

## Perspective to Contributions Made by GST to MSME Sector

*Lack of extensive employable capital does not bring about establishment of MSME sector. Operations at a certain level of efficiency is best pursued within the limits of an MSME enterprise. There are diminishing returns if overheads of a mega enterprise were to be thrust upon operations that are more efficiently run without those overheads. Therefore, MSME industry is enterprise of choice with a certain extent of investment and a desired extent of diversity. But often MSME sector is looked upon as players in needs of someone's largesse, which is neither the view of the investors, lenders, Government nor the view of entrepreneurs. Encouragement to MSME enterprise*



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*is required by the Government in the form of 'facilitating and enabling' the continuation of their own efficiencies and path to growth and success. This article considers contribution of GST to this sector and presents yet another view to these processes which can reveal the true potential of GST. Read on...*

GST carries a very powerful legislative framework for flow of credit in the course of creation of value and translates into revenue where consumption takes place. There lies more potential of the system to be explored and revealed, than limiting the concentration to mere generation of revenue. GST promises more than just revenue generation. It is a deft system, especially the one we have here in India, where transactions' trail is explicit. Here is another perspective to consider whose expectations from GST could be met in 'facilitating and enabling' strengthening of the MSME sector.



## Expectations from GST

There have been several aspects to GST that were discussed and therefore expected to find a place in the legislation itself such as:

- Multi-point tax with credit for taxes paid;
- Borderless flow of trade and seamless flow of credit;
- Simplified revenue neutral tax structure with HSN-based classification;
- Tax on value added with refund of any overflow of credits on account of exports, rate-inversion or other specified end-uses;
- Self-assessment and simplified compliance and reporting based on online tool;
- Minimal and essential Governmental intervention and expanded in exceptions;
- Rule-based and transparent anti-evasion measures;

- Enforcement of tax avoidance minimally intrusive and based on principles of natural justice;
- Voluntary compliance ecosystem where compliance rating compels compliance resulting in minimal litigation;
- Robust advance ruling mechanism to resolve potential disputes; and
- Appellate mechanism as the arbitrator for addressing interpretational conflicts which would be few and far between.

## Experience in GST

- Legislative challenges started right from the get-go in reaching an acceptable understanding by all stakeholders:
  - o Business and supply;
  - o Taxability with a precise definition;
  - o Transactions internal to an entity but of inter-State character;
  - o Non-taxable and extra-territorial transactions;
  - o Threshold exemption and composition schemes.
- Credit as a right requires clarity about:
  - o Basis for claim (resulting in linkage to end-use of inward supplies).
  - o Conditions to claim (resulting in denial for

- failure of specified conditions);
  - o Manner of claim (resulting in a loss of claim if not included in the Form or within the time permitted).
- Tax rates became complicated due to:
  - o Policy to impose Cess on sin goods;
  - o Exemption to transactions caught in definitions of taxability;
  - o HSN for services needed scheme of classification and notes with explanation to scheme.
- Valuation needed to be specific to cover:
  - o Incentives and commissions;
  - o Subsidies and price protection;
  - o Related party transactions;
  - o Transactions with non-monetary forms of consideration.
- Seamlessness of credit took a beating with:
  - o Blocking of credits based on subjective criteria and not limited to credits on exempt supplies;
  - o Taxes paid in other States do not flow to home-State except via ISD route is unnecessary compliance burden.



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- Refunds was to be precise and limited based on intelligible differentia;
- Authority to self-assess needed to be monitored by specific provisions such as scrutiny on one end with detailed audit at the other end and best-judgement assessments in between; and
- Aspects on anti-avoidance, penalty and prosecution are interspersed adequately.

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### MSMEs Challenges

MSME segment represents a very large population of taxpayers who make a



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significant contribution not only to the revenues of the Government but also to some very important and efficient links in the supply chain of mega industries. Not all taxpayers absorb changes to the law in the same manner or the same pace. MSME needs more engagement before roll-out. Government's taxpayer-engagement in certain recent changes is a glorious illustration of how to roll-out changes. Clearly, such taxpayer-engagement was missing in the past and there are non-compliances arising from that limited engagement that is still unresolved and is presenting itself in departmental audits and inquiries with interest and penalties. It is a problem that needs to be addressed and resolved on priority.

