it was idealized that there would be a two to three tax rates, so called Revenue Neutral Rates or RNRs, which would equate revenue corresponding to taxes subsumed into GST and thus be revenue neutral. However, GST was introduced with seven different tax rates i.e. zero or exempted, 0.25 per cent and 3 per cent (for precious stones and metals), 5 per cent, 12 per cent, 18 per cent and 28 per cent. In addition certain goods like tobacco products attract GST Compensation Cess²¹ as high as 204 per cent of the transaction value. These rates were based on the Harmonized System of Nomenclature (HSN) codes and the Service Accounting Codes (SAC), which in themselves are complex and at times, overlapping. To add to it, different categories of taxpayers are required to put HSN codes upto different digits in their invoices, making it

²¹ The cess levied on certain sin goods so as to compensate the revenue forgone by the States on account of implementation of GST.

all the more complex. Moreover, GST rate structure has undergone many changes since the introduction of GST in India. The Fifteenth Finance Commission (FC-XV) recommends that “It is important to restore the revenue neutrality of the GST rate, which was compromised by the multiple rate structure and several downward adjustments of rates. The rate structure can be rationalized by merging the rates of 12 per cent and 18 per cent. The system can be operated with a three-rate structure of a merit rate, standard rate and demerit rate. Efficiency and revenue gains require that exemptions be minimized.” (para xiii, page 148, The Fifteenth Finance Commission, October 2020). Therefore rationalization of tax rates is imperative to protect the revenue interests of the governments.

High tax rate often leads to tax evasion and in the GST regime in absence of border check posts and the flying squads, increase in movements of tax avoided/ evaded goods cannot be ruled out. High value, high taxed and low volume goods are in general evasion prone. The best example of this is tobacco products, which are liable to 28 per cent GST along with GST Compensation Cess which ranges up to 204 per cent. Such level of taxes may lead to sales of contraband and spurious products and/ or tax evaded movement of goods.²²

Another trigger of evasion is the anomaly or the overlapping in tax rates. A single commodity or service may seem to fall under more than one HSN or SAC code and then it becomes difficult to determine its classification and hence the tax rate. While the taxpayers would always want to classify it under the entry having lower rate of tax, the tax officials would obviously want to place it under the higher slab. Such disputes of classification may lead to litigation, creating a burden on both the tax departments as well as the tax payers.

3.18 Tracking Movements of Goods (E-Way Bill)

While it had been anticipated that all the cross-border barriers and the declaration forms of the erstwhile era will be scrapped with the onset of GST, a provision for mandatory generation of e-way bills for the transport of goods with a transaction value above INR 0.05 million and beyond a distance of 10 km was introduced to monitor movement of goods and the corresponding payment of tax from 1 April 2018 across India. More so, this declaration is not just for movement of goods from one State to another, but also within the State. The process of generating the e-way bill, though online, is not easy for the taxpayers who are not internet-savvy. Besides, filling of part B of the e-way bill by the transporters is also problematic, more so in cases where there are multiple consignments in one carriage or there is a change of the transporter or vehicle during the course of transportation. The mechanism is good for keeping a check and tapping the taxes but for the tax officials, monitoring of the e-way bill without border check-posts and flying squads is a challenge.

²² <https://www.ndtv.com/delhi-news/gst-officials-detect-rs-830-crore-tax-evasion-by-delhi-based-gutkha-factory-2347122> (last accessed on 15 August 2021).

