

# VIEW AND COUNTERVIEW

## GST – SHOULD TECHNOLOGY OVERRIDE THE LAW?

*GST runs on technology platform. Often technology and legal provisions are out of sync. Technology (GSTN) prohibits actions that are specifically permitted by law. Often technology seems to impede the letter and spirit of law and the tax payer is stranded. Problems are many: Inability to claim credits if Place of Supply is different than registered address, inability to upload an invoice where the customer is wrongly tagged as SEZ Unit/Developer, issues of an erratic portal, mismatches in Shipping Bill Numbers resulting in blockage of refunds to exporters, Forced Utilization and Cross Utilization of Credit Balances before cash payment settlement, Requirement to identify supplies to composition persons separately in GSTR-3B... This third VIEW and COUNTERVIEW aims to inform the reader of multi dimensional totality of an issue, and enable him to see a matter from a broad horizon.*

### VIEW: TECHNOLOGY IS PLAYING AN IMPORTANT ROLE IN GST IMPLEMENTATION

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In today's world, technology is playing plausible role in every sphere of our life. With speedy internet access, technology has made it possible to accomplish many things almost instantly. Technological developments in last few years have changed the way we live our lives. Today, whether it is sharing of news, views, pictures, messages, knowledge based discussion, buying, selling, travel, entertainment, research, development, banking, investment, management, and administration - most of our acts and deeds are guided or assisted by technology.

People, world over, are using technology and so do the Governments. As far as GST is concerned, such a mega reform in the field of indirect taxation would not have been possible to implement without the use of well researched network of Information Technology (IT).

Introduction of GST, in India, is certainly a paradigm shift in the field of indirect taxes which will necessarily change the manner in which the taxes were being administered. Earlier the Centre as well as the States and Union Territories were having their own laws and procedures for taxing goods and services whereby there were multiple taxes, multiple compliances and so the multiple administrations thereof. But, in GST, all those States, Union Territories as well as the Centre have come together. Most of the taxes, which were levied separately, were consolidated under the vision of 'One Nation One Tax'. Although, legally speaking there may be separate legislation for Centre and States, the technological network has made it possible like 'one registration', 'one challan', 'one return', etc.

India's dual GST system also ensures each stake holder (i.e. Centre, States and UTs) receives their share of revenue in time. At the same time GST, being destination based tax, it ensures that the tax amount travels simultaneously with the movement of goods and/or services, as the case may be. The registered tax payer (recipient of goods/services) has to be ensured every eligible input tax credit of Central GST (CGST), State GST (SGST) or Integrated GST (IGST). And there is Cess also on some of the commodities, which has to be accounted separately. Migration of tax payers (under the earlier laws) to GST was a tedious job. Nevertheless, all those tax payers (more than 64 lakh in number) spread over various States and UTs could smoothly migrate to the new system, thanks to the robust Information technology backbone. In addition, more than 44 lakh new tax payers (spread all over India) have opted for new registration (July 17 to April 18). Each of these tax payers has been assigned one unique GSTIN, which is valid for all the taxes i.e. CGST, SGST/UGST and IGST. There is no separate number needed for Centre and State GST. Presently more than 10 million tax payers are liable to submit data of outward supplies, inward supplies, tax payable and ITC, etc., through various returns and formats. There are a large number of commodities and services, out of which

some are nil rated, while others are liable to tax at several different rates. Some of the transactions are zero rated, while a few are liable for a concessional rate of taxation. There are about 20 lakh taxpayers, who have opted for 'composition schemes'. Such tax payers are discharging their tax liability differently than other registered tax payers. While dealing with about 250 to 300 crore B2B invoices per month, one has to keep track of all such kind of transactions so as to see that correct amount of tax is being paid by the tax payer/s and instant credit thereof is granted as soon as the payment is cleared through respective bank.

The law provides that GSTN (GST Network, which is presently managing IT network) maintains three types of ledgers (or registers), for each tax payer, (1) Liability Register – wherein tax payable on supplies made by the tax payer is recorded (as per periodic data related to supplies uploaded by the tax payer) (2) Credit Ledger – In which credit of ITC and utilisation thereof is recorded and (3) Cash Register – wherein all payments made by the tax payer (through bank challan) and utilisation thereof is recorded. All these ledgers/registers are instantly updated and available for viewing by the tax payer. To avoid most of the common mistakes, in preparation of challan for payment of taxes, a system has been developed whereby a payment challan has to be created through IT network of GST portal. The system has provided great relief to the tax payers, bankers as well as the Government Departments.

