

26.11.2016

Understanding GST Model Law – Conceptual Issues to Succeed

By CA Madhukar N Hiregange
CA Roopa Nayak

Background

World over in well run countries VAT or GST (expression used interchangeably) have the following characteristics which are good and adopted by India such as merging multiple taxes, reducing the trade barriers (abolition of check posts and end of resulting corruption), fast track refunds among a few other aspects.

The Model GST law in its present form hosted for public comment appears on the face of it (in plain reading) a disaster waiting to take India down into turmoil, confusion and chaos!!! Far from the promises made on public platforms and beyond what was envisaged in the Whitepaper for justification of GST.

In the many public assurances on how GST would finally be unfortunately there is a BIG GAP between the promises of PMs/ FMs of past and present over what is contained in the GST Model Law.

The paper writers have examined what could be the changes required to be made in proposed GST law to be made on priority before the law is introduced.

The major amendments required in this law could be as under:

1. Tax laws should be simple and not cumbersome: The model law (65 rules to be prescribed as per Model law) rules with elaborate provisions to trap the evader. Law made stringent for evader would discourage those on the fence to join the mainstream.

Recommendations:

- Tax Payer friendly law to encourage voluntary compliance needs deleting of many provisions and demonstrating the intention of the government.
 - This being an indirect tax, demands should be limited to maximum of 6 months when transaction recorded in books, 3 years if mala fide established where tax has not been collected and without limit if tax collected.
 - Penalties to be only for those where mala fide established.
 - Prosecution only beyond Rs. 2 crores as was there in the earlier law.
 - Simple rules/ compliances based on trust.
 - Every new law goes through the process of amendments. It is preferable to put a reasonably robust law to avoid too many changes which make the law uncertain.
2. Tax should be on ONLY value addition meaning seamless credit:
 - i. In India the keeping out of major petroleum products and electricity, alcohol from the net means that the taxes and duties on inputs, input services and capital goods for their manufacture would cascade.
 - ii. Seamless credit is at the foundation. The restrictions presently in VAT + Excise + Service Tax have been fully carried forward. The VAT Vs Service/ Manufacture cross sectional credit is the only saving grace.

- iii. If we wish tax not to cascade [resulting from taxes on taxes] business related restrictions have to be removed 100%. Further restriction on motor vehicles, aircrafts etc which are goods used for business and artificial restrictions on input services.
- iv. Period of 1 year from date of invoice for availment of transitional credit is unfair when tax collection period now is 5 years. It would have been far better to allow cross sectional credit between CGST and SGST.

Recommendations:

- Speedy inclusion of petroleum products and electricity, alcohol in GST and enabling the credit of taxes on them,
 - Simple credit eligibility to all goods/ services used in or in relation to business.
 - Time limit for credit equal to time limit for demand.
3. Broad basing of taxation: This means to cover maximum number of assessee compulsorily by having low threshold limit to share the burden and be able to reduce the tax rate. However the extent of evasion in small traders/ service providers working on cash basis or undervaluation or part billing is quite big in numbers. These small sector persons get their accounts written only after the year end. They would not be able to upload different returns every month. They would have no choice but to stop doing business (Article 19 of right to do business or profession) or to get out of the system and only do cash transactions.

Recommendations:

- Increase the composition Limit to Rs. 100 Lakhs.
- Fix the composition percentage at not less than 5% without credit but allow the credit to those recipients who utilise those supplies.
- Do away with invoice uploading and purchase matching – go on full trust with the assessee.

Other concerns and how to address them

The other concerns are lack of access to IT infrastructure to the SME segment and feasibility of providing them utilities to comply by filing periodic statements/ returns, the transitional provisions not covering many business realities, administration of GST by the VAT officers who have been generally working for themselves and not the Government are some other issues.

1. Too Unfair and Cumbersome: GST finally should contain features of simplicity, clarity, certainty and transparency, as its pillars to make it tax payer friendly. Presently a collation of the worst practices of VAT + CE + ST. Few things have been considered in the revised Model GST Law. However, it needs more relooking.
2. IT Infrastructure: GST law would be an IT driven law and we are not sure whether all the States and Union Territories in India are currently equipped with infrastructure and requisite manpower to embrace this law. Except few States like Karnataka, Maharashtra and Gujarat, who have pioneered the E-Governance model, we have not heard about this trend in other States and Union Territories. In some States even today only manual VAT returns are in vogue. They also need to be taken on board.

