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ONE YEAR OF GST

GST has Come here to Stay and We should only Learn to Live with it

GST & Aviation Sector:

A Brief Overview

Interview with

Mahendra Ramdas

Managing Director, Mahendra Pumbs

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" GST has brought in Accountability in Trade. Most of the venues for Tax Avoidance, have been plugged:

EDITORIAL

Sindhu Mangat

The government has been euphori cally celebrating the month of July as 'One year of GST'. We could see that on the eve of the first birthday of the greatest tax reform in history of India, the views about the success of law has been reported both subjectively and objectively in public domain. The government has not failed in raising tall claims regarding the success of 'Good and Simple Tax'. The industry and experts had expressed their views accepting the tax reform but at the same time highlighted the shortcomings and measures required for a fool proof system.At this moment, it is not out of place to have a flash back to draw attention to few realities.

First, among all, is the question whether it is time to assess or judge GST as success or failure? It may be recollected that GST was hurriedly pushed on July 1, 2017 to comply with the political deadline and to overcome the situation created by 122nd Constitutional Amendment that India should have an alternate system in place prior to September 2017.

The subsequent days exposed the level of preparedness of the Government,especially with the total collapse of

The first yard stick of success of a compliance-oriented tax system being the efficiency of the implementation of tools for enabling compliance, has therefore failed to provide a smooth transition to taxpayer.

the return filing system and the inefficiency of GSTNetwork (GSTN). Most of the important online forms including the TRAN-1 and TRAN-2 declarations, Refund Forms, Forms for cancellation of registration, forms for advance ruling were not available on GSTN. The first yard stick of success of a compliance-oriented tax system being the efficiency of the implementation of tools for enabling compliance, has therefore failed to provide a smooth transition to taxpayer.

Next comes the Reverse Charge Mechanism, which created havoc during the first four months and invited widespread protest, which forced the Government ultimately to suspend the mechanism.

The dipping revenues during the initial months had forced the Government to introduce E Way bill with effect from February 1st, 2018. This backfired again, for reason of an inadequate technological platform.

The widespread grievance regarding non-processing of refund for exporters had become another major issue of concern.

However, the Government, had intervened and made maximum efforts to mitigate the errors. The number of GST Council meetings held within nine months of implementation of GST is proof for proactiveness of the Government. The Prime Minister's Office had taken interest in the issue regarding refunds and there were refundson fortnight-basisthat enabled the taxpayer to speed up the refund processing. The past nine months, therefore, had been more of trial and error. But it may be remembered that, India being one of the largest federal polity, implementation of single tax for whole country, to a certain extent can run only on trial and errors. The only area where the Government could have per-formed better is in having a

The only area where the Government could have performed better is in having a simplified return from the beginning itself and making the technological platform more efficient.

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There had been revision of rates in respect of many commodities for rationalising the system that has been welcomed widely. It is also appreciable that there had been no inflation after introduction of GST, which can be mainly attributed to the fact that the rates of GST had been kept almost at same level as cumulative effective rate of all indirect taxes that existed prior to GST. Even the service sector has managed to curb inflation due to different rates of taxes offered depending on nature of services.

But, did any one hear about those GST Suvidha Providers who had been approved by the Government after a long process of screening. Except for few well known accounting software, no Suvidha Provider had been able to rise to the occasion and assist the tax payer for a smooth transition to new system.

The Anti-Profiteering provision had no impact on the medium and small segment and they had blatantly violated the provisions and had not passed on the benefit to taxpayer.

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The contribution of courts as the guardian of taxpayer had been much evident during last nine months. The Hon'ble HighCourts,on several occasions, had questioned and issued notices to GSTN and has safeguarded rights of taxpayers.

It can indeed be said that GST as a complete code is not yet implemented. The provisions regarding E-Commerce operators, TDS and so onare yet to be enforced. Major policy decision is awaited on Reverse Charge Mechanism. Appellate Authorities are not yet notified. No decision has been arrived at regarding Appellate Authority for Advance Ruling.

It may be noted that during the last one year, there has been no amendment to the parent GST Act. The Department related Parliamentary

Standing Committee on Commerce had submitted report dated 19.12.2017, suggesting various reforms in existing GST law. Ofcourse, there are areas where amendments are required and same are identified andare put up for comments in public domain. The amendments proposed are based on problems faced and feedback from taxpayers during last nine months. The implementation of GST, is therefore, not a one-time exhaustive measure, but one which can be implemented only across well-formulated stages.

The demons of GST are slowly waking up in the form of conflicting advance rulings, interceptions of conveyance at various points in absence of check posts, surprise audits, scrutiny of returns etc. The combination of assessment provisions of VAT and adjudication provisions of Central Excise and Service tax in this GST law is sure to create sufficient confusion, which is going to take substantial time of courts. It is the genuine expectation of industry and tax fraternity that the Government may take a liberal stand and refrain from imposing stringent penalty provisions for omissions and mistakes during the introductory year(s) of GST.

