

**“IDENTIFICATION AND RESOLUTION OF POTENTIAL DISPUTES IN
POST-GOODS AND SERVICE TAX (GST) REGIME- ALTERNATE
DISPUTE RESOLUTION MECHANISMS”**



SUBMITTED TO NACEN FARIDABAD

BY

**K.Engineer, (Ms.)Manpreet Arya , AtulSaxena, Sanjay Bansal, Vijay Mohan Jain, B.
Suresh Babu during MCTP Phase-IV module (Group-II) for IRS officers
July to August, 2015**

Index

S.No.	Description	Page No.
	Acknowledgement	
	Executive Summary	
1.	Objective	7-8
2.	Introduction and Background	9
3.	GST-Indian Model	10-11
4.	International Perspective-Study of GST Models Worldwide	12-14
5.	Potential Areas of Dispute	15-16
6.	Deliverables	17-23
6.1	Averting Disputes	
6.2	Dispute Resolution Mechanism	
6.3	Alternate Dispute Resolution Mechanism	
7.	Conclusion	24
	Appendices	25-26
I	Pendency of Cases in Indirect Taxes as on 31.10.2014	25
II	Organisation Chart of Appeals – Maharashtra VAT	26
	Sources /References	27

ACKNOWLEDGEMENT

We are grateful to the Government of India and the Central Board of Excise and Customs for providing this wonderful opportunity to study the contemporary issue as part of our research project during the Mid Career Training Programme. We thank the NACEN and its faculty and staff for providing the most conducive environment and resources which helped us in completing our research. Their keen insight and regular motivation has helped us in adding much value to our effort. We have received valuable inputs and guidance from IIM, Lucknow and various Tax Administrations outside India during our visit to these countries throughout our research project and we thank each one of them without naming them.

EXECUTIVE SUMMARY

A paradigm shift will take place in the tax structure Post-GST regime with the introduction of dual GST (CGST & SGST) by the Centre and the States. Fundamentally, the tax administration of both the Centre and the State will have one “value” based on which the assessments under their respective statutes will take place. One unified tax return will enter the streams of both the Central and State tax authorities.

The litigation is inherent to the fiscal laws, which mainly arises due to gaps between the legislative intent, letter of the law as well as the methods of its implementation. The globalization of world economy has been bringing about dynamic changes to the taxation laws and the existing accounting standards have not been able to keep pace with the changes in the laws.

Under the present tax regime, sizeable revenue gets locked up in various legal fora and the tax payer suffers from lack of clarity on tax matters for many years. Trade and industry is looking towards GST as a panacea to their woes and expect it to be a tax regime which is seamless and hassle –free across the country with broad uniformity across tax rates and interpretations, procedure, exemptions etc. Considering that GST is touted as the watershed event, the requirement to put in place dispute resolution mechanisms need not be overemphasized.

Objective:

While noting studies of the dispute resolution mechanisms existing in other countries where GST has been implemented and drawing from the experience of the present litigation redressal mechanisms, the paper aims to identify the specific areas of potential disputes, ways to reduce the scope of disputes in post-GST regime, their resolution mechanisms and the ways to converge the dispute resolution mechanisms with twin objectives of better tax administration and trade facilitation.

Potential areas of Dispute:

- (i) **The absence of Harmonization of State GST Act with Central Statute** including definition of various provisions relating to classification, valuation and assessment, the taxable event, Place of Supply etc.

- (ii) **Divergent interpretations, laws and procedures on Assessment and Scrutiny** between the Central tax authorities and the State tax authorities within one State but also between States.
- (iii) **Conducting multiple** checks and scrutiny by Centre on account of dual levy.
- (iv) **Different Dispute Resolution mechanisms presently in practice in different States** as any dispute arising on account of valuation, classification and input credit shall encompass both realms of CGST and SGST.

Deliverables: Twin strategy has been suggested in the current paper- (i) averting the occurrence of disputes and (ii) the ways of resolution of disputes through traditional means and the alternate dispute resolution (ADR) mechanism.

A. Averting the Disputes:

- (i) **Harmonization of State GST Act with Central Statute:** Alignment of laws and procedures in areas of classification, valuation and input credit across the Country.
- (ii) **Directives of GST Council:** On the lines of VAT Directives in EU, GST Council must issue directives in GST regime where the decision taken shall be binding on all Members-States and Centre.
- (iii) **Assessment and Scrutiny:** A two tier structure is essential at the State level to resolve differences before they enter realm of formality by way of a demand or a show cause notice. First tier is establishment at the Co-ordination Committee at State level comprising of representatives from both the Central and State tax administrations to narrow the gap arising out of different interpretations between tax administrations and secondly, a State level GST Ruling Authority comprising of members from Judiciary and from both the Central and State tax administrations when the issue is not resolved at the first level.
- (iv) **Small tax payers:** Small tax payers cannot afford dual tax administration and should interact with only one administration for all issues. It is suggested to leave such tax payers with State administration both for CGST and SGST.

