



The Course Traversed By Indirect Tax Law Post Independence

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The dictionary meaning of the word 'tax' is a strain or heavy demand, an oppressive or 'burdensome' obligation. The dictionary also says 'tax' means a call to account. In my humble opinion, we Indians and particularly those who are doing well in life have not understood the fundamental principle of taxing power. The power is utilized in order to create Harmony and balance in the society. It integrates and brings together a huge population divided amongst others Economically. The taxing power is really calling for those in higher income groups and at the top to account for the needs of those who are not so affluent and can safely be termed as deprived sections of the society.

Historical Backdrop

Independence on 15th August 1947, was an epoch-making event that sealed the fate of the Britisher colonials and at the same time also handed us the destiny of our own land with all the strengths, merits, faults, and follies. Such an event was a result of over a century worth of struggles with its sporadic success and failures, which eventually culminated in Independence. While rightfully celebrating the ecstasy of the event, it is sometimes forgotten how a topic like tax has acted as a catalyst in overthrowing a foreign power. It is well known that the slogan 'No taxation without representation' was a battle cry of the Americans against the Great Britain, but is there an Indian equivalent?

On March 8 in 1929, Mahatma Gandhi heralded the beginning of the Civil disobedience movement by taking a decision to break the Salt Act 1882. "That is for me one step, the first step, towards full freedom," he said as quoted in historian Ramachandra Guha's book, 'Gandhi: The years that changed the world (1914-1948)'. Guha further writes, "Gandhi wanted this to be a long march, or pilgrimage perhaps, where his leisurely progress would enthuse people along the way and attract wider publicity too." Finally, he decided on Dandi to be the point at which the salt law would be broken.

This Dandi March movement was so effective that, whilst enacting the Central Excises and Salt Act, 1944, even a nearly bankrupt and cash hungry Great Britain in Section 3 Chapter II Levy and Collection of Duty specifically excluded Salt produced and manufactured in India.

Dynamic Role of the Indian Constitution

The topic of the present article is Indirect taxation since independence. No discussion on indirect taxation can commence and be complete without referring to the Constitution of India. Today, we do not realize that 75 years back in 1946 the Constituent Assembly was established. It met first on 18th December 1946. It deliberated and discussed on the making of a constitution and prepared a draft of it, which we accepted on 26th November 1949. That is how

our constitution is a document which we have given to ourselves. It is in that sense unique. As held by the Supreme Court of India it embodies human values, cherished principles and spiritual norms. It upholds the dignity of man. Indians have solemnly resolved to constitute a sovereign socialist, secular, democratic republic and to secure to all its citizens what is aptly summarized in the preamble to our constitution. To meet that goal, the power of taxation is conferred. We do not realize that a tax may be compulsory contribution to the support of the government and levied on persons, income, commodities, transaction, etc., The essential distinction between tax and fee can never be forgotten. The tax does not assure anything in return to the taxpayer but while not rendering specific service or benefit, it is a collection for public purpose.

There is a difference between development and progress. The later word means advancement. While direct taxes reach the income, Indirect Taxation brings to tax inter alia goods and services. The power to tax is decentralized providing for apportionments and adjustments so as to achieve complete co-ordination between the union and States in our federal structure. The subject matter of laws which can be made by the parliament and the States is traceable to Article 246 and Schedule VII of the Constitution which sets out the three lists. List I is the Union list. List II is the State list and List III is the concurrent list. The Constitution has been repeatedly amended and recently the 101st amendment to the Constitution resulted in the introduction of Article 246-A. It confers on the parliament absolute power to make laws with respect to goods and service tax, but also takes care in stating that while the parliament has exclusive power to make laws with respect to goods and service tax, that power is restricted to supply of goods or services in the course of inter-state trade or commerce. Thus, intra state taxation on the supply of goods or services remains with the State. The Constitution has been amended so as to include in Part XI titled

as “Relations between the Union and the States” particularly legislative relations. Chapter 1 in Part XII titled as Finance, Property, Contracts and Suits, inserts various articles by which it is evident that while levy and collection of goods and service tax in the course of interstate trade and commerce can only be by the Government of India, but that tax will be apportioned between the Union and the States in the manner as may be provided by parliament by law and on the recommendation of the Goods and Service Tax Council. Thus, the imposition and levy may be by the Centre, but the distribution and apportionment between the Union and the States also takes place in accordance with the law which the constitution allows the parliament to make. Similarly, by introduction of Goods and Service Tax Council and its establishment, there is a supervision, control, monitoring and review of this tax.

