THE HIGH FIVES OF THE FIFTH ANNIVERSARY

G - GROWTH
S - STABILITY
T - TRANSFORMATION

GST@5

KAIZEN
INSIGHTS

YOUNG, INNOVATIVE & REVOLUTIONARY TOGETHER

“Whatever you do, you cannot make everyone happy” seems more applicable for taxation than most other things of life. Even the best of intentions, planning and implementation is likely to see protest movement from some quarter or the other. A no-win situation for any government in power.

The Fifth Anniversary of the Goods and Service Tax (GST) seems like an opportune moment to celebrate and rejoice in what has been achieved and take stock of what's left of its eventual journey. What once seemed like a near impossibility given the kind of resistance it faced not just from opposition-ruled states in the early 2000s but also from the various strata of society, its fruition on July 1, 2018, seems like a "mission impossible".

It may have taken ten years to conceive and faced many birth pangs, but is a healthy five-year baby today. And unlike Malaysia, where the GST experiment was stillborn, the Indian GST child seems well and truly entrenched in the Indian economy. Despite the occasional hiccups and bumps on the way from some recalcitrant states or an activist judiciary, its future is secure and bright in India.

In hindsight, like in many other things in life, a lot can be said about the early mistakes, delayed improvements, technical snafus, and better coordination between the Centre and the states that would have helped build greater trust and confidence among the various stakeholders. However, the most significant reform of the country's indirect tax structure post-Independence has many positive outcomes.

Reducing and lowering the number of taxes and rates, curbing tax leakages, identifying and catching tax evaders, ensuring ease of doing business by simplifying regulations and acts, and fostering a spirit of cooperation among the states and between the states and the Centre through the setting up of a GST Council, are just a few of them. Its role in the formalisation of the economy—bringing the informal players into the formal economy-- and uniting the nation through "one nation, one tax, one market" too cannot be discounted.

Yet, states, certain industries like real estate, hospitality, and especially new-age industries are still grappling with specific issues, with no real solutions in sight. There is still no breakthrough on the contentious issue of prolonging the cess compensation beyond five years; alcohol, luxury items and petroleum products remain outside the Act's purview. Lack of clarity on the tax rate on various items and differing judgements from various judicial courts have seen litigation piling up, putting added pressure on an overburdened judicial system.

To commemorate the Fifth Anniversary of the implementation of the GST, we at Kaizzen have launched a whitepaper to take note of the successes and failures of this grand experiment. These ten chapters cover the entire spectrum of GST from the "Twists and Turn in the GST Implementation" to "Road Ahead" and many more in between. We hope you enjoy reading the book as much as we did in producing it.

- VINEET HANDA
CEO, Kaizzen

GST: CONNECTING
THE REAL ISSUES AT PLAY

Taxation experts, industry bodies, economists, chartered accountants, law firms and even the man on the street have debated endlessly and discussed threadbare the pros and cons of the most significant reform of indirect tax reform in post-Independent India. However, the diversity of differing views and sound bites on television channels has been coloured by different perspectives and outlooks, suited more to business needs, profitability concerns and growth imperatives of the parties concerned. In most cases, the real issues seem to have been lost in the din of heated debates.

For us at Kaizzen Insights, the research arm of Kaizzen, the Fifth Anniversary of the Goods and Service Tax (GST) provided us with the perfect opportunity not just to rechristen the Act as "Growth, Stability and Transformational" but also to define and connect the dots of the fundamental issues at play.

It was about taking a 360-degree view of its successes and shortcomings, the role of the GST Council, and the rise of technological revolutions, among other issues that helped GST successfully navigate its turbulent five-year-old journey successfully. Challenges that had been drowned in the cacophony of noise.
The essence of ten chapters has already been put forth by our CEO, Vineet Handa, in the forward of the book and hence requires no further reiteration. However, the main objective of this book is to provide clarity to different issues, throw light on the impact of the changing tax structure on various sectors of the economy, and predict with some certainty the future course of action to make this grand experiment a model for other countries to follow. The implementation of GST has already helped India to push ahead of many countries in the world.

We hope that the white paper will appeal to lay readers and experts alike and add value to the existing literature on a subject that has already captured the attention of nearly 160 countries and is likely to do more in the near future. Happy reading.

(From the author’s desk)

- ASHISH GUPTA

Director Kaizzen Insights, PR

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Chapter 1

The twist and turns in the evolution of GST in India

INTRODUCTION:

While it may have taken a decade to come into existence, the GST has fulfilled most of the promises of a good and simple tax.

Former Finance Minister Arun Jaitley's statement in the Central Hall of Parliament on midnight of June 30, 2017, that "the Goods and Services Tax may be a destination tax, but for India, it will begin an altogether new journey..." seems as relevant today as it was on that day. India began a new journey on July 1 2017, with a goods and services tax, which was heralded as the most significant economic reform of India's indirect tax structure in India's independent history. And there were many twists and turns in its decade-old journey before it was finally adopted.

The scheme was first mooted by the then Finance Minister, P Chidambaram, in his Budget speech in 2006-07. The GST was supposed to be introduced on April 1, 2010. His decision was based on a report of the Kelkar Task Force on Fiscal Responsibility and Budget Management in 2004, which proposed a nationwide implementation of a fully integrated GST.
The task of designing a roadmap was assigned to the Empowered Committee of State Finance Ministers (EC). Joint Working Groups of officials with representatives from the states and the Centre were brought together to examine different facets of GST and come up with reports regarding exemptions and thresholds, taxation of services and inter-state supplies.

The Committee came up with its first discussion paper in November 2009, spelling out the features of the proposed GST. It formed the basis of future discussions between the Centre and the state. However, the lack of political consensus and opposition from the BJP-ruled states had deferred the launch of the GST several times.

However, a change at the centre changed the fortunes of GST. On December 19, 2014, the new BJP-led NDA government presented the Constitutional (122nd Amendment) Bill 2014 on GST in Parliament. The Lok Sabha passed it on May 6, 2015, and May 14, 2015. Then the bill was referred to a Joint Committee of both the Houses of Parliament. After incorporating the recommendations from the Committee, the Rajya Sabha passed the GST Bill on August 3, 2016. Thus, it required an amendment in the Constitution to give birth to the GST.

GST comes into play:

The Constitution (101st Amendment) Act 2016 came into force after being ratified by the required number of state governments and approved by the President of India. On March 29, 2017, after the support of the GST Council, the Lok Sabha passed the following Central legislation. These were the GST Bill, 2017, UTGST (Union Territory GST) and SGST Bill, 2017, and GST (Compensation to Cess) Bill, 2017. All States and Union territories passed their respective SGST and UTGST Acts by June 30, 2017. Hence the GST implementation date was set for July 1 2017, and it marked the beginning of path-breaking tax reform in our country.

Before the implementation of the GST, there were multiple markets across India, with each state charging a different tax rate. These different rates of taxes led to considerable inefficiencies in the system and significantly increased the cost of compliance. The government pointed out that GST has solved one of the biggest challenges of the myriad rate of taxes.

However, under the GST regime, the number of indirect taxes has been reduced to just 12. The GST had subsumed 17 local levies like exercise duty, service tax and VAT, and 13 cesses were rolled out. The plan was simple: decrease the number of taxes, and reduce the burden on the commoner while significantly increasing transparency and higher collection.

The biggest flaw of the earlier tax system was the cascading effect of taxes on the prices of commodities. It increased the cost of production and put Indian suppliers at a competitive disadvantage in the international markets. It also created a bias in favour of imports, which do not bear the hidden burden of taxes on production inputs.

Moreover, the composition of the GST Council was geared toward the government's vision of achieving federal cooperation, which included the Union Finance Minister as its Chairman and state finance ministers or other ministers suggested by the state government. The role of the GST Council was to recommend rates, exemption and thresholds, taxes to be subsumed and other matters.

While one-half of the total number of members of the GST Council are required to form a quorum in meetings, all its decisions are taken by a majority of not less than three-fourths of weighted votes cast. The

Four rates of taxation excluding 0%:

The new GST system essentially uses four rates of taxation (5%, 12%, 18%, 28% and 2.5% for precious stones and 3%for gold) along with several exemptions. The new system removes any taxation applied when goods cross state borders allowing for minimum tax-based restrictions on trade. It also seeks to improve tax compliance by electronically using robust data reporting requirements and cross-matching the reported data.

The GST system has a robust legal framework. It includes four central laws, the Central Goods and Services Tax (CGST) and the Integrated Goods and Services Tax Act (IGST), along with twenty- four state laws, the relevant State Goods and Services Tax (SGST) Act.

The GST system includes another central law, The Goods and Services (Compensation to States) Act, which provides the taxation of certain sales (mainly luxury and demerit goods) called the compensation cess to compensate States for any loss of revenue that the new tax system may cause.

The Tax Administration Framework of the GST system supports the administration of taxpayers through a common nationwide IT backbone called the GST Network (GSTN). It has been put in place through which all tax returns are required to be filed. The GSTN would also aid in selecting taxpayers for audit through a risk-based selection mechanism and would support the central and state tax administrations' other main tax administration functions.

Yet, designing the GST law and implementing it was a considerable challenge. There were technical, logistical and information technology issues relating to a countrywide rollout. The other big problem was integrating the small and medium enterprises into the GST regime because the entire process would become online, from invoicing to tax payment. And most small and medium enterprises did not have the technical know-how or the technological readiness to adapt to this massive change.

Harmonisation of tax rates between the Centre and states

Moreover, harmonisation of Centre-State and inter-State taxes was another big challenge because the ultimate aim of GST would be a unified base and one set of rules for the two taxes. The other factor was creating the infrastructure for tax administration, including the design of tax forms, data requirements, the system of tax rulings and interpretations, and the procedures for registration, filing and processing of tax returns, tax payments and refunds audits, and appeals.

"A modern tax administration focuses on providing services to taxpayers to facilitate compliance. It harnesses information technology to enhance the quality of services and ensure greater transparency in administration and enforcement," says a paper titled "GST Reforms and Intergovernmental Considerations in India," by Satya Poddar Ehtisham Ahmad in 2009.

The implementation of the GST system also brought forth a series of challenges ranging from poor availability of GSTN system, non-availability of specific forms and formats, delays in refunds of GST paid and carrying over the input tax credit.

Challenges in preparing tax returns arose due to the enormous amount of information required, including the transaction-level data of all sales, the requirement to match the purchase data as well as detailed information on the HSN code for goods and service Accounting (SAC) for services for each sale to arrive at the correct rate to apply.

Even the issue of introducing the e-way bills was not without its specific problems. Since every transport of goods requires the creation of an electronic bill from the GSTN, to provide details of the parties transporting the goods and of the goods, it has substantially added to the paperwork

Fortunately, the government has been alive to the business community's demands and trying to solve the problems. To resolve this issue, the government has set up a committee of ministers under the Chairmanship of the Deputy Chief Minister of Bihar. It will look at the GSTN system performance issues, and a committee headed by the Revenue Secretary, Government of India, to resolve problems faced by exporters.

In synch with the government's focus on the "Ease of Doing Business" policy, the government has provided a more extended period to file tax returns and has put considerable resources and effort into educating taxpayers. So, to make GST reform genuinely effective, the central and state governments must recognise the need to streamline law, procedures and compliances. India's potential to make India an industrial and service hub is immense and needs to be tapped through the proper use of GST.

