The CFO Board
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To,
Shri Arun Goyal,
Additional Secretary,
GST Council,
Tower II, 5th Floor, Jeevan Bharti Building,
New Delhi – 110 001.

Sub: Representation on critical policy issues related to implementation of Goods and Services Tax ('GST')

Dear Sir,

The CFO Board is a group of senior finance professionals in the country to share their knowledge/experience and also to deliberate on various regulatory developments affecting the industry and act as a sounding board between the government and industry to highlight the concerns and suggestions to improve the regulatory framework for the advancement of industry and commerce.

The Goods and Services Tax (GST) has been introduced in India from 1 July 2017. The objective of GST implementation was to provide a simple, efficient and equitable tax system with full input tax credit to eliminate cascading of taxes. This is a transformational initiative by government, however, industry has faced several challenges during transition and it is felt that GST has increased compliance and complexity. However, the government has shown its intent to resolve the challenges faced by the taxpayers.

In this context, the CFO Board has identified the following key policy challenges that need to be addressed on priority. Our suggestions are only from the perspective of bringing simplicity in implementation and reducing the room for litigation and thereby easing the pressure on the legal system. Accordingly, the CFO Board humbly request the GST Council to consider these challenges and amend the GST law to provide suitable relief to the Industry as large.

1. **Removal/amendment of invoice level matching requirement and simplify tax returns**

   One of the primary condition for availing the input tax credit is the matching of every inward supply with the details of outward supply furnished by the supplier in terms of Section 42(1) of the Central Goods and Services Tax Act, 2017 (CGST Act). The recipient can avail the credit only if the particulars furnished by the suppliers

matches with the details available/recorded by the recipient. Any unmatched transaction will be added to the output liability of the recipient.

The matching principle entails that a bonafide purchaser who has purchased goods against a valid tax invoice and made payment for the same, can still be penalized for any non-compliance and matching error by his vendor.

It is to be noted that payment of applicable taxes to the exchequer or reflection in the returns are not in the control of the recipient. Therefore, recipient should not be penalized for the error or default of the service providers.

The introduction of this system is highly cumbersome to comply for the taxpayers. If the taxpayers are not able to file accurate information, the input tax credit is blocked. The proposed matching will increase the cost of doing business and adds to the cost of compliance. Therefore, it is suggested that the system of invoice level matching should be discontinued atleast for 2 years till the system stabilizes.

Further, the requirement to file various returns can be simplified to achieve the stated objective of simple and efficient tax regime. The Form GSTR-3B should be continued for 2 years and GSTR 1, GSTR 2, and GSTR 3 should be suspended. After two years, these forms can be introduced on a quarterly basis.

2. **Discontinue reverse charge mechanism for procurement from unregistered dealer**

The GST law provides that the registered recipient of goods and services shall be liable to pay GST on the procurement from the unregistered supplier at the applicable rates under reverse charge mechanism. The recipient is required to issue a payment voucher and raise a self invoice. The additional compliance burden put forth on the registered recipient is dissuading such recipient to deal only with the registered suppliers.

This is leading to significant drop in the economic activities of the small and medium enterprises (SME) and thereby raising an alarm on their existence itself. The SMEs are an important element of society and they should be encouraged to create employment. Therefore, it is suggested that the applicability of reverse charge mechanism should be limited to only few sectors prone to tax abuse.

3. **ITC must be allowed on all expenses without any restriction if such expense is for business purpose**

The erstwhile CENVAT Credit Rules, 2004 had prescribed certain restrictions on availment of credit of service tax paid on certain services such as health/life insurance of the employees, rent-a-cab, insurance of motor vehicles, services/goods consumed by employees, etc. With the introduction of GST, it was envisaged that these exclusions from Input Tax Credit (ITC) would be done away with and ITC will be allowed on all business expenditure as any denial of credit leads to cascading effect.

However, to the surprise of Industry, these restrictions have not only been continued under Section 17(5) of the Central GST Act but its gamut has also been enhanced. For example, under the earlier regime, credit of service tax on expense relating to food and beverages could have been availed for conducting the business events (i.e. food was not meant for consumption by employees). However, under GST regime, such credit cannot be availed at all. Similarly, the restriction on motor vehicles, rent a cab services, health insurance, motor vehicles, etc. has been continued under GST regime. Similarly, the expenses relating to construction of immovable property is denied under GST regime.