4. GST Procedures

4.1 GST Registration

The procedural or the practical aspects of GST implementation are not free from complexities. First of all, the *process of registration* is not as full-proof as it should have been. Taxpayers seeking first time registration under GST (not a case of migration from the erstwhile tax system) may not even know whom to approach – either Central or State Tax Authority – in case there is any glitch in the process. This may lead to delay in processing of the registration application in case of any shortcomings in that. Moreover, the basis of allocation of jurisdiction is the PIN-code pertaining to the address of the taxpayer, which may place the taxpayer under the wrong jurisdiction since the basis of field formation may not be the same. Area/ locality based field formation may be superior to PIN-code based allocation of jurisdiction. Until recently, time limit for issuing GST registration was three days²³ and there was no mandate for pre-RC (Registration Certificate) enquiry (Physical verification) except in cases where Aadhaar number is not authenticated. This has been giving a leeway to fraudsters and in many instances bogus registrations have come to light. Even in cases where the Aadhaar number cannot be authenticated, the provision of pre-RC enquiry was, until lately, only for verifying the Aadhaar number and the address associated with it and not the other addresses associated with the business or registration. It has also been observed in some cases, the Permanent Account Number (PAN) given at the time of filing of registration application does not belong to the proprietor of the enterprise or partners of the firm but to other employees or person. There was no way such a practice can be checked. Also, details of all the bank accounts associated with the PAN card or the business are not given with the application which makes the recovery procedure difficult. Also, real time verification of bank accounts is not available on the registration window.²⁴ States have faced organized tax evasions (e.g., fraudulent claims of ITC against fake invoices) as a consequence of such instant registrations without due diligent process like pre-registration inquiries, physical verification of the credentials and details submitted by the taxpayers. Recently, in many instances circular trading and bogus dealers have been detected by tax officials. Tax officials have power to revoke the permission for issuance of e-way bills and to cancel the registrations in case taxpayer does not comply with the provisions of law or indulges in tax frauds or does not furnish GST returns for six consecutive months. Often when frauds are identified, taxpayers close their business and make it difficult for tax officials to trace the proprietors/ partners of businesses. Sometimes, erroneous cancellation of

²³ Earlier the time limit for issuance of Registration or raising a query on application was registration was only three working days. Now, under vide Notification No. 94/2020-Central Tax, dated December 22, 2020, the said time limit has been increased to seven working days and in cases requiring physical verification, upto thirty working days.

²⁴ To weed out this, limiting utilisation of available ITC at most 99 per cent for taxpayers having monthly turnover above INR five million is introduced to track bank accounts.

registration has also been observed on account of deficiencies in the system, causing undue litigation.²⁵

Once registered, the file or online record of a taxpayer is often transferred from one Proper Officer to another on account of change in pecuniary jurisdiction of the authority or change in the address of the principal place of business of the taxpayer. However, under GST, there is no facility to track the trail of the file of taxpayer and this poses another challenge of monitoring errant taxpayers.

There are also issues associated with cancellation and revocation of GST registration. Firstly, email is used as point of official communication for cancellation of registration whereas many taxpayers may not be accessing their e-mails on daily basis. Another issue is related to serving order of cancellation of GST registration through email. If the taxpayer does not come to know of the cancellation in time, the application for revocation of cancellation (in case of wrongful cancellation) may be delayed and by the time taxpayer files the application, many more compliances may fall due. The time limit for filing revocation of cancellation of registration is just 30 days (other than those cancelled during the COVID-19 pandemic period, for which it was first extended to 90 days and recently to 180 days), which is very less for the taxpayers to take cognizance and action. This in turn causes delayed filing of applications and unnecessary burden for the tax officials. Besides, it also causes ITC related problems for those taxpayers who had transactions with the cancelled taxpayers and due ITC is yet to be claimed/ adjusted.

4.2 GST Returns

At the outset, there were supposed to be three basic returns namely, GSTR-1, i.e. the return of outward supplies; GSTR-2, i.e. the return of inward supplies which was to be auto-populated from the GSTR-1 of the outward suppliers from which the purchases had been made; and GSTR-3 the monthly return or the sum-total of the above two returns. What we finally have is GSTR-1, GSTR-2A, which is not a return but just an auto-generated statement and GSTR-3B, which is not auto-populated but has to be furnished by the taxpayer. As it is, there was aversion for the increased compliances including the multiplicity of returns; it has only been worsened by further complexities cropping up. Only recently²⁶, GSTR-2B has also been made available, which is an auto-drafted statement based on the GSTR-1, Invoice Furnishing Facility (IFF), GSTR-5, GSTR-6 filed by the suppliers and also information captured through the ICEGATE portal²⁷. This has its own limitations. Firstly, it is static (upto 12th of the succeeding month) and does not change with the future actions of the supplier, which will be reflected only in the month which is open for change. Secondly, the reconciliation has to be performed by the recipient