■

It is One Year since the GST was introduced

GST has Come here to Stay and We should only Learn to Live with it

In retrospect, if we look back, though the philosophy and the rationale behind the concept of GST was always good, its implementation has left lot of bitter feelings among all stakeholders. Last one year is marked by complicated return filing process, IT glitches, refund set back, lack of clarity for many practical issues, etc. But one good thing was the responsiveness of the Government, which was doing the job of fire-fighting and damage control, effectively, like postponing the due dates for returns, holding back certain controversial provisions, issuing various clarificatory circulars, holding refund fortnights, etc. which, has mitigated the sufferings at least to some extent. The following issues would dominate our attention in the coming days and if properly addressed, GST would no longer be painful.

G.Natarajan

Advocate & Senior Partner in Swamy Associates

> **Last one year is marked by complicated return filing process, IT glitches, refund set back, lack of clarity for many practical issues, etc. But one good thing was the responsiveness of the Government, which was doing the job of fire-fighting and damage control, effectively, like postponing the due dates for returns, holding back certain controversial provisions, issuing various clarificatory circulars, holding refund fortnights, etc.**

The dreaded RCM

The most unfriendly measure under the GST law was the reverse charge liability in case of supplies received from unregistered persons. All and sundry items procured on day to day basis from small vendors, have to be classified, applicable GST rate to be identified, self invoice to be raised and GST paid. Further, the credit entitlement should be verified and eligible credit has to be availed. The paltry exemption upto Rs.5,000 per day is also not useful. Considering the huge difficulties faced in this regard, this measure was rightly put on hold till 30th June 2018, which has been since extended upto 30th September 2018.

> **The most unfriendly measure under the GST law was the reverse charge liability in case of supplies received from unregistered persons.**

The whole concept of such RCM for supplies by unregistered persons need to be revisited. As most of such supplies would be entitled for input tax credit, the rationale of such RCM is not very clear. Further, classifying each and every supply received and payment of appropriate GST thereon is nothing but a nightmare. May be a separate single rate of GST may be prescribed for such RCM and its credit entitlement also should be simplified.

Self-Invoice

The concept of raising a self invoice for reverse charge cases, is a misconceived idea. Commercially one cannot imagine raising a self invoice against one's self and the said procedure is logically flawed. The requirement of such self invoicing must be done away with.

Dragon of the Return

Filing GST return has been made as the most difficult task on earth, though over a period, people are slowly becoming familiar to it. The process would get further tough, once matching of credit and GSTR 2 are in place. A holistic study of the issue and simplification of the entire process is the need of the hour, if at all GST has to sustain as a popular tax.

A nascent but complex law like GST requires proper guidance in the form of advance rulings.

Advance Ruling mechanism

A nascent but complex law like GST requires proper guidance in the form of advance rulings. The current Advance Ruling set up under GST law leaves much to be desired, with comparatively junior level officers donning the mantle. Uniformity of decisions would soon become a casualty with each State having its own Advance Ruling authorities. Absence of a judicial mind in the forum is a major lacunae. A national level Advance Ruling Authority, with regional benches at few metros, along with Judicial members is the need of the hour.

Absence of a judicial mind in the forum is a major lacunae. A national level Advance Ruling Authority, with regional benches at few metros, along with Judicial members is the need of the hour.

Retrospective amendments

Quite a few times, the provisions have been amended to the detriment of the trade with retrospective effect. Though the intention behind such amendments may be to rectify certain genuine drafting errors, doing the same with retrospective effect is nothing but retrograde, which should be avoided in future. Even if any mistakes are committed, the Government should graciously

> **Even if any mistakes are committed, the Government should graciously accept the same and correct it only prospectively.**

accept the same and correct it only prospectively.

Enormous time-limit for raising demands

The time limit given to the Department to raise any demand for taxes is too huge (30 months in normal cases and five years in suppression cases, from the due date for filing annual return). In an indirect taxes, if uncertainty is going to be prevalent for such a huge period, how would the assesse safeguard his interest? How can the taxes be collected from the customers after such a long period? The time limit for raising demands under Section 73 have to be reduced considerably, at least for non suppression cases.

Jurisdictional confusions

The division of tax payers has been completed where the tax payer had no say at all. Be that as may be, the issue as to what extent the Department other than the jurisdictional Department can exercise control over the assesses is not clear. For example if an assesse is under the control of CGST Department, upto what extent the SGST department can interfere in the affairs of the assesse and vice versa is not clear.

> **A progressive tax measure such as GST cannot put any restrictions, on a credit which was hither to available.**

This has to be laid down clearly to avoid any harassment to the genuine assesses.

ITC entitlement for CGST paid in other states

CGST paid in one state cannot be availed as ITC at present, though there seems to be no legislative restriction to that effect. Though such instances would not be many, one common situation is hotel stays in a different State. A progressive tax measure such as GST cannot put any restrictions, on a credit which was hither to available. Service tax charged by the Hotels were being availed as cenvat credit, until the GST regime. But now if an assesse from State A, avails Hotel Services in State B, where CGST and SGST of State B would be charged by the Hotel, the assesse is not entitled to avail any ITC as of now, which has to be remedied.

If the above issues are properly addressed, no doubt, GST would soon becoming a darling of all.

GST & Aviation Sector: A Brief Overview

There has been lots of talks in Government and business circles about the impact of GST onaviation sector. First we have to understand that aviation sector is not mere few airlines and their operating fuel costs. The sector includes airports, supporting goods and infrastructure, maintenance hubs, spare warehouses, support services, aircrafts and of course most talked about Aviation Turbine Fuels (ATF). Broadly there are 2 sectors in aviation i.e. for public use and for personal use but import of aircraft for personal use attract 28% GST and a Compensation Cess of 3%. The term personal use has not been properly defined or dealt with in GST Law and can be hugely contentious issue as aviation sector grows in India at stupendous pace.