The unorganised and non-technologically savvy tax payers need to be extensively trained / supported by sufficient number, properly distributed and adequately trained tax preparers who can comply on their behalf. The shortage of accountants in some of the States may pose a challenge.

3. Officers training: The success of GST law would largely depend on the way it is implemented. Since it is a new law, the focus should also be on trust based administration. The unlearning of part of the old law and learning of GST law is imperative but cannot be accomplished overnight. This could take quite some time as faculty and resource persons should be developed and nurtured after the law is passed. All Central and State Government Officers whether in VAT, Service Tax, Central Excise or Customs Departments should get themselves acquainted with GST law. This again cannot happen in a jiffy.

Further GST law would heavily depend on Information Technology and hence proper training has to be given to the departmental officers for effective usage and implementation.

4. Public Education: GST law would subsume many State and Central Indirect Taxes and even the taxable event would be supply of goods or services. The general public including trade and industry have to be educated about this new law by creating awareness. Seminars and workshops should be organised by the Government in association with trade/industry bodies or associations to spread awareness about this new law. [ICAI can play a role in this]
5. New Registrants: GST is expected to bring within its fold many new registrants, who have been hitherto kept outside the purview of tax mainly due to exemptions. Also many new registrants could come in since the taxable event is wider in scope in GST. Initially simpler procedures with IT assisted filing and filings have to be in place for any multi locational assessee.
6. Transitional Issues: There are many areas, which have to be addressed as a part of transition to GST. There are concerns about registration, carry forward of credits, pending refund/rebate claims, review of contracts, change in taxable event for incomplete transactions, pending assessments, job work transactions, treatment of stock in hand, filing of returns etc. The need for smooth transition is imperative for success of GST. Model law seems to be a collation of all the present taxes with a tilt towards avoiding leakage of revenue. Therefore clear procedures if available without vagueness would help smooth transition to GST regime. Specifically the pro activeness of acting on the suggestions received from trade/professionals may make or break the law.
7. Past Disputes: There are many disputes pending in the context of present indirect tax laws (both Centre and State), which are at various stages viz., adjudication or appellate level. The adjudicating/appellate authorities, Courts and Tribunal are burdened with the pending cases. Before GST is implemented the Government should find ways and means to resolve these disputes. A possibility of introducing a dispute settlement scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) should be explored, which would enable the litigants to resolve many matters. If the past disputes are allowed to continue then the adjudicating/appellate authorities and Courts/Tribunals would be pre-occupied with old cases and would not have time to decide any issues/disputes cropping up under GST law.
8. Tax Administration (alignment/merger): After GST is implemented both the Central and State level officers are expected to work under one roof and in tandem by giving up their differences and non-alignment in the old regime. Cadre differences may arise, as presently in Central Excise and Service Tax, the departments are headed by Officers of the Indian

Revenue Service, whereas in the State Commercial Departments, the Commissioner is from Indian Administration Service (IAS) and his subordinates would be from State Administration Service. In Central Excise and Service Tax we have posts like Principal Chief Commissioner or Commissioner and Chief Commissioner or Commissioner etc. How these differences would be addressed in the GST regime remains to be seen and there is no whisper or murmur about it as of now.

9. Penalty provisions under proposed GST: The penalty provisions in this proposed law are draconian and a combination of the worst of all three laws of excise, customs and VAT. Needs to be substantially watered down as it could drive the non-compliant assesses out of tax net system forever.

Conclusion

In this article, the paper writers have sought to highlight some of the major issues and possible suggestions to address them in the Model GST law. This decision has to be made by the PM, FM, Revenue Secretary, GSTN or CBEC to ensure that GST succeeds in India.

We propose to cover the entire GST model law in the next 2-3 weeks in this series of articles. Feedback at madhukar@hiregange.com or roopa@hiregange.com.

(The content of the article is property of Hiregange & Associates, Chartered Accountants. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission, in writing, from the partners of the Firm)