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An Analysis on Specific Emerging GST Issues Due to Covid-19

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Abstract

The sudden outbreak of Covid-19 pandemic across the world makes our life standstill. Life has become very tough. People stated working remotely from their home. Government have prevented workers for working and consumers from spending, other than on essentials. This slow-down in economy is unavoidable and brought about by a public health emergency. Production of most goods and delivery are plummeting since workers are staying away from work. Many service tasks can be done remotely but most production of goods requires social proximity. In the short-run, companies may have inventories to meet the demand for their goods. But in long-run, prices could rise when stock and inventories run low. Due to lockdown there was drastic decline in GST collections as most of business establishment were shut down. The Union Finance Minister Smt. Nirmala Sitharaman immediately stepped in and announced some major stimulus to ease the compliance burden of the tax payers. Interestingly, the Hon'ble Supreme Court of India also suo moto decided to remain everything standstill until further notice. Any notice, any appeal or any compliance to be done will remain standstill. As per Article 141, the decision of the Supreme Court is supreme in the country. So, due to the outbreak of Covid-19 various issues related to GST has emerged. To address these issues the government undertook some preventive measures like the extension of time limits of various compliances, waiver of late fees levied on delay in filing return, relaxation on availing ITC on invoices not uploaded by vendors etc. The present study is an attempt to identify and analyze the emerging GST issues due to Covid-19 pandemic.

KEYWORDS: GST, Covid-19, businesses, Emerging issues, Government initiatives.

Introduction

A historic midnight session brought into existence one of India's most anticipated tax reform since independence. Goods and Services Tax popularly known as GST finally become a reality in our country on July 1, 2017. Goods and Services Tax came to the promise to change the decade old landscape of taxes in the country. The tax that took decades in the making was first proposed in the year 2000. Since 2000 there was lot of discussion and deliberation for the implementation of GST in our Country. In 2000, our former Prime Minister Shri Atal Bihari Vajpayee set up an empowered committee under the chairmanship of Asim Dasgupta, who was then Finance Minister of West Bengal to draft GST model for the country. In 2004, the Kelkar task force concludes GST must be implemented to improve the current tax structure. While presenting the Central Budget of 2007-08, Union Finance Minister Shri

P. Chidambaram in budget speech announced that GST would be introduced from April 1, 2010. In 2014 the talks of ushering in GST gained momentum when the Constitution (122nd Amendment) Bill was introduced in the Lok Sabha by the then NDA Government on 19th April, 2014 and passed on May 6, 2015. However, GST Bill was delayed to pass in the Rajya Sabha until August 3, 2016. Finally, the Constitution (101st Amendment) Act was enacted after receiving assent of the Hon'ble President of India on September 8, 2016, which paved the way for introduction of GST in India. Finally, it took seventeen years and was welcomed as Goods and Simple Tax that would assure 'One Nation, One Tax'. But four year later have these promises been kept is the big question. The GST has 1269 items divided under 4 key tax slabs i.e., 5%, 12%, 18% and 28%. Additionally, there are zero rated commodities and different rates for gold and semi-precious stones. Nearly 70%-80% tax on goods and services falls under 12% and 18% slabs where bulk of GST comes from. GST accounts for 35% of Centre's gross tax revenue and 44% of revenue pool for states. Items like fuel and alcohol are still excluded from the GST. Before GST each state has different form and processes for tax payers. GST brought in a uniform process of reducing the total number of forms to 12 from 495 (Source: CBIC). According to Ministry of Finance report 2021, total number of more than 1269 crore invoices have been uploaded, more than 19 Crore payment transaction were made and return worth 67.71 crore filed by1.28 crore registered tax payers in the past four years. But beyond the number, has GST simplified the lives of ordinary Indian? While GST has managed to ease the compliance burden, digitize the filing and return processes and increased predictability for tax payers, but many issues are still remain pending. States that are to be compensated for loss of revenue for 5 years often complain of being short reached and want an extension in compensation. The GST Council has recently become a battle ground for disagreement between the ruling and opposition parties. While revenue have been steadily increasing. They were nowhere close to what was expected in past due to economic slowdown followed by the pandemic. Different tax slabs and additional cesses to boost revenue mean the dream of One Nation, One Tax is still far away. Despite this hurdle, GST has definitely ease the complex system to some degree. Like other landmark reform, GST is still under progress after 4 years of its implementation.