Aviation sector approximately count for 8% of total Rail and air traffic in India and is likely to grow to 15% in 2025 on the strength of number of aircrafts being deployed in aviation sector at present. Presently India has around 550 aircrafts which are likely to be around 1500 in 2025 thus making India 3 rd largest aviation hub in world. Passengers carried by domestic airlines during Jan-Dec 2017 were 1171.76 lakhs as against 998.88 lakhs during the corresponding period of previous year thereby registering a growth of 17.31%. In FY18, domestic freight traffic stood at 1,200 million tonnes approximately.

The term personal use has not been properly defined or dealt with in GST Law and can be hugely contentious issue as aviation sector grows in India at stupendous pace.

Presently there is Nil GST on leasing of an aircraft (through import) for public use. Previously it was 5% with ITC of input services but later removed because of increased tax burden. Before GST there was Service Tax levied at only 10% of leased amount paid thus providing for 90% abatement. So it is much cheaper now to lease aircraft through import route including import of spares. Another major change that has happened in aviation sector is about GST on aircraft repair services. Prior to GST, Service Tax and VAT were applicable on aircraft repair services but now under GST regime it is being treated as only pure service transaction. This way the burden of cascading effect on airlines is reduced. But services if done in India is creditable however same is not the case if repairs are carried abroad. India doesn't have any Aircraft Engine overhaul or repair hub or facilities and every time they are exported out of India and on reimport they have to pay GST on that. Due to introduction of GST it is expected that the cost escalation to industry is around Rs. 2,000 Crore.

Presently there is Nil GST on leasing of an aircraft (through import) for public use. Previously it was 5% with ITC of input services but later removed because of increased tax burden.

There are few issues which must be addressed by government on priority basis. As airlines industry is not just job multiplier, it is also a major business sector of country contributing hugely to country's GDP. GST rate for passenger of economy class is at 5% and on Business class it is flat 12%. For economy class, airlines can claim ITC only on input services whereas for Business class segment they can claim ITC for spare part, food items and other inputs.

And now the contentious issue of GST on ATF. It is known fact that Air Turbine Fuel (ATF) constitutes almost 50% of total operational cost of airlines for which no ITC is available to airlines. If ATF is included in GST, airlines may be benefitted by 5000 crore approximately which can be used as ITC by airlines. It is five times more than what they are getting now. Presently as per available estimates ATF is charged VAT at rate of 4-30% by different states and Excise Duty at 14% but airlines are getting credit only for VAT portion presently which is around 1000 Crore annually. Under GST it will be 5 times the amount available to them as ITC. It should not be forgotten that ATF constitutes now almost 7-8% of total oil domain consumption basket of India and soon expected to cross 10% barrier of total oil basket by 2025. By 2025 when India will be having almost 1500 aircrafts (3 times from present fleet size), this domain % will be around 15% of oil basket which is almost equivalent to Motor spirit (Petrol) at present. Thus it will be huge revenue multiplier.

There are few major issues that needs to be addressed by GST council at the earliest so as to make aviation industry as flagship of new area of dynamic growth. 1 st one will be GST

Presently as per available estimates ATF is charged VAT at rate of 4-30% by different states and Excise Duty at 14% but airlines are getting credit only for VAT portion presently which is around 1000 Crore annually. Under GST it will be 5 times the amount available to them as ITC.

on import of aircraft and spares by airlines industry on pure import basis and not on leasing. 2 nd one relates to maintenance and spare part movements across India to service the aircrafts. 3 rd issue is of Air Turbine fuels to be brought under GST. 4 th one is GST on passenger's fare wherein host of fuel costs/-surcharges are not subject to GST. Here GST council also has to take into account the support infrastructure for air operations as they provide for backbone of air traffic in this country. Also needed is to clear the distinction between private and public use of air crafts inside India. Apart from public airlines, India also has huge potential for import of aircrafts and helicopters/allied services for private use as it will be a domain to watch in very near future as it may see an exploding growth by 2050. All these moves will in fact will increase the government revenue by many folds rather than shrinking them as is speculated in some circles. Mumbai

Dinesh K VohraA is a former Assistant Commissioner (IRS), Mumbai

GST has brought in Accountability in Trade. Most of the venues for Tax Avoidance, have been plugged

In Conversation with

Mahendra Ramdas

Managing Director, MahendraPumbs

Mahendra Ramdas is the Managing Director, MahendraPumbs Private Limited. He is the Immediate Past President of Coimbatore Industrial Infrastructure Co (Co-India), and Past President of Tamil Nadu Electricity Consumers Association (TECA), Coimbatore. He is the Past President of Indian Chamber of Commerce.

He is also Past Chairman of Confederation of Indian Industry, [CII] Coimbatore Zone and is a Past President of The Southern India Engineering Manufacturers' Association.

He has also held several posts in various capacities in many Associations and Community Service Clubs.
In this Interview with TAXLAW-GISTTeam, Mr. Mahendra Ramdas shares his insights and reflections on various aspects of GST.

