

Anti-profiteering provision in GST

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ONE of the most confusing and much debated issue in the Central GST Act, 2017 is perhaps, section 171, which deals with anti-profiteering provisions. This section was hotly debated in the Lok Sabha with Mr Veerappa Moily, the veteran Congress MP from Karnataka repeatedly pointing out that this provision could be misused. Mr P Chidambaram, one of the most brilliant FMs that we have, perhaps ever had, has also gone on record to say that this provision is capable of creating a lot of confusion for Industry.

Let's take a look at this section which reads as under:

171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

On a plain reading, this section would seem to cover situations arising out of reduction in the tax rates pertaining to inward supplies of goods and/or services in the first instance and the benefit of input tax credit in the second instance.

Reduction in the tax rates of input supplies of goods and/or services could arise on account of re-classification of goods and /or services, after the GST law has come into effect. With more than 4000 line items of commodities, it is but natural to expect the tax rates to be adjusted by the GST council, in the initial phase of the GST era. This Section requires the registered person, who is receiving goods and/or services in respect of which there has been a reduction in the tax rates, to pass on the benefit to his customers, by way of a commensurate reduction in prices charged. Of course, it would require great mathematical skills to apply this requirement in a practical scenario as the basket involving inward supplies is a large one involving multiple commodities and services. It is not clear as to the manner in which the taxable person would be required to pass on the benefit arising out of the reduction in the tax rates of his input suppliers of goods and/or services. It is probable that the Department might allow the taxable person to issue credit notes and prove that he has indeed passed on the benefit.

Talking of the second limb of the section, the registered person is also required to pass on the benefit arising out of availment of input tax credit to his customers. This part of the definition is very loosely worded and could result in huge interpretational issues for Industry. From the accounting parlance, input tax credit is a balance sheet item and does not form part of the cost of the product or service. Input tax credit gets netted off against the output tax/GST collected and the net amount representing the excess of the output GST collected over the input tax credit would represent the tax liability of the registered person.

On the other hand, pricing of the product or service is an issue related to the Profit and Loss Account and from an accounting perspective it would be very difficult to establish a link between the input tax credit being a balance sheet item and the pricing of the product/service, which is a profit and loss account item.

Be that as it may the implementation of this provision, at the ground level, could pose a lot of challenges, as aforesaid. In a dynamic business scenario, the registered person would not want to reduce his prices of products and /or services on a temporary basis to pass on the benefits arising out of this section and may prefer to issue credit notes.

It is not clear as to the time frame by which this section requires the registered person pass on the benefits arising out of this section. In a typical scenario involving the construction sector, the input tax credit would be availed at the time of construction of the residential buildings, etc., while the outward supply of services would happen at a much later stage. How could this section be implemented in a scenario like this is anybody's guess. Moreover, it is not clear as to whether the registered person can accumulate the benefit arising out of this section, for say, two years, and pass on the benefit in one go, to a select few of his customers.

Take another scenario... Assume that the registered person is forced to sell his products at a loss, for a temporary period, due to market conditions. Will he be required to further increase his losses by reducing his output prices to accommodate this section?

One saving grace, however, seems to be that, this draconian section does not seem to be applicable to transitional credit that accrues to existing tax payers, in terms of carry forward of cenvat credit covered under the central excise and service tax laws and the input tax credit covered under the State VAT laws of the country. This could be a huge relief for Industry as substantial amounts are expected to be allowed to be carried forward into the GST regime.

Before concluding...

For many indirect tax practitioners (including us), this section could provide ample professional opportunities under the GST regime.

In the overall context, the provision related to anti-profiteering could involve complex issues involving business practices, accounting issues, etc. In what is supposed to be a simple law, the Government could have done without the anti-profiteering section 171.

Talking of sub-section (2) and (3) of Section 171, it would seem that the Industry could get subjected to a lot of harassment, as the whole concept involving anti-profiteering would seem to involve more of subjectivity, rather than objectivity.

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