

GST – A GAME CHANGER WITH SPEED BREAKERS?

GST, a laudable fiscal and revenue reform measure, is slated to go on stream in July this year. It is expected to simplify indirect tax collection, prevent revenue leakages and help realize the goal of one India – one Market. However, as is the case in all major reforms, businesses may require some legal handholding in order to negotiate the initial bottlenecks and incongruities involved in the implementation of GST.

1. The GST Model Law provides that “services” include transactions in intangibles and actionable claims. On the other hand, the Indian Accounting Standard (AS) 26 grades intangibles as “assets” that are bought or sold just as any other tangible property. For instance, the assignment of book debts cannot, normally, be deemed a “service”. There have also been a number of Supreme Court judgments pertaining to “intangible goods”. This could give rise to confusion over applicable GST rates and may necessitate decisions based on categories and kinds of intangibles.
2. E-Commerce platforms may be faced with anomalous situations where the vendors may be compelled to either hike prices above market rates (or suffer reduced, even uneconomical, margins) because GST on the “service” rendered by the marketing platform would have to be added to normal GST on products sold by them. E-commerce may, thereby, suffer in terms of desirability as a business model.
3. A Finance Ministry Task Force is devising a mechanism for the Inter State GST Council to resolve GST related disputes between the Centre and States and inter se States. Ambiguities could arise due to conflict with Article 131 of the Constitution which maintains that such disputes are to be heard and decided by the Supreme Court.
4. As the Model Law, the proper officer may query the truth or accuracy of the value declared in relation to any goods or services and after providing an opportunity to the supplier, may proceed to determine the value afresh. This could lead to anomalous situation where the “proper officer” in Maharashtra may value goods or services differently from the “proper officer” in Tamil Nadu. This would not only defeat the idea of a uniform GST regime but could also embroil the supplier in arduous review processes, disputes, and litigation as to valuation for purposes of GST, spread over several different and distant States.
5. The exceptions to claiming input tax credit, as mentioned in the Model Law, are vague and subjective. Such diffuse criteria could well give rise to significant discrepancies providing convenient windows for tax evasion.
6. The GST regimen proposes to keep Customs Duty independent of the GST. The application of Customs valuation principles to value appraisals under GST

may inevitably lead to confusion. This is because Customs Duty rates are based on international prices of diverse products which may fluctuate and vary substantially thus engendering different GST rates on similar products from different origins besides throwing up discrepancies in the GST rates leviable on the same products manufactured entirely in India.

7. In terms of the GST Model Law, entertainment tax is to be subsumed in the GST but municipal bodies and panchayats may be authorised, by the State Legislature, to impose and collect such a tax. The Model Law does not preclude a State from circumventing the Model Law and granting such an authorisation with the added proviso that a portion/ percentage of the entertainment tax, so collected, should be routed back to the State exchequer.

8. As GST collections would accrue to the consumer/ end user/ importing State; this would put the manufacturing State at a disadvantage. Even though the scheme contemplates centrally funded offsets to the State of origin for five years; there is no mention of what is planned to recoup such losses to the originating State once those five years are over.

Clearly, much refining and removal of wrinkles (through executive directions or legislation if need be) would be necessary as the implementation of the GST progresses. Until then, businesses would have to traverse this uncharted area carefully, making sure that vagaries of statute/ rule interpretation by an assessing authority do not result, for them, in unwieldy and improper GST liability.

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