Q. One year in to GST, do you think the law has settled down seamlessly?

Though minor hitches continue, the GST regime, the biggest indirect Tax reform undertaken, since Independence,has settled down. The Nay Sayers, have finally understood that GST is here to stay, and have stopped complaining.

Q. What do you assess as the single most positive impact of GST on your business?

Accountability. GST has brought in Accountability in Trade. Most of the venues for Tax Avoidance, have been plugged.

Q. How easy or difficult has it become for the companies to do business in India post GST?

For Companies who have been honest in their transactions, or what we call the Formal Business segment is hugely benefitted. There were so many interpretations and ambiguities in the previous law. Consignment Sales for example. GST is far clear and easy for the business people. Each state had their own laws and interpretation. In addition we had issues like Form C.In the long run GST will bring in Ease of Doing Business.

Q. Although check post has been removed under GST, there is general concern regarding the interception of vehicles at various points by tax officials. During the past one year whether your company has experienced any such difficulties?

In my opinion enforcement has to be more strict. We have not experienced any problems so far.

Q. How much support you get from the Government and the Officials while entering into a new mechanism?

Officials are very cooperative and supportive, when we approach them with problems. They understand the need to support Trade and Industry at this crucial juncture.

Q. Whether scope for evasion has increased under GST?

Evasion has come down considerably. With implementation of e way bills, across the country, evasion will further come down.

Q. What are the general concerns of industry under the GST regime?

Main concern of Industry on GST refunds. Exporters, particularly Apparel Exporters are feeling the heat. Refund of GST on account of excess input credit is also a concern. Having excluded Service Tax component from the ambit of refunds,Govt should speed up refunds.

Q. The draconian reverse charge mechanism is suspended for further three months. Please share your views on reintroduction of this system?

In my opinion, RCM will be implemented by the new Govt, after the Parliament elections. Till then it may get postponed. Industry, particularly Micro Industries, will face huge problems, when RCM is implemented.

Q. Do you rate the indirect tax system that existed prior to 01.07.2017 as better than GST?

GST is far better than the tax system that existed before 1st July 2017.

Q. What are your suggestions for making GST further assessee friendly?

Industrial Associations have been forwarding suggestions periodically to the GST Council. So far GST Council has been receptive, and have brought in many changes based on suggestions from Trade and Industry. Many more changes are in the offing, including rate cuts. With elections approaching, I will not rule out surprises.

■

The Journey of One Year of GST Rollout

GST is rolled out in India from 1st of July 2017 and it is dubbed to be a major tax reform after independence but in reality, along with tax unification, it can also be called a business process reform. It has made the life of the taxpayers i.e., for the trade and industry's life relatively simple, the filing of a single return for all the taxes and a lesser number of departments to interact.

From the economic perspective we have not seen any major difference be it on the inflation, which was constant pre-rollout and post-rollout of GST, but in the other countries where it is introduced, there was a spurt on the rate of inflation.

From a political front, it was referred by many as suicidal decision by the BJP as, while looking at world scenario, no government which has introduced GST came back to power, for which even the recent Malaysian elections is an example. But it should be appreciated here that the party has prioritized the national interest in place of political interest. Although there were differences between the political parties regarding vital issues as ceiling on rate of tax, division of assesses etc , once GST was implemented, there had been no protest which had hampered the functioning of system. The unilateral support extended during the 27 GST Council meetings would vouch for this that. This has given a new dimension for the politics in India known as Cooperative Federalism.

Change is Constant in today's world and reforms are part of it and as a result, there will be some teething troubles and these cannot be avoided despite planning. There will be issues in the execution and implementation especially for a country like India due to its diversity in culture and socio-economic conditions. For any Federal Government to have a common policy across the length and breadth of the country is a challenge say for example Coconut Oil, is used in cooking in the state of Kerala and the same is used as hair oil across the country, in such cases should it be it treated as a food item or cosmetic? Since we are talking about a single classification across India we cannot have two different classifications and, in such conditions, it is a challenge. Like this we have many cases, so implementing reform in such conditions is really a big achievement in the first step and then comes the execution and sustainability. Now the focus should be towards the other phases.

Many of the taxpayers have taken the rollout of GST as a surprise and this has resulted in some knowledge GAP for the professionals as well as for the organizations. We have come across cases of various assesees who were not well prepared. Trivial mistakes are committed even by big companies. Mistakes like charging GST for intra state branch transfers, wrong mentioning of HSN Codes and loss of revenue on account of same are common.

Many of the taxpayers have taken the rollout of GST as a surprise and this has resulted in some knowledge GAP for the professionals as well as for the organizations.

These are the teething problems and the trade and industry have realized this, as a result, there were a lot of suggestions and recommendations from them after the rollout of GST. As a result of it, there are frequent changes in the law vide notifications, circulars, FAQ's and outreach programs. These clarifications are supposed to be clearing the air of doubts but in some instances, they are creating more confusion than clarity.

For example, the definition of job work as given in sub-section 68, section 2 of the CGST Act gives an impression that only services are covered with in scope of job work activities, whereas Circular No. 38 issued on 26th March 2018 says that job worker can use his inputs also apart from the inputs supplied by the principal. This really creates confusion, and are fertile areas for future litigation. Similarly, disparity in treatment is evident in case of export of goods and services. In case of export of services, remittance should be received only in foreign currency and place of supply should be outside India , whereas such conditions are absent for export of goods.

