ISSUE - 4 JUNE 1-30

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EDITORIAL

Rasheela Basheer
is an Editor & Co-Founder of Taxscan Media

The June Edition of 'TAXLAWGiST' is presented with cover story on 'E-Way Bill'.

Like any other field, technological innovations are now an integral part of taxation without which, it is impossible to implement any tax in a proper and effective manner.

The Goods and Services Tax, with its historic rollout, promised to change the conventional methods prevailed in the old tax regime. One of the key objectives of the GST was removal of all non-tariff barriers, such as check posts and consequent levies as entry tax, octroi etc., so that movement of goods inside and between states could be smoother, resulting in free flow of trade as envisaged in the Constitution. With introduction of GST, more than 20 states have progressively discarded check post, which has reportedly reduced the transit time of transportation by 30 to 40 per cent.

E-way Bill system, which was finally (re)launched on 1st April 2018, helps the Government to track all the inter-State movement of goods worth above Rs 50000/-. With this, the Government aims to bring transparency and accountability in transactions which would eventually curb tax evasion and thereby protect the interests of Revenue. Although E- way bill system is not new to few states as Karnataka and Kerala since they had their own system of online verifications to track movement of goods, same coupled with physical verification at checkpost was crippling the effectiveness of the intended objective.

EDITORIAL

The role of technology is in fact laudable as E-way bills can be stored in electronic form on a mobile phone or other device. Recognizing the real spirit of the new law, the Allahabad High Court in Bhumika Entreprises v. State of U.P & Ors (link), ruled that the consignment need not be supported with the hard copy of the E-way Bill as the current GST laws permits possession of digital copies.

The enthusiasm of government in publishing the weekly, daily, hourly generation of e way bill data is to be taken as the reflection of the assessment that government has succeeded in introducing a fool proof system for monitoring movement of supplies. Having done their part, it is up to the taxpayer now to be accurate as far as possible in generating e way bills, since same is directly linked and is always a tool of comparison with transactions disclosed in GSTR 1 return.

Having glorified the system for its technological efficiency, the eyes of government should also be open to the fact that e-way bill is just one tool to curb evasion. The number of evasion cases unearthed on weekly basis, is a pointer to the fact that howmuch ever ‘ tech-smart’ the government is, ‘smarter’ is a fraudster who is determined on evading tax. Therefore an effective evasion free GST system will be a reality only when other anti evasion measures as invoice matching, Reverse charge, TDS and TCS are implemented effectively.

■

E-Way Bill: A Logistical Booster

Ajay Ratnan
Final Year Law Student , Govt. Law College, Kozhikode

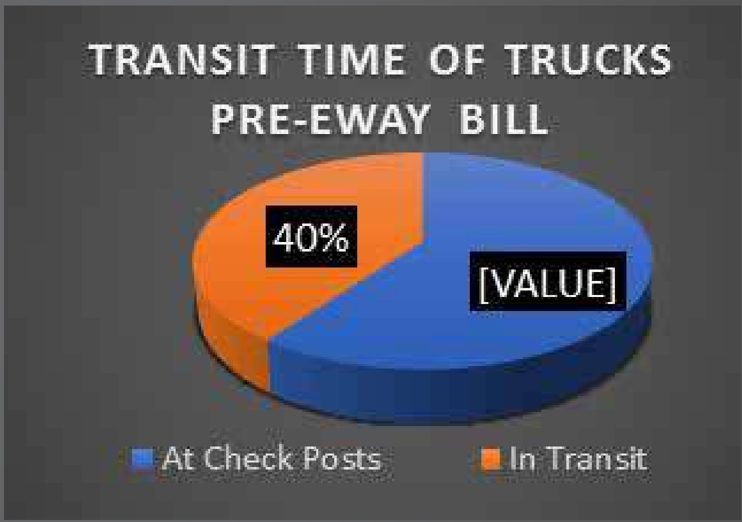
Long gone are the days when goods are tied up at various check posts. The introduction of E-Way Bill has advertently tackled the single greatest time consumer of supply in India. Check Posts, once institutions of corruption, inefficiency, & so-called inspections avenues have been obliterated from the nation. The Constitutional dream of free trade has been achieved partially.

