

## **GST – A blind man’s attempt to describe an elephant? – Sept 01, 2009**

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**SEPTEMBER 01, 2009**

**By S Sivakumar, CA**

AT a very recent interaction with the representatives from Industry, a Chief Commissioner of Central Excise and Service Tax made a comment (with a rider that this was his personal comment) that an attempt to describe the GST concept, given its impending introduction from April 1, 2010, on the basis of the facts that are currently available in the domain of the public as well as the Revenue Departments, would be similar to the proverbial attempt of the seven blind men to describe the elephant. I got the clue for my piece on GST in TIOL, in this interactive meeting.

There seems to be a widespread expectation that the GST would be a panacea for most ills related to the levy of indirect taxes both at the central and the state level. From a layman’s perspective, as things stand today, it is proposed to have a dual GST regime. The central GST regime (‘CGST’) would cover the central levies of central excise, service tax, CST, Additional Customs Duty, etc. while the State GST (‘SGST’) would cover the state indirect taxes like the state excise, VAT, sales tax, octroi, entry tax, luxury tax and lottery tax. Customs Duties would be outside of the proposed GST regime. The GST regime would, within its sweep, cover and significantly impact all manufacturers, dealers, works contractors and service providers, whether operating in a single State or in multiple States or engaged in the export activity. With the FM reiterating that the GST would get implemented from April 1, 2010, irrespective of the ‘bumps’, it’s time for the Industry to take stock of what is likely to come out of the GST regime and to plan the transition to the GST regime.

I’ve discussed ten concerns which immediately come to my mind based on my experience in

indirect taxes, vis-a-vis the GST regime.

#### **Concern No.1 – Clarity required on ‘taxable event’ under GST**

The GST regime would, hopefully, simplify the whole process of levy of central indirect taxes like central excise and service tax, as the ‘taxable event’ under the GST regime is supposed to be the ‘supply of goods’ and the ‘rendering of services’. This, in my view, would be a very important step in the right direction and the GST legislation should ensure that there is little scope for litigation. Let’s not forget the fact that, even, in a well codified taxing legislation like the Central Excises Act which was introduced in 1944, we still have major doubts on what constitutes a ‘manufacture’. Even as of last year, there have been major amendments on what constitutes ‘manufacture’ and the Supreme Court is seized of several cases which are still pending on this basic issue. If this is the status of a basic taxing issue in a well defined legislation that has stood the test of time for about 65 years, what to talk of recent legislations governing levy of service tax, etc. (which, incidentally, does not have a legislation of its own). We have witnessed a lot of unnecessary litigation even in respect of basis issues in central excise and service tax and one hopes that the lawmakers put in the requisite efforts in having simple and clearly understandable definitions of what would constitute the ‘taxable event’ under the GST regime.

#### **Concern No.2 – Concerns arising out of State GST regime**

It seems that there would be no uniform State GST regime, that all apply to all States. This could mean that, each State would administer its own GST based on its own legislation. This could mean that dealers having operations in more than one state could be required to follow the respective GST regimes in the States in which he does business. The current issues related to the same transactions being subjected to VAT in a completely different fashion, in different States, would continue. Even after four years of introduction of the

VAT regime in the country, we have major differences in the way the VAT law is implemented by the individual States. Thus, for instance, a works contractor in Karnataka is required to pay VAT on a monthly basis, whereas, in most other States, the tax period is the financial year. Further, a works contractor is required to pay 12.5% on the steel transferred by him in the course of execution of the works contract, while in most other States, he pays 4%. There are major issues concerning SEZs under the State VAT laws, with some states talking of a refund regime, while most others have an exemption based scheme, for SEZs. Of course, not to talk of the fact that the same commodity in some cases, is subjected to different VAT rates in different States.

There are major issues concerning levy of entry tax by most States and the Supreme Court is already hearing a batch of writs challenging the very levy of entry tax.

It is unlikely that these major issues would get resolved in the new GST dispensation, in the absence of a common model State GST legislation, which has to be compulsorily adopted by the States. The Central Government must realise that its role does not end with the implementation of the CGST regime, which is what looks to be the situation, sadly. One at least hopes that a basic understanding on the fundamental issues concerning the SGST scheme is arrived at covering the GST rates, tax periods, etc.

### **Concern No. 3 – Lists of goods and services covered under CGST?**

It does look like that most abatements and exemptions would go, under the CGST regime. We are likely to have a comprehensive list of goods and services, which would get covered under the GST scheme, with a small list of exempted goods and services. In arriving at these lists, one hopes that the Government of the day does not repeat the blunders that it had committed under the service tax law, in terms of its attempts to levy service tax on transactions involving immovable property, etc.

One also hopes that the CGST scheme keeps itself off transactions which are not 'services' like, selling of software licenses, which are very likely to get included in the SGST regimes.

### **Concern No. 4 – Treatment of transactions involving goods and services**

It looks very unlikely that major issues concerning the levy of both service tax and VAT on the same transactions, leading to double taxation, would vanish under the GST regime, given the fact that we are going to have the dual GST regime. Thus, sale of software licenses would continue to get levied under the CGST as well as, under the, SGST regime. In terms of levy of service tax on works contractors, who are subjected to the levy of both service tax and VAT, one hopes that the Government comes out with clear provisions to demarcate the value of goods from the value of services, so that, double taxation is avoided.