Though Reverse Charge under Section 9 (4) of CGST/SGST Act is introduced as part of the anti-evasion measure the same is getting deferred from time to time. The e-waybills which were introduced initially has to be withdrawn due to technical issues now it is stable and applicable for the intra-state movement also but the spirit of One Nation One Tax is lost as many states have their own threshold limits ranging from Rs 50,000 to Rs 3 lacs and applicability on only classified goods as in the state of Gujarat. This is bringing back the complexities back as in VAT Regime as they have to make necessary changes in their ERP's / Accounting Packages base on state-specific requirements.

As per the information available in the public domain about 70% of the taxpayers are filing the returns and rest are not filing the same, in this context to improve the return filing, the provisions of Section 149 of the CGST Act 2017 should be notified and which in turn will make the self-policing mechanism or the buyers will enforce the same. This could be one of the measures to be introduced to ensure return filing is 100%.

There are certain areas which require immediate attention to make the rollout of GST a really successful reform, they are

1. Simplification of returns
2. Centralized Advance Ruling
3. Tariff Act similar to Central Excise Tariff Act
4. As on date input tax credit is available on a provisional basis only (Section 41, sub-section 1), this has to be ratified else the financial closure will be a challenge.
5. Annual Returns and Audit if applicable for the first year should be notified
6. Tax Rates of items to be rationalized over a period of time

We have seen only one year of the rollout of GST and no even one full fiscal year, to ascertain the full number game it should be at least 3 – 5 full fiscal years. The states which are having apprehensions of revenue loss on account of the rollout of GST is not there for many baring one or two states. The number of registrations under GST has gone up and the tax collection has also seen a decent increase, the Government should think of reduction of tax rates in the medium term if not in the short term. As our Prime Minister has stated that the government has followed the Rashtraniti in place of Rajaneiti, this means national interest is above the vote bank politics, if really followed we will be having the tag of Developed Nation in place of developing nation.

CMA Bhogavalli Mallikarjuna Gupta is a qualified Cost and Management Accountant and having about two decades of experience in the areas of Taxation, Costing, Finance, Accounting along with ERP development & Implementation.

Whether there is 'ease of doing business' for Private Companies under Company Law?

The Ministry of Corporate Affairs ('MCA') has exempted private companies from the compliance of certain provisions of Company Law by its notification dated June 5, 2015 and June 13, 2017. The Companies (Amendment) Act, 2017 has amended certain provisions of the Act which are broadly aimed at addressing difficulties in implementation owing to the stringent compliance requirements, facilitating ease of doing business for promoting growth with employment, harmonization with Accounting Standards, SEBI Act and RBI Act. This article is a compilation and analysis of certain important exemptions to private companies and ultimately there is discussion on an important question – Whether there is 'ease of doing business' for Private Companies under Company Law?

Certain important exemptions provided by MCA to private companies

1. Cash Flow Statement: Cash Flow Statement is not applicable to One Person Company, Small Company, Dormant Company & Private Company (if such private company is a 'start-up'),

2. Related Party: Holding Company, Subsidiary Company, Associate Company, Fellow subsidiary companies are not 'related parties' for private companies under section 188 of the Act,

3. Kinds of Share Capital & Voting Rights: If provided in the Memorandum of Association and Articles of Association of the company, the provisions relating to Kinds of Share Capital and Voting Rights are not applicable to private companies,

4. Offer Letter under Rights Issue: For further issue of shares, if 90%, of the members of private company have given their consent in writing or in electronic mode, the period lesser than those specified (i.e. 15 – 30 days) shall apply for issuing Offer Letter under Rights Issue,

5. ESOP: In case of private companies, shares can be offered to employees under ESOP scheme by passing an ordinary resolution,

6. Acceptance of Deposits: According to the Act for raising money by acceptance deposits, a company shall pass a resolution in general meeting. The company is further subject to rules prescribed by RBI w.r.t. acceptance of deposits from its members) with the conditions: (i) Issuance of circular, (ii) Filing of copy of circular with ROC, (iii) Depositing 30% of maturing amount in separate bank A/c, (iv) Certifying that Co. has not committed any default in the repayment of deposits accepted either before or after the commencement of Cos. Act or payment of interest on. The said conditions are not applicable to private company, subject to following riders: (A) Such Private Company accepts from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account; or (B) Such Private Company which is a start-up, for 5 years from date of its incorporation; or (C) Private Company which fulfils all of the following conditions: (i) Which is not an Associate or Subsidiary Company of any other company, (ii) If the borrowings of such a company from Banks or Financial Institutions or any body corporate is less than twice of its paid-up share capital or Rs. 50 crores, whichever is lower; and (iii) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits;

7. General Meeting related provisions: With reference to provisions relating to general meeting (i.e. notice of the meeting, statement annexed to the notice, quorum, Chairman of the meeting, Proxy, Restriction on voting rights, Voting by show of hands, Demand for Poll) shall apply to private companies unless otherwise specified in respective sections or articles of association of the company that may provide otherwise;