The Constitutional dream of free trade has been achieved partially.

The E-Way Bill is an electronic document bill which facilitates the intra-state Movement or the Inter-State Movement of Goods having a value of more than Rs. 50,000/-. In other words, E-Way Bill is required to be generated for the supply of Goods having a transactional value of more than Rs. 50,000/-, in Inter-State or Intra-Sate Supply. There are 4 stakeholders under the E-Way Bill System. They are (1) Supplier, (2) Recipient (3) Transporter & (4) the Department. Whenever there is a movement of Goods, then the first three parties are required to generate/have E-Way Bills. The Department through their specially authorized squads could intercept the supply at any time and can inspect the Goods. If the whole inspection time extends more than 30 minutes, the transporter has been given the option to register the same on the common portal. All these checks and systems put in place make E-Way bills an ideal replacement of the inefficient check posts. During the Pre-GST regime, the verification of delivery notes took place at the Check Posts. This exercise tied up more than thousands of trucks at various check posts throughout the country.

McKinsey & Company, an American Management Company in its report stated that logistics costs in India are 13-15 percent of the product cost, while the global average is six percent. As per the report, the current wastage caused by inefficient logistics is equal to 4.3 percent of the GDP, and, if not corrected, will increase to five percent of GDP or $100 billion by 2020. This report is significant because a bulk of India's Goods are moved via road.

The World Bank in its 'India Development Update October 2014' Reports "Regulatory impediments to the movement of goods across state borders raise truck transit times by as much as one quarter and put Indian manufacturing firms at a significant disadvantage vis-à-vis international competitor. State border check-points, tasked primarily for carrying out compliance procedures for the diverse sales and entry tax requirements of different states, combine with other delays to keep trucks from moving during 60 percent of the entire transit time. Long transit times and high variability and unpredictability in shipments add to total logistics costs in the form of higher-than-optimal buffer stocks and lost sales, pushing logistics costs in India to two three times international benchmarks." In short, the 2014 Report stated that the trucks were stationery for 60% of the entire transit time.



However, the latest India Development Update Report 2018 by the World Bank has recognized that the average distance covered by the trucks are now up by 100-150 Km/day. Similarly, a study by the Associated Chambers of Commerce & Industry of India (ASSOCHAM)-Resurgent India stated that India could save $50 billion by trimming logistics costs from 14 per cent down to just 9 percent of its GDP. With the efficient use of E-Way Bills there is no doubt that the loss to the Indian exchequer could be minimized.

The other objective of the new system is to plug the tax evasion. Information is everything in Tax. It is significant especially for the ever-skeptical Revenue. Even it is not said, there is an old age assumption by ever taxing authority that tax may be avoided or evaded. Avoidance is tolerable to some extent, but it is evasion that makes everyone mad. Even though, the Government has taken a considerable amount of time to utilize the technology, it has understood the prominence and the role E-Way Bill would play in achieving multiple objectives of the Revenue. The E-Way System is designed in such a way that at all times, the Revenue has all the required information in its hands. If the vehicle is intercepted by the authorities and it is found that there is no e-way bill, then the penalty provided by the law is so heavy that, it would always be prudent to generate the bill before movement of goods. Moving goods without the cover of an invoice and E-way bill constitutes an offence and attracts a penalty of Rs. 10,000 or the tax sought to be evaded (whichever is greater). The vehicle that is found to be transporting the goods without an E-way bill can be detained or seized and would be released only on payment of appropriate tax and penalty as specified by the officer. Under this, there could be two situations: (1) If the owner wishes to pay the penalty, he must pay 100% of the tax payable (2) If not, the penalty will be equal to 50% of the value of goods.

There are concerns throughout the industry that the frequent checks by the tax authority would defeat the object of GST and E-Way Bill. In a way, there is unfettered power on the mobile squads to intercept any supply. Recently, one such movement of Goods were intercepted by the Revenue, on inspection it was found that there was no physical copy of the e-way bill with the transporter. On that ground the goods were seized. The Allahabad High Court, however held that tax authorities couldn't seize goods just because they're not accompanied by a physical copy of the elec-

McKinsey & Company, an American Management Company in its report stated that logistics costs in India are 13-15 percent of the product cost, while the global average is six percent.

tronic way bill (e-way bill). In its ruling, the High Court has set a precedent that E-Way Bill could also be stored in electronic form on any device.