Research Methodology

Being a reliable research it relies upon secondary data of journals, articles, every day newspapers, weekly magazines and through various online sources.

Objectives of the Study

- To overlook the emergence of the major GST issues due to Covid-19 on business establishment.
- To analysis the impact of these issues on business establishment.
- To examine the steps taken by the Government to tackle these issues.

Review of Literature

In this study various literatures under the categories of Committee Reports, Research Papers, Research Articles, decisions taken in GST council meeting are analyzed and identified various variables that affects business community on the sudden occurrence of global pandemic.

In the paper titled, **"Emerging GST issues due to Covid-19 and its impact on the Indian Business"** the authors **Areeb Ahsan et al.** intended to bring a perspective of the present and future scenario of the Indian economy as a response to Covid-19 crisis. The outbreak of Covid-19 has created unprecedented economic crisis. The shutdown of business activity during the lockdown ordered by the Government for the prevention of the pandemic have collapse many business activities and operations. The authors also highlighted several relief measures taken by the Government i.e., relaxations in terms of interest of late fees and penalties, extension of time etc. to the business units.

Jagdish Sheth in his paper titled, **"Impact of COVID-19 on Consumer Behaviour: Will the Old Habits Return or Die?'** explores how the current pandemic has affected several aspects of consumers' lives, ranging from personal mobility to retail shopping, attendance at major life events etc. The author tried to investigate consumer behaviour on various perspective like social context, technology, coworking spaces and natural disaster. Additionally, he foresees effects of the pandemic on consumer behaviour and consumption. Food hoarding is prevalent during the outbreak of COVID-19 pandemic. Moreover, due to lockdown, online shopping including grocery shopping has become more prevalent. The author concludes that most consumer's habits will return to normal, while some habits may die due to adaptation to the new norm.

The authors of the article "**Competing during a Pandemic? Retailers Ups and Downs during the COVID-19 Outbreak" Eneonora et al.** note that retailers who were unable to adapt the consequences of COVID-19 are currently facing an existential crisis. The authors also suggested some strategies to minimize current and future business impact. First, they must understand about the operation of stakeholders and thereby interact to reduce response time and optimize communication channels. Second, prioritizing critical business activities and creating contingency plans for disruption. Third, understanding of their financial need.

Fourth, devise and implement protection plans for consumers and employees. To sum up, retailers need to improve their customer management system by building better relationship with the customer and assisting them.

In the article **"Effect of Covid-19 on Economy in India: Some Reflections for Policy and Programme"** the authors **Monika et al.** tried to examine sectoral implications of Covid-19 Pandemic in India. The study focuses on assessing the impact on affected sectors, such as aviation, tourism, retails, MSMEs and, oil. While the unprecedented outbreak of Covid-19 pandemic caused a great damage to the economy especially during the periods of lockdown, the nation will have to overcome it by strict preventive measures. According to the authors, the risk of a global recession due to Covid-19 in 2020 and 2021 would be extremely high, as it has been observed across the globe that the shutdown of all economic activities – production, consumption and trade – to control the spread of Covid-19 is imminent. However, every crisis teach us a lesson to rethink and the Covid-19 pandemic has a clear message for the Indian economy to adopt sustainable development models, which are based on self- reliance, inclusive frameworks and are environment friendly.