8. Filing of certain resolutions with Registrar: A private company is exempted from filing of certain resolutions passed by the board of directors u/s 179 (3) of the Act, which includes resolution to authorise buy-back of securities, resolution to issue securities (including debentures, whether in or outside India), resolution to borrow monies, resolution to invest the funds of the company, resolution to grant loans or give guarantee or provide security in respect of loans, resolution to approve financial statement and the Board's report, etc.,

9. Right of persons to stand for directorship: The provisions relating to right of persons other than retiring directors to stand for directorship is not applicable to private company,

10. Board Meetings: One person company, small company, dormant company & private company (registered as 'start-up') shall be deemed to have complied with the provisions board meetings if at least one meeting of board has been conducted in each half of a calendar year and the gap between the 2 meetings is not less than 90,

11. Quorum for board meetings: For quorum at board meeting, where at any time the number of interested directors exceeds or is equal to 2/3rd of the total strength of board of directors, the number of directors who are not interested directors and present at the meeting, being not less than 2, shall be the quorum during such time. For private company – Interested Director may also be counted towards quorum in such meeting after disclosure of his interest,

12. Restriction on the powers of the board of directors: Certain restrictions on the powers of the board of directors are not applicable to private companies. Such restrictions include:

(i) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of company, (ii) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation, (iii) Restrictions on borrowings, (iv) (d) to remit, or give time for the repayment of, any debt due from a director,

13. Loans to directors: The provisions relating to section 185 of the Act (relating to 'loans to directors') are not applicable to private company, subject to compliance of certain conditions: (i) Private company in whose share capital no other body corporate has invested any money, (ii) Private company if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or Rs. 50 crores, whichever is lower; and (iii) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions,

14. Related Party Transactions: Pursuant to section 188 of the Act, no member of the company shall vote on the ordinary resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. Such provision is no applicable to private company,

15. Managerial Appointment: Section 196 of the Act consists of 5 sub-sections. The provisions relating to compliance of Schedule V of the Act and approval of the Central Government are not applicable to private companies for appointment of Managing Director, Whole-time director and Manager.

Under the Companies (Amendment) Act, 2017, following exemptions have been granted to private companies or closely held companies:

1. Related Parties: As per amendment – Holding company, Subsidiary company, Associate Company incorporated outside India are also 'related parties' under the Act. The Investing Company or Venturer Company are also included as 'related parties'. They mean a body corporate whose investment in the company would result in the company becoming an Associate Company of the body corporate,

2. Small Company: The definition of small company is amended, whereby the paid-up share capital (maximum limit) is enhanced to Rs. 10 crore (from Rs. 5 crore) and turnover (maximum limit) is enhanced to Rs. 100 crore (from Rs. 20 crore). It has also been clarified that for the purpose of computing 'turnover', P&L A/c of immediately preceding FY shall be considered;

3. Issue of share on private placement basis: With respect to issue of share on private placement basis, Sec. 42 of the Act has been entirely substituted. Key amendments are: (a) Group of persons whom offer is to be made is to be identified by board of directors, (b) Private Placement offer and application shall not carry right of renunciation, (c) Requirement to file Form GNL-2 has been discontinued, (d) Cos. cannot use funds till return of allotment has been filed with ROC within 15 days from the date of allotment, (e) Separate penalty provided for default in filing of return of allotment,

4. Sweat equity shares: Sweat equity shares can now be issued within 1 year from the commencement of business of the company,

5. Offer letter for Rights Issue: In addition to registered post, speed post and electronic means, the Letter of Offer can be sent through courier or any other mode having proof of delivery,

6. Venue – AGM of unlisted company: AGM of an unlisted company may be held at any place in India subject to prior consent of all the members of the company in writing or by electronic mode,

7. Venue – EGM of WOS: EGM of a Co. shall be held at any place in India, however EGM of Wholly Owned Subsidiary incorporated outside India may be held outside India.

8. Board's Report: (a) CEO shall sign the Boards' Report, whether or not appointed as a director of the company, (b) Provisions relating to extract of Annual Return (in Form MGT-9) omitted, web-link of the annual return to be provided, (c) Salient points of CSR Policy, Remuneration Policy may be included in the Report and web-link of these Policies to be provided in the Report, (d) Govt. may prescribe an abridged Board's Report, for OPC or Small Company,

9. Participation in Board meeting through electronic mode: Directors may attend the meeting by video conferencing or audio visual means for all business agenda items, subject to presence of quorum in-person (specifically in relation to the Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014) i.e. Approval of annual financial statements, Approval of Board's report, Approval of prospectus, Audit Committee Meetings for consideration of Financial Statement including Consolidated Financial Statement and approval of the matter relating to reconstruction companies

10.Loan to directors: Section 185 of the Act has been completely substituted by the Companies (Amendment) Act, 2017. The revised section is divided in 4 sub-sections, the highlights are: (i) Complete restriction on loans, guarantees & securities to certain parties, (ii) Permits granting of loans, guarantees & securities to certain parties, subject to riders, (iii) Loans, guarantees & securities to certain parties completely exempted from compliance of the Sec., (iv) Penal provisions under the section 185 of the Act,

11. Related Party transactions: The approval of the shareholders for Related Party Transactions under Sec. 188 of the Act by ordinary resolution is not applicable to a company in which 90% or more members, in number, are relatives of promoters or are related parties.