MSME industries' experience has been the 'inherent inflexibility' in GST that expects all taxpayers to make every transition smoothly. Whether it is transitional credits or belated returns or interest or unpaid arrears. There are challenges that need to be resolved but not without active engagement with the Government.

This is not to say that taxpayer has not made bona fide mistakes due to misunderstanding of this new law for which the responsibility is acceptable. But this is a fact that bona fide defaults and on-compliances are lurking with need for proper solution. Any attempt at resolving these deviations



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should be done with due care so that they do not include and enrich ingenious fraudsters from 'making hay while the sun shines'.

*Bona fide* taxpayers would like not to be ruffled by the aggressive measures that has fraudsters in the crosshairs. Fraudsters are a separate class of taxpayers and as the Government's own paper expresses, they too lie in different sub-categories based on their 'end game'. MSME industries seem to be burdened by the weight of the administrative machinery that challenges gullible taxpayers.

Government is welcome to exercise all lawful measures and pursue fraudsters or foil their plans but not before 'separating the grain from the chaff'. There's so much publicity around these 'questionable' transactions that there is untold fear about carrying out transactions with genuine parties. Everyone is looking over their shoulders to see who is the 'wolf in sheep's clothing'. MSMEs are having to prove their *bona fides* every step of the way.

Government's predicament about lines of distinction being blurry is understandable but it is equally true that not all non-compliant taxpayers are fraudsters. MSME sector cannot afford to engage in fraudulent activities deliberately as the price of fraud can be debilitating. To paint all non-compliance with the same brush would undo all the good work done in nurturing MSME sector and there is not a single MSME enterprise who would speak for fraudsters and the law bring such to justice.

Similar differentiation is justified in fatal and non-fatal defects in e-way bill compliance. It is seen that all deviations are met with the same rigorous penalty under Section 129. Allowing time to understand and comply with e-way bill requirement cannot be treated with 'one size fits all' rule when Circular 64/38/2018-GST dated 14 Sept 2018 itself admits minor offences and prescribes nominal penalties. MSMEs have borne the brunt of the e-way bill defects as this responsibility has been thrust upon them by mega industries for whom supplies, or job-work is undertaken. MSME enterprises have embraced this new requirement the fastest and are on their way to get ready with e-invoicing when thresholds are reduced further. Empathy in administration will see more than encouraging compliance and surge in revenues too.

### Credit to Government for Its Responsiveness

Credit must be given where it is due and Government's initiatives that must be commended are:

- Deferring 'New Returns 2020' and introduction of 'QRMP 2021 with IFF';
- Automating self-authenticated refunds;
- Enabling GSTR2B as a static document;
- Extending due dates, where justified;
- Upgrading technology backbone; and
- Timely amendment to rules to harmonize with the requirements of law.

It is this responsiveness that brings hope especially to MSME taxpayers that 'where Government wills (to alleviate taxpayer's woes) there are ways. There are many remarkable areas where the principles under earlier tax regime, which shares the same equitable jurisprudence with GST, will meet the ends of justice, namely:

- Circular 962/5/2012-CX dated 28 Mar 2012 which allows all 'vesting credit conditions' be eclipsed where demands are made beyond self-assessment of liability;
- Circular 1053/2/2017-CX dated 10 Mar 2017 containing administrative discipline to apply to all quasi-judicial functions



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such that it is followed *mutatis mutandis* in GST and in all such proceedings by State Government agencies who seem liberal in exercising authority 'in the interests of justice'. Justice delivery by Central agency cannot result in an outcome different when delivered by State agency(ies);

- Circular 213/3/2019-CX dated 5 Jul 2019 which admits that reversal of common credits does not apply when abatements are allowed, which could well be relevant to transactions listed in schedule III, 1/3<sup>rd</sup> abatement allowed in HSN 9954 and to all notional values under Rule 32 or where value is imputed.

Aspects that could greatly advance compliance by MSME sector if Government were to consider:

- All changes introduced be applied with prospective operation and clear transition plan published for taxpayer awareness including its effects for past tax periods;

- Release of new functionalities on Common Portal be published and made operational from a reasonable but future date. The suddenness of implementing new ways of doing old things makes it cumbersome for taxpayers to attend to these changes. Online service of notice was unknown until recovery action was initiated and taxpayer's claim that notice was not served came to be dismissed in Court proceedings. New ways of doing old things are acceptable but when these new functionalities are implemented, wide publicity be given to them; and
- Filing appeal before First Appellate Authority needs to be simplified across agencies and across States. Phased roll-out of automation is understandable but taxpayers have multi-State operations and if practices are uniform or changes notified from a prospective date would help taxpayers adhere to changes. Pre-deposit for appeals still via DRC-03 challan but without option of 'pre-deposit'.