Emerging GST Issues Due to Civid-19

We all know that inflow of tax revenue is very important for the economy. In any crisis situation like Covid-19, taxation plays a vital role by helping to sustain universal access to basic goods and services. As the Coronavirus infection is spreading and risking the life of people globally, it has also created deep economic distress. As some businesses are struggling to stay on float, most Indian Companies will see their revenue and profits getting impacted amid the Covid-19 pandemic. But the impact will be different across sectors as the country eases lockdown in some parts of the country. Even with the sufficient stimulus package if only partial uplifting of lockdown is done till mid-May 2021. It would put 30 million jobs at risk in India. As per report of McKinsey & Co, cost of stabilizing and protecting household, companies and lenders could exceed $ 130 billion dollars. In case of second wave or more wave impact will be even deeper. Among all sectors, aviation is badly affected, while pharma & IT companies are at the better position. But this aviation slump has a direct impact on the Indian IT Co and could mean 1% - 7% drop in revenues in the company in the last quarters, as per experts. Hotel Industries has seen a major disruption after the aviation sector. As per PTI report, hotel industry revenue is likely to fall by Rs 90,000 crore in 2020 due to Covid-19 impact. Auto and advanced industries will be next in line with not near-term relief to the sector. For the first time ever, India set to report zero automotive sales in April 2021 and sector is unlikely to have a respite anytime soon. Other businesses which had a major hit are construction, real estate and textile industries. The Food and utility sector is estimated to have a fall in consumption of around 10% if current scenario is plays out. The consumer and retail segments are anticipated to be soft. But comparatively, pharmaceutical, IT and telecommunication are relatively strong sector. As the lockdown has shown us some unprecedented challenges, the pharma sector is better placed to navigate coronavirus outbreak. As per McKinsey & Co report, 25% of MSME and SME loans can turn bad, whereas corporate might see a 6% default rate and around 3% default rate in the retail segment. Following will be causes of concern after pandemic is over, namely, unemployment, liquidity risk and business risk. In addition to the announcement of Stimulus package, McKinsey suggested a large stabilization package to contain the problem of a magnitude like this.

Some of the major emerging issues which are being faced by the businesses due to Covid-19 pandemic are highlighted below:

- *ITC on invoices not uploaded by vendors*: What would happen if a vendor not able to upload invoices? Suppose, a vendor has not filed GSTR-1 and obviously due to this, his recipient while checking will not find GSTR-2A. In such case, Government provides relaxation under Amendment in Rule 36(4) by insighting a proviso. Now, provision need to be checked whether vendor will be able to avail the benefit of ITC if he fails to upload the invoice/invoices due to pandemic. Even if he get the benefit, what are possible way to avail ITC under GSTR-3B?
- *Refund/Adjustment of GST already paid on discounts and on bad debts:* Suppose, any recipient due to financial difficulties unable to make payment, then the recipient either need to offer discounts by his supplier to receive timely payment or the supplier may not receive any amount due to the financial hardship faced by the recipient. The second case would be treated as 'bad debts'. Under such circumstances the question arise, what would be the treatment if the supplier has already paid taxes? Will it be refunded or it would be adjusted with future liability?
- *ITC implications if goods are destroyed/disposed off:* The third issue is related to implications of ITC if goods are destroyed due to epidemic. Suppose, a registered person has purchased raw material and taken the ITC, but the final/finished products has been destroyed or disposed off due to expiry as a result of pandemic. Now, what would happen to ITC?
- *Eligibility of ITC on mask and sanitizers:* Due to Covid-19 pandemic, MHA has issued guidelines for all business establishments. According to the guidelines, it is mandatory for all businesses to provide the adequate stock of mask and sanitizers. The registered person has to buy masks and sanitizers along with he needs to pay GST on purchasing masks and sanitizers. So, whether the registered person is eligible for ITC.