Today, it is time to broaden the tax base by bringing more sectors into the GST fold, lowering tax rates, doing away with restricted credit conditions, and reducing the number of tax slabs. Despite the occasional challenges and hiccups, the move "to establish a tax system that is economically efficient and neutral in its application, distributionally attractive, and simple to administer," according to the classical textbook definition of a good tax, is well and truly on.

Chapter 2

GST: Embodying the spirit of cooperation and trust

INTRODUCTION:

The establishment of the GST Council and other measures boosted Centre-states ties and helped solve many of India's tax challenges.

While implementing the goods and service tax (GST) has changed the country's economic landscape forever, the creation of the GST Council can be considered a major success story in cooperative federalism and the implementation of the most significant reform in the indirect tax structure.

It required an amendment in the Constitution and the introduction of Article 279A to create the GST Council, which became the torchbearer for the biggest reform in the country's indirect tax structure. It was Article 279A which gave the President of India the power to set up a joint forum
called the GST Council and resulted in the reordering of the federal fiscal relations for the cause of the common good. It also showed the strength and resolve of the federal structure.

According to Article 279A, the GST Council is a body to modify, reconcile or procure any law or regulation based on the context of Goods and Services in India. While the chairman of the Council is the Union Finance Minister of India, other members of the GST council are nominated by the state governments.

However, the spirit of cooperative federalism began when the Centre and the States agreed to have concurrent power to tax goods and services. The Centre decides to let go of its exclusive power to tax the manufacture of goods, for instance, collecting excise duties and levying service tax. Similarly, the states gave up their sole power to tax the sale of goods, such as sales and value-added taxes. After all, the GST has replaced 17 local levies like excise duty, service tax, value-added tax (VAT), and 13 cesses.

Moreover, both the Centre and the States agreed to share their powers to achieve uniformity and remove any distortion in indirect taxation, be it in terms of rates or its implementation. For instance, even though the Centre and each State legislature have passed their own GST Acts, they are based on the Model GST law drafted jointly by the Centre & the States. All the laws have virtually identical provisions and are very similar to one another. There are standard procedures, formats and even the sections and subsections of the CGST Act and SGST Act are the same, making its implementation so much easier.

The cause for the larger public good:

The coming together for the cause of larger public goods has been made possible because of the initial mechanism of setting up an Empowered Committee of Ministers (EC) and, later, the GST Council. Under the GST regime, the Centre and the States have agreed to act on the recommendations of the GST Council. Even the composition of the GST Council with the Union Finance Minister as its chairman. And other finance ministers or other ministers chosen by the state governments, and the powers vested with the GST

Council, showed the willingness of the Centre to share power with the state.

Even the power structure with two-thirds of the voting power residing with the states and only one-third resting with the Centre signalled the accommodative spirit of federalism between the Centre and the states. Today, out of the 46 meetings of the GST Council, only one case has been decided by voting, and every other decision has been accepted unanimously by the states and the Centre.

The participation of the States and the Centre in the framing of GST laws has led to the many features that promote the spirit of cooperation between the Centre and the states. For instance, there have been joint capacity-building initiatives where for the first time, the training of officers of Centre and State is being conducted under the National Academy of Customs and Indirect Taxes and Narcotics (NACIN). There are also the Joint Trade Awareness and Outreach Efforts, where the Centre with the State Government officials has jointly organised awareness & Outreach programs.

And for the first time, officers from the Centre and the states came together to create GST awareness among trade bodies and other stakeholders. A Common Compliance Mechanism, GSTN, a not-for-profit, the non-government company promoted jointly by the Central and State Governments, became the common compliance portal for taxpayers, allowing them to interface with all states and the Centre through this portal.

A significant contribution to Centre-state Relations is the implementation of the Goods and Services Tax in the now Union Territory of Jammu and Kashmir, which has led to the economic integration with the rest of the country. Even the state assembly of Jammu and Kashmir had enacted a state GST law through a constitutional amendment.

This implementation showed the power of cooperative federalism in achieving the unexplored frontiers of economic integration.

A solution for other issues:

The Economic Survey of 2017-18 came up with some interesting observations regarding GST embodying the concept of cooperative federalism. The GDP growth of 6.75% in 2017-18 had been driven mainly by GST implementation and the functioning of the GST Council as a cooperative federal unit in achieving this unprecedented feat. Secondly, the Survey further indicated that this system of cooperative federalism could be applied to agricultural policies to bring in seeds at the centre of discussion and achieve a balance between water-scarce and water-abundant areas. It would also help solve some of the country's practical problems.

Yet, some shortcomings remain for GST as a system to survive as a progeny of cooperative federalism. The GST Act did not make any leeway or special allowances for situations such as the COVID-19 pandemic, resulting in substantial fiscal challenges for the states. Moreover, the delay in disbursal of the compensation cess to the states had left many states unfunded and crippled, as the option of borrowing remains out of scope. It has also led to many heartburns between the Centre and the states.

However, the recommendatory nature of the GST Council has given rise to many issues. The obligatory nature of GST, as was pointed out by the Supreme Court in the case of Mohit Minerals, has created further uncertainty in the minds of both the states and the Centre because states can now take an independent stand on deciding tax rates for individual items.

The GST Council, the apex court said, has persuasive powers, not coercive ones. The verdict was also a reminder that cooperative federalism calls for more frequent dialogue at the highest level like the Inter-State Council and not merely at the GST Council level. The Council is still an inadequate mechanism to balance sensitivities over the taxation rights of the Centre and states.

States have always been vocal about their demand to be allowed to tax entities with revenue up to Rs 1.5 crore. Under the earlier tax regime, companies making an annual revenue beyond this limit had been exempted from excise duty. Under GST, the total collection was divided between the Centre and state, lowering the amount collected by the states. This, according to the states, undermines their powers and their rightful claim for revenue collection. Hence, they had been demanding a widening of the tax net by bringing in items like petrol, electricity, real estate, diesel and so on, which may help increment the tax base substantially.

The challenge of the pandemic:

The spirit of cooperative federalism did come under some strain during the turbulent years of the pandemic 2019-20 and when the Indian economy, like the global one, came to a virtual halt.

The 21-day national lockdown announced by the government in India beginning on March 24, 2021, affected the normal functioning of the Indian economy with disastrous results. In the April-June quarter of 2020, for instance, the Indian economy shrunk by a record 24.7 per cent, followed by a negative 7.4 per cent in the second quarter (July to September), with the next quarter recording a positive 0.5% growth. And the year 2020-21 ended with the country's gross domestic product (GDP) shrinking by 6.6 per cent.

The Covid-19 pandemic also saw the GST collections dip to a monthly average of Rs 94,733 crore in 2020-21, which was 9.5 per cent lower than the monthly average of Rs 1.04 lakh crore in the pre-Covid period of 2019-20, according to data released by the Union Finance Ministry. This shortfall also saw state governments demanding greater compensation from the Centre.

While a GST compensation of Rs. 1,30,464 crore was released to all States and the Union Territories to partly meet the compensation payable from April 2020 to March 2021. The GST Compensation Fund was not adequate to meet the full compensation amount. It forced the Centre to borrow Rs. 1.1 lakh crore from the open market and passed on as back-to-back loans to States/UTs to meet their resource gap due to the short release of GST Compensation for FY 2020-21.

Thus, at the 41st GST Council meeting held through video conferencing on August 27, 2020, the single agenda of the Council was to find ways to compensate the states. The shortfall in FY 2020-21 was around Rs 2,35,000 crore. Of this, Rs 97,000 crore shortfall was due to GST implementation, and the rest was because of Covid-19, defined by many as an act of GOD.

The Centre gave the state governments two options to meet the shortfall in compensation cess. First, the Centre could facilitate Rs 97,000 crore to states as borrowings through a special window by the Reserve Bank of India, which can be repaid after five years. Secondly, the states could borrow Rs 2,35,000 crore directly from the RBI.

Many states, namely Kerala, West Bengal, Punjab, and Tamil Nadu, among others, had raised their voices saying that it was the duty of the Centre to borrow from the market and reimburse the Compensation Fund and not ask the states to raise money from the RBI or the market.

The principal chief adviser to chief minister Mamata Banerjee and the finance department, Mr Amit Mitra, recently wrote to the Union Finance Minister, Nirmala Sitharaman, alleging that there has been a steady breakdown of the spirit of cooperative federalism in GST Council meetings.

"What pains me the most is that the GST Council meetings have become acrimonious, vexing and almost toxic with the erosion of mutual trust that held past between states and Centre since inception," he said.

With these challenges more or less conquered, with the economy back on track, this model of cooperative federalism could be used as a model to meet the other challenges faced by the Indian economy. The GST has already proved the benefits that can be derived from using this concept in a multiplicity of situations.

After all, few will discount the role of the GST Council in rate rationalisation, addressing issues related to India's exporters or reducing compliance issues that were acting as bottlenecks in the ease of doing business and curbing rules that prevented India from becoming "One nation, one tax ". The spirit of cooperative federalism has already found solutions to many existing challenges and is likely to see many more in the near and the distant future.

Chapter 3

Spawning a technological revolution

INTRODUCTION:

With technology at the forefront, GST has managed to curb tax evasion, increase tax revenues, and ensure ease of compliance for taxpayers.

On July 1, 2017, when the Goods and Services Tax (GST) was introduced in the country, it was expected to streamline the complicated tax processes by simplifying rates and reducing compliance procedures of scrapping various excise duties and value-added taxes. It also promised to minimise widespread tax evasion through technology-driven compliance.

The hope among individuals and businesses was that compliance would be automated with minimum interventions from tax authorities, solve today's tax issues, and be future-oriented. It was hoped that it would use new-age technologies like artificial intelligence, Big Data to curb tax leakages.

The transformation of the indirect tax system did bring in a lot of innovative technologies and techniques. It created a new pan-India technology platform, the goods and service tax network (GSTN). that would simplify tax-related reporting and related compliances. Automating compliance procedures through such platforms went a long way in reducing errors and increasing efficiency. The resultant digitalisation of the data also created a new paradigm in tax administration and report and analytics.

It was a highly ambitious and successful system of easier tax compliance and strengthening the gaps in the system. The government created a technology platform to simplify GST reporting and related compliances to give the tax administration the technological edge.

It also introduced a portal which handles registration-compliance-assessment -litigation with easy-to-understand manuals, FAQs and even timely guidelines to factor in changes. For instance, the government made provisions for self-assessment to facilitate easy calculation and payment of taxes. Such a move allowed individuals to determine their tax liability.

While self-assessment is allowed, mechanisms have been developed to scrutinise the returns to verify their correctness. Other assessments like provisional assessment, scrutiny assessment, best judgement assessment, and summary assessment, to be carried out by the tax authorities, were also introduced.

Similarly, a robust central electronic-way bill system was introduced in 2018. It is mandatory for all vehicles carrying goods worth more than Rs.50,000 to apply for an e-way bill by uploading all the necessary information. According to the Directorate General of Taxpayer Services Central Board of Excise & Customs, it is a compliance mechanism which makes it possible for a person responsible for the movement of goods to upload the relevant information before the commencement of goods and services.

