

Union Budget 2014- Indirect Taxation- The Ugly Side- Tax terrorism to Continue unabated.

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In recent times, the law abiding assesses have to contend with large number of target based queries/notices, audits and summons generally high amount of tax terrorism. Infructuous demands [90-95% bound to fail as per revenue officers themselves] in VAT & Service Tax have been observed. These lead to demands and disputes which go on for years leading to killing the golden goose and frustration for the tax compliant. Most of the matters are not be resolved at departmental adjudication and appellate levels and some relief only at Tribunals, High Courts and many at the Supreme Court.

A majority of the demands in the last decade were raised due to the high revenue targets which are the base for promotions, almost 80% corruption in tax departments and added to that the tax laws being made extremely complicated year after year leading to different interpretations and consequent disputes.

All decisions in favour of tax payer as a routine are appealed to higher forums. Government is the biggest and most unsuccessful litigant in the country and by sheer continuing of the ligation can threaten the democratic nature of India. Officers give scant regard to decided case laws inspite of departmental instruction to do so. This is what led to coining of the word tax terrorism.

Tax terrorism has been provided more powers and is bound to get worse though the stated objective of the PM was to rein it in and provide tax payer respect and fair treatment. In this budget exercise, it is clear that the FM ear was filled by the ONLY tax administrators who have got a number of provisions which empower them and **enable them to collect more revenue earlier as was the case with the earlier FMs [Nothing has changed except our belief that we would have better days in this regime] Some measures against the honest tax payer who is not willing to pay off the officers are** as under:

1. In Central Excise/ Customs/ Service tax for a frivolous case [70 % cases are frivolous at present] there was no need to pre deposit if a waiver was applied for an obtained. However now even for frivalous cases the **mandatory** deposit of 7.5% of the demand + penalty would have to be pre deposited prior to hearing. If not deposited then the case would be dismissed. Is this justice??? Somehow if the assessee was able to do so, then the case would be heard- what is the statistics of Commissioner Appeals giving relief

even for frivolous cases- hardly possible other than in exceptions. Therefore again at the next stage 10% of the demand and penalty [whether differential is to be examined in detail] next stage. A tax compliant manufacturer/ service provider at the mercy of the tax administrator. [What happened to the TARC report- has the FM read it?]

Instead of looking at best practices outside India we are copying the worst practices of the Sales Tax regimes of States for the centre. Are we so empty of good ideas??

2. The service tax law is highly complex and has been tinkered quite often. Again this time around it has been done. Is there any Commissioner/ consultant/ expert in the country who can confidently say that he / she knows the law of service tax? Probabaly not. However accelerated interest liability has been fastened at rate of 24% if delayed beyond 24 months and for period over 30 months 30%!!! [It maybe remembered that the refunds which are delayed for 10 years (though promised year after year by FMS) are only enabled 6% interest per annum. Is this gap logical- reasonable.

The worst problem is that there are more than 1 lakhs cases in dispute and the interest rate from 1st October this year on them would also be 30%.

Does the new GOI want honest tax payer to pay illegal demands and not fight?

This type of power would increase the present stifling corruption levels.

3. Cenvat credit is to avoid cascading effect of multi point levy. While rationalizing this we find that the biggest unfair measure of restricting the credit for 6 months has been put in place. This may require to be constitutionally challenged as being arbitrary and unequal. The demands for past periods would allow credit set off and payment and only the tax due as authorized under law under Article 265 was being collected. Now what was not due, what benefit was available earlier are being denied.

The changes in the Cenvat credit rules with officers/ audit parties on an active exercise of denying valid claims has led to a large amount of non availment / illegal reversals in the past decade.

Definitely a move against seamless credit which is a vital component of GST.

Manufacturer and service provider may take on an urgent exercise of getting Cenvat credit on capital goods, inputs and input services examined and avail the credit before the end of August 2014 as after that what is your is going to be denied.

4. Small Scale Units have not been spared- Now they need to pay monthly and not quarterly.
5. The main attractiveness of the Large Tax Units of transfer of credit which today are administratively being killed by the revenue. This move to restrict the transfer of credit could bring LTUs option to be closed.
- 6.

The Place of provision of service rules had many a lacunae. However the well settled law of intermediaries for exporters of goods outside India is now being unsettled with the recipient of marketing services location being changed to the place of the service provider. The revenue being bad losers is exemplified by this change which would now have to be understood by the trade / industry and by the time they understand GST would be upon them. Now the marketing agent outside India would not be liable and Indian marketing professionals for exporters outside India would become liable to charge service tax to the clients outside India. This may also lead to some double taxation issues.

Conclusion

The paper writer is of the view that in the light of the short time available, the FM may not have been able to appreciate the views of the tax payer who funds the country and listened only to the bureaucrats who continue to empower themselves with more weapons of extortion and threat. Hope that in the committee which would look at tax reforms, the professionals of this great country, exemplary entrepreneurs and legal experts who have been practicing the IDT area are provided fair representation. This could ensure a balanced forward looking reformist growth.

The suggestions given by the various forums like FICCI or ICAI or other trade and professional bodies could be compared to look at what has been done and what has been left off. Miles to go before FM sleeps. Hoping for a more reasoned and fair budget in February 2015 as this time it appears that none of what we concerned professionals wanted has been adverted to.

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