B. Dispute Resolution Mechanism:

(i) **Adjudication:** To avoid divergence in adjudications in the matters of valuation, classification and input credit, provision in the statute for either one of the two tax authorities (Centre or State) to issue notice for both CGST and SGST components or alternately to provide for a unified and common adjudicating authority mechanism.

(ii) **Audit:** Instead of the traditional ways of periodic audits, the need is to establish a Directorate at the State level, which would use risk assessment techniques to make intelligent selection of suppliers for an effective audit.

(iii) **Appellate fora:** For appellate remedies, establishment of a single GST Tribunal at the State level is suggested to hear appeals arising from both the Central and State tax administration streams which could avoid protracted litigations due to different rulings on the same issue by two tribunals of the Central and State tax administrations.

C. Alternate Dispute Resolution (ADR) Mechanism: ADR mechanism is a set of approaches that opens up channels for resolving disputes of tax payers with the Government without resorting to formal litigation. The existing ADR mechanisms of Advance Rulings and Settlement Commission in CBEC may be made applicable to both CGST and SGST issues. Also, the provisions on the lines of Section 11A(2B) of Central Excise Act, 1944 providing for the settlement of dispute prior to and after issuance of show cause notice, without further litigation proceedings need to be retained with suitable modifications. Creation of online Dispute Resolution mechanism for accessing ADR authority (neutral third party) to settle select category of cases has a large scope for settling disputes. Accepting Arbitration, Mediation as possible ways of dispute resolution is the need of the hour. Creation of on-line platform linking all national ADR entities would also be a good idea.

Objective: A paradigm shift will take place in the tax structure Post-GST regime. Many view introduction of GST as the single most important initiative in the fiscal history of India. As far as the trade and industry is concerned, the look towards GST as a panacea to their woes expect it to be a tax regime which is seamless and hassle –free across the country with broad uniformity not just in terms of tax rates but also in terms of interpretations, procedure, exemptions etc.

As a consequence, the dimension of the potential disputes between the ‘Supplier’ and the ‘Department (both Centre and the States)’ which is likely to undergo a sea change is an area which needs to be focused upon before the roll-out of GST. The dual GST model by design should have uniformity on fundamental issues such as chargeability, definition of taxable event, valuation and classification provisions. At the same time, being over-optimistic about the implementation of GST in a smooth manner without taking due care to put in place suitable dispute resolution mechanism is not advisable. While larger issues of the GST rates and sharing between the Centre and State are to be looked after by the GST Council, the proposals in the public domain do not seem to contain proposals on the legal and dispute resolution mechanism at the functional level. Absence of such mechanisms and lack of adequate research before-hand to identify potential areas of dispute in the tax administration under GST, especially with a multiplicity of statutes and authorities has a scope for avoidable litigation and lock-up of tax revenues.

Under the present regime, despite many attempts to streamline the procedures of assessment and collection of indirect taxes, there has been plethora of disputes. Sizeable revenue gets locked up in legal fora, trade suffers from lack of clarity on tax matters for many years and the end-result is significant wastage of time and money for both tax authorities as well as the industry. Considering that GST is touted as the watershed event which will change the way in which tax administration is carried out in the country, the need to put in place dispute resolution mechanisms need not be underscored. Consequently, there is need to draw from the experience of the present litigation redressal mechanisms and to find ways to reduce the scope of disputes in post-GST regime.

Fundamentally, under the GST scheme, for the first time, tax administration of both the Centre and the State will have one “value” based on which the assessments under their respective statutes will take place. It is also perceived that there will be one return which will enter the streams of both the Central and State tax authorities. However, diverse will be the interpretations and proceedings on matters of classification and valuation not just between

the Central tax authorities and the State tax authorities within one State but also between States. Evidence of this is already available in the form of lack of uniformity in interpretations, procedures etc among States after years of introduction of VAT. Disputes will also arise in the manner other tax administration measures such as audit, enforcement, and scrutiny will take place. Having convergence in the dispute resolution machinery such as the appellate tribunals, legal provisions for appeal in judicial fora will all have a telling effect on the way GST functions.