The System which was implemented nationally for Inter-State Movement since April 1st, is also going to be mandatory in all the States for Intra-State Movement of Goods from 3rd June. The benefits of the system can in one way outweigh the cons. However, it would be wise for the Revenue to use caution and limit inspections of the E-Way Bill during the implementation phase. It would be sensible to allow some time for the stakeholders to adjust with the system. Otherwise, it would only aggravate the already bottlenecked movement of goods in India due to lack of infrastructural amenities. It is said, that time is the soul of business. Let's hope that E-Way Bill would actually save the soul of business in our country.

AAR Order on Outdoor Catering: GST not Employee-Friendly?

The newly implemented Goods and Services Tax Law is ruling the economy for the last eleven months. The question whether GST is Tax-Friendly or not is not yet settled. But one can easily say that GST is not Employee-Friendly. After the Kerala AAR ruling that GST is leviable on Canteen services provided to employees, another ruling by Gujarat AAR has now broken the heart of industries.

Taxation of Outdoor Catering

Under the GST laws, 18 percent tax rate is applicable to outdoor catering services. For canteen and restaurant services, it is five per cent without input tax credit. There were ambiguities over the rate of tax applicable to food supplied to canteens through third-party catering. Due to this, the suppliers were charging different rates on the said services. In the old service tax regime also, there were a similar issues over the taxability of the same.

Now , in a recent advance ruling given by AAR, Gujarat, it has been determined that such supplies shall be treated as ‘outdoor catering’ for which, highest rate of tax at 18% is applicable.

Background

The Authority for Advance Ruling, Gujarat recently held that the supply of food services to canteens at industries and offices constitute ‘outdoor catering’ taxable at 18 percent GST.

The Applicant, an industrial canteen contractor, who provides catering services to manufacturing industries at various places of their customers, had approached the AAR seeking clarification with regard to the rate of taxability applicable to them under the new GST regime.

The Authority found that the service recipient had engaged the applicant for running of the canteen for their workers/employees. According to the Members of the Authority, the rates of the meal, snack, tea have been fixed and payable by the service recipient. They thus concluded that the applicant providing service from other than his own premises to the recipient and that the service provided was that of outdoor catering service.

The Members further relied on the decision of the Allahabad High Court in the case of Indian Coffee Workers’ Co-Op Society Ltd vs. CCE & ST wherein it was held that taxable catering service cannot be confused with who has actually consumed the food, edibles and beverages supplied by the caterer.

Impact on Industry

The ruling will have a huge impact on Industries and employees as it will increase the cost of meals supplied in offices. From the employer side, this will create a huge financial burden with higher employee cost to the businesses that provide meals to employees for free of cost or with subsidized prices. These entities would not be able to avail input tax credit on such items.

From the employee side, the Companies would definitely have a tendency to pass on the burden to the employees by reimbursing the same from them. The ruling is another major setback as the AAR,

From the employer side, this will create a huge financial burden with higher employee cost to the businesses that provide meals to employees for free of cost or with subsidized prices. These entities would not be able to avail input tax credit on such items.

