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Policy Memorandum on GST - challenges and actionable recommendations

India's indirect tax system has evolved considerably in terms of revenue efficiency and ease of compliance under the GST system in the last six years. There has been consistent increase in the revenue collection, increase in taxpayer base, decline in instances of evasion and increase in compliance. Also, the trade and industry has benefitted in terms of simplification of compliance, digitisation of processes, minimal manual interface with the authority and saving on cost of compliance as more than 17 taxes and other levies under the erstwhile indirect tax system were brought under the GST regime.

Yet, the country is far from attaining One Nation One Tax, which was the vision behind introducing GST regime. Industry continues to face cascading effect of indirect tax because of non-inclusion of petroleum products, electricity duty, stamp duties and other levies under GST. Also, there are multiple tax slabs which gives rise to classification disputes and litigation. There were also many instances of genuine recipients not getting the benefit of input tax credit because of non-compliance by the suppliers, even though this system has brought a welcome trend where recipients stop dealing with unscrupulous dealers or suppliers. There are many instances where the department has taken measures like reversal of input tax credit or initiated penalty or prosecution on bonafide buyers because their suppliers have issued bills or raised invoices without actually supplying goods. To prevent such instances, bonafide buyers or recipients need to verify the credentials of the suppliers before dealing with them.

The government and the CBIC are actively responding to the concerns and challenges of the industry by making necessary amendments, issuing clarificatory circulars, advisories and adding new functionalities in the GST portal in response to the needs of the industry. Yet, there are many unresolved issues and new challenges faced by the industry, which require timely action from the CBIC and the field formation. This memorandum highlights the emerging challenges or concerns of the industry and suggest suitable recommendations, as follows, to address these challenges.

This memorandum also outlines some of the existing gaps or ambiguity in the GST regulations applicable for export shipments. Indian government may support the exporter community, which is currently facing hardship from the global slowdown, by addressing these gaps or ambiguities.

1) Government may clarify its position on the proposal of levy of GST on Employee Stock Open (ESOP). Already, GST authorities in states such as Karnataka have issued summons or queries for response from assesseees on this proposal. The government may clarify its position before GST officers in other states also issue summons or queries on this issue to assesseees.

2) **Input tax credit on capital goods:** There are some service providers or goods exporters who incur substantial part of their expenditure on capital goods. These assesseees are unable to get input tax credit on procurement of capital goods when they export their products or services without paying IGST under LUT. Even though exports are zero rated under GST law, assesseees are unable to get refund of input taxes as the formula does not allow such input tax credit. Under these circumstances, government may ensure that the benefit of zero rated supply is available to genuine exporters by providing input tax credit on procurement of capital goods.

3) **Clarification on powers & authority of Proper officer with regards to interception/inspection of vehicle:** There are several instances where GST inspecting authorities delay the release of cargo in transit by examining the valuation of goods, the appropriateness of the classification of goods and whether the rate of tax paid is appropriate. The power of these inspecting authorities is to verify only the documents such as invoices and e-way bills. Beyond these documents, they lack the jurisdiction to investigate the valuation, classification of goods and rate of duty paid. Even there are High Court rulings which say that as per GST Laws, these authorities do not have the right to hold cargo if the e-way bill and invoices are produced properly. Therefore, CBIC may provide appropriate instructions to the investigating authorities to refrain from holding goods on issues that do not fall under their purview.

4) **Introduce functionality in portal:** At present, there is no functionality in the GST portal to file multiple and supplementary claims in case the assesseees genuinely missed some refunds. So, the CBIC may introduce functionality in the portal to facilitate such filing.

Also, government may introduce a functionality to rectify form GSTR 1 and GSTR 3B. In one of the ruling, Hon'ble Karnataka High Court suggested that assesseees should be allowed to rectify form GSTR 1 and GSTR 3B.

5) Facilitate real time movement of data from Bill of Entry to form GSTR 2B:

Assesseees who have imported input materials are unable to claim input tax credit in the same month of imports because the data in the Bill of Entry is not reflecting in form GSTR 2B of GST portal on real time basis. Even though there is an option in the ICEGATE to move the data in the Bill of Entry to GSTR2B, the same is not happening in real time. Therefore, CBIC may add a functionality for real time flow of Bill of Entry data to form GSTR 2B in the GST portal so that importers can claim input tax credit without delay.