Present paper attempts to give an insight into potential areas of disputes in GST regime, their resolution mechanisms and the need to converge the dispute resolution mechanisms with twin objectives of better tax administration and trade facilitation. An attempt would be made to study research already made in this specific area. The shortcomings noticed in the dispute resolution mechanism of present regime would be studied in-depth in order to identify remedial measures for GST to function in as less-adversarial manner as possible from the incipient stage itself. Studies would also be made of the dispute resolution mechanisms in place in other countries where GST has been functioning for some time now and examine the suitability of similar structures in the Indian context.

2. Introduction and Background: Brief history of events leading to introduction of Goods and Service Tax (GST)

Introduction of GST, a destination based tax, is touted as the biggest comprehensive indirect tax reform in India since 1947. It may be worthwhile to go into background of the events leading to introduction of Goods and Service Tax.

The Kelkar Task Force on implementation of the Fiscal Responsibility and Budget Management (FRBM) Act, 2003 had pointed out that although the indirect tax policy in India had steadily progressed in the direction of VAT principle since 1986, however the existing system of taxation still suffered from many shortcomings. The Task Force suggested a comprehensive GST based on VAT principle. GST system is a simple, transparent and efficient system of indirect taxation as has been adopted by over 140 countries around the world. The proposal involved reform/ restructuring of indirect taxes levied not only by the Centre but also the States. Prior to the introduction of CENVAT in the Centre and VAT in the States, there were multiple taxations in the pre-existing Central excise duty and the State sales tax systems. Under this, before any commodity was produced, inputs were first taxed and after the commodity was saddled with input tax load, output was taxed again. This situation created a burden of multiple taxes with a cascading effect. Moreover, burden of sales tax paid on purchases at each level was also added, thus aggravating the cascading effect further.

Though the burden of multiple taxation with a cascading effect was lowered to some extent by implementation of VAT in the States and CENVAT scheme in the Centre, there are still large shortcomings noticed due to which ultimate consumer of the goods and services is still facing cascade effect of tax on tax and large loopholes for evasion exists. There have not been any major tax reforms in the country, other than introduction of Service Tax twenty one years earlier. But Service Tax was a new taxation introduced for bringing under tax net a large number of service providers who are involved in providing various services to their customers. With the increase in international trade in services, the GST has become a preferred global standard. All OECD countries, except the US, follow this taxation structure.

So the need of the hour was to have a single Tax structure for Indirect Taxes. Therefore the union government is intending to introduce GST which will have two components viz Central GST and State GST to raise revenue in the most transparent and neutral manner.

3. **GST- Indian Model: Dual GST regime**

As noted earlier, reforms were introduced in the indirect tax regime in a phased manner over a period of time to improve the efficiency and to bring simplification in tax administration. The culmination of tax reform system is introduction of GST which would eliminate multiplicity of taxes, remove the cascading effect of taxes and simplify the tax regime.

India being a federal structure, a dual system of GST has been envisaged. The following are the features of proposed GST:

- The GST will consist of Central GST (CGST) and State GST (SGST) which will be levied and collected by Centre and State respectively concurrently on the goods and services.
- Both, Parliament and State legislatures will have the power to make laws on the taxation of goods and services.
- GST is proposed to be a destination based tax and taxable event will be supply of goods and services and not the manufacture or sale of goods. SGST for intra State supply of goods and services will be levied, collected and appropriated by the consuming State.
- CGST will be levied and collected by the Centre and would be shared between the Centre and States on the basis of devolution formula recommended by the Finance Commission and accepted by the Government.
- Integrated GST (IGST) would be levied by Centre on inter-State transactions of Goods and Services. This IGST would be equivalent to the sum of CGST and SGST. The exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST.
- Central tax/levies which will be subsumed in the GST are Central Excise Duty; Additional Excise Duties; Excise Duty levied under the Medicinal and Toiletries Preparation Act; Service Tax; Additional Customs Duty {Countervailing Duty (CVD); Special Additional Duty of Customs; Surcharges; and Cesses.
- State taxes and levies to be subsumed are VAT/Sales tax; Entertainment tax (unless it is levied by the local bodies); Luxury tax; Taxes on lottery, betting and gambling;

State Cesses and Surcharges in so far as they relate to supply of goods and services; and Entry tax not in lieu of Octroi.

