

A CASE AGAINST GST & ALTERNATIVES

Progress is man's ability to complicate simplicity - Thor Heyerdahl.

Promise - Information available in the public domain makes the following claims in respect of GST:

- ◆ Broadening of tax base,
- ◆ Reduction of distortions in economy through a more comprehensive input tax credit,
- ◆ Enhancement of export competitiveness by comprehensively relieving domestic consumption taxes on exports,
- ◆ Ensuring greater regional equity by getting rid of inter-state sales tax,
- ◆ Having a destination-based tax,
- ◆ Help creation of a seamless national market by removing inter-state trade barriers,
- ◆ Reducing compliance costs for taxpayers by simplifying and harmonising tax structure and making administration uniform across states. (emphasis in italics and underling supplied)

A query in this regard – Whether the tax proposals are progressive?

Answer lies in the negative bringing me to - Why can't we as Indians (I'm thinking of us as the race which had nuclear bombs, planes and all kinds of contraptions which are not fathomable today i.e. in the times of Ramayan / Mahabharat) come upon tax innovation?, set the pace for the rest of the world, set a benchmark in implementing innovative, transparent and efficient tax administration / system (emphasis supplied). I realise, after introspection, that

the answer to this quandary lies in us, as people. The varied janata / population given India's density of population and the challenges that this in itself brings, let apart business putting in place complex tax structures involving a mix of free use and abuse of principles of interpretation of law, lacuna in legislation, vague policy which is miles apart from practice and lastly implementation which needs transformation of mindset and hence by necessary implication a radical tax policy, legislation and entire re-vamp of tax administration.

Why ape Europe / west and try to implement the ways in which they legislate, they administer and they make policies in the Indian text, context and sub-text when experience advises that apples and oranges are not comparable. It's as if we (Indian's) for some strange reason which alludes me are in awe of what the gori chamdi does. It's not as if India, in the past has had a dearth of SAVANTS or in the present will ever have a brain drain, that figuring out for ourselves innovative ways to manage our taxes better becomes an attempt to ape the west/east and the rest of the world. Some suggestions do follow in this deliberation It's not all negative, as some may choose to call it.

Present - The existing condition of India's economy, given the morality of the general public, businesses and tax administration is evident from the paradox which the above vision, if I may call it that – promises. The present dispensation of indirect taxes when logically evaluated, what emanates is - Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 form the pool of Central indirect taxes apart from Central / State Sales tax levied on inter/intra-state sale of goods. All these levies except for customs are to be subsumed in GST (CGST, SGST & IGST) in addition to other levies. Presently law relating to Central in-

direct taxes have a semblance of being settled in the sense that the words, phrases, sections, etc., are in some state of inertia given decades of contentious litigation (most of which still finds place in Courts/Tribunals). Legislation is an exercise in which all and sundry are involved and pundits sitting in the north block ably added by the bureaucracy determine outcome of legislation. In other words lacuna in the name of certainty, deletion of benefit in the name of reducing distortions, insertions of more and more condition precedents for input tax credit, keeping refunds in a state of flux without appreciating that the interest cost would again fuel inflationary trends, distorting sectors by inadequate policies, legislations, and the like. All of the above are solely attributable to the sceptical mind-set of the tax administration who still believes that they collect tax for the British. Investigations are abandoned for gratification and where it ought to start it stops. Umpteen instances where the Government to save face has had to retrospectively amend laws to the detriment of business in India as also for MNCs. I'm not for a moment, stating that all tax ill's are attributable solely to tax administration, businesses are also equally to blame, it's not as if one can expect in India that there is a lacuna in law and the business community brings it to the fore and plugs it before damage is done. Though, some naysayers may point out recent controversies created by the legislature and judiciary-there is no denying that fact. Aberrations would always be a part of the larger picture of chaos. Point being, that existing machinery of in-direct tax laws can fairly be said to be well oiled capable of exacting taxes (legal or otherwise) from its tax-paying denizens. The going thus far is more or less good and the law more or less settled. Give or take about 10 percentile points either way.