Levy, collection of tax has always been a prerogative of the Government. Article 265 of the Constitution of India clearly states that Taxes *not to be imposed save by authority of law No tax shall be levied or collected except by authority of law.*

Once the authority to levy tax is established, one safely state, that the Government enjoys a vast play in the way taxation is to be levied as well collected. The basic character of Indirect tax is that it is a tax on commerce and economic affairs. The purpose however of such a tax is not to merely collect revenue, penalize or control business, the noble purpose of tax is to strive towards equality, as has been quite succinctly explained by *Justice Venkatchaliah in Srinivasa Theatre v. Govt of TN (1992) 2 SCC 643*

The instrument of taxation is not merely a means to raise revenue in India; it is, and ought to be, a means to reduce inequalities. You don't tax a poor man. You tax the rich and the richer one gets, proportionately greater burden he has to bear.

Indirect taxes and the Past

It is an interesting and progressive path that indirect tax law has taken over the past 75 years.

Major indirect taxes in India have been Customs, Excise, Sales tax laws, Service tax, VAT, and subsequently leading to the all-encompassing Goods and Services tax Act.

An Item which was imported was subject to Customs Duty, which in turn was a massive exercise in determining the rate of tax from an extremely diverse rate schedule.

Furthermore, if it was used as a raw material to manufacture a product on which there was excise duty, when it was sold, one had to pay Sales tax if sold locally which depending on the era and item could be First point, last point, or multi point sales tax. If sold interstate, in that case, the seller had to prostrate before the purchaser of another state to issue him C Forms. If the goods were transferred to another state, there was the question of F Forms which had to be backed by establishing that the same was otherwise than by way of sale. One could actually fill up parchments if one had to enlist even the most basic issues that arose out of the plethora of taxes which were levied. It would be safe to use the word archaic and not business friendly.

It is natural for an observer looking back at the chaotic nature of indirect taxation since independence to ask, why were the past governments with their treasure trove of visionaries and economists not able to react faster. The first real VAT/GST system was introduced in France in 1954, hence there was no shortage of international precedents.

There are umpteen number of countries which are far less heterogenous than India, but some how devolved into totalitarian dictatorship after a few years of experiment with democracy. A spirit of federalism and granting autonomy to the regional states by empowering the States to tax exclusively on some transactions and the Centre keeping residuary powers was one of the driving factors which have contributed handsomely to the irreversible and deep entrenchment of Democracy.

In the present era, the democracy and political system is so deeply rooted into India that despite all their internal differences and political schisms, all States and the Centre could amicably ratify the tectonic changes in the Constitution and bring about such a GST law.

It was a long and arduous journey for India and its economy to travel, before Our Ex-Prime Minister Hon'ble Mr. Manmohan Singh as a Finance Minister in 1993, said the golden words "Nothing can stop an idea whose time has come" and fast tracked the Market based semi regulated capitalist economics. Such a change in the outlook of Indian economy was also brought about by the precarious condition that our economy was in at that point of time.

Post-independence, the priority was massive industrialization and at the same time there was pressing need to support Agriculture and agro based industries. In the 4 decades between independence and opening of Indian economy, the indirect tax laws have undergone significant flux.

Thus dispassionate analysis can lead one to a conclusion, that modern Indirect tax laws like VAT, GST which required massive administrative infrastructure and synergy between the states and Union would have been nearly impossible.