- GST is applicable to supply of all goods and services except Alcoholic liquor for human consumption. Initially, GST will not apply to: (a) petroleum crude, (b) high speed diesel, (c) motor spirit (petrol), (d) natural gas, and (e) aviation turbine fuel. The GST Council will decide when GST will be levied on them. Tobacco and tobacco products will be subject to GST. The Centre may also impose excise duty on tobacco.
- Based on the European model, there could be a floor rate and a ceiling rate within which the States will have the freedom to have a high or a low rate. Taking into account the need for State autonomy, the States may thus be allowed to increase their GST rate within a narrow band. There could however be provision to levy higher rates on demerit goods, whenever necessary.
- A Goods & Services Tax Council will be created, which will be a joint forum for the Centre and the States to discuss important issues relating to GST. This Council would function under the Chairmanship of the Union Finance Minister and will have Minister in charge of Finance/Taxation or Minister nominated by each of the States & UTs with legislatures, as members. The Council will make recommendations to the Union and the States on important parameters like rates, exemption list, threshold limits, etc. The Recommendations made by this Council will act as benchmark or guidance to Union as well as State Governments. The Parliament as well as State Legislatures will be free to exercise their power on all issues recommended by the Council. The decisions by the GST council will be taken by 3/4th weighted votes; 1/3 weightage to Centre, 2/3 to States.
- A seamless Input Tax Credit chain from primary to tertiary stage would be established whereby the tax paid at one stage will be available as credit for the next stage thus eliminating completely the cascading effect of taxes.
- As this is a destination based tax, the apprehension of loss of revenue by the manufacturing States is proposed to be taken care of by levy by Centre of additional tax of upto 1% on the inter-State supply of goods. The tax will be collected by the Centre and will be directly assigned to the States from where the supply originates.

The Constitution (One hundred and twenty second) Amendment Bill, 2014 is under the consideration of the Parliament which will provide the legal framework for the introduction and implementation of GST.

4. International Perspective: Study of GST models worldwide

GST/ National VAT with minor variations have been implemented by a number of countries. France was the first country to introduce GST in 1954. Countries like Australia, New Zealand and European Union have adopted a single unified GST as a common tax on goods and services, while, countries like Canada and Brazil have adopted a dual GST where the tax is levied by both the Central and the provincial governments. We would study the GST implementation in Canada and Brazil in this Project as they come relatively close to the proposed GST Model in India.

4.1 Canadian Model

In Canada, GST/HST(Harmonised Sales Tax) on the goods and services includes real property and intangible personal property also. Difference between GST and HST is that HST is imposed in those provinces called “participating provinces” that have harmonized their provincial sales tax with the GST. HST applies to the same base of property and services as the GST. The participating provinces are New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario and Prince Edward Island. In the provinces and territories other than participating provinces, GST is imposed on taxable goods and services. In these provinces, there may also be a provincial sales tax or a retail sales tax in place. Most goods and services supplied in or imported into Canada are taxable supplies and are subject to the GST/HST. However some supplies of goods and services are taxable at the zero rate. Some common examples of zero-rated supplies of property and services are:

- basic groceries such as milk, bread, and vegetables;
- agricultural products such as grain and raw wool;
- prescription drugs and drug-dispensing fees; and
- medical devices such as hearing aids and artificial teeth.

A limited number of goods and services are exempted from GST/HST. Some common examples of exempt supplies of property and services are:

- used residential housing;
- most health, medical, and dental services performed by licensed physicians or dentists for medical reasons;
- child-care services (day-care services for less than 24 hours a day) for children 14 years old and younger;
- legal aid services;
- educational services such as:

- courses from a vocational school that leads to a certificate or a diploma to practice a trade or a vocation, or
- tutoring services for an individual taking a course approved for credit or the service follows a curriculum designated, by a school authority;
- music lessons;
- most goods and services provided by charities; and
- certain goods and services provided by non-profit organizations, governments, and other public service bodies such as municipal transit services and standard residential services such as water distribution.

Regarding dispute resolution, Canada has a system of “Interpretations” and “Rulings”. Any Taxpayer can obtain CRA’s (Canadian Revenue Authority) interpretation/view of how the legislation applies to a generic fact situation. A taxpayer requesting an interpretation should provide sufficient information to enable the CRA to understand the issues to be considered. Since they do not pertain to specific fact situations, or are based upon provisions that have not yet become law, interpretations are not binding on the CRA. On the other hand, a ruling is a written Statement the CRA provides to a taxpayer that sets out the CRA’s position on how the relevant provisions of the legislation apply to a clearly defined fact situation of the taxpayer. Usually a ruling relates to ongoing issues or transactions and does not specify time limits. A ruling may also be given in advance of any proposed transaction and may be restricted in its application to specific persons, transactions and/or time periods. These rulings are binding on the CRA, in the sense that when the conditions based on which the ruling was given i.e. facts of the case, don’t change, the taxation would be based on the basis of the ruling.

