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PRACTICAL CHALLENGES IN GST AND ISSUE FACED BY TAX PAYERS RELATING TO ITC CLAIM

Introduction:

GST is the most ambitious and remarkable indirect tax reform in India's post-Independence history. Its objective is to levy a single national uniform tax across India on all goods and services. GST has replaced a number of Central and State taxes, made India more of a national integrated market, and brought more producers into the tax net. By improving efficiency, it can add substantially to growth as well as government finances. Implementing a new tax, encompassing both goods and services, by the Centre and the States in a large and complex federal system, is perhaps unprecedented in modern global tax history.

GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits up to the retailer level. It is essentially a tax only on value addition at each stage, and a supplier at each stage is permitted to set-off, through a tax credit mechanism, the GST paid on the purchase of goods and services. Ultimately, the burden of GST is borne by the end-user (i.e. final consumer) of the commodity/service.

GST was launched in India on 1st July 2017 but still there are many issues associated with GST Implementation. Tax payers, Practitioners, Cost Accountants, Chartered Accountants etc. had various problems but had least reachability to the right solutions at right moment to resolve the issues. This study attempts to provide a brief note on the issue with GST Return filing.

Let us now discuss issues relating to the Implementation of GST and provide some suggestions.

➤ **CGST Rule 59(6) Restricting filing of GSTR 1 where GSTR 3B not filed**

1. Rule-59(6) of CGST Rules, 2017; inserted vide Notification No. 1/2021 dated 01/01/2021, provides for restriction in filing of GSTR-1 in certain cases:-
 - (a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding **two months**;
 - (b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

2. This Rule will be implemented on GST Portal from **01/09/2021**. On implementation of the said Rule, the system will check that whether before the filing of GSTR-1/ IFF of a tax-period, the following has been filed or not:

- (a) GSTR-3B for the previous two monthly tax-periods (for monthly filers),

OR

- (b) GSTR-3B for the previous quarterly tax period (for quarterly filers), as the case may be. The system will restrict filing of GSTR-1/ IFF till Rule 59(6) is complied with.

3. This check will operate on clicking the SUBMIT button of GSTR-1 and the system will give an error message if the condition of Rule 59(6) is not met. It may be noted that records which have been saved in GSTR-1 will remain saved and filing of such records will be permitted after Rule-59(6) is complied with.
4. Implementation of Rule 59(6) on the GST Portal will be completely automated, similar to the blocking & un-blocking of e-way bill as per Rule-138E and facility for filing of GSTR-1 will be restored immediately after filing of relevant GSTR-3B. No separate approval would be needed from the tax-officer to restore the facility for filing of GSTR-1.

❖ **Observation**

After Implementation on Rule 59(6) (Restricting filing of GSTR 1 where GSTR 3B not filed) from 1st September 2021. It will increase the ratio of filling GSTR 3B and also clear the Pendency of GSTR 3B. It will also impact on Tax Collection in Favorable manner.

❖ **Suggestion**

Just Like Implementation of Rule 59(6) (Restricting filing of GSTR 1 where GSTR 3B not filed) Government should make such a mechanism that until the tax payers who do not fill there GSTR 1 return for the Month/quarter on timely basis then the option of filling GSTR- 3B will not visible on the Portal. After implementation of this mechanism Issue relating to ITC claim by Recipient will be almost resolve.

At present time most of tax payers (suppliers) file there GSTR 3B on timely basis to avoid the Late fee but they don't file there GSTR-1 return within respective due date because right now fine on GSTR-1 is not calculated, and **imposing the fine is not a solution**. If the supplier fails to submit GSTR-1 on due date then the recipient have the bill/invoice but the recipient can not claim input tax credit for the month.

So, Government should make such a mechanism that until the supplier does not file their GSTR-1 return for the Month/quarter, the option of filling GSTR- 3B will not visible on the Portal. By implementation of this mechanism suppliers will be bound to first fill there GSTR-1 return. Because if they don't file there GSTR-1 return then they will not be able to file GSTR-3B and If GSTR-3B will not file on due date then fine will be calculated. This mechanism also provide benefit to the taxpayers, as at the present time fine is applicable on both Form GSTR-1 & GSTR-3B which is the burden on Taxpayers. But after implementation of this mechanism fine will be required to be imposed on GSTR-3B only.