Analysis and Interpretation on These Emerging Issues

1. ITC on Invoices Not Uploaded by Vendors – Amendment in Rule 36 (4)

The sudden outbreak of Covid-19 become a tough time for the Government and the industry. Considering the outbreak of Covid-19 pandemic, the Government provides various relaxation under GST laws. The due date of filing GSTR-1 has been extended. The Government has waived the late fine leviable under section 47 for delay in furnishing the statement of outward supplies in FORM GSTR-1. As per Rule 36

(4) if a vendor fails to upload tax invoice or debit notes and which automatically get populated in GSTR-2A, then the recipient in respect to that invoice would be able to avail credit to a maximum of 10 percent. This 10 percent is calculated on the total eligible ITC on invoice appearing in GSTR-2A and not 10 percent on the invoice issued by the supplier. The calculation of input tax credit (ITC) is shown with the help of a table below:

Table 1

Calculation of Input Tax Credit (ITC)	
Invoices appearing in GSTR-1	100% of eligible ITC
Invoice not appearing in GSTR-2A	10% on above*
ITC on other transactions i.e., import of goods	100% of eligible ITC

**Subject to maximum ITC otherwise eligible*

Considering the Covid-19 outbreak, the Government has inserted proviso in Rule 36 (4) which states that a recipient can claim credit on invoices cumulatively for not being uploaded for the period from February, 2020 to August, 2020 and the return in Form GSTR-3B for tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said month in accordance with the condition above. Therefore, the registered dealers need to apply the condition cumulatively for the period February – August, 2020 and cumulative adjustment of these period would be required to be done in the month of September, 2020 by the recipient.

However, these conditions give rise to several questions in the mind of business community. First, how to claim ITC on invoices of February to August, 2020? Second, whether full ITC can be availed on invoices pertaining to period October, 2019 to April, 2020 on which no ITC was previously availed? Third, whether remaining ITC can be claimed in any of the subsequent months GSTR-3B's where partial ITC (10/20) % was availed previously as per Rule 36 (4)?

The answer to these following questions can be interpreted with the help of illustration given

below:

Table 2

Invoice Dated	Whether Benefit of 10/20% was Availed?	Availability of ITC	Interest Implications if Invoice are not Uploaded by Supplier
From February 2020 to August 2020	NA	100% ITC can be claimed in the respective months or subsequent months	NA
From 9th Oct, 2019 to 31st Jan, 2020	No	100% ITC can be claimed in any of the tax periods if vendors upload invoice by 31st August, 2020	Interest may not be levied if ITC is reversed in GSTR-3B of September 2020
From 9th Oct, 2019 to 31st Jan, 2020	Yes	Remaining ITC can be claimed in the any of the tax periods if vendor upload invoice by 31st August, 2020	Interest may be levied.

The main aim of introducing Rule 36 (4) of CGST Rules, 2017 on 9th October, 2019 is to restrict the availment of ITC by the recipient in respect of invoices/debit notes for not been able to upload the details of invoices/debit notes. However, owing to Covid-19 pandemic, the Government decided to provide some relaxation with effect from 3rd April, 2020. Accordingly, the proviso of Rule 36 (4) clearly states that a recipient need to apply Rule 36 (4) on cumulative basis and thereby he can claim 100 percent ITC irrespective of any period between February, 2020 and August, 2020. In another case, if a supplier issued invoice from 9th October, 2019 to 31st January, 2020, there may be two interpretation. Firstly, if a recipient did not avail any benefit of 10/20%, then he could claim 100% ITC in any of the tax periods provided invoices are uploaded by 31st August, 2020. On the other hand, if a recipient avail the benefit 10/20%, then remaining ITC can be claimed in any of the tax period provided invoices are uploaded by 31st August, 2020.

Let us illustrate the new insertion with the help of an example. Assuming a case prior to the provision of relaxation under Rule 36 (4) that an assesse has total input tax credit (ITC) of Rs 1,500 of which Rs 1,000 is reflected in GSTR-2A and Rs 500 remains un-reflected, the total input tax credit can be availed is Rs 1200 i.e. Rs 1,000 + Rs 200 (20% of 1,000). Thus, input tax credit of Rs 300 out of Rs 500 which remained un-reflected cannot be claimed.

Refund/Adjustment of GST Already Paid on Discounts and Bad Debts Treatment in case of Discounts

Due to Covid-19 pandemic businesses have faced financial difficulty and due to such difficulty the business community might have faced two issues, viz.

- GST treatment where discount is given for timely payment.
- GST treatment where consideration is not received.