The Government (In-direct tax department) has its own way of functioning – it's like the rest of India where people cannot fathom the Goan way of life – “sushegath” which equals “*aram se*” in Hindi. The departmental officers are in a comfortable position where show cause (kas in kannada means money) notices (SCNs) are issued periodically without taking a stand on the legality/tenability of the demand. It's as if the department at some point of time lost its spine. SCNs are issued for heck's sake and the justification is “I don't want anybody pointing fingers at me.” Despite the outcome which is in no way linked to the tenacious officers APRs. More-so, since the seniors writing the APRs have also gone through the same rigmarole. No one takes a stand contrary to “higher powers.” Intellectual dis-honesty is the norm and justifications ample, lest, it's a hindrance to one's promotion. To put it plainly never have I seen some government officer who is expected to serve the public actually serving the public, what is happening in the name of service is self-service and dis-service.

I have never in my life seen class divide as I've seen in the GOI (any department) where even if the occasion is republic day or independence day, the tea and snacks served to Class I officers and so on and so forth has to be at a different venue albeit in the same premises when compared with Class IV officers. It some-how perpetuates an aura of *they are more important* - a paradox in itself.

Coming back, the periodicity of issuance of the SCN does not in any manner improve the quality of the show cause and uses time, effort and money in a wasteful manner. Whose time, whose effort and whose money – ours as a nation. The efficiency is never measured, its managed. In management terms it's a branch called *perception management*, which the department manages well at the cost

of efficiency. The upholding of the demand by the highest court of the land is not the criteria for APRs its issuance and confirmation of demands at the adjudication levels, which as all of us know is a farce. Such measures, if perpetuated - can anyone expect it to be anything else but distortionary/far away from the truth as can be. I have appeared before officers who choose to listen to music while purportedly listening to me argue the case and swaying their heads to the tune of the music. Adjudication is a sham and ought to be done away with – why unnecessarily conduct a procedure when it ought to be done in spirit.

I may add here as an anecdote that the deliberation here does not include amongst others, monthly doles which service providers, manufacturers, CHA's, importers, sellers and other business doing citizenery shell out for the personal betterment of the law enforcing officers and thus by analogy law abiding tax administrators. The figures would be capable of running a small nation. I'm not aware of any survey / sting operation being conducted in this regard. All of us as citizens have come to accept this as a part and parcel of doing business.

Ground Reality Any law cannot envisage all fact situations - is reality. Creases / lacunas / interpretational nuances, if any are ironed out by litigation. Under the four enactments referred to supra i.e. Central / State in-direct taxes the attendant procedures to be followed are varied. By procedures what I mean is once the levy stands attracted, the next issue is of valuing the levy in terms of the enactments, rules framed thereunder, notifications-circulars issued and impromptu fly by night circulars / dikats / *ipse-dixit* of the tax administrators who have not been given their dues sorry doles. The principles to be followed for valuation of the respective levies are dissimilar, the periodicity of filing various returns and

attendant procedures are also unlike. Further, the Cenvat Credit scheme w.e.f. 2004 has been made applicable across the goods and services sectors, which move I doubt has eased any pressure for the assessee's. Further, the Cenvat Credit scheme which is purported to be simple is anything but simple. There are disputes galore attributable mostly to the irreverently invalid arguments propounded by self-proclaimed experts serving the department for cons. The disputes are clearly unwarranted. The statics of departmental wins at the higher levels of judiciary establish this point. Such administrators, for the sake of convenience are referred to in this deliberation as revenue generating machines (RGMs). Most in-direct tax practitioners, "*consultants*" / in house tax departments know extremely well of the how's to deal with RGMs. Point being, however well-oiled a machine may be, it requires to be driven and when the drivers are RGMs, frivolous litigation mushrooms. Empirical studies on government website proves this point. The latest Excise Law Times in its editorials pegs the figure of pending cases before the CESTAT at a whopping 100000/-. The existing mechanics of in-direct taxes has too much semantics built in necessitating lis bringing Courts / Tribunals / Quasi-judicial forums into picture. This is apart from the ADRs referred to above. The so-called settlement commission is an example in point. Practice is whosoever goes with howsoever clean hands they are all thieves. Most of us denizens have to pay for our sins (read taxes-legal or otherwise) and clear our dues before we can dream of taking one step in the direction of growth. The blame is not solely on the administrators it's also the fraternity of professionals some of whom I have reason to believe (without cogent proof of course) since I'm no Snowden/Julian Assange, are instigators giving impetus to the law abiding efficient and diligent administrators to obtain some – how do we say, in diplomacy - leverage so that their lives are comfortable. What is the cause – the

