

A Discussion On The Possibility Of GST Roll-Back In The Wake Of Centre-State Disputes



Background

India is a federal nation in spirit but 'quasi federal' in practice. Unlike a true federation, the powers are not equally divided between the Centre and the States, the Centre tends to have an upper hand. Today, this imbalance is most visible in the States' financial independence.

Before the advent of GST, the States exercised considerable financial autonomy through levy of range of taxes under List II of Schedule VII of the Constitution, viz., VAT, Octroi, Entertainment Tax, Advertisement Tax etc. VAT laws (as well as Central Sales Tax) enabled the selling States to retain tax revenue on goods sold to other States.

With the introduction of GST, a consumption-based tax, the entire tax revenue of State Goods and Services Tax ('SGST') goes to the consuming State. This has created a big fiscal imbalance for producing States and windfall for the consuming States. To that extent, the producing States indeed gave up a considerable chunk of their taxation powers when they assented to this new taxation regime.

In order to bring the States onboard with GST, the Centre promised to compensate them for losses in their revenue, due to implementation of GST. This promise was duly recorded in the Constitution (One Hundred and First) Amendment Act, 2016 ('CAA') and given effect through the Goods and Services Tax (Compensation to States) Act, 2017 (Compensation Cess Act'). The Compensation Cess Act guarantees a 14 per cent tax revenue growth in the first five years after GST.

After more than two years of introduction of GST, the Centre is struggling to keep up its end of the bargain in the midst of a slowing economy and having achieved only 50 per cent of its annual GST collection target till November 2019.

Futility of States approaching the Supreme Court for non-payment of compensation

Recently, five States expressed their discontentment with the devolution of Compensation Cess ('Cess') and announced their intention to approach the Supreme Court.

The mechanism for resolution of Centre-State disputes is enshrined provided under Article 131 of the Constitution which enshrines original jurisdiction of the Supreme Court to resolve disputes involving a question of law on which the existence or extent of some legal rights depend. Although the Compensation Cess Act provides for set off / refund where excess compensation is released to States, interestingly, no such provision exists for non-payment or short-payment of compensation. Thus, it may also be argued that since the States assented to the Compensation Cess Act, they were always conscious that no remedy exists in law.

More importantly, the Centre has never dismissed the existence of States' rights to receive compensation. The Union Finance Minister, while addressing the concerns of the States during 38th GST Council meeting, specifically assured that the Centre would not retract its promise to compensate the States. Clearly, the Centre has not disputed the existence of a legal right, the delay is purely owing to an acute financial crunch. Therefore, even if the States approach the Apex Court on this issue, the Court may simply direct the Centre to discharge its commitment to compensate States at the earliest and may not go beyond that. In the author's opinion, such a remedy will provide no catharsis to the aggrieved States.

Possibility / feasibility of a GST roll-back

Unfortunately, the financial strain between the Centre and States is not the only issue plaguing GST in India. Some of the greatest concerns are that of ITC leakage through fake invoicing, increased compliance costs for businesses, weak IT infrastructure, absence of adjudicatory forums, unreasonable clamp down through anti-profiteering measures and rampant issuance of legally incorrect Advance Rulings. Further, the economic slowdown in the nation has raised alarming concerns regarding consistency of GST collections. With these persisting complications, it is difficult to dispel concerns regarding the future of GST in India.

The apprehension of continuity of GST in India, is furthered by the roll-back of GST in Malaysia, another federal nation. Eventually, Malaysia reinstated the earlier regime of the Sales and Service Tax. Here, it is important to note that the problems plaguing the Malaysian GST were very different from the ones



persistent in India. At the outset, federal disputes never plagued Malaysian GST. The implementation of GST in the midst of rising inflation, poor anti-profiteering mechanisms to check price rises, single rate of tax for all goods and services, rampant corruption and misappropriation of GST revenue generated irreconcilable grievances amongst the taxpayers. Indian GST is a result of years of labour and starting point of “cooperative federalism” in the country. Its implementation was never an easy feat to attain. It is undeniable that GST’s ability as a revenue generator for the government is unparalleled owing to its broad consumption base, staged collection process and seamless flow of credit. As nations around the world are rapidly adopting VAT regime, it would be ill-advised to move back into the older regime of taxation. Further, the move into GST regime caused substantial economic instability during the transition, therefore, its scrapping will again throw the nation into an economic chaos.

Nonetheless and the most important bit, the abolition of GST will require a constitutional amendment to completely undo the effects of the CAA. For this, the resolution (Bill) needs to be passed in each House with special majority i.e. by a majority of total membership of that House and by at least two-third majority of the members of the House present and voting. With the ruling party enjoying unrivaled majority in the House of People, this seems to be not possible till 2024.

Conclusion

Undoubtedly, GST in India has its own set of hits and misses. If we are wary of hits, we should be cautious to outrightly condemn the misses. While India finally introduced VAT regime in 2017 but its groundwork commenced as early as 1999. So, a lot of thought and labour has already been put into designing GST by observing and learning from the triumphs and failures of other nations. Looking back or looking forward to an alternate regime at this stage is not legally possible option at this stage. Instead, the solution lies in assuaging the apprehensions of the States by releasing the compensation owed to them. This will be achieved by strengthening existing mechanism to be conducive to needs of businesses and plugging the loopholes to minimise revenue leakage.



Puneet Bansal
Managing Partner
NITYA Tax Associates



Sneha Ghosh
Associate
NITYA Tax Associates