4.2 Brazilian Model

In Brazil, there are two value-added taxes. One is a State sales tax (ICMS) and the other is a federal excise tax (IPI). ICMS is due on the physical movement of merchandise. The ICMS is also levied on inter-State and inter-municipal transport services, communications and electricity. IPI is due, with a few exceptions, on all goods imported or manufactured in Brazil. Credit is given with respect to the IPI on the tax paid on the raw materials or component parts used in the finished product or consumed in production. The difference in IPI must also be paid if the goods or products are imported and sold at a higher price by the importer to a domestic purchaser, repackaged for sale at a higher price, sold at a higher price

by the producer or manufacturer through a branch or sold through exclusive distributors, a joint venture, or through an affiliated concern.

Furthermore, other taxes due on supply of goods or services are- services tax (ISS), social contribution on billing (COFINS) and contribution to the social integration programme (PIS). ISS is a municipal tax on gross billings for services. Services subject to the ISS are defined by federal law. Each municipality (city) must have its own list of taxed services. The COFINS is described as a social contribution and is targeted for funding of social welfare programs. The COFINS is charged on gross receipts from supply of goods and services. The PIS was created to fund the unemployment insurance program. The COFINS is charged on gross receipts from supply of goods and services. There is no agreement between the 27 States on the reform and harmonisation of the State Sales Tax / VAT regime. Since States are free to set their own taxes, in the past, this has meant double taxation on movements of stocks, which puts a large fiscal bill on trade within the country. To help alleviate this, States have to seek prior approval for any ICMS changes via the National Council of Fiscal Policy (CONFAZ). However, many States have ignored this. They have highlighted that they use ICMS as a competitive tool to attract inward investment.

Brazil has a number of Alternative Dispute Resolution processes. These include Binding Rulings, Administrative Litigation, and Tax Amnesty Programs. The Binding Ruling and Administrative Litigation processes are very mature, and have existed in Brazil for decades, while Tax Amnesty Programmes are have been enacted for specific periods of time repeatedly over the course of the last decade. Binding rulings can only provide resolution for future circumstances, and are often not practical for effectively resolving matters of material relevance. Over the last decade, the Administrative Litigation process has been perceived to work very well, while the Tax Amnesty Programs have also been shown to be effective. Brazil does not have a formal Advanced Pricing Agreements (APA) program. The authorities consider that the implementation of the statutory margin system has helped minimize subjective judgments in the auditing phase and avoids the need for a complex and expensive APA structure. Looking at both the models and to ensure that multiplicity of taxes both at the State and Central level are reduced to bare minimum, India has preferred the Canadian to the Brazilian model.

5. Potential areas of Dispute:

Many view introduction of GST as the single most important initiative in the fiscal history of India. As far as the trade and industry is concerned, they look towards GST as a panacea to their woes. They expect it to be a tax regime which is seamless and hassle –free across the country with broad uniformity not just in terms of tax rates but also in terms of interpretations, procedure, exemptions etc.



Keeping in mind these expectations, there are naturally some apprehensions about smooth roll out of GST considering that India is adopting a fairly untested dual model (CGST + SGST) due to its unique historical and political culture. It can be reasonably construed that unless sufficient prior thought goes into creation of a robust Dispute resolution mechanism, implementation of GST will not be smooth.

- (i) **Disputes in the absence of Harmonization of State GST Act with Central Statute:** Since under the GST regime, both the CGST and SGST, shall be levied on the same value, fundamental congruence of State GST laws with Central Laws is needed in areas of classification, valuation and input credit. In the absence of harmonized definition of the taxable event, the tendency of different State administrations to levy and collect the tax at their end, by skirting the principle of accrual of GST at destination, cannot be ruled out. Similarly and specifically on the provision of Services, divergent interpretations on the definition of “Place of Supply” are likely to arise in the absence of Harmonised Tax statutes.
- (ii) **Disputes on account of Assessment and Scrutiny:** Since under the GST scheme, tax administration of both the Centre and the State will have one “value” based on

which the assessments under their respective statutes will take place and the supplier may be required to file single unified return which will enter the streams of both the Central and State tax authorities, divergent interpretations and proceedings on matters of classification and valuation not just between the Central tax authorities and the State tax authorities within one State but also between different States is a distinct possibility. E.g. when either of the tax authorities accepts the value or classification, while the other tax administration may have reservations about such acceptance. In such a situation, the Supplier shall be forced into litigation owing to lack of coordination between the Central tax administration and the State administration.