The introduction of the e-way bill, according to a note

by the Central Board of Excise and Customs, would remove most of the ills linked to the earlier value-added tax (VAT) regime, especially the serpentine queues at the check posts. Compliance issues, too, would come down because different states will no longer be prescribing different e-way bill rules.

Today, the whole country is bound by a uniform e-way bill rule. The digital interface that has replaced the physical interface will also help facilitate faster movement of goods, improve vehicle turnaround time, and help the logistics industry. It will also dispense with archaic check posts, reduce vehicular pollution, increase the distance travelled and minimise travel costs.

The new GST regime has also brought in electronic invoicing in the country from October 2020. Electronic invoicing or e-invoicing is the exchange of the invoice document between a supplier and a buyer in an integrated electronic format. It is also a huge improvement on the earlier system's traditional manual-oriented, error-prone, paper-based process.

Such technological innovations allow the real-time tracking of invoices prepared by a supplier and ensure faster availability of input tax credit and a drastic reduction in frauds and credit entry errors.

Moreover, access to real-time data will reduce the scope of manipulation of invoices as the invoices are generated before a transaction. It also limits the scope of fake GST invoices because only genuine input-tax credit (ITC) can be claimed. As the ITC and output tax details are readily available, it becomes much easier for the tax officials to track fake input credit.

The creation of the GSTN, an information technology enterprise, was yet another technological marvel. . It created a communication channel between taxpayers, the central and various state governments, and other stakeholders. A single consolidated IT platform has shaped the main objective of GST –creating One Nation, One Tax, One Market.

The GSTN has consolidated millions of taxpayers under a consolidated umbrella for compliance and administrative purposes. These taxpayers were earlier registered on different tax platforms. Hence, any business entity registered on the GSTN was given a 15-digit Goods and Services Tax Identification Number (GSTIN). It will likely replace the old Tax Identification Number (TIN) allotted by respective states under Value-added Tax (VAT) registration.

The new tax regime will also use advanced analytical tools for leveraging taxpayer data to improve compliance, detect evasions, and assist in government policy making. It has already led to positive outcomes for businesses and tax authorities by increasing transparency, controlling tax evasion, and bringing more and more individuals under the tax net. Equipped with an open Application Program Interface (API), the GSTN server seamlessly connects with the third-party applications used by taxpayers.

This all-user interface can be connected to desktops, mobiles and tablets, a blessing for the honest taxpayer. This API assists taxpayers in automating their invoice matching from within their software rather than logging on to the portal. It also saves time and drives the simplicity of compliance procedures. Moreover, GST will force many individuals to file returns regularly, and automation will help businesses achieve their aim.

Another dimension to this technology-driven phenomenon is the increase in the online trade and supply models. Online shopping and supply chains have not only become the preferred medium but, in

some instances, the only medium of trade. A tax collected at the source for e-commerce has led to a robust reporting mechanism for e-commerce marketplaces and sellers because they need input tax credit. It will also ensure that authorities have first-hand data to cross-check with sellers reporting data.

As the Indian growth story shifts from offline to online and the GST tax regime plays an essential role in the formalisation of the economy, it must involve the active participation and the contribution of the medium, small and minor enterprises (MSMEs).

India today boasts approximately 65 million units (around 90% of all the enterprises), significantly contributing to the Indian economy. It contributes about 30% to the country's GDP and more than 40% to its exports but is mainly in the unorganised sector.

Today, many MSME players have become a part of the formal economy because all the compliance procedures such as registration, payments, refunds, maintenance of books of accounts, and online payment of taxes can be carried out through online portals only. These units no longer have to worry about interacting with department officers, which was a headache in the earlier regime.

Successful businesses have already started on their digital transformation journey. They are implementing software tools and establishing new business methods by integrating tech tools like artificial intelligence. Companies have applied RPA (Robotic Process Automation) in their current transactional tasks like data collection and extraction, reducing manual labour by 50%.

Businesses are also building a central data repository by using Big Data as it can manage the regulatory

changes going on. Indirect tax reporting norms, too, have changed. Thus, having a data repository allows for quick execution of the necessary modifications.

Several private players are offering automated compliance management solutions and ensuring that businesses are claiming appropriate input tax credit (ITC). For instance, cloud-based software like the Clear Tax GST software has made the return filing process very simple. It does not need any downloads, business owners need only upload their invoices, and the software will populate the return forms automatically with the information from the invoices. The software will identify any errors in the invoices in real-time, thus ensuring greater efficiency and timelessness.

Moreover, the "one nation, one tax" ideology of GST has helped reduce the cascading effect of the tax considerations and the multiplicity of compliances under various indirect taxes under the VAT regime. The use of technology has also enabled efficient tax administration for registration, returns filing, data exchange, and effective investigation, monitoring, auditing and performance analysis with little or no human intervention and reduced tax evasion.
The fruits of government labour are already bearing fruits. In the past five years, the GST revenues have grown steadily. The average monthly gross GST collections for FY22 stood at Rs 1.23 lakh crore, 30.5 per cent higher than the monthly average seen in the previous fiscal year. Total GST collection stood at Rs 14.8 lakh crore in 2021-22.

However, with a collection of Rs 1,67,540 crore, April 2022 broke all previous records, clocking Rs 25,000 crore more than the next highest collection of Rs. 1,42,095 crore—collected in March 2022. Even in May 2022, the GST collection at Rs 97,821 crore, a 44 per cent more jump over the collection in the same month last year. Again, formal job creation under the Employees' Provident Fund Organisation (EPFO) increased 25.6% to 17 million in April from 1.7 million a year ago.

While the GST technological transformation is still a work in progress, the government seems to have achieved a few critical objectives. It has managed to curb tax evasion, increase tax revenues, bring more and more businesses and bring more people into the formal one and ease compliance for taxpayers. And that is a significant achievement in GST's five-year-old journey.

Chapter 4

The exemplary role of the GST Council

INTRODUCTION:

The apex body has not only identified and debated pressing issues of the day but also found ready solutions.

While implementing the goods and service tax (GST) has changed the country's economic landscape, the creation of the GST Council can be considered one of the most significant innovations in implementing GST. By inserting Article 279A in the Indian Constitution, the government gave the President of India the power to constitute a joint forum of the Centre and States called the GST Council.

The Council is "an apex member committee to modify, reconcile or to procure any law or regulation based on the context of Goods and Services Tax in India," according to article 279 A. While the chairman of the Council is the Union Finance Minister of India, other members of the GST council are nominated by the state governments.
The Council is so designed that while taking any decision, the Centre would have one-third voting power, while the states would have two-thirds. And the decisions are arrived at by a three-fourth majority. Thus, all GST rates are now decided by the GST Council, with states having limited flexibility in making changes to tax rates on goods and services.

It is also a striking example of cooperative federalism as states and the Centre have on their own, giving up their power to tax various items. After all, the GST has replaced 17 local levies like excise duty, service tax, VAT, and 13 cesses. Thanks to this spirit of giving and take, not only among states but also between the Centre and states, most Council decisions have been unanimous, except one. Moreover, most contentious issues between the states and the Centre have been resolved amicably.

Secondly, the Council has been hugely successful in identifying and discussing pressing problems of the day and finding ready solutions. For instance, at its 43rd meeting in New Delhi on May 28, 2021, the GST Council also took note of the damaging impact of the Covid-19 pandemic on the economic health of the states and took immediate measures to provide relief to its fellow citizens.

The discussions of the Council resulted in tax cuts from the existing 12 per cent to 5 per cent on several specified COVID-19-related goods such as medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, and specific diagnostic markers test kits. It has also fully exempted certain medicines from GST like Tocilizumab and Amphotericin B and brought down the tax rate on other Covid-19 vaccines.
As the states reeled from the economic fallout of the pandemic, the 41st meeting of the GST Council, organized through video conferencing on August 27, 2020, had only one thing in mind. How to find ways to compensate the states in these difficult times? The total shortfall for the states in FY 2020-21 was estimated at around Rs 2,35,000 crore. Of this, Rs 97,000 crore was the shortfall due to GST implementation, whereas the rest was because of COVID-19.

Realizing the gravity of the situation, the Centre gave the state governments two options to meet their revenue shortfall. The Centre could either facilitate Rs 97,000 crore to states as borrowings through a special window of the RBI, and this amount could be repaid after five years from cess collection at a reasonable interest rate.

Or, the states could borrow Rs 2,35,000 crore directly from the RBI. The government also hiked the states' borrowing limit by 0.% per cent under the Fiscal Responsibility and Budget Management (FRBM) Act. It allowed the state governments to borrow more depending upon the severity of the COVID-19 impact.

Clearing air on the GST compensation cess:

In May 2022, the Centre cleared the entire GST compensation payable to date by releasing Rs 86,912 crore to states. Of this, Rs 25,000 crore was released from the GST compensation fund, and the balance of Rs 61,912 crore was released by the Centre from its resources pending collection of cess.

Similarly, the 45th and 46th meetings of the GST Council, held in Lucknow on September 17, 2021, and in Delhi on December 31, 2021, considered the recommendation of the Fitment Committee of the GST Council—comprised of revenue officials from the Centre and states. The Committee wanted the calibration of the GST tax to correct the inverted duty structure on textiles and footwear. Accordingly, it was decided that the 5 per cent GST rate will be continued from January 1, 2022, on textile products, while footwear products will be put under the 12% per cent slab category for sale value exceeding Rs 1,000 per pair.

Even earlier, at the 39th GST Council meeting held in New Delhi on March 14, 2020, the members had taken up the recommendation of the Fitment Committee for calibrating the GST rate structure. It was done to correct the inverted duty structure on various items like mobile phones, footwear, textiles and fertilizers.

After much debate, the Council decided to raise the GST rate on mobile phones and its specified parts from the existing 12 per cent to 18 per cent. It also promised to deliberate the issue of calibrating the rate in other items and removing inversion duty in various articles in future meetings with further consultation and examination of the issue.
In fact, at the 45th meeting of the GST Council held in person in Lucknow after a gap of 20 months, they decided to extend the cess collection beyond July 2022 to March 2026.

This extension of cess levy is in line with an earlier approval accorded by the GST Council last year (2021) for repayment of loans meant to compensate states for the five years since the July 2017 rollout and is not for an extension of compensation to states beyond June 2022. A move to include petroleum products under the indirect tax regime, a highly contentious subject, was discussed but thought fit to keep the proposal out of its ambit for now.

A decision was also taken to set up two groups of ministers (GoMs) to study rate rationalization and also other issue issues, such as the e-way bill, FASTags, etc., with reports expected to be placed before the Council within the next two months.

The contentious issue of compensation cess was hotly debated at the eighth meeting of the GST Council held on January 3 and 4, 2017, chaired by then Union Finance Minister, the late Mr Arun Jaitley. The states were demanding that more and more items like luxury goods, aerated drinks, tobacco products and high-end cars be brought under the compensation cess to make up for the revenue loss of Rs 90,000 crore.

Rise In Indirect Tax Collection:

The GST Council was responsible for taking decisions, which has helped the government increase its indirect tax collections. For instance, at the 20th meeting of the Council, organized on August 5, 2017, the apex body made electronic or e -way bills mandatory for the movement of inter-state goods worth more than Rs. 50,000. It also announced the kick-starting of the anti-profiteering mechanism by appointing state-wise committees.