Effective Implementation of Laws and powers of exemptions

On several occasions the core issue in discussion is how the laws relating to indirect taxes could be effectively implemented. In that we fail to notice that in a vast and thickly populated country like ours, coordination at all levels is not impossible to achieve, but seems difficult. We have inherent and inbuilt contradictions, complications and complexities in our Country. We do not organise our financial matters and property affairs properly. It is necessary therefore for every legislation to attempt to fulfil the dreams and aspirations of a cross section

of the Society. Therefore, the drafting of Tax laws as a whole is indeed an enormous task. On occasions clumsiness and lack of clarity exists because there is attempt to please every one and all. That is why after the charging section and outlining the Incidence of tax follow the machinery provisions which enable recovery and collection of Tax. When there is an imposition and levy and the incidence falls on goods or services or acts including import thereof, it is necessary in Indian context to confer a power to exempt from taxation. Input Tax credit on Goods or Services or allowing a set off or adjustment in the tax on final product. Thus, Input Credit is provided for so that the Trade does not feel aggrieved if the burden is heavy.

It is commonly misunderstood that exemption means 'tax free'. 'Tax free' or 'no tax' is not always equivalent to Exemption. The burden falls, but in the light of the power to exempt being exercised the tax is not recovered and collected. Once the exemption is withdrawn, the recovery will follow. The power to exempt is not always conferred in absolute terms. Moreover, it is to be exercised in public interest. It cannot be unconditionally exercised under all circumstances. Therefore, a balance is struck by granting conditional or partial exemption. If the conditions are satisfied and fulfilled the exemption can be enjoyed and whether the conditions are fulfilled or satisfied or not will have to be adjudged in the event of a dispute.

Thus it can be seen that power to exempt is essentially necessitated for the State to further their goals of public interest.

Tax exemptions dilute the incidence of tax and thus offer such refuge. Whether a taxpayer or a transaction fall within the scope of the exemption provision, therefore, becomes a point of inquiry and debate¹. Interpretation

of Exemption notification itself has been an oscillating affair. The general rule as settled was while interpreting a certain aspect of the law, when there was an ambiguity, the view that favours the assessee was held as acceptable. It was only in 2018, that Constitution Bench of the Supreme Court in *Commissioner of Customs (Import) v. Dilip Kumar*², settled the law of interpreting an exemption notification by holding that:

66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

Reforms in indirect tax law and structure

It was in 1974, that the LK Jha Committee Suggested Introduction of VAT System, and VAT was introduced in 2005. Per Contra Chellaih Committee Report recommended "VAT/GST" in 1991 and the GST laws saw the light of the day in 2017. The drastic reduction in the time taken to implement reforms, also reflect the reality of the growing ambitions of Indian Trade. The aspirations of Indian Enterprise acts like a river which beyond a certain threshold shatters the dam, even if it is a behemoth like the complex bureaucracy, politically divergent state politics, federal autonomy and the tax administration. The 101st Constitutional amendment is therefore a result of an aspirational India and its desire to be competitive at an international stage.

The Hon'ble Apex Court has laid down that, every legislation particularly in economic matters is essentially empiric and it is based on

1. 2021 SCC OnLine Blog Exp 14

2. (2018) 9 SCC 1

experimentation or what one may call trial and error method and therefore it cannot provide all possible situations or anticipate all possible abuses.³ After several decades of trial and error, the time had come for one of the most awaited experimental restructuring of the entire indirect tax laws, i.e. GST laws.

The need for reforming the plethora of indirect taxes extant in India in 2017 was to re shape the entire Indian tax System. A baneful feature of the Indian Tax System is the lack of administrative efficiency. There is no coordination between taxes to allow a well-organized, planned and coordinated tax to evolve⁴.

The deficiency in the tax administration is not something which was lost on the Executive and the Government. The working paper published by The Department of Economic Affairs, Ministry of Finance in 2009⁵, admittedly states:

Compounding the structural or design deficiencies of each of the taxes is the poor or archaic infrastructure for the administration of taxpayer services, which are a lynchpin of a successful self-assessment system, are virtually nonexistent or grossly inadequate under both the Central and the State Administrations.

GST Laws are a tryst with a system of true self-assessment and an administration which is backed by robust Information Technology.