- (iii) Disputes on account of multiple Audit:** With GST proposed to be a dual levy with the tax administration both by the Central tax authorities as well as the State authorities, apprehension among the trade on being subject to a multiplicity of checks and scrutiny is not misplaced. Audit is one such area. Central Tax administration has continued with “scrutiny-assessment” and audit of almost all assesses, VAT laws require audit of the records by an independent Chartered Accountant, much on the lines of Income Tax. Lack of a unified system of audit and the possibility of diverse interpretations would only result in high administrative and compliance costs.
- (iv) Disputes on account of different Dispute Resolution mechanisms:** India has adopted a unique model of GST taking into consideration local conditions, political compulsions of a federal set-up and the contours of the tax base. Despite a high degree of convergence between the Central and State tax administrations in certain critical areas such as assessment and classification practices, audit protocol, the disputes are likely to arise. Any dispute arising on account of valuation, classification and input credit shall encompass both realms of CGST and SGST. At present, different States are adopting different structures for adjudication of the notices and the appellate remedies. The adjudicating powers vested with various authorities on adjudication of tax disputes varies between various States and Centre. Presently, taking the Maharashtra VAT system as a model *Appendix(I)*, it is seen that the final authority is the Maharashtra State Sales Tax Tribunal with two preceding levels of appeal. On the other hand, the indirect tax administration has one appellate forum in the form of the Commissioner (Appeals) before a litigated matter reaches the Customs, Excise and Service tax Appellate Tribunal (CESTAT).

6. Deliverables:

In the above context, the approach of this research paper has been to study and identify the fundamentals of effective dispute resolution, both in theoretical terms as well as, to seek and suggest policy and structural measures. The neglected facet of dispute resolution by averting the occurrence of disputes through structural mechanisms as well as through policy measures, need to be considered. The basic premise is that the best form of dispute resolution is to kill the dispute before it actually arises. The experience of litigation in the Indirect taxes regime over the years reveals that despite various methods and concerted efforts, a real dent could not be made in the pendencies and the revenue locked up in the legal fora {No. of cases pending in Indirect Taxes as on 31.10.2014 in *Appendix-II*}. Equally important is to look at ways of resolution of disputes with due emphasis on the traditional dispute resolution mechanism such as the Tribunal/Courts and the Alternate Dispute Resolution (ADR) mechanism. The issue has accordingly, been examined with reference to following dimensions:

6.1 Suggestions for Averting Disputes: As noted above, the following areas need attention from the point of reducing the occurrence of disputes:

(i) Harmonization of State GST Act with Central Statute: The first and foremost issue is the need for harmonization of State GST Acts and the rules with the Central laws. Fundamental congruence especially in areas of classification, valuation and input credit across the Country, is imperative for seamless implementation of GST. Similarly, the procedures and documentation required for various related transactions like invoices, procedure of movement of goods, returns, availment of input credit must be simple, transparent and uniform across CGST and SGST.

(ii) Directives of GST Council: In EU, the aim of VAT directives is to harmonize VAT within EU VAT area. The scope of the VAT directive ranges from harmonisation of VAT law, content and layout of VAT declarations to the regulation of accounting and legal framework, detailed description of invoices and definition of transaction relating to supply of services. In India, the similar function must be exercised by GST Council where the decision taken shall be applicable and binding on all Members-States. Such a proposition will go a long way in reducing disputes between Centre and Member States and between various Member States. Consequently, the assessee shall be spared of the confusion and prolonged litigation due to multiple interpretations.

(iii) Assessment and Scrutiny: We have discussed the situation where the disputes are likely to arise on account of assessment and scrutiny of the returns filed by the “supplier” primarily due to the fact that the assessments are designed to be on one “value” and the supplier shall be required to file single unified return.

One way of mitigating such a situation and nipping in the bud the problem of protracted litigations in such matters would be to put in place a two- level structure at the State level to resolve such differences before they enter realm of formality by way of a demand or a show cause notice.

- a. At the First level, a Co-ordination Committee could be set up in each State comprising of one or two Principal Commissioner/Commissioner level officers from both the Central and State tax administrations. The Committee would consider the referred issues of differences of opinion from the respective tax administrations and try to achieve consensus on the issues. The Committee could initially take up cases where unified returns in electronic form are filed, (which could cover a sizeable number of suppliers contributing a large chunk of revenue) and later be extended to all suppliers.
- b. In the second stage, where the issue is not reaching resolved after the examination by Co-ordination Committee, the case could be referred to a State level GST Ruling Authority comprising of members from Judiciary and also drawn from both the Central and State tax administrations. The Authority would then hear and pass a ruling on the subject which would be final. The Authority may use the techniques like Mediation, Arbitration, Neutral Evaluation etc. as has been in practice in various GST administrations worldwide.