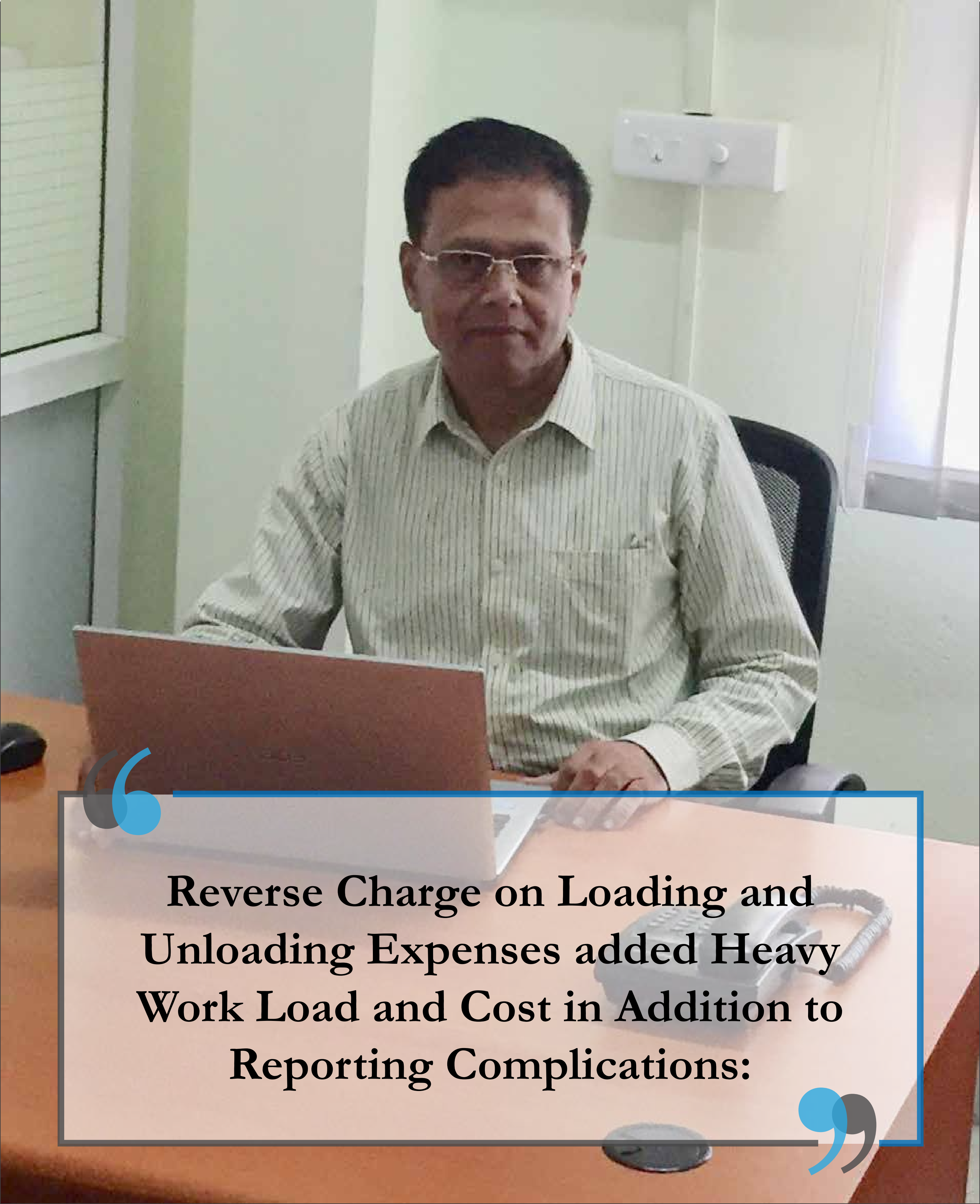
The ruling is another major setback as the AAR, Kerala has earlier ruled that the cost recovered from employees, by the employer, towards using the canteen facility provided by the employer is a "supply" and hence liable to GST.

Kerala has earlier ruled that the cost recovered from employees, by the employer, towards using the canteen facility provided by the employer is a "supply" and hence liable to GST.

In a circular issued by the CBIC on January clarified that the supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit under the new Tax regime. The lower rate is applicable even if it is provided by a third person (outside contractor) as appointed by the said institution. Canteen facilities provided in offices and factories also deserves a similar treatent.

The AAR order does not make any sense when the labour laws imposes a statutory obligation on the employer to provide canteen facility in work places.

Rasheela Basheer
is an Editor and Co-Founder of Taxscan Media



Reverse Charge on Loading and Unloading Expenses added Heavy Work Load and Cost in Addition to Reporting Complications:

In conversation with:

Mr. A. Renganadthan

Chairman of Krishi Nutrition Company Private Limited

A Renganadthan B.Sc., PGDBA is a Chairman of Krishi Nutrition Company Private Limited. Krishi Nutrition Company is a Manufacturing and Marketing of Animal Feeds – Cattle & Poultry Feeds. Currently producing and selling around 30,000 mt of Feed per month.

He is an Alumnus of IIM – Ahmadabad through MDP – Programme. He Promoted the Company with 3 Friends in 2013.