### **Concern No. 5 – Transactions involving 'Immovable Property'**

The country has seen a lot of avoidable litigation in terms of the Government's attempts to levy service tax on transactions related to immovable property. Of course, the controversies related to the levy of sales tax on immovable property related transactions have been in vogue for a much longer period. One hopes that the Government of the day takes steps to take the Realty Sector completely out of the CGST scheme, given the fact that, these transactions involve essentially, transfer of immovable property which are not 'goods'. As things stand now, neither the Revenue officials in Delhi nor their counterparts in the States, seem to have the same view, in so far as the levy of service tax on the Realty Sector is concerned. This is a dangerous situation, significantly impacting the Sector and one hopes that the Realty Sector is completely taken off the GST regime.

### **Concern No. 6 – Refund of taxes to exporters, 100% EOUs and SEZs**

There doesn't seem to be much information on how this crucial topic of ensuring that the exporter does not export taxes, is sought to be handled. Even the Foreign Trade Policy for 2009-2014 announced last week, has left the fate of exporters, in terms of refund of service tax, etc. to the GST regime. The existing scheme

of refunding indirect taxes, has been one of major disappointment, for exporters of goods as well as, services. Despite announcements to the contrary, the fact remains that exporters have indeed been significantly exporting 'taxes' along with goods and services, due to the completely unfriendly and insensitive manner in which the Revenue Departments have been handling refund issues concerning the exporting community.

One would have to term the GST regime a failure, if the needs of the exporting community in terms of refund of taxes, are not handled. One would expect the GST regime to go in for an exemption based regime rather than, a refund based regime. The Centre should also prevail upon the States to implement the exemption based scheme for 100% EOUs and SEZs under the SGST regime.

**Concern No. 7 – Significantly higher GST rates likely?**

It has been informally reported that the aggregate rate of GST, across the CGST and the SGST regimes, could approximate to about 16%. There are also reports that there could be multiple GST rates. We must bear in mind that, the higher taxes in the GST regime would significantly impact specific industries like the Software Industry, which pays 4% VAT on sale of licenses and perhaps, service tax @ 10% on software services. I get nightmares when I think of tax rates of around 16% both under the CGST and the SGST regimes. A typical sale of software license could get taxes to the extent of an unbelievable 32%, under the CGST and the SGST regimes. Such a high tax structure could kill the domestic software industry.

**Concern No. 8 – Carry forward of accumulated cenvat credit and input tax credit**

One hopes that the Government clearly lays down provisions so as to ensure that, manufacturers, dealers and service providers are not denied the benefit of carry forward of the accumulated cenvat credit and input tax credit balances, as of March 31, 2010, under the GST regimes. Of course, this facility was also extended to the assesses when VAT got introduced in April 2005.

**Concern No. 9 – Exemption to small players**

One hopes that the GST schemes continue the current policy of exemption for the small players, by significantly increasing the threshold limits. Of course, it would be interesting to see how this gets implemented, across the manufacturing and the service sectors. The GST regime should strive to concentrate on the larger players and leave out the smaller players.

**Concern No. 10 – Credit on input duties and taxes**

We have seen a lot of litigation on issues concerning availability of cenvat credit to manufacturers and service providers, due to the loose manner in which the statutory provisions have been drafted. The provisions related to denial of cenvat credit for exempted goods and exempt services have contributed to a lot of avoidable litigation. One hopes that the credit availment provisions under the CGST law are significantly simplified. The overall purpose of rebating of taxes can be achieved, only if the output manufacturer or the service provider is allowed cenvat credit in respect of all duties and taxes paid, irrespective of his selling exemption goods or providing exempted services.

**Before parting.....**

++ One does not particularly understand the haste with which the Central Government seems to be proceeding, in implementing the CGST regime. There are several burning issues which have remained unresolved in the existing indirect tax and sales tax regimes including levy of taxes on the Realty Sector and the Software Sector, refund of taxes to exporters and SEZs, denial of substantive benefits like cenvat credit, etc. Despite huge expectations, the VAT regime has failed to deliver a common law applicable across the various States and given this, the dual SGST system is bound to result in larger inequalities.

++ The Government's objective seems to be able to garner significantly increased taxes under the GST regime. The Government should realize that its citizens, to a large extent, do not mind paying taxes. They are only afraid of a tax collecting system which is largely based on unclear taxing statutes and a totally

unfriendly tax collecting revenue department. The objective should then, be, to come out with a simple and understandable law which could lead to minimal interpretational issues.

++ The Government should think of involving the Industry in the GST implementation, to a much larger extent. Given the fact that the GST regime would significantly impact sectors like Realty, Software, etc., industry bodies like FICCI, Assocham, NASSCOM and CREDAI should get involved in a much larger manner.

++ I'm still wondering about the seven blind men that the Chief Commissioner mentioned. Are these, the three revenue departments of central excise, service tax and VAT, the Central and the State Governments the hapless tax payer and me, the Consultant?

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