²⁵ Ansari Construction vs. Additional Commissioner, CGST (Appeals) & Ors. [Writ Tax No. 626 of 2020 dated November 24, 2020]

²⁶ Notification No. 82 /2020 – Central Tax dated 10th November, 2020

²⁷ ICEGATE or Indian Customs and Central Excise Electronic Commerce/Electronic Data Interchange (EC/EDI) Gateway is an online e-commerce portal which serves importers and exporters, both cargo and trade carriers through e-filing services.

and in case the number of row exceeds 1000, then it has to be downloaded in JSON²⁸ format, which again is a cumbersome exercise.

4.2.1 Quarterly Return Monthly Payment (QRMP) Scheme²⁹

To counter the aforesaid issues pertaining to return filing, the Quarterly Return Monthly Payment (QRMP) Scheme has been introduced with effect from 1st January 2021 whereby facility for quarterly returns has been provided to small taxpayers with an annual turnover upto INR 50 million, albeit with monthly payments. This scheme has its own challenges in the sense that while the tax shall be deposited on monthly basis and that too just in the electronic cash ledger and not the government treasury and its reconciliation shall be made only at the end of the quarter or as and when the return is filed while the claims of ITC will have to be settled on monthly basis. In case, the taxpayers wish to pass on the ITC to the B2B buyers, they can opt for Invoice Furnishing Facility (IFF)³⁰, which again is cumbersome as it requires segregation of B2B invoices. Also, the total value of invoices for IFF is restricted to INR five million. For payment under the Scheme, two alternatives of Fixed Sum Method³¹ and Self-assessment Method³² have been provided. For the tax official, monitoring of IFF, sales register and GSTR-1 along with the payments made by the taxpayer is indeed very strenuous. Training tax officials to adopt data analytics at field level with some basic data management tools could help them to manage their time efficiently.

In all, the journey has been a long one and is still not settled. It is true that the multiplicity of returns is a burden on the stakeholders only but, at the same time, it is also an additional duty for tax officials to monitor compliance in filing GST returns.

4.2.2 System's inability to analyze the GST returns

The GST law has been modified in implementing the schemes of GST returns. In other words, the scheme of returns currently prevalent in GST is very different from what was envisaged originally under the law. While notices are being issued to taxpayers based on differences found in information in GSTR-2A and GSTR-3B and orders being passed for recovery of demands, but the fact remains that GSTR-2A is a system generated (self-populated) statement of inward supplies of a taxpayer and not a return submitted by the

²⁸ JSON or JavaScript Object Notation is a lightweight format for data-interchange.

²⁹ See Notification No. 82, 84, 85 /2020 – Central Tax dated 10th November, 2020.

³⁰ The registered persons required to furnish return for every quarter under proviso to subsection (1) of section 39 of CGST Act may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.

³¹ Taxpayer opting this method is required to deposit an amount equivalent to thirty five per cent. of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly.

³² Taxpayer opting this method is required to deposit an amount equivalent to the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly.

taxpayer. Therefore, legal sanctity of GSTR-2A remains a question. In such a situation, even if the taxpayer is at fault, he cannot be legally held accountable for discrepancies found between GSTR-2A and GSTR-3B, if any. It is only after GSTR-2B coming into practice, that reconciliation has been made possible but that too is static and not dynamic.