Legal Challenges

In the circumstances, we have a typical scene where firstly a challenge is mounted on the power to levy and impose the tax. Secondly, disputes are raised during the course of recovery and collection of taxes and thirdly, disputes and differences occur when the power to exempt is exercised. The complaint throughout is that the power is not exercised in conformity with

the mandate of Article 14 of the Constitution of India. While, the power to tax, recover a tax and equally exempt from taxation is not immune from challenge under Article 14 and is subjected to the Constitution itself, still, the legislature enjoys a large discretion in these matters. It need not tax all to tax someone and in the same breadth need not exempt all in order to leave out someone. The latitude is much more. Yet, the common Indian picture is that disputes and differences in relation to the above three are pending in courts for decades together.

Role of Tribunals

Tribunalisation has not helped at all. The traditional civil court is denuded of its power to take cognisance of the above referred matters by a civil suit and Tribunals are established, but post establishment scenario is pathetic. The Tribunals are not given adequate financial assistance, they lack manpower and basic resources and therefore are not able to render justice in a timely manner. Since the infrastructural and budgetary issues remain unresolved, competent persons are reluctant to join the service and are not keen to be appointed as either judicial or administrative members. In India, the traditional system of justice delivery caters to the Tax Tribunals as well. There is no independent service like an Administrative service, Revenue service, etc., or a All India Judicial service. Though specifically permitted by the Constitution such a service is not established till today. Therefore, we face vacancies, and which are not filled in for months and years together. Members of the District Judiciary of a State, post retirement and members of the Higher judiciary demitting office, all of a certain age, are only available to man these tribunals. Similarly, existing members of Administrative and Revenue Services are

3. *Union of India v. Paliwal Electricals P ltd* (1996) 3 SCC 407

4. International Journal of Management Vol 10 Issue 3 May June 2019, Indian Tax Structure – An analytical Perspective Dr SM Alagappan, Ph.D

5. Working Paper No 1/2009-DEA Satya Poddar and Ethisham Ahmad

not available for being appointed. That apart, successful members of the bar are unwilling to accept Judicial appointments for varied reasons. In such circumstances, a Tribunal is incomplete. It has failed to achieve the blend of expertise viz., judicial and administrative. Apart from other issues, calibre, competence and character is lacking in some cases.

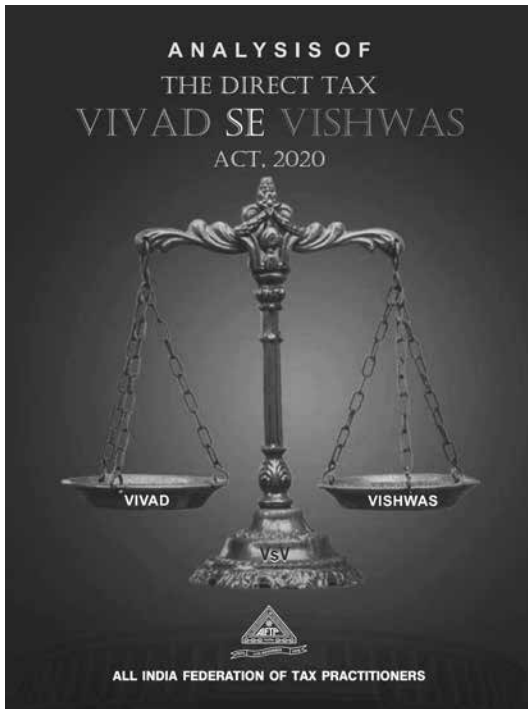
Interpretation of fiscal and taxing statutes is a Challenging task. Traditional approach must give way to achieve the object and purpose of Taxation. Strict Interpretation is not possible when the result is palpable anomaly and absurdity. Then, purposive Interpretation may have to be resorted to. The challenge can be met by experience and a Justice oriented approach.

Conclusion

In the light of the above, I feel that after 75 years of independence we are left with a mixed feeling. Equality and Harmony through taxation is yet to be achieved. People are not willingly paying taxes, although the number is increasing. A Tax payer resorts to litigation because there is no assurance that a genuine and bona fide dispute touching the power to tax, its recovery and collection would be decided efficiently and expeditiously. Thus, only those who do not dispute the above-mentioned facets of taxation continue to suffer by paying enormous taxes on consumption of goods and services. A robust Tax structure appears to be the only solution.

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