GOI pays the best brains who have cracked the civil services a pittance which cannot provide anything else but an ego boost, which is all lost after superannuation.

Cause - Onus is a word which an interpreter of law comes across often. A synonym for which is responsibility not only moral or professional, but also intellectual. It is my view that unless and until onus / responsibility is cast on tax administrators for each of their acts / actions, discharged in the course of rendering service, there cannot be a change in the manner in which business is done nor would there be any hope in ease of doing business. All promises would fade if onus / responsibility is not cast on administrators. I do not see any expert in their reports bringing out this aspect. Neither do any of the recommendations propose any kind of responsibility on the tax administrator. My guess is that, the powers that be in the bureaucracy thwart any recommendation / change in this regard, if any. However, this does not preclude them from seeking increase in their pay scales. The VII pay commission report is an example in this behalf.

India expects everything stated above to change overnight by the sleight of hand that by legislating a law to be called GST all the ills of tax administration would be done away with. This is akin to expecting local blended whiskey to taste like single malt. No mother's son (to use Shri Aurobindo's language) has even attempted to cast responsibility on the administrators. I do not see one word about responsibility in the public domain juxtaposed with what is out there as we (commoners) know of GST. It's a misnomer i.e. the word responsibility when we think of tax administrators. This is despite the despicable litigation results of colossal cases built up by the efficient, diligent and ever so law abiding juries

bond wings of the revenue i.e. Anti-evasion / DRI etc. I think they teach them how not to get caught while making a pathetic case against the dole givers. Kindly do not think that I'm generalizing here. But a majority of the 007 division are dole takers not DHARMA following Dharmadhikaris rendering a service to their denizens or to our Nation.

Reason - I think (and this is my conspiracy theory) that the first thing that BJP ought to have done once they were in power is to shuffle the entire Bureaucracy up in the North block. Theory being - governments come and governments go – who remain constant like fixtures in the North Block it's the North Blockers. Hence, they (North Blockers) have become a parallel government and are the ones who have their say to the detriment of the public at large. Take the example of how they try to dictate to the business men how to do business when they have not an iota / ounce of experience in doing business. Of how they expect forecasts of growth every year from businesses, while having the largest ever imaginable data base on businesses. How the trained 007 division of the GOI directs assessee under investigation to provide information in simple formats dictated by them. How they hoist false cases against assessee who refuse doles and the list goes on. North blockers are good at getting pay commission recommendations passed for which all of us the commoners have to bleed / shell out so that they (North Blockers) can increase their emoluments pays without increasing their responsibilities and travel in *lal battis*. They have no inkling of any responsibility. All they can do is expect to get paid irrespective of what time they come into office, how they discharge their duties, how intellectually honest they are in serving the public and without asking themselves how morally, intellectually and professionally they diligently (in fact) discharge their duty for which they are paid,

get a car, get accommodation, get TA/DA in addition to getting the right of doing us the common denizens a favour.