Firstly, a recipient is not in a position to pay the value of supply to a supplier and thereby a supplier allow discount for timely payment of consideration. Secondly, due to financial hardship the recipient denied the payment and consideration is not realized. In both the scenario, supplier paid GST.

Section 15(3) of the CGST Act deals with the legal provision related to treatment of discount and bad debts. According to this section if discount is given before or at the time of supply and if such discount has been duly received in the invoice issued in respect of such supply, then such discount is excluded from value of supply. Even in case of post supply no adjustment would be made on the value of supply if discount is allowed after the supply has been effected without pre-agreement.

GST, in general, is payable on transaction value viz, the price paid or payable for the supply of goods or services. So, deduction of post supply discount is available where it is established in term of an agreements entered into at or before the time of such supply. However, deduction made on account of deficiency in supply of services or non-supply of goods as desired by recipient is not equivalent to discount. In this case, Credit Note under Section 34 of the CGST Act can be issued and GST already paid can be adjusted against the tax liability.

Treatment of Bad Debts

Before going for analysing the treatment of bad debts let us clear about the meaning of 'bad debts'. Here, 'bad debts' refers to that debts which proved to be irrecoverable or debtors is in bad financial position to pay off his debts. No ray of hope to receive any amount from debtor.

As discussed, GST, in general is required to be paid on transactional value, which is the price paid or payable for the supply of goods or services. The provisions are silent on specifying the point of time at which, this value should be referred. So the question is: 'Does this mean that the amount which is not recoverable at a later date will not form the part of the value of supply? One may argue that as valuation provisions are silent, the transaction value on which GST is levied can referred at any point of time. Thus, amount not recovered by recipient shall not form part of the value of supply. However, this view is not correct as our considered view, the value should be taken at the time of supply because of the following reasons:

- By combined reading of provisions of meaning of supply, levy of tax, time of supply value of supply, etc., under CGST Act, it can be interpreted that the value of supply is to be computed when the event becomes taxable i.e., at the time of supply.
- If the intention of the law is to allow determination on the value of supply at any point of time, it wouldn't make any special provisions of treatment of discount under GST.
- The value of supply is transaction value, which is, price paid or payable for such supply. In case bad debts, the amount is actually payable but it is not just realized.
- Therefore, benefits of refund/adjustment of GST paid bad debt would not be available to the supplier.

ITC Implications If Goods are Destroyed/Disposed Off

Practically owing to Covid-19 and prolonged lockdown as notified by the Government many goods in the industry are found destroyed. These goods may be perishable goods like beverages, juices etc. that needs to be destroyed due to expiry period. From a trader point of view, he would purchase goods and would sell them. He would trade goods within his stock. Whereas, from a manufacturer point of view, he would have either raw materials as well as finished goods within his stock. The important question arise in this regard is 'Would there be any requirement to revert credit in the GST?' Section 16 of the CGST Act deals with legal provisions related to input tax credit (ITC) in respect of goods or services which are used in the course or in the furtherance of business. Simultaneously, Section 17(5) prescribes list of few goods or services on which a recipient would not be entitled to take any credit. Further, according to Section 17 which deals with apportionment of credit and blocked credits states that anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, input tax credit (ITC) shall not be available in respect of following, namely: goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. However, the situation seems interesting in case of finished goods to know whether under GST regime input tax credit (ITC) is available in respect of finished goods or inward supply. It is interesting because eligibility of claiming ITC and its conditions are linked to the inward supply. Should applicability of Section 17(5) not to be limited to ITC taken on the very goods (i.e. raw materials) lost or destroyed? For getting answer to this question one need to understand the meaning of expression 'in respect of' used in Section 17(5) of CGST Act. In Indian tax laws the expression 'in respect of' is a synonymous of expression 'on'. Given the above, one must read Section 17(5) as input tax credit (ITC) on goods destroyed. As ITC is not available on finished goods but on inward supply, therefore, its scope should not be extended to finished goods.