These expenses are necessity for any business and are incurred in the course or furtherance of business even though in some cases the same is consumed by employees. Under the income tax law, these are treated as business expenditure and a deduction is allowed from the Taxable Profits.

The denial of ITC to legitimate business expenditure increases the cost of doing business and in turn negatively affects the cost of goods/services to consumers. Since the Government intended to ensure that GST eliminates the cascading effect of multiple taxes, it may be noted that these are legitimate business expenses and arbitrary restriction on credit dilutes the basic objective of avoiding cascading effect of taxation and creating seamless credit structure.

Further, computation of quantum of reversal of ITC especially in case of free distribution of manufactured goods is complex and increases the possibility of litigation. Hence, with the objective of reducing complexities and burden on the legal system, we suggest that such restrictions are removed as these expenses are incurred for the purpose of furtherance of business.

Therefore, it is urged that the restriction placed under Section 17(5) be withdrawn by treating such expenses as business expenses eligible for ITC.

4. **Clarity on the anti-profiteering measure and detailed guidelines on how to determine the impact on prices**

Before introduction of GST, there was a wide spread apprehension that the prices of goods and services may increase due to removal of exemptions, reduction in the threshold limits etc. Accordingly, the anti-profiteering measure was introduced by government to ensure that the benefits arising on account of introduction of GST are passed on to the end consumer. The law envisages that a commensurate reduction in the prices on account of reduced tax rate or benefit of higher input tax credit is passed on to the consumer. It has also set up an authority to monitor such instances of profiteering.

However, no guidelines was released to the trade and industry in terms of implementation of anti-profiteering clause and industry was left to determine the quantum of benefits to be passed on by the company.

We would like to highlight that besides taxes, the prices of goods and services are primarily driven by various factors including elasticity of demand, supply situations (excess/shortage), level of economy, global events, cost of raw materials, status of supplier and competition etc. As pricing is a function of multiple factors, it is difficult to attribute only one factor responsible for increase or decrease in prices. Therefore, the actual implementation of this provision is quite challenging for business especially in absence of any specific and clear guidelines/rules and procedure with respect to the determination of benefit to be passed on to the customer.

The absence of any clear guidelines may lead to varying interpretations and could lead to litigation. It is thus in the interest of the business community and the end consumers that a detailed guidelines which is easy to understand and implement is issued at the earliest.

5. **Challenges relating to export of services: Place of supply of services by an Intermediary/research/testing/repair/IT/ITeS etc. should be based on location of recipient instead of location of supplier**

As per sub-section (8) of section 13 of the IGST law, the place of supply of 'intermediary services' shall be the location of supplier of service. The 'intermediary' is defined as under:

> *"intermediary" means a broker, an agent or any other person, by whatever name called,* ***who arranges or facilitates the supply of goods or services or both****, or securities,* ***between two or more persons****, but* ***does not include a person who supplies such goods or services*** *or both or securities* ***on his own account****;*

There are several intermediaries who provide services to overseas principal supplier/customers, however, as the supplier of services (i.e. the intermediary) is located in India, the services provided by them do not qualify as export and becomes liable to GST at the rate of 18 per cent. Generally, this additional GST liability on intermediary is not reimbursed by the foreign principal and it significantly reduces the margins as well as competitiveness of the Indian intermediaries in the global market.

We would like to urge that such Indenting Agents provide valuable services to the country by virtue of their expertise in procurement from overseas market by acting as agent of reputed/reliable overseas manufacturers/suppliers. They facilitate supply of quality raw material and other goods as required by Indian manufacturers/customers. The services are ultimately provided outside India to a foreign principal, bringing in valuable foreign exchange. However, as per the aforesaid place of supply, such services does not qualify as export and is liable to GST in India.

The levy of GST on such services negatively impacts the said sector by making these services more expensive due to GST of 18% on such services. The Indenting Agents, who are working on a very thin commission margin have to absorb GST @ 18% making their business unviable. This has forced the Companies to move their intermediary operations to overseas jurisdiction. Upon such movement, there is loss of tax revenue to government to the extent of GST on income generated by such intermediary from Indian customers. Such income will not be liable to GST under reverse charge mechanism as the place of supply is the location of the intermediary i.e. location outside India.

