

## Some out of the box thinking for reducing litigation : 08-07-2014



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MUCH is being written about the quantum of litigation related to central indirect taxes, which has reached alarming proportions. Here are some bold and serious suggestions from a tax practitioner aimed at minimizing tax related litigation.....

1. *Allow seamless cenvat credit to manufacturers and service providers, without any restrictions. Credit should be available on all purchases of goods and capital goods(100%, in one shot, as is the case under VAT) and on all expenses, without any distinction between expenses for manufacturing activity and those for business purposes. Credit should be available on and across, central excise duty, CVD, SAD as well as, on service tax, except for, customs duty, of course. Given the fact that about 70% to 80% of the current litigation in service tax is related to cenvat credit, this in itself, will considerably reduce litigation in indirect taxes.*

2. *Allow the benefit of non-leviability of duties and service tax on all export transactions, without any restrictions. The only stipulation for availing this benefit should be that the services should have been paid for, in convertible foreign exchange. Scrap the Place of Provision of Services Rules, 2012 and introduce a simple rule for determination of service tax leviability. All transactions that are paid for in convertible foreign exchange, including deemed sales should be exempt from service tax while all transactions paid for in INR, should attract service tax.*

3. *Completely exempt SEZ developers and SEZ units from the levy of service tax, without any restrictions about usage of the input services, etc. All service providers to SEZs and SEZ developers should be exempted from the levy of service tax, without any conditions.*

4. *Allow for seamless refund of the service tax paid on input services and duties paid on capital goods/inputs, to services*

exporters and manufacturer exporters, without any issues. Refund should be made available on the basis of self-certified documents submitted by exporters without any issues. Alternatively, allow services exporters to claim a duty drawback at a brand rate of 5% of the value of exports, which should be made available to exporters, on receipt of the sale consideration in convertible foreign exchange.

5. Do away with the concept of levy of penalty on the basis of 'mensrea' to be proved. Follow the example of the state VAT law (eg. Karnataka) and provide for levy of a mandatory penalty of 10% of the tax or duty short paid due to any reason whatsoever. In effect, this would mean that, mensrea should not be an essential ingredient for levy of penalties under the indirect tax laws (as is the case in the VAT law).

6. Implement tough administrative measures to take to task, Departmental Officers who disobey binding precedents and refuse to follow Board Circulars. Allow for show cause notices and replies to be filed online. Allow for departmental orders to be delivered to assesseees, online. The assessee's registered mail id can be used for the purpose.

7. Provide for system where, adjudication proceedings including refund related proceedings would have to be completed within 3 months and appellate proceedings upto the level of the CESTAT, to be disposed of, within 6 months, from the date of commencement of these proceedings.

8. If the Government were indeed to implement these measures, it is bound to see some amount of loss of revenue. At a time when tax revenue is most crucial, suggestions which would reduce tax collections might not sell..... Hence, the Government can consider increasing the service tax rate by 2% and the central excise rate by 1%, to compensate itself for these losses. Of course, the Government can drastically cut down the size of its tax bureaucracy and save costs. Perhaps, we would not have the need for Appellate Commissioners and the first appeal can be directed to the CESTAT. In my view, with a simpler system, it can do with about one fourth of its current size.

Of course... I and many other Advocates and CAs might go out of job. There would be lesser bright guys who will join the IRS. I might have to shift to an alternate career and might start writing books, etc. Many reputed publishers might lose business and there might be much fewer case laws to follow on TIOL. This is fine.

The larger benefit would of course be that, this simplification would, in itself, usher in, a new, largely non-corrupt system which would encourage Indian and foreign businesses to invest and grow their businesses, to the common benefit of all of us.

Many of TIOL readers might be amused at reading this piece. The fact remains that, many countries do follow these systems with such amount of success that foreign visitors who pay VAT on their purchases, etc. while on travel are reimbursed/refunded these taxes at the airports as part of the emigration process.

**Before concluding.....**

All of us... the Advocates, tax practitioners, tax bureaucracy, publishing houses, etc. would seem to have a common and vested interest in ensuring that the indirect tax laws continue to be complex, to the detriment of the industry. This sad state of affairs cannot be allowed to be continued.

The 'hook or crook' attitude followed by the earlier Central Government, in respect of tax collections, has played havoc with Industry and has contributed to large scale confusion and the inevitable corruption. The Budget is a good opportunity for the new Government to take a complete re-look at the existing indirect tax laws and go in for massive simplification of the law and the procedures, without jeopardizing its revenue targets.