### **GST IT STRATEGY:**

The GSTN has been assigned the role of facing taxpayers and these among other things include filing of registration application, filing of return, creation of challan for tax payment, settlement of IGST payment (like a clearing house), generation of business intelligence and analytics. All statutory functions to be performed by tax officials under GST like approval of registration, assessment, audit, appeal, enforcement *etc.* remains with the respective tax departments.

Thus, GSTN has the main responsibility of providing a robust IT infrastructure and related services to the Central and State Governments, taxpayers and other stakeholders, by integrating the common GST portal and connecting it to the existing tax administration IT systems. The common GST Portal developed by GSTN is functioning as the front-end of the overall GST IT eco-system. The back end operations are being looked after by the IT systems of CBEC (Central Board of Excise and Customs) and State Tax Departments.

Under GST, the registration of taxpayers is common under Central and State GST and hence, one place of filing application for the same i.e. the Common GST portal. The application so received is being checked for its completeness by the GST portal, which will also carry out validation of data like PAN from CBDT, CIN/DIN from MCA and Aadhaar of promoters, if provided, from UIDAI. After completion of validation, the registration application thereafter is shared with respective central and state tax authorities. Query of tax authorities, if any, and their final decision is communicated to GST portal which in turn communicates the same to the taxpayer.

The Common GST Portal, as explained in brief above, is the single interface for all taxpayers from any part of the country. Only in case where a taxpayer is picked up for scrutiny or audit, and such cases are expected to be small in number, he will interface with the respective tax authority issuing the notice under the Act. For all other cases, which is expected to be around 95%, the Common GST Portal will be the only taxpayer interface.

As far as filing of returns is concerned, under GST there is one common return for CGST, SGST and IGST, eliminating the need to file separate tax returns with Central and state GST authorities. Checking of claim of Input Tax Credit (ITC) is one of the fundamental pillars of GST, for which data of Business to Business (B2B) invoices have to be uploaded and matched. The Common GST Portal created and managed by GSTN will do this matching on the basis of invoice level data filed as part of return by all taxpayers. Similar exercise will be done for inter-state supplies where goods or services will move from the state of origin to the state of consumption and so will the taxes. The claim of IGST and its utilisation will be settled based on returns filed at the Common GST portal.

Although, there may have been initial hiccups due to various reasons, but learning from past, adopting appropriate strategies, and constant improvement thereof is the key to success. The fact remains that the IT network of GSTN, CBEC and that of respective State Governments, together, are rendering plausible services to all stake holders in the implementation of GST in our country.

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## COUNTERVIEW: TECHNOLOGY CANNOT OVERRIDE THE PROVISIONS OF LAW

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One of the important features of GST structure, adopted by the policy makers, is the IT network which is the backbone for almost all the processes like registration, return filing, tax payment, etc. On the face of it, it promises minimal human intervention, giving the hope of a robust transparent system which should have been welcomed by all the stakeholders. After passing of more than 10 months, the said hope has belied the expectations and there have been a lot of hue and cry across the country about helplessness of the taxpayers in handling the situation arising out of glitches or non-functioning of the IT network.

Under the authority of section 146 of the CGST Act, the Central Government has notified vide Notification no. 4/2017- Central Tax, www.gst.gov.in, as the website managed by Goods and Service Tax Network (GSTN).

While operating the GSTN, the taxpayers have faced many situations whereunder, they could not upload the information in the returns or even file the returns or applications. Some of the illustrations are the following:

1) In many cases TRAN-1 return was not uploaded even after it was 'submitted'. It has resulted in either not carrying forward the ITC balance available with the taxpayer to the GST regime or mismatch between GSTR-3B and electronic credit ledger. It also led to inability to file returns for subsequent months. Exporters could not get refunds because of non-filing of returns.

2) In the case of sale of imported bonded goods, the CBIC has clarified vide Circular No. 46/2017- Customs treating the said transaction liable to payment of IGST irrespective of location of buyer (place of supply). Whenever sale was made to customer within the same State, the said transactions were not accepted by GSTN for payment of IGST as the system was classifying those transactions as intra-state transaction liable to payment of CGST & SGST. The system was behaving against the provisions of law. In future, GST Officer may allege payment of wrong taxes and even wrong availment of credit by the buyers.

3) On introduction of GST, all the existing taxpayers were migrated to GST. A large number of them had stopped the

business or decided to close the business, but the GST portal did not have facility for cancellation of registration till November 2017. This has led to imposition of penalties for non-filing of returns. In one of the States, the GST officers have issued the best judgement assessment orders u/s. 62 treating the cases of non-filers and huge demands have been raised against them because the system was not accepting their cancellation application and there is no provision in the law to file manual applications.

4) Section 170 of the CGST Act requires rounding off the tax payable amount. On the other hand, online GSTR-1 facility which calculates the tax payable amount automatically does not round off the tax payment. It led to mismatch between GSTR-3B and GSTR-1 return resulting in non-payment of refund to exporters.