Eligibility on ITC on Masks and Sanitizers

The Ministry of Home affairs under the Government of India have mandated compulsory wearing of face cover in work places and availability of hand wash/sanitizer at entry, exit and common areas. The business entity in order to resume operations would purchase face mark and sanitizers. In order to purchase face masks and sanitizer a registered dealer would require to pay GST. Now, question arise whether GST paid on face masks and hand sanitizer for employees will be eligible for ITC under GST or not. Basically, section 16 and Section 17(5) of CGST Act explained the legal provisions of ITC. As per Section 16 of CGST Act a registered person can claim ITC of GST paid on inward supply of goods or services that are used or intended to be used by him in the course of furtherance of business. On the other hand, Section 17(5) of CGST Act ITC shall not be available in respect of goods or services or both used for personal consumption. However, expression in the course of furtherance of business is not defined under the CGST Act. It should be read or followed as the way the business is conducted.

It may be noted that masks and sanitizer are purchased to look after the health of employees so that business can operate smoothly. So, as per MHA guidelines, wearing masks and having sanitizer at work place is mandatory which itself indicates that for operating business it would be required to be purchased. Thereby, it qualify Section 16 as goods (i.e., masks and sanitizers) are purchased for the furtherance of business. Again, it would be interesting to know whether purchases of masks and sanitizer will be treated as personal consumption as per Section 17(5) (g) of CGST Act or not. There is a difference between 'personal expenses' and 'personal consumption'. Here, it is not personal expenses as goods (i.e., masks and sanitizer) are proved to be purchased for the furtherance of business as per section 16 of CGST Act. Also, the term 'personal consumption' has not defined under GST Act. However, under the erstwhile regime Cenvat Credit Rules, 2004 the similar terminology has been used where expenses incurred for employee at large in the organisation cannot be referred as personal consumption. Hence, ITC on purchases on face masks and sanitizer can be said to be available.

Conclusion

This study tried to understand and identify some of the specific emerging issues occurred due to the sudden outbreak of Covid-19 pandemic. The Covid-19 pandemic has probably been one of the biggest global health disasters that we have lived through in our lifetimes. Not just global pandemic, it has had deep economic repercussions and has triggered perhaps a deep economic crisis as well. Businesses were hard hit from the smaller traders that from the backbone of the economy to modern giants nearly bankrupted, like retailer future group. In view of Covid-19 outbreak, Union Finance Minister through press release announced several relief measures to Statutory and Regulatory compliance matter across sectors. In order to combat the various GST issues emerged due to pandemic, the Government of India provided a big relief to the suppliers, as the ITC for the month of February 2020

– August 2020 could be availed as per books of accounts. The Central Board of Indirect Taxes & Customs (CBIC) has also reduced the late filing fees up to a maximum of Rs 500 if the return is filed within September 2020. However, the interest on delayed payments of tax is not waived off for large tax payers. A complete waiver of interest is also required considering the fact that most of the businesses are only working with less than half of their regular capacities and other hardships faced by the businesses. Recently, the CBIC through its notification (NN 8/2021 – 14/2021) dated 1st May, 2021 announced relaxation in GST for different classes of taxpayers due to Covid-19. The main objectives of these relaxation are:

- Relaxation on interest on delay payment of tax
- Relaxation in Late Fee on GSTR-3B
- Relaxation in filing Annual return for composite supplier (GSTR 4)
- Relaxation in filing GST ITC 04 – Job worker
- Relaxation in GSTR-1 filing
- CGST Amendment (3rd) Rules, 2021
- Relaxation in time limit for completion or compliance of any action.

The Government of India from time to time is examining proposals seeking relief to businesses through extension of compliance timeline and other issues related to GST. While India facing the biggest Covid crisis so far, the government has received multiple industry representations, including from micro, small and medium enterprises, wanting a breather of up to three months. The Government also assured to address the genuine concern that businesses are facing in an appropriate manner. Let us see and hope that the Government could able to minimise the prevailing issues that business community is facing now-a-days due to Covid-19 and move towards normalcy.

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