Conclusion: Taking into account the above discussion, I am of the opinion that there are adequate exemptions from the compliances of certain provisions of the Act for a private company. Some of the exemptions were already provided under the Companies Act, 1956. However, for private companies, under Companies Act, 1956, there was no restriction on loans to directors and limit on acceptance of unsecured loans from members of private company. Presently, there is no clarity on the provisions relating to relief for disqualified directors and companies de-registered by the Ministry of Corporate Affairs. The additional fees (i.e. Rs. 100/- per day) for filing of pending nnual Returns and Financial Statements within a prescribed time is also very 'punitive' on private companies, especially when such companies are revived (or name is restored) by the order of National Company Law Tribunal. In my view, there is 'ease of doing business' under Company Law for private companies, however the recent developments (i.e. director disqualification and de-registration of companies) has created pandemonium.

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They Said
'ONE INDIA ONE TAX'
Let's Face One Tax More Trouble

'Goods and service tax' one of the major changes in tax regime has been implemented with large number of tax slabs which helps in contribute in drafting simple, transparent and fair GST rules in goods and services. Even though it has been a year that government has implemented GST across India from 1st July 2017, still there are a number of queries been arising in the minds of various stake holders. This series of article will express the various technical as well as compliance issues being faced by the normal tax payers.

1. REGISTRATION PROBLEMS

a) I am an accountant in a footwear company and I was the one who has taken registration at the time of GST implementation and I have provided my personal e-mail id and mobile number and so every mails regarding the particular firm has been receiving by me even if I am out of station. Now I wanted to change into companies Id and I am not able to find any such provision to do the alteration. The only solutions been suggested is to change the authorisation or enter a new partner in the application which cannot be acceptable. This is a serious issue for my company and a proper provision isrequired.

b) My company comes under SEZ unit and so as far as my knowledge special economic zones get an exemption from GST and we are not liable to pay tax as per provisions declared by government. I have registered my company as SEZ unit but my profile in GST portal shows that I am liable to pay tax and when checked it has shown company has been registered as normal tax payer. I have visited the respective authority to get any solution but still unable to rectify this issue. Our company deals with exports which are zero rated but unable to claim refund for the same.

c) I am running a business on lease and so at the time of takingregistration it has been asked to upload lease agreement .It was specified that documents shall only be uploaded which is less than 2MB and I reduced the size of my document accordingly and tried uploading. Even though the size was 1.5MB I was unable to upload my lease agreement until size

been reduced to .5MB.Since my document consisted of many pages nothing was visible for the authority and I received a mail asking for re-submission. Since we can upload either lease/tax receipt I uploaded my tax receipt for the second time but again I received a query to upload lease agreement. And for the third time when I tried to complete my registration it came as rejected due to the compressed file and loses of clarity. It took more than a week for me to submit my

application because of my agreement. Facing issues because of the respective GST portal is very much disappointing.

2. FILING PROBLEMS

a) Hi Sir, my name is Karan and I am running a medical shop and there are more than 500 invoices which takes place in a month. At the time of filing GSTR-1, it said that if the invoices consist of more than 500 in number it is preferable to do it offline but when it's time to upload not every invoices are getting uploaded in one go and we are unable to identify which are missing also we cannot cancel the same and re-enter because the status was shown that the particular invoice already exist in draft. The portal is taking more time to upload all the information and if any technical error comes we have to do it again and try submission. b) I was filing GSTR-1 of my company which was 2 days back from its due date. I entered every details of invoices and before submitting when I checked, out of 38 only 15 been

updated in the site. It took around 3 days for every bill to get uploaded and by the time due date got over and late fee was generated for late filing. Filing returns are not easy even after creating invoices, If B2B invoices are entered online it takes minimum 3 days to get updated in the GST portal. c) I am an accountant in a service agency and we provide communication services for customers. At the time of filing returns I have uploaded every invoices of a particular month and items where kept drafted to submit after getting the digital signature. But when I opened the portal for the second time I

saw that not every invoices are been uploaded and some are missing and I was asked to enter it again and submit the return which was a double work and extra time was taken. GST returns tends to make errors at the time of submission due to technical issues and the details shows missing even if the status is uploaded.

3. TRAN-1

a) I am an employee in a manufacturing company since GST brought up an advantage of claiming input tax credit for those who was registered in the previous VAT regime it was an happy news for us because implementation of GST and switching to a new system was not easily acceptable when goods are already in stock of which excise duty paid. Identifying those stocks took some time also to prepare the relevant documents. Every time we plan to submit the TRAN-1 forms some or the other new notifications rise up also the due dates get extended. Now when we finally try to submit, it shows no provision to upload and status is shown as due date

is over for submission. Tax payers are finding it difficult to claim the input credit due to no clear notifications received from government.