I suggest a radical approach in making them fall in line or fall by the wayside, take away all their perks, perks ought not to be dependent on their class / grade of pay etc., it ought to be based on merit and deserve and desire ought to be the mandate. That it should be made mandatory for all of them irrespective of their grades / class to travel by Government transport be it metro / busses. Imagine how much the country would save. Refer to the number of central government employees and do the math. Further, perks ought to be linked to cases built up by them being upheld in the highest court of the land / High Court/Supreme Court. How about their promotions are not based on seniority (how many years they have put in) but based on performance which is linked to professionalism, diligence and intellectual honesty. How about they are made accountable for their acts and there is a separate department in every administrative agency which consist of us common denizens (like a jury which takes stock on a monthly / bi-monthly / quarterly / half-yearly and yearly) basis and only thereafter their promotions / perks are decided upon. How about they do not get anything for granted just because they have reached a particular level. How about banning all Delhilites from being eligible for government jobs except if it is not in Delhi. I think it is time that there are radical changes made in the administrative set-up, since they like a party that rules us for more than 60 years have had it good for aeons and they have taken us the common denizens for granted. I fail to understand how all so-called intellectuals, professionals and other commoners do not see the fact that our courts are burdened with humungous backlogs in cases which are all attributable to some north blocker / 007 divisioner who is not

accountable for the sheer mass of his creation. Of how nothing ever seems to happen to them irrespective of what decision they take – legal or illegal. On the contrary it is the common denizens who have to suffer for their faults in not being upright and following their DHARMA. Nay-sayers would argue that this is all wishful thinking, however, it may be borne in mind that whenever it is said that so and so is not possible, that so and so has always happened. History of the world bears witness to this fact.

Wish list - What brings perspective is - GST proposes to integrate Cenvat across VAT & CEA / FA, which is welcome in an utopian society not KALIUGA in India, where a person is expected (repeat expected) to look both ways while walking on a one way street. Where he is presumed guilty before a verdict and where the guilty go scot free and poor suffer for lack of a good counsel. Modalities and fine print by which integration is proposed / GST is to be administered / implemented is in the realm of one's imagination (to the exclusion of bureaucrats) which latter creed of people seem to be dictating the GST model-my theory again. If experience is a teacher it ought to teach us not to depend on administrators to don all caps i.e. of administrators and also law makers. There are other means of devising / writing laws. Merely because it has never been done does not mean that it cannot be done. This is negativism to the core and needs to be nipped in the bud. Let us be a country where the commoners dictate the manner in which the country is run and not the so-called elected few who dictate, who get the right to splurge our monies on vastu, cars, de-notifying land, amassing enormous wealth which they or seven generations cannot expend. Let us at least try to get in a legislation which actually helps us bring down the inflation caused by the excesses of the government, politicians and bureaucrats.

Why is it, that laws are so complex that there needs to be scores of judgements, clarifications and lies on one particular issue. Why can't laws be simple in fact. Why is there a need to exclude Cenvat to builders and give the same to contractors just because some big brain in the North block came up with a device to save or rather do some jugglery with numbers and ostensibly show that some pittance money is saved. Why can't refunds be refunded within the time limit so that interest burden does not again stoke inflationary trends. The 7th pay commission when implemented the Finance Minister has made a statement that he needs to find 1 lakh crore to fund the same. This is now a reality. All of us citizens are more in debt for paying the servicers more for ostensibly rendering a service, while in reality they sit on our heads like masters. Exclusions are always in existence and are the ones who prove the rule. Now, since the FM is not Houdini or a Merlin to garner 1 lakh crore from thin air, my guess is that some big brain would again come up with some magic jugglery and think that he is a big brain. Why can't all of the GOI bear in mind when they come into work that it is for INDIA that they are all working towards and have inbuilt mechanisms to negate lies between governments – imagine how much this would save the country in litigation costs and reduce pendency in Courts. This entire paper can be on this topic, however not being the discussion on paper, it is not.