### Taxpayer Friendly Measures

While there may be certain measures that are common to all taxpayers, but MSME sector feels the burden the most due to the mounting interest liability along with threat to business

continuity. Without delving into changes in the law, certain ease-of-doing business measures that could help administration too, namely:

- Payment 'under protest' is a right in the interests of equity that taxpayers enjoy and providing a payment mechanism which is binary does not allow the law to breathe and grow. And every new law needs space for these accommodations. When there are doubts, whether it relates to credit or tax, taxpayers who are not enthused to aggressively litigate would gladly 'deposit disputed amounts' and wait for the air to clear a Enabling an interim payment option would go a long way in taking away the anxiety that has suddenly taken severe proportions. Introduction of rules such as 86A or 86B are cases in point where there is a clear sense of anxiety to take sudden measures;
- Credit 'under protest' is also a remedy that taxpayers require in respect of credit that is doubtful to everyone else but the taxpayer. If taxpayer were permitted to 'avail without utilizing' such credit, taxpayers will not forfeit credit due to the time limit in section 16(4) but still enjoy the fruits of litigation or clarity to law. Doubtful credits claimed by taxpayers are aggressively pursued by administration to be reversed, with interest

and penalty, adding to eventual pendency in appeals. A remedy similar to rule 37 where credit availed is permitted to be 'reversed with restoration' free from any further time limitation would not only single-out credits that taxpayer considers doubtful for inquiry without anxiety and yet protect taxpayer from interest and punitive consequences.

### Extension of Section 172 imminent

There is no doubt that taxpayers have made mistakes and certainly all of them have been set right and errors greatly reduced. First 5 years is reasonable and certainly first 3 years begs exercise of powers that the Legislature has allowed the Executive under section 172 to 'remove (following difficulties':

- Transition credits permitted when Courts across the Nation have issued directions based on bona fides of each case. Taxpayer who is wronged by the law



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and burdened with disproportionate losses due to innocent mistakes will not be won over to become compliant in future;

- Taxpayers be relieved of the inflexibility of time limit under section 16(4) to claim bona fide credit;
- Interest on all belatedly discharged arrears be imposed on 'net tax' liability and clever wordings to carve out only one use-case in proviso to section 50(1) of belated returns does good to no one as there are scores of other cases where net tax liability remains unpaid;
- Alternate methods be allowed to demonstrate compliance with section 16(2)(c) and not enforce matching as the only method from 1 Jul 2017. Taxpayers will be unable to bear a double impact when the only default by Supplier is in reporting as B2C in GSTR1 returns;
- Refunds met with Deficiency Memos

repeatedly or glitches in GSTRx and multiplicity of amendments to rule 89(4) and 96(10) amply justifies reprieve to taxpayers; and

- Indiscreet orders passed under section 62 and under rule 21 need resolution as time to file appeal has passed even before taxpayer could realize the many different ways section 169 permits 'service' of notices and orders.

Taxpayers are eager to make amends where they have misunderstood or failed to realize the extent this new law differs from earlier tax regime. Remedial measures foster healthy relations and its no one's case that GST will be able to deliver on its promises in an adversarial compliance environment.

### Conclusion

There is no incentive to be non-compliant and MSME sector knows this all too well, where its margins are in single digits and GST is in double digits, this sector is all too concerned to deviate. Compliance is a journey that is best undertaken with much



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It must be accepted that taxpayer-base is too large for administration to aggressively pursue and effectively implement this new law. Where taxpayers are willing, MSME sector is the one with the greatest motivation to cooperate and be compliant with law, it is important the Government joins hands to ensure self-assessment of liability in its true sense without fear of looming inquiry or demands.

MSME industry is willing, even eager, to go from 'bullock cart to bullet train' but only seeks time and closer taxpayer-engagement to make through every transition. But the one that brings the most value in GST is one where there is a happy partnership with Government and industry to make this journey pleasant.