Additionally, the GST rate on job work done on the entire value chain in the textile sector was reduced from 18 per cent to 5 per cent; on tractor parts from 28 per cent to 18 per cent and from 18 per cent to 12 per cent on government work contracts like roads, bridges, canals, etc. In the case of small housekeeping service providers (plumbers/carpenters) providing services through E-Commerce Operators, the Council stated that the liability to pay GST would be placed on E-Commerce Operators.

Similarly, at its 35th meeting in New Delhi on June 29, 2019, the Council extended the tenure of the anti-profiteering authority by two years till November 2021. It allowed the use of Aadhaar as proof for obtaining GST registration while referring to tax cuts on electric vehicles and their chargers to an officers' Committee.

The Committee also fixed a penalty of 10% on the profits of those entities which had not passed on the benefits of GST rate cuts to consumers. It also extended the date for the filing of annual Goods and Services Tax (GST) returns for the 2017-18 fiscal by two months till August 30, 2019, and made it mandatory for entities for companies with Rs 50 crore or more turnover to generate electronic invoices on a government portal for B2B sales. The other decision was to give a nod to the setting up state & area- based GST Appellate Tribunal (GSTAT).

Other essential decisions of the Council include making compliances easier for individual taxpayers. At the 28th GST Council meeting held on July 21, 2018, at Vigyan Bhawan, New Delhi, under the Chairpersonship of the then Union Finance Minister, Mr Piyush Goyal, even regular taxpayers with a turnover of up to Rs 5 crore were given an option to file GST return every quarter against earlier limit of Rs. 1.5 crores.

The new return filing for quarterly filing came as a welcome move for the taxpayers because it has reduced the tax burden of more than 93% of the taxpayers in the country. It has also reduced the possibilities of crashes as the IT systems would work efficiently with a balanced load.

Takeaways From First GST Meeting:

The spirit of cooperation among states and the Centre was evident from the first meeting. At its first meeting on September 22 and 23, 2016, there was a strong determination among the Council members to roll out GST on April 1, 2017. The two-day meeting was attended by 29 states and 2 Union Territories and headed by the then Finance Minister, Mr Arun Jaitley. The forum's main focus was to decide on regulation under the composition scheme--a tax-paying scheme offered to small businesses--1-2% tax, which would be less than the GST rates from traders with a gross turnover of up to Rs. 50 lakh. Some issues were also discussed regarding the GST rates and threshold limit to pay taxes.

The second GST council meeting was held on September 30, 2016. Draft rules for registration, payment, returns, invoice, refunds and total of six issues have been finalized so far. The states were compensated for the loss, a fixed growth rate of 14% was decided and all the exempted entities under indirect tax were considered to pay tax in the new GST regime.

Chapter 5

GST in Online commerce: Work in progress

INTRODUCTION:

GST has so far proved to be both a boon and bane for the online marketplace players.

Online marketplaces are essentially aggregators of products and services from third-party sellers, and the marketplace's products are sold online to customers. It is a new phenomenon in stocking and purchasing goods through the internet, at the fingertip and with incredible operational efficiency, yet short profitability for the economy.

A few salient features of a marketplace model are:

1. Marketplaces enable third-party sellers to register and sell goods & services online
2. Sellers pay a subscription fee/ percentage commission on sale value to the E-commerce Operator (ECO).
3. Third-party sellers gain access to a more extensive customer base already registered with the marketplace.
4. Customers can access multiple sellers, competitive prices and reviews for desired products.
5. Items purchased on such marketplaces are shipped via Merchant/Third-party seller or fulfilment centres managed by the ECO.

Online marketplaces apply various market management tactics through digital tools and cater to a vast audience, viz., Amazon, Etsy, Alibaba, Flipkart etc. The primary reason sellers opt for e-commerce is to garner more visibility for their products to a broader audience instead of revenue sharing with the marketplace.

Online marketplaces are complex and ever-evolving ecosystems that deal with multiple parties and overseas transactions, known as e-commerce. The bigger an e-commerce company is with diversified operations, the more global regulatory and tax compliance becomes inevitable.

E-commerce has the potential to create price wars, use asymmetric information to benefit and may have the power to affect consumer choices by restricting the visibility of competing products through data-based decisions and targeted advertising. The subject is further being developed with constant vigilance and policy discussions under the purview of Antitrust laws.

GST registration is mandatory for e-commerce operators and sellers supplying goods or services through an e-commerce operator. As per Section 24(x) of the CGST Act, 2017, the threshold exemption benefit is unavailable to e-commerce operators. They are also liable to be registered irrespective of their turnover. Further, GST has no rate arbitrage because goods and rates are standardised across states.

Tax implications on e-commerce - Old & New:

The old GST structure was developed considering sales of goods and had a more or less positive impact on the sector. The problem of taxation for online marketplaces in the old tax regime lay in determining the jurisdiction in which value creation takes place and, consequently, the right to tax. It worked in favour of the sellers and consumers. Only the state from where goods were supplied used to collect the tax, which the buying state or the state at the receiving end didn't like as they didn't get any tax benefit and

therefore, they used to put restrictions like entry tax, i.e., Octroi.

Before GST, the major problem with online retail was if someone bought something through e-commerce, taxes were not collected in the state where goods were delivered. Only the state from where goods were supplied used to collect the tax, which the buying state or the state at the receiving end didn't like it as they didn't get any tax benefit, and therefore, they used to put restrictions like entry tax, i.e., Octroi (Kumar, Tyagi & Vashishat, 2018).

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In reality, however, services have also become integral to the marketplace model. For instance, some marketplaces supply gig economy-based services through listed professionals or public transportation.

Under the old tax regime, there was ambiguity around indirect taxation for online marketplaces. Under Section 9 (5) of CGST Act 2017, services covered under GST were passenger transportation, accommodation and housekeeping payable by the operator.
The structure lacked a clear definition of taxation on digital supplies following a lack of clarity among authorities regarding various online marketplace business models, resulting in conflicting claims on the jurisdiction entitled to tax a given transaction, the requirement of the marketplace to pay tax, and multiple other compliances.

Amendments to the GST structure occur through meetings of the GST Council appointed by the Government of India. Since its inception, the council has met 46 times, suggesting adjustments per the economy's needs.

In January 2022, the Government introduced a crucial amendment in the Central Goods and Services Tax (CGST) Act, 2017 via the Finance Act, 2021, based on the recommendation of the GST Council in its 45th meeting. It laid down the possibility of levying taxes at different stages of transactions for operators and sellers. In addition, the implications of the FDI in e-commerce policy created severe intervention areas for online marketplaces.

The scope of the amendments covers many areas such as shifting the tax burden to e-commerce operators, input credit restriction, enforcement provisions, mandatory Aadhaar authentication for various application forms and blocking of GSTR-1 for non-filing of GSTR 3B, empowering the GST Commissioner for means of tax collection, etc.

The amendments were introduced in the light of the proliferating digital services across grocery, food delivery and air-conditioned passenger transportation. An evolving scenario with digital penetration doubling to 47 per cent of India's total population in March 2022 from last year presents the scope for course correction.

Current challenges for e-commerce:

Registration is mandatory for any seller supplying goods or services through an e-commerce operator, unlike small businesses that only have to register under GST if their turnover crosses Rs 40 lakhs in case of goods and Rs 20 lakhs in cases of services. Simply put, the turnover-based exemption benefit is unavailable to sellers making online sales of goods or services, even if the revenue percentage from online sales is nominal.

GST also introduced a 'composition levy scheme' for small businesses and sellers in the CGST Act 2017. A taxpayer registered under the composition levy scheme is liable to pay an amount equal to a fixed percentage of the annual turnover from business as tax to the Government, to be paid every quarter.

The simple, hassle-free process does not require the taxpayer to maintain detailed accounts and records and instead can suffice with only two monthly statements and a tax return (which an average taxpayer must file under GST). Section 10(2)(d) of the CGST Act, 2017 restricts businesses or individuals registered under the Composition scheme from selling through e-commerce platforms. It further disallows scheme members to issue taxable invoices under GST law and prevents them from collecting neither GST from customers nor claiming Input Tax credit on purchases made.

Under restaurant services and supply of goods, questions about applicable GST remain around takeaway orders/restaurants for takeaways only/cloud kitchens. As we advance in the digital era, a more nuanced and detailed approach must be considered to tax e-commerce effectively.

Tax Collection at Source for sellers:

According to the GST law, Tax Collection at Source (TCS) refers to the tax collected by the electronic commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is managed by the electronic commerce operator. Following Section 52 of the Act, TCS must collect the net value of taxable supplies made through the ECO by other suppliers. The ECO is liable to pay the supplier the price of the product/services, less the tax, calculated at the rate of 1% currently.

Post collection, an e-commerce operator must deposit the amount in the Government's account and file GSTR-8 by the 10th of the following month. Stringent matching is applied before processing input tax credit to the supplier as, through GSTR-8, the GST Portal processes the details. The details of the supplies, including the value of supplies, submitted by every operator in the statements will match the collections offered by all such suppliers in their returns. The supplier is provided with credit in the electronic cash ledger upon successful e-waybills (EWB) verification.

This will also impact these sellers' liquidity and cash flow because, ultimately, the seller will have to file a monthly return under GST to claim the credit of TCS collected by the marketplace operator.

GST laws are complex and tedious. Despite the digitisation of forms and processes, the stringency of filing forms and restrictions on input credit based on data matches each supplier's demands for proactive measures, especially from small businesses. Failure to respond timely to notifications sent by the GST Dept. upon finding a discrepancy in amounts must be handled professionally and, else would such amount would be added to the output tax liability of such supplier, and they will have to pay the differential amount of output tax along with interest.

Conclusion:

GST on e-commerce has become necessary to keep the FDI flush foreign companies in check, lest it harms indigenous sellers and small businesses through predatory pricing and asymmetric information. Given the push to build a self-reliant India and attract foreign business, further deliberation and clarity must be provided to increase the ease of business. Digital transformation and social media have allowed small businesses to grow in the country's remote corners, from homes and small setups to find an all-India market. The complexity of the filing process alone should not be a significant hindrance for micro-entrepreneurs to handle efficiently.

Inexpensive digital tools in compliance services can eventually help enterprises safely, securely, and correctly follow compliance rules.

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Chapter 6

GST: Milestones in the five-year journey

INTRODUCTION:

The introduction of e-Invoicing, E-Way Bills and system-based matching has not only countered the problem of bill trading and tax evasions but also provided a host of benefits to GST filers.

Unarguably the most revolutionary tax reform in post-independence India has been the introduction of the Goods and Services Tax (GST) in 2017. As we approach the fifth anniversary of the path-breaking tax reform, we look at how the new tax system has subsumed various tax systems like Value Added Tax (VAT), Central Excise, Entry Tax, LBT, Octroi, Service Tax, etc., and provided the business with a unified tax regime. There have been various enablers that the government has put in place to smoothen out the tax filing exercise of the business establishments, and how there has been a significant rise in statutory revenue collection by way of indirect taxes in the country.

The government has heralded a much faster tax filing method for businesses and merchants and made the process involving the movement of goods from one state to another smoother. It has also put in place several measures to tackle the menace of tax evasion and filing of fake invoicing by some unscrupulous merchants.

