The need for a GST settlement scheme

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Views are personal

The availability of such an option would make it easier to keep up with the ever-evolving regime

The GST regime will complete seven years in July 2024. There has been a substantial increase in the number of show cause notices and other recovery proceedings in the last few years. Timelines have been extended for passing of orders and there have been an avalanche of orders just before the expiry of the timelines, creating various demands on issues such as mere reconciliation, return mismatches, input tax credit (ITC) denials for suppliers' defaults, time-barred ITC claims, and ITC on account of blocked credit. Further, there are classification disputes arising out of differential rates of tax because of multiple notifications, many not fully aligned with Customs Tariff. It is unfortunate that most of the demands pertaining to denial of ITC are based on comparison of GSTR-3B and GSTR-2A, which was not even legally permissible prior to January 1, 2022. A large number of disputes have also arisen because of lack of understanding of the new law and procedures, numerous amendments, and the impact of frequent portal glitches.

In many cases, the First Appellate Authority simply confirms the order of the lower authority and there is no GST Appellate Tribunal in place for relief to be obtained. The GST Tribunal is yet to be formed and the defective drafting of the relevant statutory provisions relating to formation of this Tribunal has resulted in repeated filing of writ petitions. The matter is still pending in the Supreme Court. Even though several amendments have been made, it would still take considerable time for the members to be selected and infrastructure to be set up. The more practical step of increasing the strength of the existing CESTAT was, unfortunately, not accepted.

A number of disputes were referred to the Authority for Advance Ruling and appeals have then been filed to the Appellate Authority for Advance Ruling. As most of these rulings are averse to the assessees, the efficacy of this mechanism, which is manned only by officials, is also doubtful.

The settlement scheme must cover not only matters pending in appeal but also cases where show-cause notice has been issued or where a demand has been made at the pre-show-cause notice stage

In the above context, it is worthwhile to consider a GST settlement scheme to enable assessees to pay a percentage of the disputed tax and bring thousands of pending proceedings to a close. Past experience has shown that Samadhan or Dispute Settlement Schemes are successful only when the percentage of taxes to be paid under the scheme is not high and there is a complete waiver of interest and penalty. The 2016 Direct Tax Settlement Scheme was not a success, though it did facilitate disposal of appeals and even disputes that arose on account of retrospective amendments to the Income Tax Act, 1961 to nullify the decision of Vodafone. This was because assessees had to deposit the entire disputed tax plus a percentage of the interest and penalty. On the contrary, the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was a roaring success and facilitated settlement of disputes under the erstwhile excise and service tax laws. The scheme provided for the waiver of interest and penalty subject to payment of a reasonable percentage of taxes demanded or disputed. The unique feature of the scheme was its applicability to even cases where show cause notices were issued or demands raised at the pre-show cause notice stage.

The success of the Sab Ka Vishwas paved way for the Direct Tax Vivad Se Viswas Act, 2020. Unlike the simple nature of the settlement scheme for indirect taxes, this Act included not only the tax, but interest, penalty and fees as well. It required deposit of the entire tax in dispute plus an additional percentage of 25% to 30% of the disputed interest, penalty or fees.

Keeping in mind the conditions imposed in these schemes and their mixed success, it would be immensely beneficial if the Union Budget provides for a GST dispute settlement scheme. It is suggested that the scheme should provide for a flat payment of 33% of the disputed tax amount with complete waiver of interest and penalty. This would make the scheme far more attractive and lead to the closure of several disputes. It would also considerably reduce the number of appeals that may come to be filed before the proposed Tribunal.

The GST dispute settlement scheme should cover not only matters pending in appeal but also cases where show-cause notice has been issued or where a demand has been made at the pre-show-cause notice stage. The scheme must provide for the usual immunity from penalty and prosecution.

The GST regime has seen a number of retrospective amendments to the Act and Rules resulting in demands for the past few years. Unlike the 2016 provisions, which required payment of the entire disputed tax, the GST scheme must provide for a much lesser amount on account of any retrospective liability. It is suggested that if a demand has been created for an earlier period, on account of a retrospective amendment, the assessee must be given the option of settling the dispute by paying 25%.