

August 16th, 2017

Mr. Arun Jaitley
Minister of Finance
Government of India
New Delhi

Sub: Representation on Goods and Services Tax, w.r.t. Anti-Profitteering measure

Hon'ble Minister,

We would like to congratulate the Ministry of Finance, GST Council and their officials, on successful launch of GST and the recent release of case study 'the GST Saga'.

This is in reference to our representation dated 23rd June, 2017 on Anti-profitteering under the GST laws (copy attached). We would like to highlight the operational and practical difficulties faced by the industry in order to comply with the Anti-profitteering provisions under the Central and State GST Acts.

The GST legislation¹ mandates the following:-

"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"

A major challenge faced by the industry in this regard is that if they are expected to compare the tax and credits available to them under the erstwhile tax laws and present GST laws, and arrive at a tax cost/credit benefit analysis, then how do they determine the commensurate reduction in the prices as stated in Section 171 of the Central Goods & Service Tax Act, 2017

In our representation dated 23rd June, 2017, we had already highlighted this issue i.e. 'absence of defined methodology and periodicity on commensurate reduction'.

We understand that the intent of the legislators and the Government is to put a check on profiteering of prices on account of implementation of GST and pass on the benefit to the ultimate consumer. In order to bring this into effect, the Industry is required to do an analysis of their overall tax costs under the erstwhile and the present GST law. However, having acknowledged the expectation, the Industry requires clear guidelines and methodology in this regard.

We would like to highlight that, although the Rules 122 to 137 under Chapter XV of the Central GST Rules, 2017 deal with the Anti-profitteering measures, no mechanism for determining the 'commensurate reduction in the price' is prescribed.

Specifically, Rule 126 provides the power to determine the methodology and procedure. In terms of the Rule, the Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices. However this provision only caters the situation w.r.t

¹ Section 171 (1) of the Central Goods and Services Tax Act 2017

evidencing of passage of benefits, and not determination of “commensurate reduction” which is the moot question.

In absence of a prescribed methodology, there is a room of subjectivity and justification and the industry will follow its own economics to determine the commensurate reduction in price of goods or services.

Our Request:

On behalf of our members, the Government is requested to issue a guidance/circular providing proper guidelines and methodology under the law-

- Most importantly, clear procedures on methodology and periodicity to be used for calculations to reflect such commensurate reduction should be provided. As we are in the new era of tax transparency, which requires the businesses to revisit the prices of their goods and services, it would clarify the position and help the industry to comply with the law.
- It may be noted that the GST legislation provides such guidance in other areas including apportionment of credits and refunds, where all taxpayers is bound to be governed by the mechanics outlined in the law and thus there is no space of subjectivity and consequential potential for litigation. It also ensures uniformity and consistency in the application of this very important provision to prevent profiteering on the introduction of GST. We request that a similar formula based mechanism be provided for Anti-profiteering measures on priority to ease the anxiety of the industry.

We hope our present request finds merits and consideration before this office and shall be taken up for a further discussion so as to ensure a timely and mutually agreed resolution between the council members, allowing to make a recommendation to the Government.

We would be happy to assist you with further documents and in meetings as the case may be.

Thanking You,

Yours Sincerely,



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