

FOUR YEARS OF GST – ACHIEVEMENTS AND CHALLENGES AHEAD



CMA CS V S Datey

Author - Indirect Tax

GST is completing four years on 1-7-2021. It is high time to review the present position of GST and consider the challenges ahead.

Background of GST

As per Statement of Objects and Reasons appended to the One Hundred and First Constitution Amendment Bill, the object of GST is (a) to have common national market and (b) avoid cascading effect of taxes.

The idea of national GST was first mooted in India by Kelkar Committee in year 2004. Dr Vijay Kelkar recommended national GST.

The first announcement for introduction of GST was made in budget speech on 28-2-2006 by the then Finance Minister, Shri P Chidambaram. Task of designing GST was given to empowered committee of State Finance Ministers, which had designed earlier State Vat. The first discussion paper was released by Empowered Committee on 10th November, 2009 and then the process started.

The earlier provisions of Constitution did not provide for imposition of GST. Hence, Constitutional Amendment was required. Constitution (One Hundred and First Amendment) Bill, 2014 relating to GST was passed by Parliament and was ratified by 17 States out of 29 States, as required under Constitution. It then received assent of President on 8-9-2016.

Finally, GST was introduced on 1-7-2017. It is the biggest tax reform in indirect taxes in India since independence.

After four years, we can safely say that GST is neither a grand success nor a big failure.

Achievements in last four years

Achievements in last four years can be summarised as follows:

Common National Market - The market in India was fragmented due to State Vat and CST. One basic purpose of GST was to have a National Market. We can say that the purpose has been achieved to the extent of 70%, as now tax rates on goods are uniform all over India. Movement of goods inter-state is almost free. Most beautiful part of GST is that taxes move with the goods inter-state through mechanism of IGST. This ensures seamless transfer of Input Tax Credit across India.

However, petroleum products are still out of GST. Tobacco products are only partially covered under GST. Alcoholic liquor is out of GST.

Thus achievement of the goal of common national market can be said to be about 75%.

Abolition of check posts but harassment through road checks - Abolition of check posts for movement of goods across States is a very big achievement in GST, ensuring comparatively free movement of goods across India. However, there is still harassment through road checks, by way bills provisions. Road checks is becoming official Highway Robbery, and source of harassment and corruption.

Tax free movement of goods across States – In earlier tax regime, inter-state movement of goods was not tax free due to 2% CST. GST ensures tax free movement of goods across States, through mechanism of IGST.

Avoidance of cascading effect of taxes - Another purpose of GST was to avoid cascading effect of taxes through mechanism of input tax credit. That purpose has been only partly achieved due to various deviations from basic concept of Input Tax Credit. Achievement can be said to be about 60%. The issues are summarised later in this Article.

Avoidance of overlapping of State Vat and service tax - Another problem in earlier tax structure was due to overlapping of Vat and service tax on various activities like works contract, construction activity and supply of food items in restaurants. That problem has been more or less eliminated.

Centre State Cooperation and Uniformity in laws - Uniform law of tax on goods and services all over India is a great achievement. Earlier, each State had its own Vat laws and procedures, which was difficult to assessee doing business in multiple States.

Centre State Cooperation is at unprecedented level. All the decisions so far (except one) in GST Council by consensus and not by voting, even when there are different political parties at helm in Centre and States.

Unique features of GST in India

Earlier, excise duty was on manufacture and Vat and CST was on sales. In addition, there was service tax, which created overlapping of State and Central taxes.

GST is on 'supply of goods or services or both' and not on 'manufacture' or 'sale'. Definition of 'service' is so wide that almost anything or activity can get covered under that definition. This has changed entire structure of tax. Many problems in interpretation of GST is because the hangover of earlier concepts of Vat, CST and Central Excise. Both tax authorities and assesseees are unable to get over the hangover, due to which many interpretational issues arise.

Concept of IGST is a unique idea in India. That concept has nowhere else been tried in the world. In fact, whatever success

of GST in inter-state transactions is due to concept of IGST. The IGST is really a game changer. It ensures free and seamless transfer of Input Tax Credit through mechanism of IGST.

Special features of GST in India

Indian GST is probably the most complex GST law in the world.

There is no concept of ABC analysis in trying to bring every transaction under GST, which makes the law complex.

Since India has federal structure of governance, there is dual structure of GST – both Central Government and State Government tax the same transaction. Though this is unavoidable, such dual structure makes GST law complicated.

No ease of doing business in GST – GST was envisaged as simple and single tax. However, the law is very complicated and procedures are clumsy. There is no ‘ease of doing business’.

Failed Goods and Services Tax Network (GSTN)

Robust information technology network is vital for administration of GST to ensure proper compliance and to avoid misuse of input tax credit.

The GSTN has been set up primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (GST).

GSTN has engaged Infosys as a single managed service provider (MSP) for design, development and deployment of GST system, including application, software, tools and infrastructure for operating and maintaining the system for five years.

Complete failure of GSTN – Biggest hurdle in smooth implementation of GST is failure of GSTN. Assessee faced any number of difficulties in getting registrations, filing and amending returns, migrating from earlier tax to GST, filing refund claims etc. Exporters were the biggest sufferers.

It is irony that India develops software for the world but could not develop a robust and workable system for its own use.

Almost 50% problems in GST are due to system, which is law in itself. GSTN is master. Often it acts against law but assessee is helpless. Often law provides one thing but law allows something entirely different.

It may be coincidence, but Infosys, which had developed GSTN IT infrastructure has also developed new IT infrastructure for Income Tax, which has been released in June 2021. That website also have many technical glitches. The only difference is that CBDT has fairly acknowledged the glitches and is taking proactive steps, while CBI&C even refused to accept that there are problems in IT infrastructure of GST.