6) Clarification on eligibility of ITC/refund of CVD & SAD paid for the pre-GST transactions:

There are instances where the provisional assessment has not been finalised for imports made during the Central Excise regime before the implementation of GST. The tax department has kept assessment provisional under the Customs Law in many cases. When these provisional assessments are finalised, assesseees will have to pay countervailing duty (CVD) and special additional duty (SAD) along with differential customs duty. But under the current GST regime, assesseees cannot claim credit or refund for CVD or SAD, which were otherwise available under the erstwhile Central Excise regime. Credit against CVD and SAD is a genuine benefit of assesseees which should not be denied by the authority. So, the government may provide relief to such assesseees by allowing credit or refund against SAD and CVD paid after final assessment of such old transactions.

7) Request to reopen FORM TRAN-1 on the GST portal for bonafide cases:

There are many assesseees who missed certain transitional credit at the time of implementation of GST and these assesseees are facing some genuine difficulties in claiming those credits despite the proactive steps taken by the government. The government opened a common portal and allowed two-month window for assesseees to revise their TRAN-1 and TRAN-2 forms and rectify the errors that they made while filing these forms before for claiming transitional credit. Government also issued guidelines for filing or revising TRAN-1 and TRAN-2 through Circular 180/12/2022 dated September 9, 2022 and guidelines for verifying transitional credit vide Circular 182/14/2022 on November 10, 2022. Despite these initiatives, some assesseees are facing genuine issues in claiming the credits missed during implementation of GST. So, government may provide one more window for these genuine tax payers by allowing them to claim their missed credits.

8) Reconsider Rule 96B of CGST Rules:

Exporters issuing financial credit note due to say price negotiations or defect in good are facing genuine hardships from GST liability. So, the provisions of Rule 96B of the CGST Rules (which provide for surrender of refund to the extent of non-realization of export proceeds) can be amended to

provide some relief to these exporters such as giving re-credit of amount of IGST which is surrendered due to issuance of financial credit note.

9) Clarification on applicability of GST under RCM on charges deducted by foreign banks for inward foreign remittance: Government may bring in clarity about whether Indian exporters are liable to pay GST under reverse charge mechanism with respect to bank charges deducted by overseas bank when foreign buyer makes sales proceeds to the Indian exporter. When the bank of the foreign buyer makes payment through the Authorised Dealer bank of the Indian exporter, the exporter is not the contractual recipient of the service of the foreign buyer's bank. So, there is no settled legal position as there are contradictory judicial rulings on who is the service recipient – whether it is the Indian exporter or the Authorised Dealer bank or the foreign buyer. So, the Government may clarify as to who is the recipient of service under this circumstance.

10) Clarification on eligibility of ITC against IGST paid through TR-6 challan: Government may issue clarification on whether exporters can claim input tax credit against payment of Integrated Goods & Services Tax (IGST) through TR-6 Challan for import of input materials. Many Export Oriented Units (EoUs) and exporters who imported input materials under advance authorisation license have been barred from claiming refund against payment of IGST on their exports under Rule 96 (10) of CGST. Government may provide relief to these exporters.

11) Clarification on determination of value for the deemed supplies made between related parties eg: right to use of brand name, logo, symbols etc. : As per Schedule I of CGST Act, exporters have to pay IGST on reverse charge mechanism even for supplies made between related persons without consideration. For instance, if an Indian subsidiary uses the brand name of its foreign parent company, it is considered as deemed supply even though there is no royalty paid by the former to the latter. Here, the challenge is how to determine the cost or value of this supply as no consideration is exchanged between the parties. Therefore, government may clarify on how to determine value of these supplies.

12) Clarification on GST applicability on distribution of samples to persons outside India: Currently, there is no clarity on whether to make payment of IGST for export of samples. Government may clarify the treatment of GST liability on shipment of sample goods to foreign parties (related or unrelated) or shipment of sample goods abroad for quality testing, R&D and other purposes.