



Review Paper

Dispute Resolution Mechanism under VAT and GST in India

Deepa Joshi * and

Institute for Excellence in Higher Education, Bhopal M.P. India
anju.a24@gmail.com

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Abstract

An effective public finance system of a country needs a sound taxation system which is a major and vital source of revenue which is possible with active participation of citizens. Well drafted tax laws in most understandable manner can help in tax compliance and absence of which blocks tax revenue needed by the economy. Tax disputes are unavoidable though brought to the minimum. The paper presents a review of disputes and available dispute resolution mechanism with reference to VAT in India and the proposals for forthcoming indirect tax reform GST. It also discusses the challenges of dispute that GST regime may face due to its design.

Keywords: Buoyancy, Revenue, Creditability, Administration, Taxation.

Introduction

The growth and advancement of any nation largely depends on Taxation system. Economies aim at generating sufficient revenue through a simplified efficient tax system which collect tax revenue in a fair manner and seeks active participation of all the citizens in a cost effective manner. Tax is a major source of revenue and its administration in an effective way is the desirable feature of the public finance of an economy. The taxation structure in India is well developed which operate in a three tier system controlled by the Central government, State Governments and the local government organizations¹. The system of collection of taxes is comprised of Direct taxes and Indirect taxes which needs an effective administration for economic growth. According to national tax laws the tax administration is liable for assessment and collection of the relevant taxes. There is possibility of disagreements between tax payers and tax administration in the course of implementation of such laws. This phenomenon result in tax disputes which has become an imperative part of the taxation system based on rule of law. In addition there is generally a considerable delay in collecting a large amount of tax revenue adversely affecting economy as a whole.

The dispute resolution mechanism play an important role as far as credibility of the tax administration of a country is concerned. Decision regarding tax liability follow a procedure in which audit is conducted by the tax authority and many times tax payers have objection on the decision. The option of judicial review on the decision is always open for both the tax payer and the tax administration however observed to be time consuming and involve higher cost. The better way of avoiding disputes in tax administration is the provision of review of tax administration's decision at this level itself. This provides an

opportunity to tax payers to show disagreement with tax administration's decision and seek clarification and then to follow the judgment. The efficiency of the tax administration depends on tax resolution mechanism which restricts occurrence of avoidable disputes as well as assures that such disputes are not prolonged. A transparent and collaborative approach in context of tax payers is needed which calls for clarity in laws, rules and procedures².

VAT is implemented in India in year 2005 by replacing the cascading type sales tax which is planning to move forward with the next generation indirect tax reform in the form of GST. The current tax regime and the proposed tax regime is not the exception to existence of tax disputes due to multiple reasons which need attention so as to avoid the delayed tax revenue collection. VAT occupies the dominant position among all indirect taxes in the country with 47% of contribution to tax revenue and has to be given due importance. In order to raise revenue in an efficient way the regimes are expected to have effective dispute resolution mechanism.

Disputes in Taxation

Difference in interpretation of law by the tax authority and the tax payer's results in tax disputes which is observed as persistent feature of tax administration. Effective and timely resolution of tax disputes helps maximize tax revenues by ensuring that tax legislation is correctly applied and that non compliance is appropriately deterred efficiently and in a time bound manner. When the taxpayer does not agree with the assessment, the protest procedure ensues. Protests may arise as the taxpayer does not want to abide by the tax laws; the tax authority has made a mistake or there are doubts concerning the interpretation of the tax laws. There are several reasons for the

inception and prolonged continuation of tax disputes at various levels in India³.

VAT functions on the principles of self assessment and selective audit which are accused of causing disagreement many times. In case of VAT in India many issues have been identified which lead to disagreement between tax payers and tax administration⁴.

Dispute Resolution mechanism under VAT

M.P. is an important state in India where the dispute mechanism under the VAT comprised of a hierarchy of appellate authorities. As per the VAT act in the state any taxpayer who is aggrieved by an order which is passed by any officer appointed is eligible to make an appeal for reinvestigation. Right to appeal is a substantive right. The parties concerned have the right to move to the next higher order of authority when one is not satisfied at lower level.