The administrative cost involved in setting up the GST Ruling authority and GST Co-ordination Committee at the State level would be offset by the reduction in litigation on account of their mechanisms. More so, when the traditional dispute resolution mechanisms which have focused on assessing disputes only after these have formally arisen, have not really been effective.

(iv) Small tax payers: Small tax payers have minimum capacity to bear the cost of litigation. At present, the small scale sector on manufacturing side is exempted from Central Excise duty for an annual turnover upto Rs. 1.5 cr, but the case is not so in VAT regime. Different States have been following different threshold limits ranging from Rs. 10 lakhs (in

North East) to Rs. 50 lakhs in relatively better developed States. There are practices in the States to allow compounding of the cases below a threshold where the tax payers have been paying lumpsum presumptive tax. In GST, the ideal situation would be to follow uniform threshold limit for exemption from payment of GST. In any case, there is a least case for subjecting the small tax payers to dual administration. The small tax payer may interact with one administration and may face assessment and scrutiny proceedings, if any, from one tax administration only. Keeping in view the existing practices, it may be more practicable to leave such tax payers with State administration both for CGST and SGST. CGST so collected can be transferred to Centre by the collecting State. In any case, the return data shall be available to both Centre and the State for accounting.

5.2 Suggestions for Dispute Resolution Mechanism:

(i) Adjudication:

Since any dispute arising on account of valuation, classification and input credit is likely to have equal implications for both tax administrations, the respective adjudicating authorities under the Central and the State acts could pass orders taking diametrically opposite legal positions on the same issue and the same supplier. Needless to say, what would follow will be an endless litigation. Conceptually, the way forward to mitigating such a situation would be to provide in the statute, provision for either one of the two tax authorities (Centre or State) to issue notice for both the CGST and SGST components or alternately to provide for a unified and common adjudicating authority mechanism. However, with both Central and State administrations likely to zealously protect their respective turfs, a breakthrough mechanism to avoid the potential area of dispute under discussion may not be easy in the short run.

(ii) Audit:

The traditional model of audit having “periodicity” as the basis of carrying out audit in a routine manner results in wastage of manpower and resources. It is in this context that a futuristic audit based on selection through the principles of computer-assisted risk assessment and management should be established. Drawing from the experience and recent developments of audit and scrutiny in both indirect and direct taxes, the GST regime would be best served by the establishment of Directorate of Audit and Risk Assessment at the State level. This organization would draw officers from both the Central tax administration and State vat authorities and would use risk assessment parameters by pooling intelligence from all quarters to make selection of suppliers for audit in a more intelligent and scientific

manner. The system based generation of an audit schedule would also ensure that duplicity or repetitive audits by either of the tax administrations do not happen. Central Board of Excise and Customs has undergone structural expansion in its recent cadre re-organisation and established a number of Audit Commissionerates which would support the above structure.

A system based targeting of auditing/fraud detection has also been preferred internationally with a fair amount of success. The Australian experience in risk targeting is particularly worthy of study and emulation with suitable local adjustments. There, Risk Rating Engine (RRE) is utilized to assist in detecting potential fraud and non-compliance. The propensity for risk is also being addressed through the Registration Information Matching System (RIMS) which was set up following the introduction of the GST. The system has both a fraud prevention and detection capability. However, it is primarily targeted towards the prevention of fraud. RIMS uses data matching techniques to identify potentially fraudulent registrations and amendments. RIMS checks new GST registrations against a reference list and other criteria. The system highlights high-risk applications that can then be referred to intelligence analysts for further analysis.

The suggested system of audit involves a fundamental shift in the mindset of tax administrations. While changes have taken place in the indirect tax administration in the realm of auditing, the emphasis from quantity to quality has not really taken place. The above GST Audit regime will draw from the experience of risk management implemented in Indian Customs.

(iii) Appellate fora :

Experts believe that adoption of a dual GST model and hence, dual tax administration by the Central and State tax departments, may result in high administrative and compliance costs. Despite convergence between the Central and State tax administrations in critical areas such as assessment and classification practices, audit protocol etc, the congruence in Appellate mechanisms in both regimes is considered essential. The issues related to convergence in the realms of assessment/classification and audit, have been dwelled upon in the preceding paragraphs. For appellate remedies, it would be more practical to consider putting in place a single GST Tribunal at the State level to hear appeals arising from both the Central and State tax administration streams. This would avoid a situation where two independent tribunals of the Central and State tax administrations would have given different rulings on the same issue leading to protracted litigations.