➤ **Tax payment options in GST**

In present time only three mode of payment are available in GST which are

- E- payment (Net banking),
- RTGS/NEFT &
- Cash over the Counter

But most of the taxpayers don't have Net banking facility or at the time of making payment they use RTGS/NEFT or over the counter hence face the issues of time limit of banking hour and also other issues like link fail in bank etc.

So the government may introduce such other methods of payments like Debit card, Credit Card, BHIM-UPI etc. in GST portal. So that it can be more user friendly for the tax payers.

➤ **Provide Revise return facility**

In GST if taxpayers make any mistake during return filing then there is no any provision of revise return in GST. Taxpayers can only make adjustments in next month GST return.

So it is suggested that there should be a revise return facility. So that if taxpayers make any mistake or wrong information in their return, then taxpayer can apply for revise return.

➤ **Invoice Matching Concept (GSTR 2B) hardship to genuine Taxpayers**

It is getting difficult for GST taxpayers to match their Book's ITC with GSTR 2B ITC because GSTR-2B contains ITC which is not only related to the current month ITC but it may be related to earlier month's ITC due to the suppliers filing their GST1 Returns after the due date also.

Here is a Simple Equation for Matching ones Book ITC with GSTR 2B ITC. The invoice matching causing undue hardship to the genuine Taxpayers. To strike a balance between the interest of Government Revenue and Taxpayers, the invoice matching & consequential ITC denial can be made applicable only the cases of non-bonafide transactions. This would relieve the Genuine Taxpayers from the undue claims from the department and reduce the large scale of litigation

➤ **Removal of GST Audit from F.Y 2021-22**

Removal of GST audit should not be seen as one perspective of ease of doing business. Doing away with GST audit will be a retrograde step as it will create greater problems for society in days to come if there is no concept of **maker checker**. GST audit helps in prevention and early detection of disease/error. When we do reconciliation audit, we look at many different things from compliances point of view. That will not be done if GST Audit has been removed, since maker checker concept will not be there.

➤ **Tax burden must be defined**

The issue with Section 16 (11) is that it puts the administrative burden associated with the tax on the buyer rather than the supplier, which can be problematic for businesses. One potential issue that could arise as a result of the administrative shift is the non-payment of taxes by the supplier. In that case, the buyer will end up having to pay for not only her share of the tax, but also for the supplier's share of the tax under the proposed tax code. Further, problems could arise, if for some reason there are inconsistencies found in the supplier's documentation at some later stage. Under this scenario, the buyer will be forced to pay back the tax reimbursement to the government with interest. This problem is usually fixed by market forces, however, as any non-compliant suppliers will soon find themselves losing customers as a result of their negligence. The government has also put in place a mechanism to help with the issue, by providing a publicly available compliance rating system which will allow consumers to pinpoint defaulters as the system starts to take effect over the coming years.

➤ **Relaxation for ITC claim for F.Y 2018-19**

As per the provision u/s 16(4) of CGST Act 2017, the time limit for taking input tax credit for the financial year 2018-19 was up to the filing of return (GSTR-3B) for the month of September 2019. But, a large number of taxpayers had filled their returns after the due date of the September 2019. Book finalization not done till September 2019, but a large no of taxpayer has claimed their remaining ITC of F.Y 2018-19 after the due date of GSTR 3B of September 2019. Due to various reason such as glitches in GST portal, there would be delay in the finalization of books of accounts.

Hence it is humble request and suggestion to government must provide at least one more opportunity/relaxation to the taxpayers regarding the claim of ITC of the F.Y 2018-19. Because in present time many litigations are pending before the Honourable Court relating to ITC claim of the F.Y 2018-19.

➤ **Conclusion**

The Goods and Services Tax is a much needed tax reform, and can do wonders for India's economy. Along with eliminating double taxation and lowering product price, the GST can also assimilate the informal sector into the greater Indian economy and provide a much needed boost for India's flagging export market. Yet there are implementation issues that could be problematic for India's small businesses and, perhaps more importantly, undermine public trust in the GST.

The issues surrounding the GSTN can be managed if more time is given for continued enrolment of taxpayers and thorough testing of the IT infrastructure. Additionally, giving more time for the CAG to conduct a thorough audit would allow for any functionality issues with the GSTN to be brought to light, preventing costly public trust issues.