Some of the noteworthy milestones in this five-year journey have been the introduction of e-Invoicing, E-Way Bills and system-based matching, which has not only countered the problem of bill trading and evasions but also provided a host of benefits to the filers of GST like faster availability of correct input tax credit and real-time tracking of the invoice.

E-Invoicing and the GST regime:

E-invoicing has been one of the most revolutionary changes in the GST regime since it was introduced. While it was made mandatory for companies having a turnover of Rs 500 crore from October 1, 2020, the corporate entities having a turnover of Rs 100 crore or more were made to adopt e-invoicing three months later, from January 1, 2021.

Following global best practices and as a measure to curb tax evasion, e-invoicing was recommended and approved by the 39th GST Council meeting of the government and has been instrumental in plugging tax leakages by mandating the authorization of the invoices directly from the government portal. E-invoicing has been beneficial for tax filers in more ways than one. They allow interoperability as the E-invoices prepared on one type of software can easily be read by another, leading to lower data-entry errors(1). There is backward integration possible in the e-invoicing system as the details of every invoice are auto-populated in various other tax returns (1). The details are auto-populated for the generation of Part-A of the e-way bills. There are also far fewer possibilities for further audits by the concerned tax authorities as the information they need is available at the transaction level (1).

E-invoicing has become the most efficient way of generating invoices online for businesses. It simply automates the entire procedure and does away with the requirement of a human being. The seller generates the e-invoice and then sends it directly to the buyer's server. By e-invoicing, the purchaser's system is given a choice to use the invoice as and when needed and subsequently seeks all the permission and payments.

Just like e-invoicing, E-Way Bills (EWB) have been a noteworthy milestone in the journey of GST in India. The EWB has not only made tax evasion very difficult by some transporters and business houses, but it has also ushered in a smoother and much faster movement of goods across the country. This has led to better margins for companies by bringing down the cost of transportation and more tax revenue for the government.

EWB is an electronic document generated on the GST portal giving details of the movement of goods. Introduced in 2018, EWB is generated for inter-state or even intra-state movement of various types of goods worth more than Rs 50,000. The e-way bill should be generated before the shipment of goods, And, its details cannot be changed or altered once it is generated.

Before the implementation of the EWB, each state had its document requirements for the shipment of goods. Mismatch of the details of the goods being transported from one set of documents to another set, sometimes unintentionally and sometimes intentionally done to avoid paying tax, led to complexities and problems for the businesses and the government, which was keen to weed out instances of tax evasion.

Easing inter-state transport:

EWN did way with multiple state-wise documentation for transportation of goods and also carrying all the documents and physical forms since all the details of the shipped goods would be in a central server. Even the cost of transportation has come down as there is proper invoicing of every consignment.

With a lower cost of transportation, the proportion of the logistics cost to the GDP is likely to come down, which is presently relatively high compared to other countries. The movement of goods from one place to another has also become faster as there is no need to have multiple stoppages at checkpoints in the states

and districts. EWB is generated quickly by following simple guidelines, and it is quite possible for the dealers to self-generate e-way bills these days.

Since April 1, 2018, the date EWB became a reality, and the tax collections have been increasing substantially since there is minimal scope for tax evasion left in the system.
In its quest to muzzle tax evasion, the government has also set up 'The Directorate General of Analytics and Risk Management (DGARM), a GST and tax evasion analytics wing. DGARM uses complex software and carries out Big Data analytics to give intelligence inputs to the tax authorities to capture tax evaders. Constituted under the Central Board of Excise and Customs (CBEC), DGARM uses various internal and external data mining sources to suggest actionable inputs to tax authorities.

DGARM has been functioning as the apex body of CBEC for carrying out data analytics and risk management. In 2020, it came up with names and details of as many as 12,900 business houses, including some of the biggest companies, that have taken input tax credit by way of fake invoices worth around Rs 1 lakh crore between the period of July 1, 20172 and March 31, 2020(2).

The Power of Data Analytics:

The trends and details collected through data analytics carried out by DGARM and the intelligence inputs are further intended to be used by the CBEC to frame policies and rules at national and sub-national levels for the businesses (3). A division in DGARM called the 'Risk Management Centre for Goods and Services Tax has been collecting various inputs to adopt a coordinated approach for proper scrutiny and audit function. The centre has also been sharing outcomes of the data analytics for risk-based identification for greater tax enforcement efforts (3).

Another division in DGARM called the 'Risk Management Centre for Customs' has been conducting comprehensive data mining and its analysis to develop outputs for targeted action by the field formations and investigation arms of the CBEC (3).

Based on the inputs about the 12,900 entities which took advantage of Input Tax Credit by filing fake invoices, more than 100 people have been arrested, and many shell companies' fake businesses have also been unearthed. As many as 1,161 cases were booked against 3,479 fake companies which got GST registration fraudulently. The counterfeit companies were found to be illegally availing or passing input tax credits (2).

An analysis carried out by DGARM found that fake GST invoices were being used not just for evading GST but also to inflate expenses to defraud companies by cheating owners and even transferring massive amounts abroad through hawala transactions. GST invoices were being used to claim inflated imports and exports.

A detailed analysis by DGARM also found that fake invoices were used to get higher loans from banks, then default on the payment to ensure that the loan became a non-performing asset. These fraudsters would then use the Insolvency and Bankruptcy process to declare themselves insolvent and deny banks loan repayment.

Trends decoded by DGARM also found that several export companies are majorly resorting to fake invoicing to claim more GST refunds than they were eligible for and avail of more export incentives from the government.

These revelations and decoding of trends by DGARM have been instrumental in taking penal action on rogue companies and exporters and framing better policies regarding GST and its implementation.

DGARM was instrumental in finding that many exports were getting credit through fraudulent means by refunding Integrated Goods and Services Tax (IGST) on the export of various goods (4). Hence, the DGARM's parent body CBIC was asked to thoroughly audit the supply chain, identify risky suppliers to exporters, and share the data with jurisdictional field officers.

DGARM's findings led to CBIC taking several measures to apply strict risk parameters and checks. The CBIC made 100 per cent custom examinations mandatory for goods consignment of such risky exporters, and even their refunds were kept in abeyance for a reasonable duration.

With the inputs received by DGARM, CBIC changed the Standard Operating Procedure involved in granting NOC (no objection certificate) to suppliers of exporters to identify the risky ones. CBIC ordered that DGARM carry out supply chain analysis and share the risky 1st and 2nd level major suppliers with the jurisdictional CGST (Central GST).

The verification dossier of identified suppliers was mandated to be sent by GST and customs commissioners to DGARM so that it could decide whether to grant NOC or not based on such dossier. CBIC decided that DGARM will give the final NOC to the export house only when the verification dossier of the identified risky supplier is in order.

After a careful analysis of the implementation of the GST laws, the government also took some corrective measures for the registration of business entities for GST to keep the fraudsters away from the system.

In early 2020, the government changed the norms and said that firms with monthly revenues of more than Rs 50 lakh would have to discharge at least 1 per cent of their payment liability in cash. However, this would not be applicable where the Managing Director of the firm or a partner has paid out Rs 1 lakh or more income tax or the registered person has availed a refund of more than Rs 1 lakh in the previous fiscal due to unutilized Input Tax Credit (5).

New Amendment to the GST Act:

In early 2020, the government came up with another amendment restricting the filing of the Outward Supply details in form GST R1 for those firms that have not paid tax for past periods by filing form GSTR 3B. Till the end of 2019, non-filing of only form GSTR 3B resulted in the blockage of the E-Way Bill, but after January 2020, it resulted in GST R1 blockage as well.

Around the same time, CBIC also made authentication of the Aadhar number or physical verification of the firm for getting GST registration so that shell companies or fraudulent entities cannot enter the GST system to pass on ITC. It was also decided that the validity of the E-way bill be one day for 200 kilometres of travel as compared to 100 kilometres, which was the case till the end of 2019.

With these measures, the government has been able to tighten the noose around rogue and fraudulent companies and significantly bring down instances of tax evasion. Even the tax collection has been going up for the government. GST collections by the government touched an all-time high mark of Rs 1.68 lakh crore in April 2022, and this was Rs 25,000 crore higher collections than the earlier highest mark of Rs 1.42 lakh crore, which was achieved in March 2022. Even the number of EWB generated in March 2022 stood at 7.7 crore, 13 per cent more than the 6.8 crore EWB generated in February 2022.

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Chapter 7

Covid impact: The fall and rise in GST collection

INTRODUCTION:

While the first wave of the pandemic did create a big hole in the states and the Centre's exchequer, GST collections have bounced back because of an upswing in economic activity, increased focus on compliance, and the efficacy of enforcement actions in identifying and arresting errant taxpayers.

Economies of the world came to a grinding halt with the onset of the COVID-19 pandemic, hurting both the demand and supply situation worldwide. While the Covid-19 virus may have originated in the Chinese city of Wuhan in December 2019, its devastating impact was felt in virtually every part of the world, with deadly health and financial consequences.

The pandemic posed two kinds of significant threats and challenges to the country. Starting as a health epidemic, it soon became an economic catastrophe, forcing governments to take various emergency measures. These include self-isolation, social distancing, restrictions on national and international travel, closure of public facilities and an initial nationwide lockdown.

All these health-related issues led to a 21-day national lockdown in India from March 24, 2021, which affected the normal functioning of the Indian economy with disastrous results. In the April-June quarter of 2020, for instance, the Indian economy shrunk by a record 24.7 per cent, followed by a negative 7.4 per cent in the second quarter (July to September), with the next quarter recording a positive 0.5% growth.

GDP sinks on Covid-19-related challenges
The year 2020-21 ended with the country's gross domestic product (GDP) shrinking by 6.6 per cent. 2020 was considered the worst year in global economic history after the great depression in the 1930s. The economic slowdown hit the GST collection too. As the state governments struggled between lockdowns and the opening of the economy in tune with the spread of the virus, the budgets of the state and local governments took a significant hit as revenue collections collapsed.

It also hit the central and state governments because it is a significant revenue source through the Central GST, State GST and the Integrated GST components. In April 2020, the total GST collection was down to just Rs 32,172 crore, and till September 2020, the collection stayed below the one lakh crore mark.

The obvious reasons were the persistence of the epidemic and local and intermittent lockdowns in various states and cities. However, from October onwards, the GST continued to rise with more than Rs 1 lakh collections monthly. 2020-21 saw the total collection at Rs 11,36,805 crore.

GST collections in 2020-21--the pandemic years saw a dip in the monthly average to Rs 94,733 crore in 2020-21, which was 9.5 per cent lower than the monthly average of Rs 1.04 lakh crore in the pre-Covid period of 2019-20, according to data released by the Union Finance Ministry.

Demand for greater compensation:

The economic impact of the pandemic saw state governments demanding higher compensation from the Centre because of the coming together of two factors. First is the lower GST collection and also reduced GST compensation. The government had already released a compensation of Rs 37,134 crore for April 2020 and March 2021 to the states, while Rs 14,664 crore was due to the states and Union Territories. (Press Information Bureau, December 7, 2021)

The amount in GST Compensation Fund was inadequate to meet the complete compensation requirement. It also forced the Centre to borrow Rs. 1.1 lakh crore from the open market and passed on as back-to-back loans to States/UTs to meet their resource gap due to the quick release of GST Compensation for FY 2020-21.