Suggestions - GOI may choose to note the principle of legislation by incorporation / reference. That the exercise of power of legislation by incorporation / reference is well settled. There are innumerable examples where existing law relating to one enactment has made applicable provisions / parts of another enactment by incorporation / reference. Various cesses levied as a duty of excise under the CEA are examples of exercise of such power. Such legislations have been

successful in implementing the levies sought to be levied. The administering of such levies has also been successful. The same power i.e. legislation by reference / incorporation can, in my view, be exercised in respect of subsuming various taxes / levies which are proposed to be subsumed under the GST. Such exercise of power would entail tinkering with another column or two in the periodical returns which would do the job. Rather than enacting a completely new levy with its challenges of re-defining words, phrases and expressions well settled. Why re-invent when tinkering can do the job. Keeping out goods from the purview of GST which garners almost 45% of the state revenues as per the whims of the States and stating again and again on paper that GST would reduce distortion etc., is not fact but an attempt to distort fact. Whether the exercise of introducing GST is what is stated to be in the first para supra or whether the introduction of GST is for garnering and cornering more revenue for the States is a question which deserves an answer. That keeping out majority goods which garner if not more at least 45% of revenue for the States and expecting that there would be no distortion in addition to proposing 1% additional IGST for the origin state without first doing the math relating to consuming States and origin states and putting such data out in the public domain would be nothing short of giving a not so pleasant surprise to the States and also public/assesseees'. Such exercise of powers by the GOI and wasting immense time, effort and money of the public according to me is unwarranted if simplicity, transparency and ease of doing business are what is sought to be achieved. Further, what is the logic in making promises that GST is a destination based levy and that the monies ought to go to the consuming states – Why? Is it not more pragmatic to promise that whichever state is garnering revenue would not garner less than that. Is the objective to make lives of denizens of India easier, cheaper or is it that the State governments

ought to fill their coffers since no majority party has power in all states and the political parties who are in power ought to fill their quotas. Why does petrol need to be so expensive when the barrel has reached 35\$ we are still paying through our noses, while when the cost of one barrel goes up the price of petrol again goes up – what is this logic? Is everybody sleeping and too busy fighting because the person behind him honked. This is more so because the goods being kept out of the purview of GST which garner 45% of the revenue have been given a constitutional guarantee of not being subsumed under the GST. Refer Article 246A and also 279A of the 122nd Constitutional Amendment Bill. Further there is also a constitutional guarantee given by the Center that it would compensate the States which garner a loss due to GST being destination based. The focus appears to be on how the States can make more revenue rather than the focus being on the intent of proposals of GST – remember the discussion on intellectual, professional and Dharmic honesty supra. That we are one country and all of us ought to work towards it's betterment seems to be completely lost in the din of demarcating more and more States and how a few can garner and corner revenue belonging to the people of India. The above discussion drives home the point that there is a lot to be thought of before GST is introduced. The focus as stated in the first para in this paper is lost in the din of upholding a promise made by the ruling party without fully comprehending its results. I state this because the statistics of all the aspects detailed above are not in public domain. Issues like which States stand to gain due to their consumption and which States loses revenue and by how much compared with earlier records are not clear and are not in the public domain.

Another facet which merits appreciation by one and all is how would the States retain financial, administrative and political autonomy (which is the corner stone of our Constitution) when the Center proposes that they would first collect all the monies and thereafter distribute it to the States. That they would insert such a promise in the Constitution. Is this what the Constitution is reduced to be tinkered with as per the ipse-dixit of the ruling party. If this were to be prudent imagine a situation where after the introduction of GST the States consuming more would be comparatively richer since it is a State which consumes more than it produces and as such would have more monies in its coffers as compared to State which is a manufacturing hub. What would the incentive be for business houses to set up shop in States for manufacture and how would such a State, loosing revenue due to it being a producing State promote business or seek investments. How does the GST address this issue? There is no clarity on these aspects and the GOI would do well to put in the public domain some legitimate statistics on these aspects which would provide clarity on these issues. A mere cursory glance at industries in Kerala would answer this query.