Also the service consideration charged by Indian Intermediary is included in principal supply of goods or services by foreign supplier on which applicable customs duty/GST shall be payable. Levy of GST on intermediary services would lead to double taxation for the foreign principal as in certain countries recipient of service is required to pay tax in their home county on reverse charge basis.

It is therefore suggested that the place of supply of service provided by Intermediary should be considered as the location of recipient of service.

Similarly, Section 13(3) of the IGST Act, 2017 provides for determination of the place of supply for certain services to be the place of performance in cases where the customer is located outside India. This includes cases where the provision of service requires the receiver to provide goods to the provider of services. Thus, if the place of performance is in India then such services cannot qualify as export of service and become liable to GST at the rate of 18 per cent. The levy of GST on such services is generally borne by the service provider in India (exporter of services) as the foreign customers are reluctant to reimburse such GST.

Recently, it has been reported that the IT and ITeS companies have received service tax demands due to a tax position proposed by the service tax authorities culminating into a significant potential service tax liability. As per the news report, the issue primarily appears to be of interpretation of applicable place of provision of services in respect of services provided by the IT/ITeS sector which has treated such services as an export and claimed refund of the accumulated input tax credit. Though the government has issued a press release on this issue, but the companies who has received such notices have to go through the normal process of adjudication/litigation to get the relief.

The levy of GST on such services makes the exporter of services less competitive and such exporters are finding it difficult to survive in the world of stiff competition. An example of such services could be repair and maintenance, research and development, clinical trials, testing etc. Though the service providers earn the foreign exchange for the country like any other exporter, however, due to the limitation placed in the GST law, they have to bear the additional GST burden.

Therefore, it is recommended that the provisions relating to the place of supply based on place of actual performance in Section 13(3) of the IGST Act should be amended and replaced with the location of the

recipient. This will provide the much needed boost to exporters of services and also generate critical employment for the country.

6. Withdraw the deeming fiction to levy Inter-branch supply of services e.g. sales/back-office, corporate support etc.

The GST law treats supply of services between Head Office (HO) and branch/warehouse/office of the same person located in a different state as a taxable supply even if there is no consideration. Such establishments of same legal entity in two different states are deemed to be 'distinct persons'. The identification of such transactions and its valuation is highly challenging. For example, whether the cost of employee should also be cross charged or only third party direct cost are required to be cross charged.

Similarly, it is very difficult to identify the nature of services between HO and branches or between two branches. Service being intangible it is practically difficult to ascertain the nature of support extended to other branches. Therefore, we request that inter-branch supply of services be excluded from the coverage of deemed taxation on the following grounds:

- This is a revenue neutral measure as IGST paid will be available as credit to the recipient branch. It can lead to cost increase in cases where the operations of company are either not liable to GST or are exempt.
- ISD concept will allow HO/branches to distribute credit to supplier of goods/services
- Huge compliance burden in terms of identifying the transaction, determine the value, raise the invoice, pay taxes, file the returns, avail credit at the receiving branch etc.
- Complicate valuation of such transactions between related persons including the lack of clarity on inclusion of the employee cost
- Method of valuation adopted and transactions offered are prone to dispute/litigation due to deeming fiction.

We therefore humbly request that GST should not be levied on inter-branch supply of services. This leads to needless complexities in computing and paying taxes for a largely tax neutral matter. Besides, since exporters would be unable to utilize the input tax credit of taxes charged by their branches, it would lead to increase in the accumulated credits for which refund claims would have to be filed by exporters. This would further lead to additional compliance burden for the export community. Such complexities may be avoided as the matter is essentially tax neutral.

7. GST should not be levied on advances received for the provision of services

Section 12(2)(b) of the CGST Act, 2017 seeks to levy GST on advances received for supply of goods and Section 13(2) seeks to levy GST on advances received for supply of services. Since the supply is not effected

at the time of receipt of advance and such requirement to pay taxes on advances caused additional compliance burden for the taxpayers, the Government has modified the law to eliminate the requirement to pay GST on advances received for supply of goods vide Notification No. 66/2017-Central Tax dated 15 November 2017.

However, the requirement to discharge GST on advance received for supply of services still continues. Since GST was introduced with the aim to eliminate a differential treatment for goods and services, we request the Government to eliminate the requirement to pay GST on advances received for supply of services as well. This would help to maintain a standard treatment for supply of goods and services and ease out the compliance requirement of taxpayers.