Various studies show the total loss of GST collection during the first phase of the Covid-19 pandemic. A study by Dr Maithili Naik (Department of Commerce, VVM's Shree Damodar College of Commerce & Economics) and Gajanan B Haldankar. (Goa Business School, Goa University, Department of Commerce, VVM's Shree Damodar College of Commerce & Economics), estimated that the total loss during the first phase of the pandemic was Rs 1,67, 493 crore between March 2020 to February 2021.

The authors noted that their study "Impact Assessment of First Wave of Covid-19 pandemic on Goods and Services Tax (GST) Revenue Collection & Distribution in India" showed that there was "a sharp decline and uneven distribution in the GST revenue in the months after the lockdown announcement. April 2020 and May 2020 recorded the lowest GST revenue collection with a shortfall of Rs. 81, 571 crores and Rs. 38, 280 crores compared to the pre-lockdown announcement period. Post-September 2020, a rise in the revenue collection and stable GST revenue distribution is noted with the relaxation of lockdown measures and restarting economic activity."

Their study also showed that the small states like Manipur and Goa suffered far more than their larger neighbours. The small states recorded an estimated loss of Rs 1,995 crore compared to a loss of Rs. 1 14, 432 crore by the bigger states.

Thus, the authors concluded that the first wave had put a big hole in the government exchequer, which may take years to fill. Further, to ease the compliance burden of small and large taxpayers, the government announced a raft of measures. These included postponement of deadlines for filing of goods and services tax (GST) returns and related payments of GST, the interest rate for the delay in payment of tax etc.

Another study by Vodnala Chandramouly, Assistant Professor, Department of Commerce SRR Government Arts & Science College Karimnagar, Telangana, India, came out with similar results. GST collections suffered heavily in the first half of the financial year, mainly in April and May, because of the Covid-19 pandemic. Her study titled "GST Revenue During Covid 19", published in the Journal of Multidisciplinary Educational Research on August 30, 2020, stated that GST revenues had suddenly fallen by 50% during these lockdown months.

Recovery phase in GST collections:

However, during the unlock phase and the economy's recovery, the GST collections have increased since September 2020. From October 2020, the GST collections have exceeded one lakh crore per month. The GST collection is in sync with Economic Survey 2021, which stated that the second wave of Covid-19 on GST collection was more muted than the impact of the nationwide lockdown during the first wave.

The average monthly gross GST collections for FY22 stood at Rs 1.23 lakh crore, 30.5 per cent higher than the monthly average seen in the previous fiscal year. Total GST collection stood at Rs 14.8 lakh crore in 2021-22.
In April 2022, the GST collection of Rs 1,67,540 crore broke all records, and it was Rs 25,000 crore higher than the following highest collection of Rs 1,42,095 crore achieved in March 2022. Even in May 2022, the GST collection at Rs 97,821 crore, a 44 per cent more jump over the collection in the same month last year.

The monthly GST collection has crossed the Rs 1.4 lakh crore mark for the fourth time since its inception. It is also the 11 month in a row that the total mop-up came above the Rs 1 lakh crore mark.

Such a collection in May 2022 has allowed the government to settle Interest worth Rs 27,924 crore to CGST and Rs 23,123 crore to SGST from IGST. Centre and the States' total revenue in May 2022 after a regular settlement is Rs 52,960 crore for CGST and Rs 55,124 crore for the SGST. In addition, the Centre has released a GST compensation cess of Rs 86,912 crore to states.

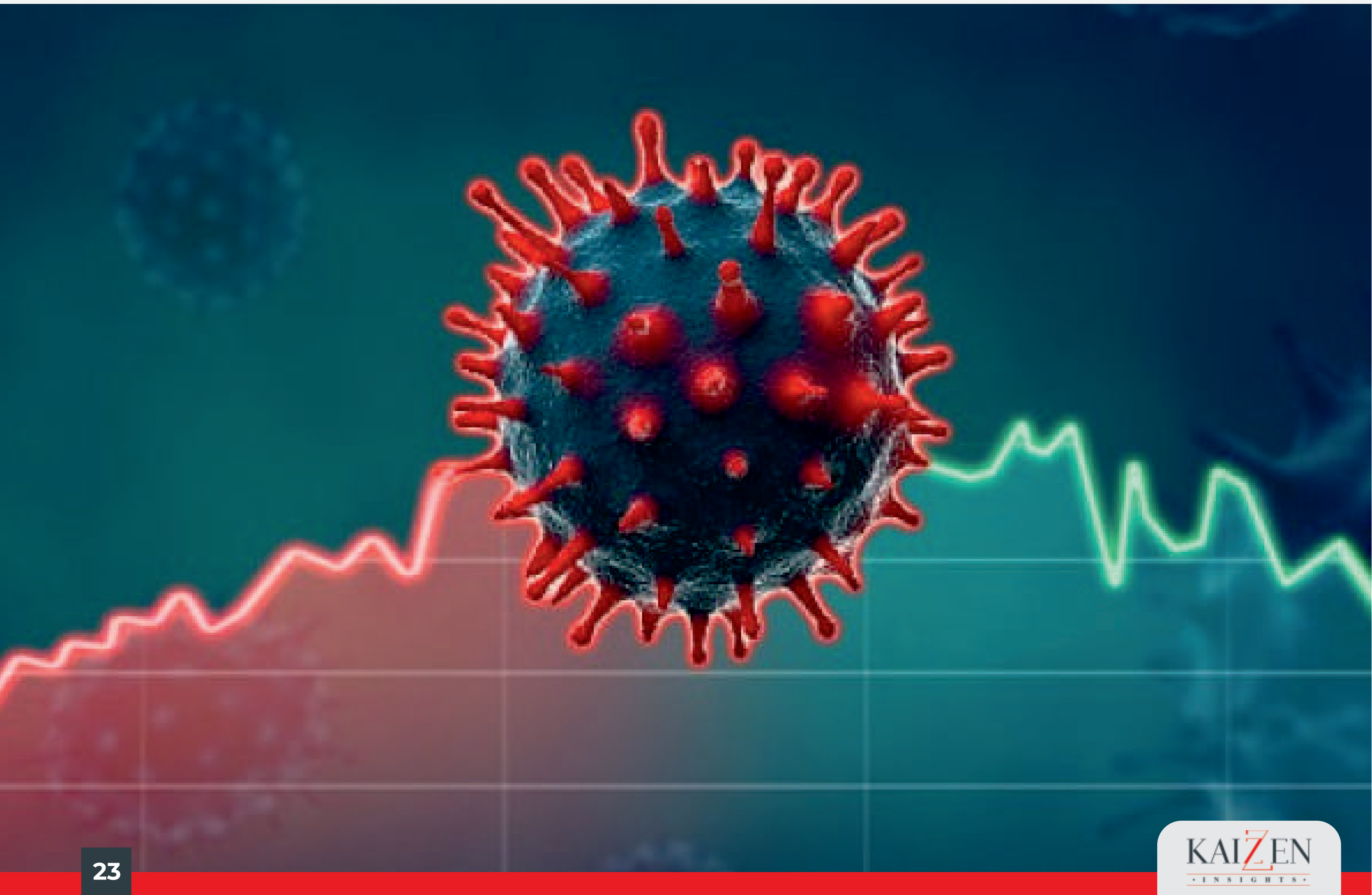
So, what explains the jump in GST tax collections?

According to experts, the stability demonstrated by the GST collection of more than 1.4 lakh crore over the past three months has come from an upswing in economic activity, increased focus on compliance, and the efficacy of enforcement actions in identifying and catching errant taxpayers.

The growth in GST collection can also be attributed to increased demand from various sectors of the economy. GST compliances also showed significant improvements because of the initiatives taken by the audit and analytics team.

The north-bound collection trajectory is likely to continue, with India's GDP expected to grow by 8 to 8.5 per cent in 2022-23, according to the Economic Survey 2021-22. This hike in tax collections will be because of the supply-side reforms undertaken by the government over the last two years.

These measures include deregulating numerous sectors, simplifying processes, removing legacy issues like 'retrospective tax', privatisation of government-owned entities, production-linked incentives, etc. The future of India's indirect tax structure seems to be safe in the hands of the GST regime.

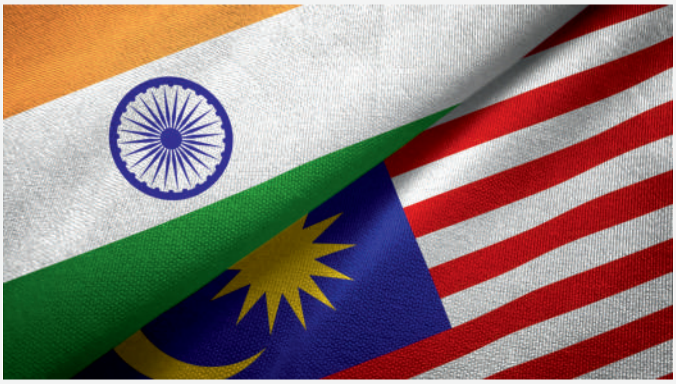


Chapter 8

India and Malaysia: Some similarities, major differences

INTRODUCTION:

Despite the initial teething problems and some challenges which remain today, the GST is alive and thriving in India



Much like the Indian experience, after two failed attempts and waiting for seven long years, the Malaysian Goods and Services Tax Act 2014 finally came into effect on April 1, 2015. The broad-based consumption tax was first announced in the 2005 Budget for implementation in 2007. However, the Malaysian government suddenly announced the tax postponement in February 2006 because it felt that it needed more time to get feedback from the public.

The GST Bill was finally tabled in 2009 for its first reading for its proposed implementation in 2011. Finally, on October 25, 2013, the Malaysian Prime Minister, Mr Datuk Seri Najib Razak, announced the introduction of GST in the Budget of 2014 to replace the current sales and services tax, GST to be effective on April 1, 2015. Upon its implementation, it became the 146th country in the world to join the list of countries with either GST or value-added tax (VAT).

Incidentally, Malaysia was the last country before India to implement the GST. However, unlike India, the Malaysian GST experience was relatively short-lived. And within days of being sworn in as the seventh Prime Minister of Malaysia, he scrapped the GST on May 16, 2018, fulfilling his election promise.

Return of Sales and Service Tax:

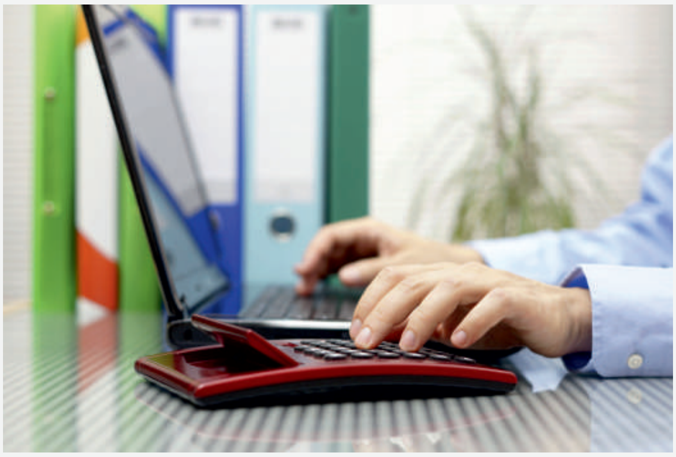
Interestingly, Malaysia's sales and service tax return happened despite a rise in revenues and reduced dependency on oil. Moreover, except for the contentious Anti-profiteering provisions, the laws of both countries are pretty different. India follows the dual GST model where there are two types of GST levies, the Central GST and the State GST.

