

## Anti – Profiteering Clause in GST.

Anti Profiteering Clause has indeed rattled the confidence of business community. The first version of GST law did not mention about it and then in the second version Government comes up with anti-profiteering clause. What is this clause and how it would affect manufacturers? Let us take a bird's eye view on it.

Following points are considered for discussion;

- Actual text of the Clause:
- Reasons for its introduction
- Which Authority Shall Govern this clause
- How this Clause shall be Governed:
- Measures to be taken by Manufacturers

### I - Actual text of the Clause:

Clause 171 of GST Law passed by Lok Sabha on 30-3-2017.

#### Anti-profiteering Measure:

1. *Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*
2. *The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*
3. *The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.*

### II - Reason for its introduction:

The Original Draft Law on GST did not have such clause. It was later that the Government decided to introduce this.

The objective of this move is to protect consumers from inflation after GST implementation. The implementation of GST has often led to some inflationary pressures in countries where this tax is already in place. Even in Maharashtra when MVAT was introduced in FY 2005-06, inflationary trend has been noticed. So taking a cue, Government came up with this measure.

**Hasmukh Adhia** – Revenue Secretary - said the anti-profiteering clause in the law is meant to be a deterrent and is an enabling clause so that reduction in tax incidence due to the GST is passed on to consumers.

Adhia told PTI that the Centre and states will in due course prescribe the procedure for filing a complaint where the complainant feels that the benefit of tax cut has not been passed on to him as well as the quantum of penalty to be imposed.

Asked who will decide if the benefits have been passed on or not, he said: "It would be based on complaints... Anti- profiteering provision may not be required in majority of items because wherever there is perfect competition, there is nothing to worry. Competition will take care."

### **III - Which Authority Shall Govern this clause:**

Government shall form an Authority to govern this clause based on GST Council's recommendation.

There is "Competition Commission of India" formed by Government in 2002. This Commission may be entrusted with the governing of Clause 171 of GST.

As CBEC is the governing Body of GST, Government may notify this authority to govern this Clause, or may form an entirely new body for this Clause. No concrete decision has yet been taken by the Council.

### **IV - How this Clause shall be Governed:**

The Commission may have Su-moto right to take up an issue of Anti-profiteering or it may act upon a complaint filed by an individual entity, Trade Body, or a Govt. Department.

Well, this clarifies when the Commission will come into action, but still leaves many questions like:

- a) How the commission will decide the impact of reduction of tax rates has actually being transferred to the recipient?
- b) How the Commission will deal where an entity deals in multiple products with multiple GST rates?
- c) The word used in the Clause is recipient and NOT final Consumer. So if a manufacturer faces vagaries of The Commission, would subsequent entities in the supply chain get covered?
- d) To calculate the impact of benefit what documentation shall be relied by the Commission as certain documents shall belong to the entity which is being scrutinised like Internal Cost Sheet, segmental reports, or would an external comparable be sought by the Commission?
- e) Would this start a witch-hunt for entities doing business in India?

The possible answer to (a) above, Government may call upon the Cost Audit Record Rules which certain manufacturers need to maintain as per The Companies Act. But still it will not cover service providers and other entities down the supply chain. So, new set of Rules shall come into picture. Again a compliance issue.

The Commission will have to factor in the benefits / cost savings accrued by the entity due to logistical issues as this increase in profits need **NOT** be transferred to the recipient of goods.

Once GST is implemented and in future if tax rate of a particular item is reduced, does the supplier need to transfer the benefits to recipient by reduction in prices? This would be very difficult to answer as well as to administer.

**Measures to be taken by Manufacturers:**

In all Government seems to push hard with this Clause and business entity need to prepare itself. In Australia when this clause was implemented, the business entities were aware well in advance and they were able to prepare themselves in time. But in India if GST is being implemented from July 2017, it leaves little or no room for preparation.

But all is not lost. Business entities, especially Corporates need to prepare and report in their financial statements appropriate disclosures of Accounting policies, accounting standards applicable from time to time.

They need to begin with financial disclosures for the year ending 31<sup>st</sup> March 2017. They must ensure that the principles of corporate governance are met and all disclosures are done properly. Transparency in reporting will make a strong case in favour of the manufacturers.

Manufacturers need to ensure that the profits earned are not due to tax arbitrage, but either as a cost plus amount or as function of prevailing market prices.

There are rumours, that some companies have increased their selling price so as to compensate for GST, in terms of tax rate difference, compliance cost etc. But this is easier said than done.

In a matured market where competition is fierce, there seems no room for this clause to be imposed on a particular entity. But historically business entities are vary of bureaucracy.

To create a cushion, business associations, merchant chambers can come together and stand with their members to mitigate the probable loss this clause can cause to an individual entity.

Numerical Example is given to convey how a business entity need to calculate the amount to be passed on down the line of distribution chain.

CA Nirav Shah.

PARTICULARS	VALUE AND TAX AMOUNT UNDER CURRENT LAWS	VALUE AND TAX AMOUNT UNDER <b>GST LAW.</b>
<b>Value to manufacturer</b>		
Production cost	100000	100000
Add Profit Margin @10%	10000	10000
Add excise duty @12%	13200	
Total cost of production	123200	110000
Add VAT @12.5%	15400	
Add SGST @6%		6600
Add CGST @6%		6600
Invoice value for manufacturer	138600	123200
<b>Value to wholesaler</b>		
Cost of goods	138600	123200
Add profit margin @10%	13860	12320
Total Value	152460	135520
Add VAT @12.5%	19058	
Add SGST @6%		8131
Add CGST @6%		8131
Invoice value to wholesaler	171518	151782
<b>Value to Retailer</b>		
Cost of goods	171518	151782
Add Profit margin @10%	17152	15178
Total Value	188670	166960

Difference      15400      13%

Difference      19736      13%

Add VAT @12.5%	23584			
Add SGST @6%			10018	
Add CGST @6%			10018	
Invoice value to retailer	212254	186996	Difference	25258 14%