8. Deemed taxability of transactions between employer and employee

As per Schedule I of the Central GST Act, 2017, the supply of goods or services or both between related persons when made in the course or furtherance of business is liable to GST even if made without consideration. The definition of 'related person' as provided in Explanation to Section 15 of the CGST Act, 2017 includes persons who are employer and employee.

Due to this deemed fiction envisaged in the GST law, any transaction between employee and employer has become liable to GST even when there is no consideration. This, coupled with the very open ended definition of 'supply' and 'services', has lead to uncertainty of GST being applied on various employee benefits and connected supplies for example canteen facility, pick up and drop facility, health insurance, medical bills, arrangement of other facilities for employees, purchases made by employees at concessional rates from company etc.

Such deeming fiction as far as employee related transactions should be done away with to enhance the ease of doing business.

9. Simplification of e-way bill system

The GST Council has recently taken a decision to introduce the e-way bill from 1 February 2018 for inter-state movement of goods where the value of consignment is more than INR 50,000. Also, as per the press release, the states may choose their own timings for implementation of uniform e-way Bill for intra-State movement of goods on any date before 1 June 2018.

As the e-way bill will be required for every consignment of goods irrespective of its movement, it is critical that the e-way bill system is simplified in such a manner that it does not become a bottleneck for smooth

transportation and logistics management for trade in general. In this regard, we make the following suggestions for kind consideration of the GST Council:

- The consignment value of goods to be increased from INR 50,000/- to INR 1,00,000/- per consignment.
- The validity of e-way bill should be increased from one day to two days for movement upto 100 km.
- No e-way bill should be required for intra-state movement of goods of any value or in cases where the movement is covered by the tax invoice.
- Clarity should be provided with respect to the generation of e-way bill for export shipment or in case of Bill to Ship to transactions.
- It should be clarified that no e-way bill is required to be issued if the consignment value (excluding tax) is lower than INR 50,000/-.
- Real time availability of e-way bill system should be ensured to prevent any delays in movement of goods on account of system downtime/server failure.

10. Inclusion of petroleum products, real estate and electricity under GST regime

As per charging Section 9 of the Central Goods and Services Tax Act 2017, the GST on supply of petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel shall be levied from a date to be notified by the government on recommendations of the GST Council.

Due to exclusion of this major sector of economy from the GST regime, the cost of business operations for various industries which use petroleum products either as feedstock as well as fuel has increased in absence of any input tax credit. Few industries which are greatly affected by the exclusion of the petroleum products include fertilizer, transport and aviation, steel, power, coal, other manufacturing sectors etc.

Similarly, electricity is the major source of energy for several manufacturing and emerging service industry. The electricity duty and tax on sale of electricity is outside GST regime. This leads to cascading effect and results in additional cost of doing business.

In addition to petroleum and electricity, there is an urgent need to broad base GST regime to real estate sector as well. Currently, sale of land and building is excluded from GST regime which affects the complete pass through of Input Tax Credit to the developer.

As these sectors are the backbone of economy, increase/decrease in cost of such products directly affects the inflation. The inclusion of such sectors in GST regime will further integrate the indirect tax

regime and will avoid cascading effect of taxes. This step will also provide boost to make in India initiative by reducing the cost of operations.

11 Rationalisation of the tax rate structure

The GST Council has presently adopted 6 slab rate structure ranging from Nil to 28 for levy of GST on various goods and services. Besides these slabs, there are different rates for composition scheme, for sale to merchant exporter etc. Further, since introduction of GST on 1 July 2017, there has been several changes in the schedule of rates.

The multiplicity of the tax slabs enhances the compliance burden on the tax payer as the taxpayer has to set up IT system to comply with the GST regulations. The frequency of the changes in the tax rates requires the assessee to maintain/update such complex tax computation in the IT system. The multiplicity of rates also increases the probability of litigation on account of lack of clarity on classification of certain goods or services.

Therefore, it is recommended that the GST Council deliberates on the possible reduction of the GST rate slabs into maximum three rate structure.

Keeping in mind the intent of the law and the difficulties faced by the industry, it is our humble request that the above mentioned factors be taken into consideration. We hope that our representation would be considered favourably.

We would be glad to represent our matter in person if an opportunity of such meeting is granted by your good office.

Thanking you,
Yours truly,
For CFO Board

P.K. Ghose
Former Executive Director & CFO
TATA Chemicals and Advisor to Group Chairman
TATA Group

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