He was previously worked with Godrej Agrovet Limited for 25 Years. He was also held the position as DGM - Heading Animal Feed Business in Tamil Nadu & Kerala.

In this interview, Mr. Renganadthan has an exclusive chat with TAXLAW-GiST over various aspect GST, impact of E-Way Bill Mechanism, Reverse Charge Mechanism and so on.

Q. Almost one year in to GST, how do you assess the impact of GST on your business?

GST has brought in increased Input cost like GST on Processing Charge etc., Also cost of compliance has gone up. Initial Technical Glitches – Frequently changing tax rates, Crashing website, and increased frequency of tax returns are some of the additional burden as of now. More Man Power is working on GST; Our Accounting Modules / ERP are getting configured to fit in the requirement....may get sorted out over a period.

Q. Since the products of company are GST-exempted, how has the levy impacted the procurement chain? Is it not that there is still cascading effect in such cases?

> **If and when the supply chain gets organised ... and when everyone gets in to regulatory frame work...it may help. But a Long way to go.**

It has impacted. Cost is up; but then, since we have been operating in a transparent manner with the supply chain it has not affected the business processes.

Q. Whether abolition of check post and introduction of e-way bill system has made intra and inter state transfers more viable than pre GST period?

Not much difference in our case as of now. "Value – Distance – Taxable or not" decides the EWB...Needs attention all the time. But will be more viable for sure.

Q. How do you assess the impact of reverse charge on your industry during the short period from July 1st till October 12,2017.

Reverse charge on Loading and Unloading Expenses, Rent, Bills of unregistered Processors , Repairs and Maintenance etc.. etc., added heavy work load and cost in addition to Reporting complications. It will be a burden any day – in terms Cost & Accounting / reporting processes.

Q. Compliance cost is one of the most criticised aspect of any VAT system. Whether the cost of compliance has decreased when multitudinal taxes are replaced by GST?

Compliance cost may get decreased over a period – It looks.

Q. Is GST in alignment with the developmental endeavours of the company?

Our Business is with unorganised Agri / Farm sector and Dealers (our customers) who are servicing the Farmers.

If and when the supply chain gets organised ... and when everyone gets in to regulatory frame work...it may help. But a Long way to go.

Q. What according to you, is the significant impact of GST for a country like India?

Instead of paying, Octroi, Central Excise VAT etc…, (including few other indirect taxes) the taxpayers is now paying one amalgamated tax.

It is may be expected that the informal sector will come under the regulatory framework to a great extent. ..and so Increased Tax Returns ; lesser tax evasion.

It's only when the glitches are sorted out and simpler comprehensive accounting and reporting system is brought in, one will see where we stand.

However, there will be a significant amount of transparency and ease in the taxation process in future in India.

GST Anti-Assessee Rulings

Goods and Services Tax is one of the historic tax reforms India has witnessed. GST subsumed all the indirect taxes except customs duty such as excise duty, service tax, VAT, sales tax, luxury tax etc. On the implementation side, the law faced some initial glitches (even now) both in the technical and conceptual field. No doubt, the Government is working on the technical glitches which caused a lot of pain and hardships to the taxpayers. Apart from these glitches, there are some other areas, the Government needs to focus now.

GST law provides for establishment of Authority for Advance Ruling (AAR) in all States with a view to provide certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. AARs were established in States after six months of GST rollout and have been giving rulings since March.

Complicated AAR Rulings

In March, while disposing an application filed by M/s Deepak & Co, Delhi AAR stated that the supply of food and beverages in trains would attract eighteen percent tax and not the concessional rate of 5%. This was totally against the CBIC Circular issued in January as per which supply of goods in railways would attract a lower rate of 5 per cent. Subsequently, the Ministry of Finance issued a statement clarifying that 5% Uniform rate of GST applicable to all railway catering services in trains or on stations.

Shockingly, the AAR Kerala has ruled that the cost recovered from employees, by the employer, towards using the canteen facility provided by the employer is a "supply" and hence liable to GST.

In another ruling, Gujarat AAR held that the supply of food services to canteens at industries and offices constitute 'outdoor catering' taxable at 18 percent GST.