In stark contrast, Malaysia had observed the single GST levy-- one standard rate of 6% on all goods and services. On the other hand, India has five different rates, i.e., 0%, 5%, 12%, 18% and 28%, along with compensation cess on some items. It also provided zero-rating of exported goods, international services, essential food items, and many books.

During the introduction of the GST regime, the presiding Malaysian government made many promises. These included the GST exemption on the electricity consumption of up to 300 units and no GST on the retail sale of petroleum fuels such as petrol, diesel and liquified petroleum gas (LPG). Additionally, prices of medicines and electrical appliances were expected to reduce to 4.1 per cent. There was also the promise of rationalising individual and corporate income tax rates.

When GST was introduced in Malaysia, it had many advantages over India. It did not have a dual GST structure, was technologically much more advanced, had a better literacy rate, showed better results on most economic indicators, and performed better. These included the country's GDP per capita, ease of doing business, and exports as a GDP or trade balance percentage.

Full support to the citizens:



Moreover, Malaysia has been far more proactive in GST implementation and gave full support to the citizens and industry in the form of general guides, industry-specific guides, specific topic-wise guides etc. During the long preparation period from 2005, the private sector and the Malaysian government conducted various GST information sessions and seminars to educate Malaysian business taxpayers.

With the implementation of GST in 2015, the country saw a rise in government revenues and contributed 17% of the total revenue in 2017-18, according to the Malaysian Statistics Department. Its preceding indirect tax regime, called sales and service tax (SST), had two tax rates of 6% and 10% for goods and services, respectively.

Thus, despite reducing the tax rates of goods by 4% (the current GST rate was 6%) in the GST regime, it saw an overall increase in consumer goods prices as items of everyday consumption were taxed. However, the government's aim of diversification and growth in revenue collection was achieved.

An abolition of SST saw a revenue loss of RM 17.1 billion (2014), but the first nine months of 2015 saw GST generated revenue of RM 27 billion in 2015. The revenue collection went up to RM38.5 billion and RM 44 billion in 2016 and 2017, respectively.

Li Xirui, a research assistant at the China-ASEAN Research Institute at Guangxi University, the People's Republic of China, in an article titled "Why the GST Became Malaysia's Public Enemy Number One," brilliantly argued the successes and failures in the GST implementation.

Li argued that the GST would provide nearly twice as much tax income as the SST because it applies to more businesses than the SST; consequently, the Malaysian government could claim more tax income using the GST.

Quoting the Customs director-general T. Subromaniam, he stated that under the GST framework, about 472,000 companies need to pay taxes, compared to only 80,000 businesses registering with the SST. Besides, 5,445 goods in the consumer price index (CPI) basket will be exempted from the SST, while only 545 are excluded from the GST.

Moreover, the Chinese academician further argued that while the SST has a business cost, the new tax disrupts the functioning of the small and middle enterprises (SMEs). He argued that while GST imposes a tax on multiple stages in the supply chain, businesses can claim a tax refund and transfer the cost to consumers, and SSTs, could not benefit from it. Therefore, the GST became a burden for the small players.

However, Malaysia's GST has long been a source of intense political debate between different political parties. The failure of the GST regime in Malaysia has been attributed to various reasons, including a regressive, complicated structure and a changing political environment. Other experts argued that Malaysia had to take the extreme step because of the single rate (6%) of GST for all goods and services, and the essential items and luxurious items cannot be taxed at the same rate.

The growing debt of Malaysia:

But perhaps one of the most significant issues before the Malaysian government was that despite the increased tax revenues, the Malaysian government's debt continued to grow. Upon launching the GST

reform, the then Prime Minister Najib assured the people that GST implementation would increase the country's revenue and diversify the tax basket, helping it move away from vulnerable oil prices. However, in 2016, the debt of the Malaysian Federal government had reached a staggering debt of 686.8 billion ringgits in 2017, from 630.5 billion ringgits in 2016, according to Chinese scholar Li Xirui.

However, today there is a growing chorus to bring back GST in Malaysia. After all, the indirect tax collection had fallen substantially, and the collection in 2019 and 2020 was only half the collection during the GST era. It also forced the government to depend more on direct taxes like corporate income, individual, and petroleum income taxes.

India, too had to face teething problems in the initial years, and many such niggling issues remain even now, but thankfully scrapping GST was never on the agenda of either the ruling government or the opposition. For instance, the country's prime software, GST Network, has failed several times, forcing the government to issue innumerable extensions. Many tax forms are still not available on the portal for e-filing.

Even the implementation of GST in India took more than ten years, and after the initial hiccups and the devastation of Covid -19, things have started to pick up. When GST was introduced on July 1, 2017, the revenue amount collected was Rs 94,603 crore. The 21st GST Council meeting was held in September 2017, and it recommended a change in the rates of 40 goods. It also reduced the tax bracket of a few goods from 12% to 5%, 28% to 18%, 18% to 12% and 28% to 5%. The rates were effectively implemented from October, and the revenue collected was Rs 93,414 crore in September and Rs 83,346 crore in October.

The 23rd GST Council Meeting held in November 2017 changed the rates of 177 goods from 28% to 18% tax bracket. They decreased the tax rates on two goods from 28% to 12% and retained 50 goods in the 28% bracket. They lowered the tax rates of 54 goods from 12% to 5% and 18% to 5%. The tax rates were put into effect in December, and there was an increase of Rs 5,895 crore from that revenue collected in November. Despite all the challenges, GST revenue collections have grown steadily.

In April this year, with a collection of Rs 1,67,540 crore, it has broken all records, clocking Rs 25,000 crore more than the next highest collection of Rs. 1,42,095 crore—collected in March 2022. Even in May 2022, the GST collection at Rs 97,821 crore, a 44 per cent more jump over the collection in the same month last year. The monthly GST collection has crossed the Rs 1.4 lakh crore mark for the fourth time since its inception. This is also 11 months in a row where the total mop-up came above the Rs 1 lakh crore mark.

Thus, the future of India's GST regime remains robust, and it is unlikely to go the route of Malaysia. After all, the fruits of the labour are clear from the collection numbers. The upswing in economic activity increased focus on compliance and the efficacy of enforcement actions in identifying and capturing errant taxpayers.

Chapter 9

Shrinking the informal sector, the GST way

INTRODUCTION:

Formalisation will help the unorganised sector access capital, suppliers, talent, skills, and technology and improve its productivity.

One of the main aims of numerous tax reforms initiated in India since 1985, and especially the latest and perhaps most transformative one, the introduction of the goods and service tax (GST) in 2017, has been to bring the enterprises in the informal or unorganised sector into the formal or organised sector. And, therefore, in the overall tax net of the government and the good economy.

Simply put, formalisation of the economy means putting companies under the regulatory regime of government and subject to manufacturing and income tax laws. It also includes firms providing some social security to their employees when they form a part of a tax net, according to the Economic Survey 2017-18.

The International Labour Organization (ILO) defines the sector as consisting of all private entities owned by individuals or households.

Informal employment, says the ILO, includes people working in informal enterprises and those employed outside the informal enterprises. Domestic workers, casual day labourers, and family workers who are not covered by social security provided by their employers fall in the category.

According to official Periodic Labor Force Survey statistics, 75 per cent of informal employees are self-employed or casual wage workers with lower average incomes than regular paid workers in India.

Several factors have contributed to a much higher level of formalisation in the past eight years than ever before. Demonetisation, implementation of the GST, the Covid-19 pandemic, increased focus on digital payments, and the launch of the Jan Dhan and Mudra scheme have brought more people and industries into the banking system. They have led to the greater formalisation of the economy. These reforms have triggered a transformation of the economy from one typically dominated by cash to one in which formal finance or banks and payment banks have a more significant role.

According to a State Bank of India's October 29, 2021, the share of the informal in India may have shrunk to no more than 20% from 52% in FY 18 (2017-18). The report looked at employment and digitisation to assess the extent of economic formalisation. It stated that "...there has been a positive development in the Indian economy amidst the pandemic. The government's various efforts have increased the formalisation of the economy."

Demonetisation leads the way:

While the demonetisation had started the process of formalisation of the economy, it was the Covid-19

pandemic that further accelerated the process of digitalisation. The fear of contracting the infection forced people in the metros and small towns to shift to digital payments.

However, no one can deny the significant contribution of GST, which celebrates five years on July 1, 2022, in the formalisation of the economy. It has discouraged registered businesses from dealing with unregistered entities by denying them the incentive to claim the input tax credit, making them uncompetitive in domestic and foreign markets.

Similarly, for the 'unorganised' firms, it made little sense to stay out of the GST net because they too would not just miss out on the input credit facility but would ultimately be forced out of the production process. So, even the small vendors had a strong incentive to enter the mainstream economy and join the formal sector.

As more and more industries enter the GST fold and remaining loopholes to evade taxes are plugged, there is little reason for the unregistered entities to stay in the informal economy. Moreover, implementing the GST has thrown up a lot of precious and detailed high-quality information, making it extremely difficult for the unorganised sector to work in the cash economy.

For instance, now, the Centre and the state governments can have formal, informal state-specific production and export data, point of origin of goods and services, and other economic data as and when required, making it extremely difficult to stay out of the radar.

Being a part of the formal economy has also meant that even the small and medium enterprises have now become attractive clients for banks and non-banking finance companies (NBFCs). It will also eliminate the informal money-lending system's inefficiencies sooner or later. The cost of credit for these newer entrants in the formal economy is coming down as the mix between mortgage and cash flow-based lending shifts towards the latter.

Incentivising formal employment generation:

To incentivise formal employment generation. The Aatmanirbhar Bharat Rojgar Yojana (ABRY) scheme was launched to incentivise establishments under the Employees' Provident Fund Organisation (EPFO) to hire more workers and provide social security benefits. As part of the scheme, the government is crediting, for two years, the employees' and the employers' share of contribution payable, depending on the employment strength of the EPFO-registered establishments.

The "Udyam" registration scheme for small businesses, launched on July 1, 2022, will also help the government collect data on this sector and, at the same time, help small enterprises (MSMEs) access the various schemes offered by the government.

The Economic Survey 2021-22 stated that as of January 17, 2022, 66 lakh enterprises have registered on the Udyam portal. The single biggest problem faced by the government during the pandemic in providing help to the migrant labourers was because of the absence of a comprehensive database,

Again, the code on Social Security Bill 2020 and the Occupational Safety, Health and Working Conditions Code Bill 2020, for example, will specifically expand the social security net for the informal labourers and provide them with much attention from the government.

This shift from the unorganised to the organised sector occurs at two levels. At one level, it is the formalisation of the firm, and at another level, it is the formalisation of the workforce. According to the SBI research report, 13 lakh crore workers have come under the formal economy through various sectors and schemes on the E-Shram portal.

