

Effectiveness of anti-profiteering provisions in GST

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Game changing GST law has brought-in lot of practical difficulties for a tax payer. Many of these difficulties are being addressed by the government which is a positive sign. One major issue which is being faced by the tax payer now is on compliance with anti-profiteering provisions. It is also a fact that implementation of anti-profiteering provisions was never been easy in any of the countries wherein GST system was introduced in the past. Even in our country it may not be a smooth sailing affair. However, a reasonable system could be implemented considering the experience of anti-profiteering in other countries with few precautions.

Dictionary meaning of profiteering is to make or seek to make an excessive or unfair profit, especially illegally. Greatest fear which any country had with introduction of GST system is effect on pricing of goods or services leading to inflation. In Indian GST law, Section 171 of CGST Act 2017 provides that any reduction in GST rate on supply of goods / services or benefit of ITC needs to be passed on to the recipient by way of commensurate reduction in prices. Therefore, the tax payer who is enjoying the benefit of extra credit or reduction in rate of taxes needs to pass on corresponding degree or proportionate benefit to the customers. Any extra profit should not be made on account GST rate or credit. The law does not consider the situations where as a result of implementation of GST, there is a drop in the orders due to uncertainty, need to incentivize the trade by increasing the rate as well as the margin provided to the retailers and many such practical downsides of GST.

Section 171 also enables the central government to constitute an authority to examine if input tax credit availed by any registered person or the reduction in tax rate have actually resulted in commensurate reduction in price of goods or services supplied. Certain transitional provisions in CGST Act provides for passing on the benefits of credits on closing stock of goods as well.

An authority has been constituted for monitoring anti-profiteering in India after introduction of GST. The authority can order for reduction in prices or order for return of excess amount collected by supplier of goods / services with 18% interest to customer. Authority also got powers to order for cancellation of registration or levy penalty. Action would be taken by the authority based on the application made by interested party. Tenure of this authority would be for 2 years from date of selection of chairman which could be extended if required. The present chairman has been appointed from November 2017 and therefore, the present authority would be active till November 2019 to monitor anti-profiteering provisions.

When GST was introduced in countries like Australia, Canada and Singapore, the inflation rate got increased. In countries like Greece and Portugal, after introduction of GST the inflation got reduced. There were instances where inflation increased after few years of introduction of GST in some of the countries. It would not be easy to assess if introduction of GST in India would lead to increase or decrease in rate of inflation. In most of the countries where GST was introduced, the anti-profiteering provisions were also introduced. However, the countries were not successful in implementing it on all goods or services. The provisions were made applicable mostly for retail products.

Issues with present provisions in India

Though most of the tax payers are aware of the requirement of anti-profiteering provisions, they are not clear how to comply with it as there are no guidelines issued prescribed for compliance. In countries like Australia, the awareness of anti-profiteering was started much prior to introduction of GST law. Such awareness with clear guidelines would have reduced the confusion among tax payers in India.

A complaint application form has been released for public for complaining against profiteering. However, for a layman filling the form would not be an easy task as it requires the complainant to fill information like HSN, ITC claim, pre-GST price etc. Unless the form is simplified, successful implementation would be a dream. There has been news from past few months on simplification of complaint form. Faster action is requirement in this regard which otherwise provides extra time for some of the tax payers who could be taking advantage of GST to increase their profit.

More number of complaints being received are in retail and construction sector. Retail industry would find it difficult to comply with anti-profiteering provisions as most of their products would be covered under legal metrology act with MRP printed. There would be sales strategy involved in pricing of goods as well. For example, fixing price at Rs.99/- or Rs.999/-. Change in such MRP due to change in rate of GST could affect their business. Representation could be made by the industry to address such situations.

There are many factors such as seasonal sales, global commodity prices, competition, duration of sales, new business start-ups which could influence the pricing of goods. Presently it is not clear how to consider these factors for compliance with anti-profiteering provisions.

The law is also not clear as to duration or time available for compliance with anti-profiteering provision. There could be cases wherein the inventory would be held with distributors or dealers with prices printed and negotiated.

There are also legal arguments that this provision is only for “tax” and tax means GST. Therefore, only the cases where there was a reduction in GST rate – say for restaurants and other items in 28% bracket and there was a reduction, the anti-profiteering would apply.

Action by tax payers

It is very important for the tax payers to understand that compliance with anti-profiteering provisions would continue until there would be change in rate of GST or increase in credits. Simple exercise like identifying the pre-GST profit and post-GST profit due to increased credit or reduction of rate of GST could be useful at this stage. Other factors which has led to decrease in costing of goods or services such as abolition of entry tax, central sales tax and other cesses should also be considered. There are also possibilities of increase in costing due to factors such as GST implementation cost, ERP customisation expenses, disruption due to change in business process etc. which needs to be considered for arriving at the final profit or benefit for passing on to customers. Wherever it is clear, the tax payers should pass on the benefits to the

customers with clear documentation maintained to substantiate it later on in case of enquiries.

Conclusion:

Successful implementation of anti-profiteering provisions would help the consumers in large. It is expected that the guidelines would be issued soon for anti-profiteering. Professionals could caution their clients and help them to prepare for compliance. As discussed earlier, there are many practical challenges in implementation of the provisions, especially for retail sector. Professionals could help the sector with suitable representation highlighting all the issues and disclosure of facts and why anti profiteering not applicable in border line cases to the GST authorities which could avoid longer period demand.

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