

GST - Three year Journey

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Three years of GST

- ▶ The idea of GST was initiated to create a national market and to avoid cascading effect of taxes.
- ▶ We can say that GST is neither a great success nor a big failure.
- ▶ However, as we have to learn to live with Corona, we have to learn to live with GST

Achievements

- ▶ National Market - about 70% achieved
- ▶ Avoid cascading effect of taxes - about 70% achieved
- ▶ Problems due to overlapping of Vat and service tax - more or less eliminated
- ▶ Abolition of check posts (but not abolition of harassment through road checks - Official Highway Robbery)

Unique features of GST as introduced in India

- ▶ Concept of IGST is a unique idea - nowhere else tried - it is a game changer
- ▶ GST on supply and not on manufacture or sale. This changes entire structure of tax
- ▶ Dual structure of GST
- ▶ Uniform law on goods and services all over India - great achievement

Special features of Indian GST

- ▶ Centre State Cooperation at unprecedented level. All the decisions so far (except one) in GST Council by consensus and not by voting
- ▶ Most complex GST law in the world
- ▶ No concept of ABC analysis in trying to bring every transaction under GST

Failed GSTN

- ▶ GSTN is the biggest failure - almost 50% problems in GST are due to system, which is law in itself
- ▶ Difficulties in filing returns and amending them
- ▶ Keep track to know whether supplier has paid tax
- ▶ GSTN is master - acts against law but assessee is helpless

Interest for late payment of taxes - whether on gross amount or net amount

- ▶ Interest for late payment of taxes - whether on gross amount or after deducting Input Tax Credit available - should be on net amount
- ▶ In *Pratibha Processors v. UOI* 1996 AIR SCW 4299 = AIR 1997 SC 138 = 88 ELT 12 (SC) = 1996 (11) SCC 101, it was observed that Interest is compensatory in character. Essentially, it is compensatory and different from penalty - same view in *State of Karnataka v. Karnataka Pawn Brokers Association* [2018] 6 SCC 363 = 255 taxman 12 = 91 taxmann.com 228 (SC).
- ▶ Assessee cannot claim ITC as he cannot file return without payment of taxes
- ▶ Government ignoring GST Council

Remuneration to whole-time and executive directors

- ▶ whether taxable and whether reverse charge applies - Contradictory judgments of AAR
- ▶ Services of employee to employer are neither goods nor service
- ▶ Whole-time or executive director is employee and hence no GST - and hence no reverse charge
- ▶ Luckily department circular has clarified the matter
- ▶ Issue of other services like rent, consultancy

Transitory Provisions - TRAN-1

- ▶ Many assessees could not file TRAN-1 due to system failure
- ▶ Retrospective amendments to nullify effect of Delhi HC judgment - against promise of BJP
- ▶ Amendment may be legal but not fair at all - assessee suffering due to fault of GSTN

Sale of developed plots

- ▶ Recent AAR decision that GST is payable on sale of developed plots
- ▶ Legally GST can be levied on sale of land - anything other than goods is service - but specifically excluded in Schedule III - neither goods nor service
- ▶ Development of land into plots is only value addition to land - sale of plot continues to be sale of land
- ▶ It is registered as sale of land itself

Refund issues

- ▶ In case of exports, much easier to pay GST and claim refund - refund of input tax on exports is very difficult - no refund of GST paid on capital goods
- ▶ Many invoices do not get reflected in GSTR-2A - cannot know whether supplier has paid tax
- ▶ LUT - unnecessary headache
- ▶ Refund in case of inverted duty structure - only on goods - not on input services and capital goods

E-Invoicing

- ▶ Basic idea is to get information in standard format as formats of invoices of each taxable person are different
- ▶ Programmes like Tally, SAP - formats not inter-changeable - suppliers invoices cannot be matched by recipient
- ▶ Once e-invoicing introduced, GSTR-1 should become redundant
- ▶ If it functions like eway bill portal - welcome - if works like GSTN, then nightmare

Blocked Credit

- ▶ Some legitimate business expenditure disallowed like travel and food to employees, medical facilities to employees
- ▶ Gifts and Free Samples - ITC involved negligible but compliance cost heavy
- ▶ Motor vehicles for legitimate business purposes
- ▶ Construction services - really legitimate expenditure
- ▶ Goods lost in fire - ITC to be reversed
- ▶ Services received in other State like hotel

Many more critical issues

- ▶ What we have discussed is only the tip of the iceberg. Many more complications would arise in due course.
- ▶ No worry about job security for persons in the GST department and consultants of GST
- ▶ Ranking - Basic structure - 90%, Drafting of law - hotchpotch - 70%, implementation - 30% - overall 50%

Thanks

- ▶ Thanks
- ▶ Wish you happy and safe journey
in jungle of GST