4.3 Time bound tasks

In the GST regime, time lines are set not only for all compliances of the taxpayers but also for taking action thereupon by tax officials. Often, these time lines are insufficient for the desired action. For example, in case of approving application for GST registration, there was a time limit of three days. If the task was not completed by a tax official within three days from the date of submission of application, a GST registration number was granted to taxpayer. To avoid deemed action, tax officials had to make hasty decision without going through process of due diligence and therefore possibility of making errors could not be ruled out. In such cases, if any legislation comes up, then the same may be decided against revenue merely on account of procedural lapses, without going into the merits of the cases. However, recently this limit has been increased to seven working days which has come as a breather for the tax officials. Also, in cases where the person applying for registration does not opt for Aadhar authentication or fails to get the same done or otherwise the need for pre-RC enquiry is felt, this period is extendable upto 30 working days. Being the first step of revenue risk management of any tax system, going through the due diligence process at the registration stage is important even if it takes time beyond the permissible days. Another issue is that in some cases, there is also lack of clarity as regards to the time limit provided for taking action. For instance, in case of detention of vehicles, the time limit provided for release is three days which is extendable by the Proper Officer by further three days. Officials are likely to use this loophole to their advantage and consecutively seek extensions in installments of three-three days. Moreover, in some cases, the action required to be taken is not supported by the system. For instance, Proper Officer is required to generate MOV-4 within three days of detention of vehicle without proper documents or e-way bill but the system is still not generating the same. Such technical glitches hamper the day to day working of the tax officials.

4.4 Input Tax Credit

Intricately related to the issue of returns is the issue of ITC verification. GST, like VAT, requires the ITC verification to the last seller. This is one of the biggest challenges in its success. It is worth mentioning that so many matters pertaining to ITC verification under VAT are still pending, even though in those cases, both the seller(s) and the purchaser(s) were dealers registered within the State. On the contrary, in GST, the sellers could be from anywhere in the country and the match-mismatch analysis is a system performed process. Therefore, it is near impossible for the officers to monitor the same especially since they might not have access to the data of other States' dealers. This problem has already started leading to so many cases of circular trading, even across different States. The problem has been solved to some extent with the functionality of GSTR-2B, however, the limitation of not having access to the data of the taxpayers of other States continues to persist. Also, even though the GST intelligence authorities have been using data analytics, data-sharing

and Artificial Intelligence along with BAFTA tool to identify fake dealers and ITC, it is still a long way to go especially for the tax officials of the States who do not have the access or skills to use such tools.

GST, being a destination based tax, with goods and services travelling all across the nation and the corresponding ITC flowing with them, it is imperative to have a smooth chain right up to the end. Monitoring or verifying of the ITC claims in case of supplier of services becomes all the more difficult. Again, exact pro-rata calculation of ITC distribution by Input Service Distributor (ISD) becomes near impossible. However, firstly because of the lack of proper cross-linking of the returns and secondly, because of the non-filing or erroneous filing of returns, often this flow is interrupted and compliers have to pay the price for the defaulters. To top it all, the courts have begun to rule that the purchasers should not be penalized for the defaults and crimes of the sellers.³³ In such a situation, it becomes difficult for the tax officials to trace the supplier, press him for compliance and recover of due taxes.

To address the issue to some extent, e-invoicing has been brought in but that too is for the large taxpayers with annual turnover above INR 50 billion. However, to enable correct input tax credit mechanism, tracking of tax payment by the first seller has to be brought in.

5. GST Administration

5.1 Frequent Changes in the Law

As has already been discussed, the GST law has been undergoing frequent changes, perhaps much more than any other tax law in the history of the country. Such frequent changes not only hamper the understanding of the law by the stakeholders, including tax officials but also make it difficult for the IT system to keep pace with the changes. Together, this hampers tax administration as well as tax compliance.

5.2 Non availability of SOPs or Review of SOPs

The GST law and procedures are not supported with appropriate Standard Operating Procedures (SOPs) and wherever they do exist, they are not reviewed from time to time in the light of amendments or changes made. Moreover, frequent amendments in the law and procedures have also not been always accompanied with trainings and so the officials are also not able to keep a track of them and find themselves at loss when it comes to administering the law and its procedure.