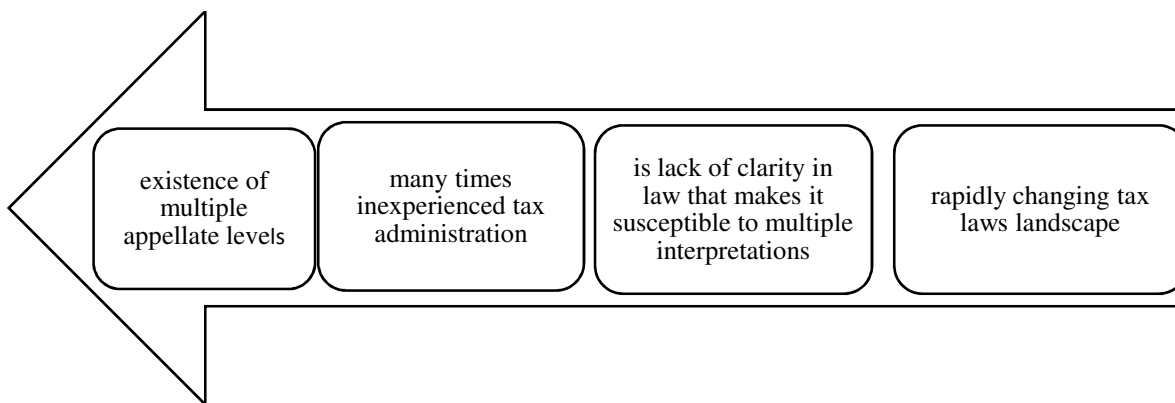
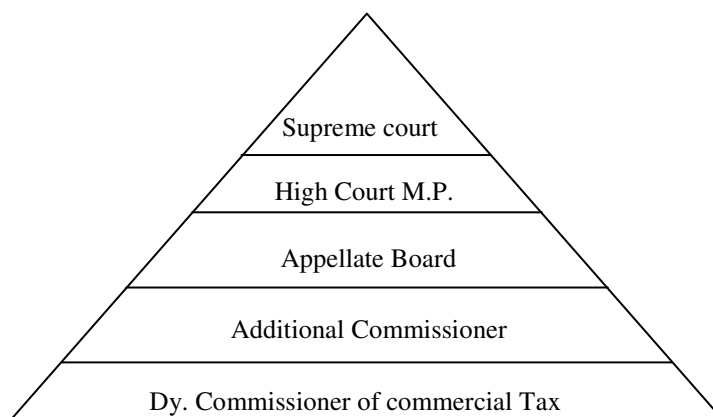


Figure-1
Reasons for existence of Disputes in Taxation

Table-1
Issues of Disagreement

Issues of Disagreement Tax Payers v/s Tax Administration	
Assessment, reassessment	Order as to determining nature of transaction
Imposition of penalty	Order of determination
Imposition of interest	Rejection of application for registration
Order disallowing any deduction or input tax rebate	Refusal to amend the registration certificate
Order imposing tax at a rate higher than specified under the act	Cancellation of registration by the authority on their own
Order as to seizure of goods or vehicles	Any other order passed by an authority under this act

Source: VAT Act 2002



Source: Author, Based on MP VAT Act 2002 Provisions

Figure-2
Hierarchy of VAT Dispute Resolution Authority in MP

Provision of VAT act in M.P. provides for appeal which goes through the levels as: First appeal to appellate authority appointed by the government for the purpose i.e. Dy Commissioner of Commercial Tax Department. Additional commissioner, Second appeal before Appellate Board, Appeal to High Court, Supreme court.

As per the Act the High court is responsible to deal with an appeal provided it is based on a substantial question of law. Here the Appellate Board is working as the final authority for fact finding⁴. Ideally disputes should not arise in VAT as the system of taxation is well defined however some disagreement is inevitable. The system should work in such a manner that less number of cases mover through the hierarchy of resolution mechanism. At the initial stage of filling the returns disputes can be avoided when the problem of interpretation of tax laws are solved. In the same way lesser number of amendments with lesser frequency would also help to reduce tax disputes. Complexity and changeability of tax laws cannot be totally avoided, but need to be minimized. VAT has been perceived to a complex tax by the taxpayers and thus leads to disputes. The country has a chance to overcome such difficulties by having a well planned movement towards GST. The forth coming tax reform GST is expected to have clarity in all respects so that lesser disputes would arise in taxation.

Dispute Mechanism under GST: GST at a Glance

VAT has been appreciated worldwide though in India it has been questioned on the grounds of its coverage as it does not include all the services under the tax net and also because of still prevalent cascading effect created by existing indirect tax structure which has excise, entry tax and others. The country is planning to implement GST. The shift of VAT to Goods and

Service Tax (GST) is a tax reform which is supposed to bring a significant change contributing to the buoyancy of tax revenues, generation of a number of positive externalities aimed at be acceleration of economic growth of the country⁵. The gist of the reform GST shows the roadmap and the taxes which will be subsumed in a comprehensive tax regime.

