Leakage of Indirect Taxes in Past Suggested Measures to Plug in GST

The Indian tax laws have evolved over period of time to become complicated due to the existence of the parallel economy, complicated laws, high rate of multiple

taxation, large scale corruption in the State VAT administration and to a lesser extent in the central taxes. The transaction with final consumer being very price sensitive and need for bill not preferred if there is an additional cost.

Unfortunately the tax laws have nurtured the noncompliance and as a via media have provided TDS. , TCS., reverse charge, URD purchase being liable and many such measures. In GST discipline is sought to be imposed but only on the trade. There needs to be accountability and responsibility on the tax administration with time bound procedures with adequate escalation also put in place. In this article, the examination of some of the common methods of evasion/ leakage of revenue are listed with possible solutions. It is understood that there maybe many other methods and alternative solutions to

the issues raised. An attempt has been made below to put them in order of severity.

**Fake Bills:** The supplier of these bills does not provide any goods or services but issues invoices. These are used to reduce the income tax liability. For every fake bill of Rs 100/accounted as expenses the tax payer “saves” Rs. 30 at the least.

Some such suppliers even charge Excise duty and VAT the credit of which is availed by the buyer of the bills. That means additionally Rs. 12.5 & Rs. 15.

**Detection/ solution**: Mostly in case of an investigation, at the time of audit when cross verification id done. Not entered in the security inward register or in the stock records. At times the information from disgruntled employees can lead to the search etc.

Once a fake bill supplier is identified then how he gets away and all the people who transacted by him are not taken action against is anybody’s guess. If proper systematic action without gaps and in writing is done this menace could stop. However, if the fence eats the crop nothing much can progress.

In GST. the forced matching could be a solution but is it implementable in full in India after years of indiscipline is one's doubt. The investigative audit of concerns with suspicious high credits could be one method. Section 14A & 14AA in CE and parallel provisions in service tax (72A) have failed due to very low

audit fees fixed. Further at the time of Payment again issues and deductions made. It appears that the revenue is not interested at all in doing these audits other than nam ke vaste for purpose of record.

**Compromised surveys/ searches / audits:** This could be one of the main reasons for the lack of fear and practice of doing many things wrong knowing that things can be fixed. The tax saved vs the cost of fixing is seen. The number of cases of officers being caught accepting bribe is miniscule- maybe 0.05%. 99.95% get away scot free. The type of practices prevalent which any businessman is aware is a disease which needs to be purged. The recent protest we are reading in the papers about the VAT officers planning a strike and Central Govt. officers following suit for what? Do they want to work more? While

there are honest diligent officers their numbers today is small. The huge personal advantage being derived by more than 100,000 errant officers at the State and centre seems to be the reason. Under GST the officers expect this additional revenue may disappear and they may have to only depend on their salaries is the educated guess. Readers may provide a feedback.

**Detection/ Solution**: Unless a proper system of independent outside professional agency monitoring these it there it is expected that nothing would be achieved.

**Demands / Appeals**: Most of the tax officers in indirect taxes do not know the law and have not read anything other than circulars etc which can be used to extract money. That is the reason why the revenue dept loses most of their cases. In some cases it is so badly drafted that one needs to do nothing to win the case. Poorly drafted orders ensures that the matter goes up the ladder and then comes back on remand. Such a waste of government + tax payers resources. May cases which are open and shit cases of need to comply are pending and likely to be in favour of the tax payer due to mistakes made by the officers at stage of drafting the notice, personal hearing, orders passed in haste at last moment. In some cases it is compromised by the adjudicating officers. The case of 1000’s of refund pending with certain officers while out of turn 100s are being sanctions which has been happening for service tax refund for years indicates this.

**Detection / Solution**: Let GST pave the way. Let there be an examination of understanding of basic knowledge of all officers at State and Central level faster their training is complete.

Only those who pass would continue to hold the post or be demoted if they fail. When the govt wants the tax payer to get discipline why not the tax officers?? For those who are drafting notices and adjudicating a special course be designed which they need to pass. An independent professional oversight body also be in place to review their performance.

**Cash Supplies without tax:** The B2C transactions especially for goods where the taxes are very high have been a challenge for decade now.

**Detection/ Solution**: This is difficult unless it comes up at the time of an audit and reconciliation of stocks. At times the electricity consumption and other factors can indicate something amiss.

In B2B transactions where the receiver is unorganized/ uneducated or under composition the chance of suppression of the transaction exists. In these cases the receiver does not claim the set off at all.

**B2B to organized sector:** Here in the audit of the larger units the suspicious transactions maybe noted on sample basis and whether tax paid at the other end can be verified. Again not easy.

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**Target based demands/ Frivolous demands**: Taxes which are just should be collected from ALL and not some. Those in the net feel that they are unnecessarily harassed and go thru multiple investigations audits and forced to compromise on ethics due to threats of intervention in business and finally toe the line.

**Detection / Solution**: The focus of the govt. must be towards those not in the net and not on those in. The effort should be 90% on those not in net and 10% on monitoring those in the net. However, the reality is opposite!! The cases which are lost provide a mine of information on these. There has to be some penalty on such officers beyond say 10 notices.

**Tax collected but not deposited**: This is being done by a few assessees who do not file returns though they are registered under VAT or Service tax. However, at every stage of the enquiry the possibility of closing the enquiry has been enabled. Therefore only a fraction of such persons identified actually end up paying the tax, interest and penalty at a negotiated %age.

**Detection/. Solution**: The focused action against the nonfiler, late filer in a systematic time bound monitored manner would reduce this part. Once they know they cannot get away this type of practice would stop. The very high penalty and even prosecution beyond some level (already there in central laws and proposed GST) on such actions would also help.

**Threshold exemption**: The practice of splitting the organisations into all adult members of the family or having number of partnership firms with different partners or %age of share and different PAN no is also very prevalent. Every private limited companies working in tandem to enable the exemption to be availed is quite common in the VAT law. In excise also it has been done for several decade where the threshold limit was 150 lakhs. Now under GST with

50 lakhs limit and 50 Lakhs composition limit this practice is expected to be continued by errant assessees.

**Detection:** The SC decision in Mc Dowell on colorable devices maybe taken up seriously and wherever the benefit is for 1 family matters need to be investigated though in some cases genuine separate working maybe there. Only properly monitored and prenumbered survey notices with accountability and audit could lead to this.

The practice of concentrating on the tax compliant needs to be discontinued and resources in sufficient number of honest officers be dedicated to concentrate on those outside the net to be identified and penalised.

**Under invoicing to some and Over invoicing to some:** This is done by dealers who have those interested in goods along with those more interested in availing credit. The person who wants goods but is unorganized or in composition is given a under invoiced bill and the other who wants the goods gets the goods at say double the price. Second person gets enhanced credit + deduction under income tax.

**Detection:** These type of practices can come up in audit if done properly. Auditors are to rated like suppliers.

The GST rules are being drafted and we are expecting a good law which will be fair to first the tax payer and also ensure that the revenue is taken care. The purpose of this communication is to highlight may facts known and to provide the perspective of a honest professional to the Govt. and drafters of the GST law.

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