5.3 IT issues and GSTN

The biggest hurdle in the smooth functioning of GST is the IT issues. Right from the beginning, the adequate and robust IT infrastructure was not in place for the smooth roll out of GST. In fact, the roll out preceded the set-up of all systems and it was expected that the system shall settle by and by but it still has not. Taxation is a highly technical arena

³³ For example, D.B. Civil Writ Petition No. 12445/2016 (R.S. Infra-Transmission Ltd Vs State of Rajasthan, Rajasthan High Court, Jaipur dated 11 April 2018)

requiring domain intensive specialized knowledge and it was this lack of domain knowledge on the part of service provider which is leading to technical glitches with GSTN. Two different models (Model-1 and Model-2) were offered to States to operationalize the IT infrastructure related to GST. While Model 1 States have a leverage of creating custom made reports and analyses, Model 2 States have to depend solely upon the pre-defined reports made available by the GSTN. This has also caused differences in the processes among States.

So far as Model 2 States are concerned, data is received from GSTN through three parallel channels are as follows:

- (i) **BOWEB portal:** BOWEB is the back-office portal provided for tax officials by the GSTN, which provides non-defined consolidated but concise data in the form of various reports. It is on BOWEB that the tasks pertaining to various requirements and compliances (like registration, returns, payments, refunds etc.) of taxpayers under their jurisdiction are assigned to tax officials. Again, it is through BOWEB that the tax officials can monitor taxpayers under their jurisdiction by viewing various reports that flow to them (e.g., status of compliances of taxpayers, mis-match of ITC, mis-match of output tax and e-way bill). However, the process flow of the portal needs to be smooth and error free. Otherwise, it will be difficult for tax officials to check pilferages of revenue.
- (ii) **Secured File Transfer Protocol (SFTP) Server:** Through SFTP portal, detailed data pertaining to registration, returns and red flag reports³⁴ are provided as per the requirement and request of States, but these too are sent to nodal officers of a State (i.e. the respective IT sections of the State GST Department), which in turn disseminate them to the respective field offices. The field officials do not have direct access to these reports. A lot of valuable time lapses in the communication of these reports from the head-quarter to field offices whereas there are time limits to complete each task for tax officials.
- (iii) **Application Programming Interface (API):** API provides all other requisite data related to GST, also in greater quantity and variety. The data provided through API is shared with National Informatics Centre (NIC) and not with the State governments. Also, data pertaining to significant heads like TCS and TDS are not being provided.

The Central Board of Indirect Taxes and Customs (CBIC) and especially Directorate General of GST Intelligence (DGGI) are certainly better placed to utilize the GST data efficiently as compared to State Tax administrations as they have access to the countrywide data and can even share it across a common platform. Moreover, in the present pan-India GST System, the access to GSTN database of different States is not uniform. The State Tax officials are facing problems due to diversified system of database. Besides, different agencies are providing IT services to the States and CBIC. This

³⁴ Reports provided on comparison between GSTR-1 and GSTR-3B.

difference in mechanisms is one of the biggest bottleneck in the seamless flow of data and hence its applications.

5.4 Challenges before GSTN

The law and procedure of GST have both been so dynamic that GSTN has faced difficulties in keeping pace with it and to cover the gaps, stop-gap arrangements are made which further complicate the procedures and their understanding.

5.5 Challenges in managing GST return system

Initially, the tax officers had limited access to GST return and other reports of the GSTN which made it difficult to take up analysis. Moreover, the GST return system that was envisaged at the outset has been completely changed. The summary return (GSTR-3B) is lacking invoice-wise details of transactions and the issue of reconciliation of data between GSTR-1 and GSTR-3B has been raised by scholars (Mukherjee and Rao 2019b). In absence of invoice-wise details of transactions in GSTR-3B, possibility of errors in reporting taxable turnover cannot be ruled out. Moreover, GSTR-3B does not have provision for reporting tax rate-wise details of taxable turnover, tax liability and tax payments. This again makes difficult to reconcile GSTR-3B data with GSTR-1 for any analysis or cross-checking. Though the provision of e-invoicing has been made mandatory for large taxpayers, they constitute a small share in total number of taxpayers under GST. Therefore, for majority of taxpayers the GST return system is cumbersome.

