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Treading the GST Path – VIII

Is Central Excise duty really gone?



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1.0 The Constitution (One hundred and first) Amendment Act, 2016 seeks to amend various provisions in the Constitution of India, to pave way of imposition of GST. The said Act contains 20 sections, which amends various provisions of the Constitution. As per section 12 of the Act, Article 279 A has been inserted in the Constitution whereby a GST council shall be formed by the President of India within 60 days of the commencement of the said Act. As per Section 1 (2) of the Act, the various provisions of this Amendment Act will come into force from a date to be notified by the Government and various dates can be notified for various provisions to take effect.

1.1 Exercising the powers conferred under Section 1 (2) *ibid*, the provisions of Section 12 of the Amendment Act, which inserted Article 279A has been notified with effect from 12.09.2016 *vide* notification dated 10.09.2016. Consequently, the President of India has also constituted the GST council *vide* Notification dated 15.09.2016.

2.0 Now, all other sections of the Constitution (One hundred and first) Amendment Act, 2016 have been notified to take effect from 16.09.2016, *vide* Notification dated 16.09.2016. The consequences are mindboggling.

2.1 As we are aware the legislative powers of the Union Government and the State Governments, including the taxation powers, emanate from List I (Unit List), List II (State List) and List III (Concurrent List) of the seventh schedule to the Constitution. Entry 84 of the List I, deals with the power of the Union Government to levy excise duties on goods manufactured or produced in India. Central Excise duties are being levied by the Union Government under this entry. Entry 54 of the List II deals with the power of the State Governments' to levy taxes on the sale and purchase of goods (VAT). Service tax is being levied under the residuary power of the Union Government under Entry 97 of the List I.

2.2 These entries have been amended by Section 17 of the Constitution (One hundred and first) Amendment Act, 2016, whereby Entry 84 of List I has been amended and Excise duties can be levied by the Union Government only on petroleum products specified therein. Entry 54 of List II has also been amended whereby sales tax could be levied by the State Governments only on sale of petroleum products and alcoholic liquor for human consumption (except inter statesale).

2.3 With the notification of the amendments with effect from 16.09.2016, the amended provisions of the Constitution has come into effect from 16.09.2016. Does it mean that there cannot be any levy of Excise duties by Union Government on all goods other than petroleum products and there cannot be any levy of VAT on intra state sale of goods from 16.09.2016? What about service tax? What will happen since no CGST / IGST Acts have yet been introduced and passed in the Parliament yet and no SGST Act has yet been passed by the State Governments? Will the Government's coffer would dry up? Has the notification been done in a hurry without analysing its ramifications? Is it the first major goof up under GST?

3.0 Section 19 of the Constitution (One hundred and first) Amendment Act, 2016 provides that any law which was in force in a State prior to commencement of the Constitution (One hundred and first) Amendment Act, 2016 dealing with levy of taxes on goods and services would continue to have effect for a period of one year or till such Acts are repealed by the State legislature. So notwithstanding the amendment to Entry 54 of List I, the State VAT acts would continue to have validity, till they are replaced by SGST Acts or one year, whichever is less.

3.1 Service tax is already being levied only under Entry 97 of List I and this entry has not been removed, there would not be any problem with regard to collection of service tax post 16.09.2016.

3.2 Union Excise duties on all goods, except petroleum products can be justified only under the residuary power of the Union Government under Entry 97 of List I. The said entry reads as "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". Prior to 16.09.2016, Entry 84 specifically empowered the Union Government to levy excise duties on all goods manufactured or produced (except alcoholic liquor for human consumption). When this power is now specifically restricted to cover only excise duties on petroleum goods, can the levy of excise duty on all other goods be justified under the residual entry 97? Had the residual entry 97 itself would take care of all taxing powers of the Union Government, there was no need at all for Entry 84 either. Can the substantial inflow of funds to the Consolidated fund of India, through major indirect taxes be dependent upon the residuary taxing powers of the Union Government? If this residuary power can be used to justify even such major levies, the fear of more such levies being levied in future, after implementation of GST, under the garb of Entry 97 is not ruled out, thereby undermining the avowed objectives of GST.

4.0 It is not clear whether these consequences were thought of and it was a conscious call to notify all sections of the Amendment Act with effect from 16.09.2016 or it was a major goof up, though the same can somehow be justified, based on Section 19 of the Amendment Act and Entry 97 of List I.

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