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ARTICLES 2022

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GST TRIBUNAL – THE MIRAGE.

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One issue in GST, which has defied a solution even after five years, is the inability to form the GST Tribunal. By the time the Tribunal comes into existence, it would be obese at birth, with huge load of cases.

The major hurdle in forming the GST Tribunal is its Constitution. Both Central Government and the State Governments desire to have their officers as Technical Members in each bench and with another Judicial member, it becomes a three member body. It is a common belief, that the Technical members could be biased in favour of the revenue and in a three member body, if two Technical members concur on an issue, their view would prevail, even if the judicial Member differs in his view.

As justice should not only be done but must also be seen to be done, it is imperative that any such notion is dispelled.

Such a constitution of the Tribunal, with the Technical Members constituting a majority has been found to be flawed by the Hon'ble Madras High Court in the case of Revenue Bar Association Vs UOI.

One easy way of getting over this could be to make the Tribunal as a two member body, with a Judicial Member and a Technical Member, who can either be from the Central Government or from the State Government, to be selected from out of a panel of Technical Members.

But this option is not finding favour with the Government, as both the Governments want their officers to be present in all benches of the Tribunal. Increasing the strength of Judicial Member to two would make the Tribunal too unwieldy and it is not known whether thus many eligible persons would come forward to become Judicial Members.

The GST council is the unique federal body created by the Constitution, which has been doing a phenomenal job ever since the introduction of GST. The voting pattern of GST Council is unique, where the value of Central Government's vote is 33 % and State Governments' vote is 67 % and it requires 75 % votes, for the council to take any decision. Neither the Central Government alone, nor all State Governments together can get to pass any resolution in the GST Council, as it requires 75 % of votes.

Why not this voting methodology be introduced in the GST Tribunal? To elaborate, let the decision of the Judicial member have a weightage of 50 % and let the decision of each Technical member have a weightage of 25 % and any decision to be arrived at must have 75 % approval. This would make that even if two Technical members concur on an issue, such concurrence could not become a judicial verdict. The view of Judicial member could prevail, only if at least one of the Technical member concurs with him.

For this purpose, the statutory provisions dealing with setting up of the Tribunal must prescribe a procedure, by which one of the three members shall frame the issues and record his decisions thereon and thereafter, the other two Members must either concur with such decision or with the same, by recording their reasons and the final verdict would be based on the weightage of the decision of all Members.

Complex problems require out of the box solution and in the given situation where both Central Government and the State Governments are not willing to compromise on having Technical members from their officers, the above solution, seems to be the only way out to tide over the logjam.

It is hoped that the Group of Ministers, formed in this regard would seriously ponder over the above suggestion.

(Published in Business Line)