Refund issues in GST in case of exports

Refunds is a very big problem in GST and of course, big source of corruption too.

Exporters are the biggest sufferers.

In case of exports, it is much easier to pay GST and claim refund. However, this avenue is proposed to be restricted as per provisions in Budget 2021. This is done to plug problems of bogus input tax credit on basis of fake invoices. It is true that there is revenue loss due to fake tax invoices. However, such loss may be less than 1% of entire export refunds. However, 97% genuine exporters are made to suffer for 3% crooks. The proposed remedy is worse than the disease.

Procedure for refund of input tax on goods or services exported is very difficult and clumsy. Often refund claims are rejected or reduced on flimsy grounds. Further, there is no provision of refund of GST paid on capital goods when final manufactured product is exported without payment of taxes.

Often, invoices do not get reflected in GSTR-2A or GSTR-2B of recipient of goods and services, which creates problems in getting refund of Input Tax Credit.

Letter of Undertaking (LUT) or bond is unnecessary procedural headache and tool of harassment. The purpose can be achieved by making simple provision in GST Act itself.

Refund in case of inverted duty structure

Refund in case of inverted duty structure is only on goods and not on services. Further, there is no provision of refund of GST paid on input services and capital goods. The formula and procedures are clumsy, to say the least.

Complicated provisions in respect of Input Tax Credit

Basic purpose of GST is to avoid cascading effect of taxes. This is achieved through mechanism of Input Tax Credit (ITC). However, the provisions of ITC have been made very complicated and clumsy.

Provision of 'blocked ITC' is regressive. Some legitimate business expenditure like travel and food to employees, medical facilities to employees, fringe benefits to employees etc. are disallowed.

ITC on Motor vehicles and Construction services is disallowed, though really it is legitimate expenditure.

ITC of GST paid on gifts and free trade samples is not allowed. Really, it is genuine business expenditure, though technically not allowable as GST is not paid on output supply. Further, ITC involved is really negligible, but compliance cost is heavy. By making ABC analysis, it can be easily concluded that it will be much simpler and easier to allow ITC on such petty matters.

If goods lost in fire, ITC on those goods is required to be reversed, though really it is a genuine business loss.

ITC of tax paid on services received in other States like hotels, customs clearance charges, transport, renting etc. is not admissible as SGST and CGST paid is of other States. This is against 'one nation one tax' principle.

Some burning issues in GST

There are many potential litigation prone issues in GST on which there is no clarity or there is ignorance. Assesseees are likely to face huge demands on these issues.

Though GST Council and CBI&C are aware of these issues, they are not clarifying the issues. If they do so, it will bring clarity and reduce litigation.

Some such issues are as follows. This is only tip of iceberg. There are many confusing and litigation prone issues in GST.

Cross Charge – Often, Head Office or divisions provide services to branches or divisions in other States having different GSTIN. Technically, GST is leviable on such services, as different GSTIN means different taxable person under GST Law. However, most of assesseees are not doing that, either through ignorance or presumably on basis that one cannot provide service to oneself. However, this is likely to be a big source of litigation.

Services by employer to employee – Employer provides various services to employees like free or subsidised food in canteen, free or subsidises transport, dresses etc. Technically, the services are taxable as only services provided by employee to employer are taken out of definition of ‘service’ and not vice versa. Further, employer and employee have been specifically defined as ‘related persons’ and hence GST is payable on open market value and not on transaction value. This issue needs immediate clarification/relaxation.

Definition of ‘intermediary’ in provision relating to place of supply - Definition of ‘intermediary’ in provision relating to place of supply is highly unfair and broad. In case of ‘intermediary’, place of supply is location of supplier of service. This creates an ironical situation, as assessee earning foreign exchange is taxed while person making payment in foreign exchange to foreign intermediary is not liable to pay tax under reverse charge. Ironically, earning foreign exchange for country is a sin but paying in foreign exchange is not a sin at all.

Further, definition of ‘intermediary’ is vague and broad. Really, the intention of definition is only to cover commission agents. However, the definition is being interpreted by departmental officers to cover even consulting services, software services, call centre services etc. which actually earn foreign exchange for country.

Requirement of Registration to suppliers of exempted goods or services, if reverse charge applies – In many cases, the supplier of goods or services is exempt from GST e.g. petroleum products, alcoholic liquor, recognised educational institutions, small hospitals. However, they receive some services like security, legal services, GTA services etc. where reverse charge applies. In such case, there is requirement of Registration of suppliers of exempted goods or services, even if such amounts are petty. The requirement of GST registration should apply only if such amounts exceed Rs 20 lakhs per annum.

Liaison Offices - Basically, one cannot supply service to oneself. However, ‘Liaison offices’ in India of foreign entities are held as taxable in some decisions of AAR.

Definition of ‘establishment of distinct persons’ - The definition is classic example of clumsy definition. The definition is sought to be applied to group companies. In fact, the definition should be ‘establishment of same persons’. Group companies are not ‘establishments of same persons’.

Conclusion

In conclusion, I would give following rating to GST.

Basic structure of GST – 9 out of 10

Drafting of law – hotchpotch, as bad provisions of both Vat and Central Excise are combined -7 out of 10

Implementation of GST – complete revenue minded approach, on basic assumption that all assesseees are crooks and rascals and all tax officers are saints and Godly - 3 out of 10

GST will succeed only if there is change in mind-set of both assesseees and GST officers change.

There is vast scope for improvement in GST provisions.

In any case, as we have to learn to live with Corona, we have to learn to live with GST.