There are many such instances where GSTN portal was not supporting what the GST law has provided for. The question, therefore, is whether GSTN portal can override the provisions of law, thus taxpayers be made liable to suffer financial hardship and penal consequences. The answer is definitely a big NO. Let us analyse this with legal reasoning.

Section 146 and the Notification issued there under provides that, an electronic portal would be notified by the Government for "facilitating" the processes like registration, payment of tax, return filing and for carrying out functions and purposes under the GST law. The existence of GSTN is only for facilitating the functions and purposes of the GST law. Therefore, GSTN or the technology, which is subservient to the law, can never override the provisions of law.

Even though, to our knowledge, there is no judicial precedent available on the issue as to whether technology would prevail over law or *vice versa*, but the courts have consistently held that in the absence of any machinery provision to implement a provision of law, the substantive law itself fails because of being incapable of implementation.

The Supreme Court has in the case of **B. C. Srinavasa Shetty [1981 AIR 972]**, while examining whether there arises capital gains liability on goodwill of a new business, held that there cannot be a levy of tax without existence of a machinery computation provision. A similar view has also been taken by the High Court of Orissa in the case of **Larsen and Toubro Limited [2008 12 VST 31 (Orissa)]**, which was later affirmed by the Supreme Court, wherein while examining whether without a specific provision allowing

reduction of the value of land from the value of service, levy of tax on sale of under construction flats by a builder is valid, the Court has held that charging provisions as well as the machinery for its computation has to be provided in the Statute or the rules framed under the Statute. The Act is unworkable in the absence of necessary rules.

The Supreme Court in the case of **Govind Saran Ganga Saran (1985) 155 ITR 144**, while examining the validity of CST levy on cotton yarn where the law omitted to prescribe the single point at which the levy could be imposed, observed that:

*“The components which enter into the concept of a tax are well known. The **first** is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the **second** is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the **third** is the rate at which the tax is imposed, and the **fourth** is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.”(emphasis supplied)*

If we adopt the reasoning given by the courts, it is crystal clear that if the law provides for certain responsibility to be fulfilled by a taxpayer through a mechanism to be put in place by Government or any other authority, the failure to provide such mechanism will absolve the taxpayer from his responsibility and the consequence thereof. The reason for such views taken by the courts is that in the absence of any mechanism or facility which was to be provided by law, the taxpayer cannot be made to suffer. In the case of GST, the non-availability of certain facilities in the GST portal or inability of GSTN to permit entering of certain details or filing of return cannot make the taxpayer to suffer its consequences. The judicial pronouncements discussed above would definitely support this view.

Because of various glitches in the GSTN portal, a number of taxpayers have approached High Courts. The courts, including Allahabad High Court (Continental Pvt. Ltd. and others) and Bombay High Court (Abicore and Binjel Techno Weld Pvt. Ltd. and others), have provided relief by allowing them to file manual TRAN-1 return or to extend the deadline for filing of return/s.

The fact that technology cannot override the provisions of law has also been admitted by the Government vide **CBIC (Central Board of Indirect Taxes and Customs) Circular No. 39/13/2018-GST**, wherein an IT-Grievance Redressal Mechanism has been put in place to redress the grievances raised by taxpayers with regards to the failure to filing a return or form within the time limit prescribed in the law due to IT related glitches. Para 5.2 of the said Circular clearly states that the application for redressal has to be made for those glitches due to which the due process as envisaged in the law could not be completed on the Common Portal. The circular has also empowered the said committee to provide relief for past cases.

It is, therefore, quite clear that GSTN is merely an infrastructural tool which would assist and facilitate the compliances to be done by a taxpayer and it cannot override the provisions of the law.

I do realise that there are possibilities of IT related glitches when a tax reform of this magnitude for a vast country like India is introduced. It has happened in the past while implementation of VAT in many States who also adopted technology based systems.

But, what is disheartening is that Government has taken considerable period of time to come out with redressal mechanism. Moreover, the mechanism is very restrictive and many of genuine grievances presented before the committee may be rejected on the grounds that a problem relates to individual taxpayer and not large section of taxpayer or it does not pertain to non-filing of return.

The Government should have allowed all types of cases to be presented before the said committee with an assurance that a time-bound solution would be provided. Alternatively, taxpayer may be allowed to file manual returns or documents in order to help him in claiming refund or allowing the credit to the buyer.

In fact, making an omnibus provision in the GST law that no penal action including interest liability would arise against any taxpayer or his customer due to non-filing or wrong filing of returns etc. on account of IT glitches, Government should keep in mind that handholding of taxpayers at the initial stage of GST reform is one of their prime responsibilities. ■