5.6 Enforcement module

The Enforcement module of GSTN suggests that for Model-2 States, the module would be based on practices in majority States. Enforcement, being a purely field activity, it is not practically feasible for making the double effort of first conducting all proceedings manually in the field and then entering the same on the portal. Moreover, enforcement procedure, varying from case to case, no standardized procedure can be set for it.

5.7 Mapping of taxpayers

Mapping of taxpayers to the jurisdiction of tax officials is not smooth or flawless. At times, the mapping is wrongly done and by the time it is rectified, certain timelines of taking action by the proper officer expire. Also, the taxpayer does not get any intimation as regards to the jurisdiction to which his file has been allocated and this causes further hassle. While the mechanism is completely online, it should have been smooth and transparent.

5.8 Role transfer

Many procedures under the GST law have prescribed timelines, even for the tax officials to complete the tasks. Limited roles are assigned to each of the Proper Officer, depending on the level of the officer. Thus, every time an officer is on leave or is transferred, it entails

role transfers. This too is required to be done online by the concerned Proper Officer higher up in the channel. This is not just time taking but also sometimes, due to this, the tasks are deemed completed like that of registration.

5.9 Grievance redressal

The grievance redressal mechanism of GSTN is also not proper. Often online grievances are closed without desired solutions or answers to them. Even the physical ones do not have a proper face or team for redressal. As a result, grievances remain pending for long. One example that can be given here is that of non-generation of DRC-04, the acknowledgment for payments made voluntarily. For a smooth system of grievance redressal, it is desirable to have a team of persons from GSTN along with back up teams and with committed time schedule. Also, summary of the common grievances may be periodically circulated in the form of a circular.

6. HR Related Issues

6.1 Training Programmes

As already discussed, GST has undergone many changes during last three and half years, so it demands frequent extensive as well as intensive training programmes not only for tax officials but also for taxpayers to keep up with changes in Acts, Rules, Processes and Procedures. In absence of regular training programmes, it becomes difficult to keep abreast with even basic understanding as regards to the complex concepts and procedures. Many amendments, notifications, circulars etc. have been promulgated which made it difficult for individual tax officials to keep a track of them. Moreover, the GST laws and procedures are dynamic and still evolving with ever new amendments, clarifications and Removal of Difficulties (ROD) orders. Accordingly, it was desirable that the training programmes for stakeholders including the officials be a continuous process in consonance with the amendments in the law and procedure. On the contrary, there have been too few and too rudimentary. Consequently, tax practitioners are in advantaged position as compared to tax officials. With myriad other tasks and duties, tax officials find it difficult to keep pace with understanding of evolving environment of GST administration.

6.2 Restructuring of Tax Cadre

Looking to the requirements of the new regime, the redefined roles of tax officials cadre restructuring or, in fact, restructuring of the State Tax departments as a whole is desirable. However, the Union government and the GST Council do not choose to interfere on this issue and States also have not made much effort. In absence of appropriate formations at the level of both Head Quarters and field formations of State Tax administrations, GST work, especially those pertaining to audit is lagging behind in States.

6.3 Cross Empowerment of CGST and SGST Officers

6.3.1 GST administration of transport cases of assessee of other States

When any evasion case is detected during transport checking and if assessee registered in another State (possessing a GSTIN of other State) claims ownership over the goods being transported and urges to carry out the proceedings with his GSTIN, the proper officer has no option but to proceed with issuing temporary GSTIN as he cannot access or adjudicate the GSTIN of other State. This has become an unnecessary burden for the tax officials and also delays the processes.