It is further to be appreciated that the goods proposed to be kept out of the ambit of GST in quantum are about 45% (approximately on an average i.e. petroleum, petroleum products, alcohol, tobacco and cigarettes). Therefore, what follows is that the GST which purportedly is being implemented to broaden tax base, reduce distortions in the economy through a more comprehensive input tax credit, enhance export competitiveness by comprehensively relieving domestic consumption taxes on exports, ensure greater regional equity by getting rid of inter-state sales tax and having a destination-based tax, and help create a seamless national market by removing inter-state trade barriers, reduce compliance cost for

taxpayers by simplifying and harmonising the tax structure and making the administration uniform across states achieve such a tall objective, would fail in its objective. For if GST is for only 55% of the goods what sense does it make to enact such a law or take up such a mammoth task for only 55% of the goods and burden the denizens with more un-certainty, more expenditure in the face of huge backlog in Courts and a meagre number of judges present to do the job. The topic of judges is again worthy of a thesis and is not attempted here. It is also unclear as to whether the collective impact of the GST would be more than what it is presently or would it be lesser. All of these issues are serious and need clarity. As of now there is nothing in the public domain which sheds any light on these issues.

The point being that various issues / concepts / aspects under the respective laws are settled and the industry is also more or less in sync with the laws and their attendant procedures to be followed. Now the proposal by the GOI to introduce a new enactment encompassing a host of levies under the GST and integrating the Cenvat mechanism across various levies would be in its conception stage. It is only once the enactment is made known and the fine print is out in the public domain that the questions raised in this deliberation would be capable of being answered.

However, I'm of the view that old wine in a new bottle and administration of such old wine by the same old bottle in addition to the corrupt department of VAT would only give impetus to corruption, disorder, frivolous disputes and chaos. This is because unless and until the mind-set of the people administering the laws is changed expecting that pouring new wine would mature it

instantaneously / introduction of a new law would change the ease with which business is done in our country is a logical fallacy. That this is a fact is staring us in the face while we are busy checking our new idiot box the mobile. This is more-so because the Babu tradition has seeped into the DNA of the administrative officers to such an extent that unless this aspect is first addressed before introducing the GST nothing on the ground would in fact change. Expecting change while the administrators of the law remain the same is like expecting the old wine to taste like single malt whiskey when poured in a new bottle. Such an expectation is nothing short of expecting a miracle which in Kaliyuga is not possible since we have lost Merlin and Houdini and it is not Dwapara yuga anymore.

Facts - I have noticed loads of hoopla around GST and various articles on the why's and how's of GST. There are also books running into thousands of pages which are available in the market. Of how much use these books are I cannot say for I have not wasted time in reading someone's opinion on a law whose bolts and nuts are invisible. According to me there is nothing out in the public domain conclusively informing us of the modalities of GST as pointed out supra. What I've however, failed to appreciate in respect of GST are the following: –

- i. Why is it imperative to bring in a new law?
- ii. Can't the existing law be tinkered to subsume the other taxes like what is done with various cesses, levied as a duty of excise?
- iii. Can't one levy be incorporated at a time all the while assessing its effectiveness?
- iv. Can't the mechanism of collection of taxes be tinkered with?

- v. Can't invoices raised under one law have interconnection with other indirect tax laws?
- vi. Is it not possible to have minimal State interference, given the state of administration and corruption in local VAT offices?
- vii. What would a return under the new GST look like?
- viii. What would the frequency of filing the same be? Central Excise has a number of forms to be filed one monthly, one quarterly, one half yearly etc?
- ix. How would the GST address this issue?
- x. Would the dispute resolution system be the same as it is presently?
- xi. Would appeals have to be filed before the State Appellate Tribunals in respect of services earmarked to the States?
- xii. What would the credit system look like?
- xiii. Would there be identical blockages of Cenvat credit given the definitions of exempted services / goods, while proposing to do away with the distinction of goods and services?
- xiv. How would software be treated? Presently the software industry pays service tax and also VAT on the same value. Given this fact which authority (State or Centre) would give up its right to tax software, given the fact that it cannot be a service and goods at the same time on the same value.
- xv. Would all appeals including refund, rebate and demands be filed before the CESTAT?
- xvi. Would CESTAT as a Tribunal function and have jurisdiction over services and goods?

