

Business Standard

When GST heads to the courtroom

Compliance requirements, valuation, input tax credit transfers are likely to lead to tax litigation

Sayan Ghosal Last Updated at September 11, 2017 00:31 IST



Two months after coming into effect, India's new indirect tax has already begun making its rounds in the courtrooms. Tax professionals and corporate lawyers are gearing up for a swathe of increased litigation, given the large influence that the [goods and services](#) tax (GST) has on economic participants.

"The [GST](#) has caused and continues to have some teething problems as to its applicability and compliance requirements. The concerns arising from these issues are reflected in the various writ petitions filed in high courts across the country," says Nishant Shah, partner, Economic Laws Practice.

According to experts, several issues related to enhanced compliance requirements, valuation, classification and the availability and transfer of [input tax credit](#) are expected to take centre-stage in [tax litigation](#) in the days to come.

A recently filed case in the Rajasthan High Court (Rajasthan Tax Consultants Association v Union of India) exemplified some of these issues of compliance, considering the GST's digitised framework and India's challenges in adapting to [technology](#). The association's plea has highlighted several technical glitches faced by [taxpayers](#) in meeting these new requirements, as well as other concerns on incomplete utility forms, charging of interest, penalties, composition windows and the retrospective effect of waiver of late fees.

The classification, applicable rate and valuation of supplies for the purposes of [taxation](#) are expected to be other contentious issues. Experts say the multi-slab nature of the Indian [GST](#) system will undoubtedly have the potential for rate arbitrage and differences in opinions between assesses and the tax authorities. The availability of transition and input tax credits, considered to be key to the effective functioning of the indirect tax system, is also likely to be taken to court.

"Different slab rates have been fixed for supply of [goods and services](#). Valuation of goods is mostly on the basis of Customs valuation rules. Both are prone to litigation. The truncated grant of transition credit (that can be used as [input tax credit](#) under the new system) is another issue that is likely to be challenged in the courts," says V Lakshmikumaran, managing partner, Lakshmikumaran & Sridharan.

The [Delhi HC](#) and Hyderabad HC are already hearing petitions on the applicable rates set on sanitary napkins (12 per cent) and limestone (28 per cent). "The mere fixation of rates may be viewed by the courts as an economic policy decision.

However, when other fundamentals come into play, the judiciary could take a more proactive role," says N Meyyappan, partner, Nishith Desai Associates.

Another pending case in the [Delhi HC](#) is on the issue of availability of transition credits for the clean energy cess paid for stocks of coal under the earlier system (vide Finance Act, 2010) and the requirement for re-payment of compensation cess (under [GST](#) rules) on the same stock. A similar issue on the validity of the government's move to recover previously provided CenVAT credit on stocks of imported gold dore bars (Rule 44A of the Central [GST](#) Rules) is also being challenged in the same high court.

After finding prima facie merit in both the petitions, the court has given the affected parties interim relief while listing the matters for further consideration. **"Even interim orders staying adverse actions by the department may have larger implications. There are still many issues that are yet to reach the courts," notes Meyyappan.**

Yet another petition in the [Delhi HC](#) involves issues of cross-applicability of input credits within the integrated GST, central [GST](#) and state [GST](#) laws. There are concerns that [digital transactions](#) that are charged Integrated GST, yet provide supplies which attract Central [GST](#) and state GST, will be unable to claim these input tax credits to offset their total tax burden, leading to double [taxation](#).

Experts also feel certain supplies, especially in the digital space, are also likely to be marred by litigation and differences of opinion. Digital assignments, cloud-to-cloud transactions and the categorisation of such transactions as goods or services may eventually reach the courts, once the tax department takes a more concrete stance. **"There is still significant ambiguity with the classification and the rate of taxation of some supplies," adds Meyyappan.**

According to Shah, the [GST](#) regime is also likely to see some amount of commercial litigation between business entities. “This will be novel to the [taxation](#) arena and will be on account of the requirement for invoice to invoice matching in order to ensure availability of credit as required by the [GST](#) law,” notes Shah.

A snapshot of cases in the dock

Exemption of [GST](#) for mobility aids for differently-abled persons: Nipun Malhotra vs Union of India

- Petition in the Supreme Court seeking exemption from levy of [GST](#) on mobility aids used by differently-abled people
- Notice issued to Centre for response

Transition credit on gold dore bars: Kundan Care Products Ltd vs Union of India

- Challenge to Rule 44A of the CGST Act reversing 5/6th previously provided CenVAT credit on imported gold dore bars as on July 1
- Interim relief by the [Delhi HC](#) — No coercive steps to be taken to recover CenVAT credit already availed

Reverse charge mechanism for legal services: J K Mittal & Company vs Union of India

- Action against notification allowing [GST](#) on reverse charge mechanism only for representational legal services
- Ad-interim relief by the [Delhi HC](#) – No coercive steps against legal entities – Reverse charge mechanism for all legal services till further orders

Compensation cess on previously purchased coal stock: Mohit Minerals Pvt. Ltd v Union of India

- Challenge to constitutional validity of the [Goods and Services](#) (Compensation to States) Act
- Ad-interim relief by the [Delhi HC](#) — No payment of compensation cess under [GST](#) for stock on which clean energy cess already paid

[GST](#) rate on sanitary napkins: Zarmina Israr Khan vs Union of India

- Challenge to imposition of 12 per cent [GST](#) on sanitary napkins
- Notice issued by the [Delhi HC](#) to the [GST](#) Council and the Ministry of Finance to file response

[Input tax credit](#) of state [GST](#) on IGST transactions: D Pauls Travel & Tours Ltd vs Union of India

- Petition against double [taxation](#) of interstate supplies due to ambiguous interpretation of the CGST and SGST Acts in the Delhi HC

Levy of state entertainment tax; GNG Enterprises vs Uttar Pradesh

- Petition against levy of state entertainment tax under the UP Entertainments and Betting Tax Act after the [GST](#) regime in the Allahabad HC
- Since no notification repealing the tax, court has allowed state to collect tax up to March 31, 2020

Requirement of bond and bank guarantee on zero-rated supplies; Aphro E-commerce Solutions Pvt Ltd vs Union of India

- Challenge to requirement of furnishing bond and bank guarantee under Rule 96A of CGST Rules (read with CBEC Circular 4/4/2017) for exports of zero-rated supplies in Delhi HC