

GST ISSUES AND THE NEED FOR REFORMS!!MEANINGFUL GST AMNESTY,HIGHLY NECESSARY – CA SUDHIR HALAKHANDI



I have been studying GST for many years, and I have had direct involvement with taxpayers' issues. At the present a detailed study addressing the various problems and difficulties arising under GST, and the need for improvement in this tax system. Before I proceed, I would like to mention that some of the issues with GST are such that the dealer against whom the demand is raised has only made a technical mistake, without any evidence of tax evasion. As this was a new tax, mistakes were bound to happen. Therefore, the government should introduce a simple amnesty scheme to prevent such dealers from paying double tax or heavy penalties. Let us discuss the main issues.

– Sudhir Halakhandi

1.Blocking of ITC when the Seller does not file Returns or is Declared Fake or Non-existent:

Issue: When the seller does not file returns or is declared fake or non-existent, the buyer's ITC gets blocked, causing inconvenience and financial loss in the business. The amount in the buyer's ledger is debited due to the seller's mistake, while the recovery should be made from the seller. Interference in the ITC ledger without notice should be stopped, and the straightforward process should be that recovery is made from the seller. Only in cases where the buyer is involved in collusion should the buyer be penalized. There is no other way for the buyer to ensure their input credit is safe. Often, it is said that one should not deal with bogus sellers, but the Government should specify how to identify bogus sellers or provide a list of bogus dealers. One might say how the Government would know in

advance, so then please explain how an ordinary buyer would know. This is very serious problem and need immediate attention.

2.Loss of ITC if the Seller Files Returns Late:

Issue: If the seller's return is not filed on time, the buyer faces the loss of one month's ITC, which is unfair and disrupts business. The buyer does not have the authority over the seller to ensure timely tax payment, but the Government does. Therefore, the Government should exercise its authority to recover the tax from the seller, but what is the fault of the buyer in this delay of filing the return and payment of tax? Thus, the buyer should be given a specified time to rectify the mismatch, and if the seller still does not deposit the tax, then recovery should be made from the seller.

3.Penalty for Minor Mistakes in E-way Bill:

Issue: Heavy penalties are imposed for minor mistakes in the E-way bill, which is a significant problem for Taxpayers. This provision should be made flexible so that minor mistakes do not attract penalties. When E-way bills are checked, the dealer has no means to obtain legal advice, and the vehicle driver is their sole representative who does not understand these issues. The Government should catch tax evaders, which is appropriate, but penalties for minor mistakes are not suitable for industry and trade.

4.Double Taxation for Non-payment of RCM:

Issue: If a trader fails to pay RCM on time, they end up paying double tax as they do not get credit for it later. RCM itself is a complex provision causing significant difficulties for taxpayers. This provision should be simplified. The initial provision for RCM under GST was considered impractical and a large part was removed, but what remains is still problematic. If a dealer has not paid it, they do not get credit for it, and now if recovery is being made, it is double taxation with interest and penalties.

5.Increase in Number of Notices:

Issue: Traders face an increasing number of notices under GST, creating obstacles in doing business. The system was claimed to be non-intrusive, but it currently involves more intervention than the previous tax system. The number of notices under GST is much higher than in the previous indirect tax system, indicating flaws in the system that need to be addressed. Most notices are related to input credit, and the biggest flaw is that there is no provision for the buyer to inform the department from whom they purchased goods. This tax is based only on the seller's information, and if the seller makes a mistake or evades tax, the buyer is held responsible, which is the biggest flaw of this tax system.

6. Inability to Amend GSTR-3B:

Issue: GSTR-3B is a crucial return under GST, but there is no provision to amend it after filing, leading to errors and many notices. The biggest question is, after almost seven years of GST implementation, why can't GSTR-3B be revised? This is a procedural flaw in implementing GST in our country.

7.Annual Return for Composition Dealers:

Issue: The deadline for composition dealers to file their annual return is April 30, which is very early,

while regular dealers get nine months. Moreover, there is no rationale for asking for the details of purchases from composition dealers. Composition dealers were considered incapable of complying with GST's complex procedures, so how can they prepare and file their annual return within a month, including purchase details? The Government should deal with this problem sympathetically and give the composition dealers at least 9 Months' time which is available to the regular dealers at present. .

8.New Registration Process:

Issue: The new registration process is complicated, involving physical verification of business premises in every case, with different processes in different places. The utility of 100% physical verification is questionable. Risk assessment should determine which dealers require physical verification; otherwise, the process is impractical. A standard operating procedure (SOP) for registration should be issued. Is it the government's decision that 100% of cases require physical verification of business premises? If so, the Government should clarify, and if not, a circular should be issued to remove any confusion and address any procedural flaws.