There is a lso the greater use of digital channels or formal finance. It includes the greater use of digital payments, formalisation of agricultural credit through Kisan Credit Cards and an increase in online purchases during the last three years.

Kisan Credit Cards and the formalisation of the economy

"Over the years, the usage of KCC (Kisan Credit Card) has increased significantly. In the last three to four years, the per card outstanding has increased from Rs 96,578 in FY18 to Rs 1,67,416 in FY22, an increase of Rs 70,838. At 6.5 crore cards, the amount which is formalised, i.e. Rs 4.6 lakh crore," says the report. It has also reduced the cash intensity in the economy.

The report further argues that based on the 2011 census report, the informal size of the trade, hotels, transport, communication and broadcasting is at an average of 40%. The same census estimated the informal construction sector at around 34%, public administration at 16%.

The formal financial sector has expanded by 10% post-pandemic, with the Government direct benefit transfer (DBT) gaining traction. As expected, the utility services are also 100% formalised; in fact, the formal economy expanded by 1% during the pandemic.

One of the best indicators of the formalisation of the economy is the monthly EPFO payroll data provided by establishments remitting the first ECR (Electronic Challan-cumReturn) in a particular month. "Based on this data, we estimate that since FY18, almost 36.6 lakh jobs have been formalised till July 2021. We expect this fiscal formalisation rate to be higher than 2019-20 but lower than the 2018-19 level."

The second source of "formalisation" is the e-Shram portal, India's first national database of unorganised workers. It facilitates extending social sector schemes' benefits to the unorganised workers. More than 5.3 crore workers had registered until October 30 2021, and the report notes that at least half of the Rs 13 lakh crore formalisation is through the e-Shram portal. Occupation-wise, workers from the agriculture sector now account for 55% of registration, followed by the construction sector (13%).

The benefits of formalisation in an economy are myriad – access to capital, suppliers, talent, skills, and technology. Greater formalisation in enterprises levels the playing field for enterprises ensuring fairer competition, contributing to government revenue and enabling higher economic growth. It will also see a shift from low-paying, labour-intensive jobs in the informal sector to more productive, better-paying formal sector jobs.

Chapter 10

The unfinished agenda of GST

INTRODUCTION:

While the GST implementation has seen many successes like technological innovations, higher tax collections, and greater formalisation of the economy, some issues remain unsolved.

The fifth anniversary of the introduction of Goods and Services Tax (GST) in India on July 1, 2022, provides an opportune moment for us to analyse the successes and failures of the most significant reform of the Indian indirect tax structure. While there is much to rejoice for businesses and individuals because of the streamlining of taxes, much higher tax collections, and better compliance by individuals, resulting in greater ease of doing business, there are still shortcomings that need immediate redressal.

The 15th Finance Commission, under the chairmanship of N K Singh, a former bureaucrat, too had raised certain shortcomings after the completion of four years of GST. The Commission had discussed many drawbacks such as the significant shortfall in GST collections in comparison to the projection, the accumulation of integrated goods and service tax (IGST) credit with the Centre, as well as issues regarding technical glitches in the GST network and delays in refunds, especially for exporters.

The Commission had also recommended specific structural changes in the system, including the overdependence of the states on compensation from the Centre for making up the shortfall in their revenue collections.

However, with changing times, many other issues need immediate attention. There is an urgent need to constitute a GST tribunal. The advancement of various specialised areas of law, such as taxation, consumer protection, industrial law, banking law etc., has necessitated the need to set up subordinate judiciaries.

In the absence of a dedicated tribunal, assesses have to approach the high courts, which adds to the burden of the higher judiciary. Dedicated tribunals would also ensure speedy and specialised justice. Since Tribunals are bodies performing judicial functions, they should ideally comprise judicial members in addition to technical members.

Under GST, the Tribunal comprises two Technical Members (One each from the State and the Union) and one Judicial Member. Since this may impact the independence of the judiciary, the Madras High Court in Revenue Bar Association vs Union of India,[1] struck down the current constitution of the Tribunal.

Such tribunals also present an opportunity for the government to create an online dispute resolution mechanism, which should be backed by a legal framework with clearly defined and drafted rules and regulations. No further development has occurred on the Constitution of the Tribunal despite mounting litigation cases, thanks to ambiguous legal provisions.

The GST Council must decide on the appropriate mechanism for the constitution of the Tribunal. A suggestion can be that while a judicial member on a bench may be permanent, the technical member may be rotated on a half-yearly or annual basis.

Further, the absence of tribunals is creating huge pendency of litigation wherein the taxpayers have to wait for the Tribunal to be formed for preferred Appeals against the Orders of the Department Authority. It also creates uncertainty for the taxpayers as the litigation does not attain finality, and they carry substantial interest risks.

Reconstitution of Advance Ruling Authority

Also of utmost importance is reconstituting an Authority for Advance Ruling (AAR), which should include a judicial member so that advance ruling can become an effective mechanism to reduce disputes.

An advance ruling is essential from the perspective of the individuals who have to make GST payments well in advance. It also helps determine the individual's tax liability, as the ruling given by the Authority is binding on the applicant and government authorities.

Further, it helps "avoid long- drawn and expensive litigation at a later date". After all, getting an advance ruling is a simple and inexpensive procedure. For the taxpayer, it means that there is certainty concerning a contentious issue, an issue which could lead to litigation with the tax authorities in the future, according to a Central Board of Indirect Taxes and Customs (CBIC) notification on Advance Ruling Mechanism in GST.

Moreover, a legally constituted body like the AAR can also clarify the correct legal position in case of conflict between two or more Advance Rulings received in different States by the same taxpayer.

Those unhappy with the decisions of the Authority can appeal before an Appellate Authority for Advance Ruling (AAAR). This legal authority can clarify the correct legal position in case of conflict between two or more Advance Rulings received in different States by the same taxpayer.

There are no timelines prescribed for passing an order by AAR, but for the AAAR, it is only around 90 days. Both the AAR and the AAAR have been constituted under the respective State /Union Territory Act and do not fall under the jurisdiction of the Centre.

"This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. It is also for this reason that questions on determination of place of supply cannot be raised with the AAR or AAAR," says the CBIC notification.

Review the need for National Anti-Profiteering Authority for GST

Today, the controversy around the National Anti-Profiteering Authority has been settled more or less, and market forces are being allowed to determine the price of the goods or services. Alternatively, if an anti-profiteering measure continues, the government must issue appropriate guidelines on the "manner of computation" to determine whether profiteering has occurred.

The GST Council announced the anti-profiteering rules on June 18, 2016, because India had learnt the lessons from the experience of other countries, where price hikes became a common phenomenon after the GST came into effect. For instance, when Singapore introduced GST in 1994, the country saw a spurt in inflation. Hence, the government decided to introduce anti-profiteering measures at the retail level by introducing Claude 171 in the GST Act to protect consumers from price hikes.

Clause 171 makes it mandatory for companies to pass on the benefit of the reduction in tax rate or from an input tax credit to the consumer through a commensurate price decline. The crux of the anti-profiteering rule is that the benefit of price reduction must be passed on to the consumer by the registered person.

For instance, when eating out became cheaper under GST because the tax rate came down from 20.5 per cent to 18 per cent, restaurants were expected to pass on the benefit to the consumers. Since the reduction in tax rate can be witnessed directly through the invoices, recipients must benefit from the rate reduction.

Similarly, retailers typically sell fast-moving consumer goods (FMCG) at the maximum retail price (MRP) or fixed costs. Hence, if there is any reduction in the tax rate, the reduced prices need to be passed on to the consumer by revising the maximum retail price (MRP) or any other such measures.

Alternatively, if there is a hike in the GST tax rate, courtesy of the GST Council, then prices would need to be automatically increased. For example, if the price of domestic LPG rises because of the imposition of a 5 per cent tax, which was exempt under the earlier regime, then the cost of domestic LPG too will go up.

However, implementing the Anti-Profiteering Act has its own set of challenges. It will mean mapping out the entire manufacturing chain and identifying vendors below a certain threshold level. That can be a cumbersome and tiresome process. Moreover, as many experts point out, while the tax rate on a certain specific product may come down, the tax rate on many components that go into the product's manufacturing may have gone up. Hence, calculating the overall cost reduction can be a challenge.

Thus, different countries have adopted different rules. Australia, for example, follows a net dollar margin rule—if the new GST tax rules result in product prices falling by $1, companies will have to reduce their costs by $1. India, unfortunately, has to develop still clear-cut rules for assessing the GST benefits, which can be passed on to the ultimate customer.

Another challenge before the tax officials in implementing such anti-profiteering measures is to ensure that while companies are prevented from fleecing the customer, the honest taxpayer is not harassed.

Clarification on treatment of alcoholic spirits not fit for human consumption under GST:

Interestingly enough, there is no levy of GST on the supply of alcoholic liquor for human consumption under Section 9(1) of the CGST Act 2017 and Section 5 (1) of the IGST Act 2017. However, this exemption or waiver is conditioned on the fact that the non-levy of GST only applies to alcohol meant for human consumption, not industrial use.

Alcohol for human consumption includes rectified spirits (ethyl alcohol), extra neutral alcohol (ENA) and ethanol (alcohol, ethyl alcohol, green alcohol). ENA is the purest form of alcohol prepared from sugarcane, molasses and grain like barley, wheat, rice etc.

However, alcohol used for industrial use is taxed at 18 per cent and 5 per cent, respectively. For instance, ethyl alcohol or any other spirit "denatured" by any strength attracts a GST rate of 18 per cent, while ethyl alcohol supplied to oil manufacturing companies for blending with motor spirits is taxed at 5 per cent. Interestingly enough, when alcohol is denatured –alcohol products are adulterated with toxic or bad-tasting additives like methane, benzene, and pyridine—it becomes unfit for human consumption and GST is levied on such alcohol.

However, alcohol for human consumption is a state subject and is the sole jurisdiction of the state governments. The state levies excise duty on production and value-added tax (VAT) on selling such products. Thus, there is no GST on country liquor, Indian-made foreign liquor etc. is only taxed by states.

Inclusion of non-GST goods such as Petroleum products within the ambit of GST

Even when the GST was introduced, there was a deliberate plan to keep out five petroleum commodities from its purview. These included crude oil, natural gas, petrol, diesel and aviation turbine fuel because these items generated the maximum revenue for both the Centre and State governments.

Fuel taxes were expected to contribute to almost Rs 6 lakh crore in the kitty of the Centre and the state governments in 2020-21. And, bringing them under the GST net would lead to lower tax collections because fuel taxes attract a far higher duty than the 28 per cent slab--the highest in the GST regime.

Moreover, states fear that if fuel taxes are brought under the tax net, they will be further dependent on the Centre for meeting their tax revenue shortfall. More importantly, even after the Kerala High Court directed the GST Council to bring petrol and diesel under the GST regime and take an appropriate decision within six weeks, it was not done.

At the 45th GST Council meeting on September 17, 2021, the Union finance minister Nirmala Sitharaman, who chaired the meeting, said that the members of the Council thought that petroleum products should not be brought under the GST regime. The opposition came mainly from the non-BJP ruled states.

Other issues that need a relook on are the seamless transfer of input credit tax (ITC) because there is rising litigation around ITC and rules need to be rationalised. Similarly, there is a need to ensure refund under the inverted duty structure.