b) I own a business of manufacturing plastic items and also doing exports of the same. It carries value of around 30 lakhs unsold stock in my hand during the implementation of GST. I was trying to upload the details of inventory and then due to some technical issues it ended up in failure. When I enquired for the second time at the authority they said due dates will be extended they are waiting for the next notification. And when the site was open to file TRAN-1 every details where entered one by one without any carelessness. Since my invoices was more than 500 I was done the entry through offline tool but at the time of filing even after showing proper documents been uploaded to claim the credit the portal is unable to generate JSON file for submission and so filing was left incomplete. Since it's a huge amount I tried to follow up the respective authority but they too were helpless to find me a solution. Now I am unable to complete because portal shows that the due date is over and if any further enquiries wait for the next

amendment. Today huge fund of mine is being in a blocked condition. 4. Other filing issues a) I am an employee in an exporting company and we have a huge amount to be claimed for refund at the time of exports. We were waiting for RFD-01 since the date GST has taken its position in the tax regime. When it was time for the exporters to feel relief site has started showing technical errors and we are unable to complete the form RFD-01 because even after uploading the relevant documents and being saved in portal submission status is showing as failure and not moving to the final page of completion. b) I am an accountant in a ready de shop and we are doing monthly filing of returns. At the time of submission it showed that there is a late fee blinking. Even if the submission was done before the due date still we were unable to file the return without making the payment. GST provisions need more clarity. c) I am running a super market and have quarterly filing. I made a mistake in my revious return. Even though under GST they say that revision option will be soon available there was no further notification received regarding the same.

5. General issues a) I am part of a mutual fundbusiness and I act as an agent for them but not registred under GST. I am aware that mutual funds attracts GST but not for the insurance agents who are working for such entity. But at the time of receipt of money they send tax deducted amount and I am unable to claim for credit since I am not a tax payer and not registered under GST. So that amount turns out to be a loss.

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THE SILHOUETTES

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Refund of unutilised input tax credit (ITC) was one of the few novelties under GST.

Refund of unutilised cenvat credit was allowed under the erstwhile indirect tax laws, namely, central excise as well as service tax, only when such cenvat credit was accrued on account of exports /deemed exports/SEZ clearances and there was no provision to refund such credit accumulated on account of inverted duty structure. For example, in pump industry, where the Central Excise duty stood at 6%, the manufacturers of such pumps accrued huge cenvat credit, as most of their inputs / input services attracted higher duty rate. With marginal value additions, the outflow had always been lesser than the inflow and thus resulting in huge accumulation of Cenvat credit in books with resultant cash flow issues.

GST, vide its Section 54(3) introduced a new proposition, whereby, a provision was made to refund the unutilised ITC, accumulated on account of situations, where, the GST rate on outward supply is lesser than the GST rate of the inputs.

For ready reference,

Sec 54(3) - Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than —

(i) zero rated supplies made without payment of tax;

(ii) **where the credit has accumulated on account of rate of tax on inputs** being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council (Emphasis supplied).

The above Section was given effect under Rule 89(5), wherein a formula to claim refund of such unutilised ITC was prescribed, which read as under;

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods

By an Explanation appended to the above Rule, the variables for the above formula, namely, Net ITC and Adjusted Total Turnover, were borrowed from Rule 89(4), which dealt with refunds emanating on account of Zero rated supplies (Exports / SEZ).

As per Rule 89(4)(B), the term Net ITC has been defined as under:

"Net ITC" means input tax credit availed on **inputs and input services** during the relevant period (Emphasis supplied).

From the above, it would be very interesting to note that, though under Sec 54(3) contemplated only the refund of accumulated ITC on **INPUTS,** by assigning the definition of Net ITC applicable to Zero-rated supplies, the accumulated ITC on **INPUT SERVICES** were also made refundable for the inverted structure refunds.

In other words, as the definition of Net ITC was common for both refund on account of exports (Zero rated supplies) as well as refund of unutilised ITC, the refund was given taking into consideration BOTH inputs as well as input services, though the same appears to be not in conformity with the parent Section 54(3).

Sensing this blunder, Notification 21/2018 – CT dated 18.4.2018 was silently issued without much ado, whereby, the definition of Net ITC, which is the relevant variable for getting the refund of unutilised ITC had undergone a major change.

Now, by the above notification, the definition of Net ITC for the purpose of refund of unutilised input tax has been separately carved out specifically for Rule 89(5), which reads:

Explanation:- For the purposes of this sub-rule, the expressions –

(a) "Net ITC" shall mean input tax credit availed on **inputs** during the relevant period.

This means, for the refund of unutilised ITC, **the accumulated ITC on inputs alone** would be considered and not the accumulation on account of input services.

Now lets see the impact of this amendment. To take an example, in the textile industry, the textile chain is taxed @ 5% (except for garments with sale price over INR1000 which attract 12%). In the garment industry, there would be a huge expenditure incurred on account of advertisements, renting of commercial spaces (showrooms), etc, wherein, the GST rate on such services are @18%. This would lead to a huge accumulation of ITC on such input services.

Similarly, in respect of pump industry, the GST rate is 12% for pumps for handling water. In many of the pump units, most of the manufacturing process is outsourced as job work, whereby, the job workers are paying GST @18%, which would necessarily lead to an accumulation of ITC at the hands of the principal. The same analogy would be applicable in respect of many engineering units, who supply parts for Railways, where the output tax rate is only 5%.

Now, with the above amendment, the accumulation on account of such input services (advertisement / job work) would not be given, which will be a huge hit to the industry and be a threat to the sub-contracting industry.

If this is bad, the worst has also arrived.

By Notification 26/2018 – CT dated 13.6.2018, the amended definition of Net ITC supra, has been given retrospective effect wef 1.7.2017, which means, there would be no refund on account of accumulated ITC on input services from 1.7.2017 and as a natural corollary, there would be recovery action, if any refund had already been sanctioned.

Happy First GST Anniversary.

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