Dispute resolution mechanism under GST: The plan of introducing next generation reform in indirect taxes in India has been initiated with the amendment in the constitution in the form of 122nd amendment. The amendment proposes that a goods and service tax council need to be created as the act come in force which will be responsible for developing a harmonised national market of goods and services in the country. The proposed functions of GST council show in Figure-4.

Under VAT possibility of tax dispute are between tax payers and tax authority whereas under GST there will be the possibility of disputes between states, centre and state or even with local bodies also. The issues between tax payers and tax authority are supposed to be tackled under the present system of dispute resolution. But it has not been finalised that who will be in charge of solving issues between states or state and centre. GST Council has been proposed to make recommendations on issues of dispute but its role with respect to dispute resolution has been criticised on the ground that authority responsible for making recommendation related to disputes should not be made responsible for resolving them as most of the issues are supposed to arise due to the recommendations themselves. The 122nd amendment assigns the responsibility of deciding modalities for dispute resolution. It also proposes that a separate authority has to be created for the purpose in the form of Goods and service tax dispute settlement authority⁵.

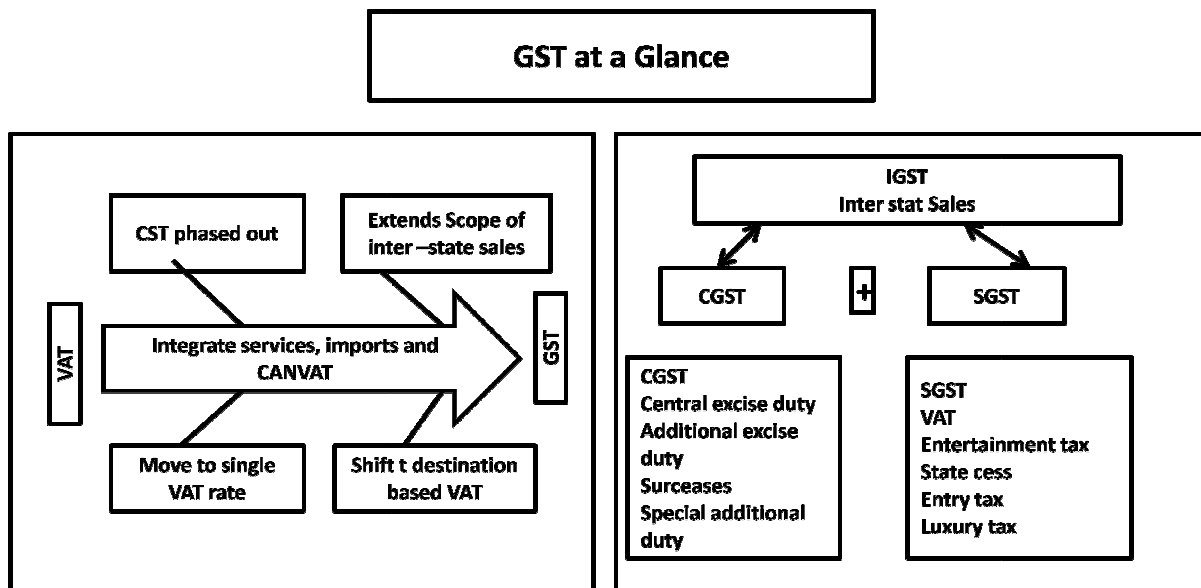


Figure-3
 GST at a Glance

Goods and Services Tax Dispute Settlement Authority

It has been proposed as per 122nd amendment to add article 279B where there is a provision of the establishment of Goods and Services Tax Dispute Settlement Authority. The authority will be made responsible for dealing with disputes referred to it related to issues between levels of governments arises out of recommendations given under article 279A. The Goods and Services Tax Dispute Settlement Authority will be responsible to pass suitable orders including interim orders. The authority is supposed to consist of three members:

The chairperson: As per the eligibility criteria for a Chairperson a person who has been Judge of the Supreme Court or Chief Justice of a High Court, will be appointed by the President on the recommendation of the Chief Justice of India.

Members: Two other Members appointed by the President on the recommendation of the Goods and Services Tax Council. They are supposed to be persons of proven capacity and expertise in the field of law, economics or public affairs⁵.

Challenges for GAT Dispute resolution mechanism

Dispute resolution under GST will not be an easy task. The disagreement is expected to arise at several levels. The dispute may be there not only between tax authority and tax payers but also between the states to which the buyer and seller belong.

There is challenge related to tax revenue collection and sharing under the proposed models of IGST and GST.