- xvii. What are the measures to be taken to fix accountability on the administrator?
- xviii. Why is no accountability fixed as per law on Babus?
- xix. Why keep 45% of revenue generating goods outside the ambit of GST?
- xx. How would distribution of taxes collected by the Center be done?
- xxi. Would the costs involved in setting up all what is proposed to be set up justify the collections?
- xxii. Can't the GOI give us a presumptive figure based on the statistics collected by it?
- xxiii. many more

Such are the questions which loom large in my mind. I have no clarity given the present literature which is available to all, on GST on the above aspects. I for one am of the firm belief that the advent of GST would give rise to immense litigation and would only be a lawyer friendly affair. There would be no ease of doing business, or change in the mind-set of the tax administrator given that accountability is not a feature of the proposed levy.

I do not understand the logic that GST ought to be introduced after such a long time of having the presence of CEA, CA and FA. Given the fact that the principles and various facets and aspects under these laws are litigated and there is a certain level of certainty to the litigation process. However, under the GST how would all these aspects be dealt with? Why should an assessee who has been diligently paying taxes to the central government be made to necessarily go before the State authorities, which latter authorities are known to be far more corrupt than the former. This is an open secret. That the VAT authorities

exercise discretionary powers in an arbitrary fashion is well known more-so because the appeal mechanism requires full pre-deposit i.e. 50% deposit of the adjudged dues and 50% bank guarantee. Now given such exercise of powers by the VAT authorities is there hope for justice in tax laws? If yes how is this going to be tackled without first fixing accountability on the administrators of the GST?

I have always wondered why is it that in Bangalore it is the house which is first constructed and thereafter all measures for plumbing are undertaken. It's like the mountain going to Mohd or the tail wagging the dog. GST proposals are akin to these proverbs. As stated above it is the mindset of the existing tax administrators and their Sardars which has to undergo a sea change. They ought to stop being recovery agents acting like the British stooges collecting revenue and not thinking of the Indian well-being or acting as facilitators. I have had instances where the administrator is clueless of the law despite being in the department for 30 odd years, such is the state of affairs.

The GOI is also to blame to a certain degree in this approach being adopted, for it is the GOI which fixes targets to be achieved. I don't understand whether the department is an insurance agent to achieve targets or is he there to levy, collect and recover taxes where they are due and to guide assessee's when in doubt, in accordance with law. I do not understand why has the sanctity of the phrase **in accordance with law** lost its meaning and relevance. Unless and until such mind-set is changed and accountability is brought into the picture there would in my mind, be no change whether it be introduction of GST or any other levy which purportedly subsumes various taxes and levies and which purports to be simple and reduces distortions is a well-known fact that creation of the post of

Principal Commissioner while there already exists the post of Chief Commissioner and Commissioner makes the administration top heavy. If everyone is of the rank of the Commissioner, who is responsible for ground work? How many amongst the department desire to actually work? How may do justice to their pay? How many are on their seat at the designated time of the day? How many introduce best practices? How many actually help assessees? How many are not drawing twin salaries one from the GOI & One from every registered assessee? What is done in the GST law to tackle such menace to the society which has eaten away the very fabric of our country? How is accountability fixed on every departmental officer to ensure that he is paid for what he deserves? Who in the GST scheme of things acts as a check and balance?

None of the above questions are answered in the literature present on GST as of today. I am not aware if there exists such provisions in the GST which casts an obligation on the administrator to act judiciously. No one seems to be concerned on these aspects either. This is because all that I read in various web-sites and books is all relatable to the hoopla surrounding the introduction of GST and not one line has been dedicated on the above aspects, which according to me would have a far reaching effect than introducing GST without first addressing the root problem i.e. not the law its administrators.