9.Loss of ITC under Section 16(4):

Issue: If the return is filed late under Section 16(4), ITC is not available, nor can it be passed on to the buyer, even though the tax has been paid to the Government. This provision causes financial loss to traders and it is absolutely unfair. The Government receives the full tax, but due to non-availability of ITC, it becomes double taxation for industry and trade. Additionally, the Government charges interest and penalties for late returns and tax payments. This provision of restricting ITC is not justified.

Although the Government intends to maintain discipline by implementing such laws, which is very important, mistakes can occur in adhering to such deadlines in a new tax system. Therefore, an amnesty scheme should be introduced for initial years to address ITC-related issues for buyers and sellers.

10. Reduction in the Number of Tax Rates:

Issue: Currently, GST has multiple tax rates like 3%, 6%, 5%, 12%, 28%, making it complex for traders. The number of tax rates should be reduced and simplified to provide ease to traders and make the tax system more transparent and straightforward. One nation, one tax is fine, but the tax rates should also be limited. When GST revenue is continuously increasing, why delay the adjustment in tax rates? Tax Payers and Public have high expectations from the Government in this regard.

11. ITC on Passenger Vehicles:

Issue: Traders cannot avail ITC on scooters, motorcycles, and cars, which are essential for many businesses, especially two-wheelers. There is no rationale for blocking ITC on these vehicles. A comprehensive study should be conducted to restore ITC on these vehicles with some conditions. Initially, this unreasonable restriction might have been imposed based on some notion, but it should be lifted now that GST revenue has stabilized.

12.High Tax Rates on Cement and Two-wheelers:

Issue: The tax rate on cement and two-wheelers is 28%. Are these items considered luxury Goods? A

study should be conducted to reduce the tax rate on these items to provide relief to both traders and consumers. These items are commonly used by the General public.

13.Target-based GST:

Issue: States set their GST targets and conduct surveys to meet these targets, often resulting in arbitrary demands. This practice is impractical. When the Government's tax revenue is increasing on its own, artificially collected tax can pose a future threat to the country's trade. This trend should be stopped.

14.Fair Treatment by GST Officers:

Issue: GST officers should be trained to treat taxpayers fairly and follow the law. Officers, under pressure from higher authorities, focus solely on revenue collection through surveys and recovery, which is unfair. While making decisions, not only revenue but also justice should be considered, which is often not happening. Strict and vigilant efforts are required in this regard.

14.Trade in the Name of Poor and Helpless Individuals:

Issue: Some people use the identity of poor and helpless individuals, using their Aadhaar and PAN cards to trade, leading to large demands against them. In many cases, these individuals are complicit due to poverty, ignorance, and greed, but the real culprits are others. A special wing should be established under GST to catch the real culprits behind such trades and recover the dues from them.

Legally, the department is correct while creating demands against these persons, but this entire arrangement needs to be attacked to prevent poor and helpless people from becoming victims of small temptations, and to avoid creating problems for the department, which often cannot recover anything from them as they have no property with them. A real campaign should be launched to catch the real culprits behind them and recover the dues from them.

15.Interest Despite Tax Payment:

Issue: There is a strange provision in GST that if the taxpayer deposits the tax in the bank but files the return late for some reason, they face a penalty for late filing and interest on the deposited amount. This is not right. This provision should be abolished to prevent undue interest burden on taxpayers.

16.High Interest Rate:

Issue: The interest rate under GST is 18%, which is much higher than the market interest rate and impractical. This 18% interest rate is outdated and should be reduced. The interest rate should be aligned with the market or bank rate, with an additional 2% margin, but 18% is excessively high.

17.Required Documents for ITC:

Issue: The list of documents required to claim ITC is unclear, causing difficulties for traders.

A clear list of required documents should be provided to ensure that ITC claims are never blocked. Otherwise, doing business becomes impossible. This list should be clearly defined to provide traders with the correct information and allow them to claim ITC without any hindrance. There should be a way

for traders to ensure that their ITC is fully secure.

18.Role of the GST Council:

Issue: The GST Council is currently unable to effectively address taxpayers' problems, or this is not its primary function.

The objectives of the GST Council should be modified to include resolving taxpayers' issues. This change will make the GST system more inclusive and effective, providing better support to traders and resolving their problems.

Finally, a meaningful GST amnesty scheme should be introduced as soon as possible to provide relief to taxpayers, especially MSMEs, from the economic burden, penalties, and interest.

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Category

1. GST

Date Created

17/06/2024

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