Functions of GST Council Recommendations on

Taxes may be subsumed in the GST	Goods and services subject to exception	Rates including floor rates with bands of GST	The threshold limit of turnover libel for tax	Model GST laws, principles of levy, apportionment of IGST	Modalities for the resolution of disputes
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Figure-4
 Functions of GST Council

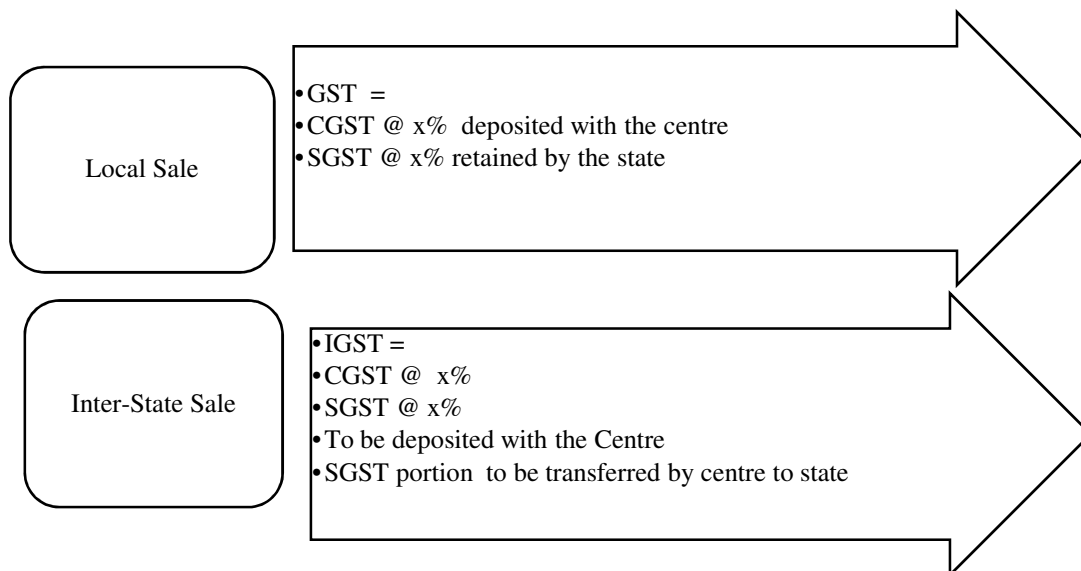


Figure-5
 GST Model

There is a possibility of disagreement even between center and state on the issue related to sharing of tax revenue assessed and calculated under IGST which will be shared as CGST and SGST. Every intra state transaction is supposed to levy both CGST and SGST at different prescribed rates and deposited/transferred accordingly. In case of interstate transaction the tax is proposed to be deposited to centre and the state's share shall transferred to state by the centre. GST is supposed to include different taxes each of which have their own dispute resolution mechanism⁶. VAT issues are tackled by Appellate Board whereas issues related to Excise are dealt with by Appellate Tribunal. Now the question remains who will deal with the dispute under GST as it will integrate different taxes. The challenges with GST regime's dispute resolution include the questions related to: Possibility of unifying the tax litigation policies and process under the GST regime, Need of filing appeals at two places under GST i.e. at the state level for SGST and at the centre for CGST, How many appeals under IGST and where, Where to file appeal in supplying state or in the consumption state in case of the transaction taking place between business and consumer, as GST is a destination based tax, Difference in ruling mechanism in states, Difference in ruling authorities i.e. Excise Custom and VAT ruling authorities are different, Possibility of clubbing the ruling authorities in to a single and standard appellate or advanced ruling authority, Possible increase in the work load of existing staff with the new system as most of the revenue authorities are reported to be under staffed⁷.

Conclusion

Tax administration cannot avoid disputes but it needs to have minimum of such issues as far as possible as tax litigation block a large sum of tax revenue and create problems for the developmental planning of the economies. It is worthwhile if the disputes are avoided at the initial stage. One of the specific ways to avoid disputes before a tax return is filed relate directly to the problem of interpretation of tax laws. If taxpayers have a clear understanding of their obligation, a greater number of them will be inclined to comply appropriately, thereby reducing the potential for dispute with the tax administration. Undue

complexity of tax laws and an excessive rate of amendment can lead to disputes. It is important that tax laws be technically well drafted, with care for precise language and policy that avoids legal distinctions that lead to problems of application. Complexity and changeability of tax laws cannot be totally avoided, but should be minimized. VAT administration in India has experienced the problem of large number of tax disputes. Introduction of GST in the country is awaited. It would be the right time if issues suspected to create tax disputes are studied well and provided with possible solutions beforehand prior to implementation of GST in the country.

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