Apart from the above, clarity or finality was required regarding the issues whether the intelligence-based enforcement actions initiated by the Central GST officers against the taxpayers assigned to the State GST administration is covered under section 6(1) of the CGST Act or not. Also, whether the corresponding provisions of the SGST/UTGST Acts are applicable or a separate notification is required to be issued for cross empowerment just as a specific notification has been issued for authorizing the State GST Officers for processing refunds under section 54 and 55 of the CGST Act³⁵. To address the issue, however, the CBIC clarified on 22 June 2020 that the officers of the State and Centre have been appointed as proper officers for all the purpose of the CGST Act and SGST Acts.³⁶

7. Centre - State Coordination in Tax Administration

GST was conceptualized as a perfect fruition of cooperative federalism between the Union and States and was expected not only do away with all the hiccups in seamless flow of trade but also help each other in administering tax on both goods and services as well as detecting revenue pilferages by bringing errant taxpayers under the tax-net. It was envisaged that the representatives of the Centre and States shall come together to work on the laws, lay down the procedures and address the challenges. However, States always feared sacrificing their autonomy, their powers and even their revenues. There is need to build mutual trusts between the Centre and State tax officials to strengthen mutual cooperation in tax administrations.

One emerging conflict between the Union and States is related to GST compensation payments. States are supposed to receive GST compensation for the revenue loss occurring due to the implementation of the GST for a period of five years (2017–22), as per the GST (Compensation to States) Act, 2017, from the GST Compensation Fund. The shortfall in GST revenue of a State is calculated by projecting a revenue based on 14 per cent compounded growth from the base year's (2015–16) revenue and computing the difference between that figure and the actual GST collections (SGST+IGST settlement) in a particular year. While timely release of GST compensation is a contentious issue

³⁵ Notification No. 39/2017-CT dated 13 October 2017

³⁶ In reply to the reference from DGGI on Cross Empowerment under GST regime.

<https://taxguru.in/goods-and-service-tax/reference-form-dgci-on-cross-empowerment-under-gst.html>

between the States and the Union government, the ongoing shortfall in GST collection and the COVID-19 pandemic has worsened the situation.

7.1 IGST apportionment

As stated earlier, GST comprises of three different types of taxes – namely, SGST, CGST and IGST. Of these, while SGST directly flows to the kitty of the States and CGST to that of the Centre, the apportionment of IGST is a tedious one and takes place backend through e-Kuber system of the Reserve Bank of India (RBI), from where the respective shares of the Centre and the States are transferred. This process is carried out on monthly basis. The settlement so received is called Provisional Settlement, which is subject to verification by the Auditor General but delays have been observed in this verification too. Moreover, this amount is received consolidated and State-wise and dividing the same as per field formations or dealer-wise is not possible. Problem also exists in ascertaining the apportionable amount owing to business-to-consumer (B2C) supplies. As in the present GST return system, Place of Supply (POS) information is not captured for B2C transactions with transaction value less than INR 0.25 million.

In addition to the above, the amount where the GSTIN or certain other items in the challan are not recognized and such total amount in the central kitty exceeds INR 150 billion, the same is proportionately divided among the States as ad hoc settlement and again, its division as per field formations or dealer-wise is not possible.

8. Conclusions

Reform in any tax system is not a onetime event but an ongoing process, and Indian GST is not an exception. Designing a destination-based dual VAT system for a federal country like India was a challenge. The Indian GST is unique for its structure, design, and administrative framework. The present paper highlights the challenges and progress made in the last four years in administering the GST. It is understandable that no tax reform could be launched at once as a full proof system and therefore initial glitches and technical difficulties are obvious. However, the structure, processes and procedures of GST though improved, are yet to stabilize. Simplicity of any tax system is desirable as it facilitates ease-of-tax compliance of taxpayers as well as ease-of-tax enforcement of tax officials. Therefore, it would be important for the GST Council to take appropriate measures to weed out difficulties in the GST system and improve tax efficiency.

Given this changed scenario, and the increased use of IT systems to facilitate ease of doing business and easy compliance with taxes during the past few years, there is need to explore ways of reorganizing the State tax department to improve efficiency of tax administration, augment quality of taxpayer services and ensure "smart" utilization of available manpower.

To conclude, it can be said that undoubtedly GST is a futuristic and progressive system but for it to be successful, it is required to be accompanied with a robust infrastructure and dynamic learning process for both the tax officials and stakeholders.

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