The Maharashtra AAR in case of Maharashtra State Power Generation Company Limited, given a ruling that 18 per cent GST would be applicable on liquidated damages received by the Applicant for delayed supply under a contract.

There are two divergent views taken by Maharashtra and Karnataka AARs on the GST rate applicable on installation of solar plants which made the industry bit confused. While the Maharashtra suggested 18 per cent tax treating installation as a whole works contract, the Karnataka AAR confirmed tax on installation at the concessional rate of 5% applicable on equipment.

Abdullah Karuthedakam
He is the Founder of Taxscan Pvt Ltd

Need for Appellate Mechanism

An advance ruling helps the applicant in planning his activities which are liable for payment of GST in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities. It also helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious.

As per the Act, the aggrieved parties can approach the appellate authority within a period of 30 days which may be further extended by a month. However, there is no such mechanism available in most of the States (except Delhi and Karnataka) causing double pain to the taxpayers. The appellate authority comprising two members, i.e, the chief commissioner of central tax as designated by CBIC and the commissioner of state tax shall pass an order within 90 days of the filing of appeal.

Recent reports said that the Central Government is planning to bring a Centralized Authority of Advance Rulings. However, this would take some more time as there is a need to amend the present GST laws.

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BEFORE PARTING

The GST PARADOX

When Advance Ruling was introduced in Central Excise and Service tax, it didn't impact much and I thought it was due to the restriction with respect to the eligibility to apply, whereby, only specific classes of applicants were allowed to opt for it. But I was wrong. Despite the eligibility criteria expanded in subsequent years, ARA could not garner any telling patronage from the trade and industry. Maybe the forum failed to instill the required confidence among the trade.

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GST have made provisions for ARA under Chapter XVII (Sec 95 to 106) of the CGST Act, whereby, an applicant shall apply to an advance ruling authority constituted in every State of UT, as the case maybe, for a ruling on any of the following issues / questions, as per Sec 9792) of the Act:

(**a**) classification of any goods or services or both;

(**b**) applicability of a notification

(**c**) determination of time and value of supply

(**d**) admissibility of ITC

(**e**) determination of the liability to pay tax

(**f**) whether applicant is required to be registered;

(**g**) whether the transaction constitute a supply

The ARA would comprise of two officers, in the rank of Joint Commissioner, one from the State/UT and one from the Centre. Upon application on any/all of the issues supra, the ARA, after hearing the applicant / authorized representative as well as the concerned officer / authorized representative would pronounce the advance ruling on the matters on which advance ruling is sought for. The advance ruling thus pronounced is binding on the applicant as well as the department. Unlike the ARA of the erstwhile laws, GST provides for an appellate authority also under the advance ruling (which is yet to be constituted in almost all States / UT), whereby, if either of the party (applicant or the department) is aggrieved by the advance ruling, they may opt for an appeal against the said advance ruling, within 30 days from the date of the said ruling (further 30 days subject to condonation by the appellate authority).

Apart from the appeal, even if there is any difference of opinion between the members of the ARA (i.e between the two JCs), then the same is referred to the appellate authority. Further, if there is any difference of opinion between the members of appellate authority, then its deemed that there is NO advance ruling could be given on such differing point / issue / question.

Under GGST, unlike the erstwhile regime, we are all witnessing unprecedented applications being filed and advance rulings being given, across the nation, mostly on very crucial and controversial issues. That too, as the appellate remedies are not in place (GST Tribunal is yet to be constituted), most of the trade is banking on ARA to resolve the humongous confusions prevalent in GST.

I am always against the idea of ARA and vehemently against under GST because of two reasons. One is that, each and every State / UT having a separate ARA would only create a chaos by giving different rulings on an identical issue and thereby create a serious threat for the GST administration as well as the trade understanding, and secondly, the rulings doesn't have any persuasive or precedent value, as its binding only on the party to the application.

Now, with the spate of rulings delivered by the ARA so far, being far from any remedy or help and almost all of them appears to be lacking any form judicial propriety and legal propinquity, my conviction that the ARA is just a pain – in - vain, gets further reinforced.

And I am sure that, with the current trend of advance rulings (eg. outdoor catering), ARA has already started building its graveyard.

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