I entreat the readers to appreciate the following anomalies between the reason for proposing and implementing GST and the manner in which there has been a compromise with various states (as collected from various journals like ELT, STR, TIOL, India Today etc). Tobacco & Cigarettes after the advent of GST would nevertheless be leviable to a separate central excise duty. Now if this be

true what is the point of GST? Isn't the point of levying GST totally defeated? It was the demand of most States to keep out of GST petroleum, petroleum products and alcohol. If this be true again statistics as stated in various journals indicate that the States earn more than 50% of their revenue from petroleum, petroleum products and alcohol. Wouldn't keeping 50% revenue earning goods outside the ambit of GST be against the grain of the reason for proposing GST? Imagine this if 50% revenue earning goods are kept out of the ambit of GST of every State what is the point of having GST for the remainder except tobacco & Cigarette (the percentage of revenue earning from these products being unknown). Further the fact that these goods would be out of the ambit of GST is strengthened from the proposal of Article 279A which postpones levy of GST on petroleum and petroleum products to a latter date. The fine print of Article 246A further leads me to believe that there is still scope for keeping other goods outside the levy of GST which is clear from the exception carved out in Article 246A by use of the words *except those which are kept out of the purview of GST*. It may also be appreciated that the Center has promised the States that they would compensate the States for any loss for five years. That the present state of GST is, thanks to negotiations which are on-going since 2009. That in six years our bureaucracy and the political establishment along with various committees have not been able to come up with a solution.

That tinkering the existing law would be sufficient to implement all that is proposed to be done under the GST, there only needs to be a will to do so. That introduction of GST would only distort and set to naught whatever little semblance of legality and parity has been achieved amongst various taxes levied. That a simple solution is plausible rather than keep 50% revenue earning goods

outside the ambit of GST, keep tobacco and Cigarettes out of the ambit of GST, keep alcohol out of the ambit of tax and start implementation of an onerous tax regime all over again for maybe 20% of the goods. I implore all and sundry to appreciate the costs involved in implementation of the proposed GST and ask themselves the question - whether expending the taxpayers hard earned monies in a venture called GST for maximum 30% of goods apart from allowing every state to levy 1% additional IGST to be retained in the origin state over and above the IGST rate of GST is an exercise of logic and prudence given our economic situation. Should'nt the GOI be focused in cleaning all administrative systems first than proposing to do everything at all times. Kindly ask yourselves - If all of these distortions provide for economic balance and growth? These distortionist tactics ought to be nipped in the bud and GST ought to be scrapped. I'm of the firm opinion that tinkering with the existing laws would provide ample room for manoeuvring all that is proposed under the GST. This entire exercise of GST would provide nothing but a big hole in our pockets, the burden of which would have to be carried by the common man as always. That it is high time that before introduction of any law public consensus be obtained and the fine print be available for detailed analysis and comments by experts. Distortions be reduced and all goods irrespective of their revenue earning capacity be subsumed within the GST or to tinker the existing laws without any separate GST enactment. The interested reader would do well to appreciate that I have not brought to the fore further distortions which would be created by the proposed Cenvat facility to be across the supply and services sectors.

In parting I will only quote that *business function not because of governments but in spite of governments* and that *a little experience upsets a lot of theory* and *a good lie finds more believers than a bad truth* and *things pass for what they seem, not for what they are. Few see inside, many get attached to appearances.*

The comments made in this article are based on my experience and the views expressed herein are singularly mine. Errors may have crept in the draft, all of which are singularly attributable to me. The views expressed are immensely personal. References to published texts are stated wherever applicable. Readers will do better by reading studies and papers conducted and published on the web site of National Institute of Public Finance and Policy. As always, I'm interested to know errors which may freely be pointed out to further increase my efficiency.

References - Reports & working papers by PawanK Aggarwal, Pinaki Chakraborty & Jeejabai Manay, Sacchidananda Mukherjee & R. Kavita Rao, R. Kavita Rao & Pinaki Chakraborty published on the website of National Institute of Public Finance & Policy, website of CESTAT, CBEC website, Excise Law Times, Taxindiaonline, various news-paper articles, news, various periodicals like The Week, Open, India Today etc.