6.3 Alternate Dispute Resolution (ADR) Mechanism: The ADR is a series of approaches that opens up channels for interaction of tax payers with the Government for resolving disputes without resorting to litigation. ADR is a very broad term and includes negotiation of disputes without outside assistance. Although, the concept is still evolving worldwide, yet there has been significant increase in number of disputes opting for ADR and the mechanisms of ADR. The scope of ADR varies from country to country and region to region. In fact, there are some opinions calling these Alternate Dispute Resolution (ADR) mechanisms as APPROPRIATE dispute resolution mechanisms.

- Australia GST has been using the methods of Conferencing, Mediation, Neutral Evaluation, Case Appraisal, Conciliation in Administrative Appeals Tribunal and Federal Courts. System of Independent Review is a key mechanism to resolve the areas of disagreement and disputes prior to issuance of assessment orders.
- Canadian Revenue Agency (CRA) has also been using Mediation in the cases where consensus has been found possible and both sides see its benefits.
- In UK, the Adjudicator is parallel to Ombudsman whose role is to consider whether or not, Her Majesty Revenue & Customs (HMRC) has handled complaints appropriately and has given reasonable decision. The areas include mistakes in assessment, unreasonable delays, poor or misleading advice or inappropriate behaviour. The normal procedure involved is mediation and if it fails the recommendation by the Adjudicator.
- Singapore has its system of Advance Ruling which is binding on the Revenue but not on the tax payer.
- Brazil's Alternative Dispute Resolution processes include Binding Rulings, Administrative Litigation, and Tax Amnesty Programs. The Binding Ruling and Administrative Litigation processes are very mature, and have existed in Brazil for decades, while Tax Amnesty Programs are have been enacted for specific periods of time repeatedly over the course of the last decade.
- India has its own experiences of ADR in Civil jurisdiction e.g. LokAdalats. The petty disputes have been settled through these mechanisms and the media reports confirm that no. of cases as high as few lakh cases have been settled in a day or so in LokAdalats.

Lok Adalat settles 1.25 crore cases in one day

New Delhi: Over 1.25 crore cases across the country were on Saturday disposed of by the second National Lok Adalat which also saw disbursal of Rs 3,000 crore as compensation towards motor accident claims.

According to the National Legal Services Authority, the

reduction in pendency of cases averaged about 9% across all states. The Lok Adalat was inaugurated by Supreme Court judge Justice A R Dave and in the SC itself 28 out of 53 cases were settled by three benches.

“This method is the best way to resolve disputes. It is fast

and less expensive. Relations between the litigants do not get strained and they remain cordial as they mutually agree to resolve the dispute,” Justice Dave said. “People need to have a big heart and keep their ego under control to get the dispute resolved in Lok Adalat.” AGENCIES

There have been experiments in indirect taxes in the past also. Settlement of disputes by accepting the duty demanded by the tax payer with consequential benefits of no or reduced penalty or settlement of disputes through Settlement Commission where in addition to reduction of penalty, the waiver from prosecution is available to the tax payer, have been tried in the past. Although the reports of evaluation of results of such measures in reducing the litigation are not available and is an area of further research, the huge pendency of the cases pending almost at all levels of adjudication and appeals point to the fact that these have not been very effective. ADR is not meant for undermining the rule of law or dealing with the issues not capable of settlement or relaxing compliance with the law. It is aimed at reducing the cost of litigation by means outside the normal channels of dispute resolution through Courts and Tribunals. Despite ineffectiveness in the past in taxation side, the scope of such measures cannot be underestimated as in the globally evolving tax administration, both the Government and the taxpayers have less appetite for litigation because of costs and time involved. The following Alternate Dispute Resolution mechanisms already in existence may be continued with suitable modifications:

- To minimize and reduce litigation, the present system of Advance Rulings in CBEC must be available to both CGST and SGST issues. In fact, the scope of the jurisdiction may be sufficiently enlarged to bring all categories of cases like domestic and overseas tax payers. The study of limitations of this institution and ways to increase its effectiveness is a separate area of study and research. Its Rulings shall be binding on all Stakeholders.

- The existing institution of settling disputes through Settlement Commission may be continued with suitable modifications in its powers and structure.
- Provisions on the lines of Section 11A(2B) of Central Excise Act, 1944 providing for the settlement of dispute prior to and after issuance of show cause notice demanding duty within a specified period of time, without further litigation proceedings.

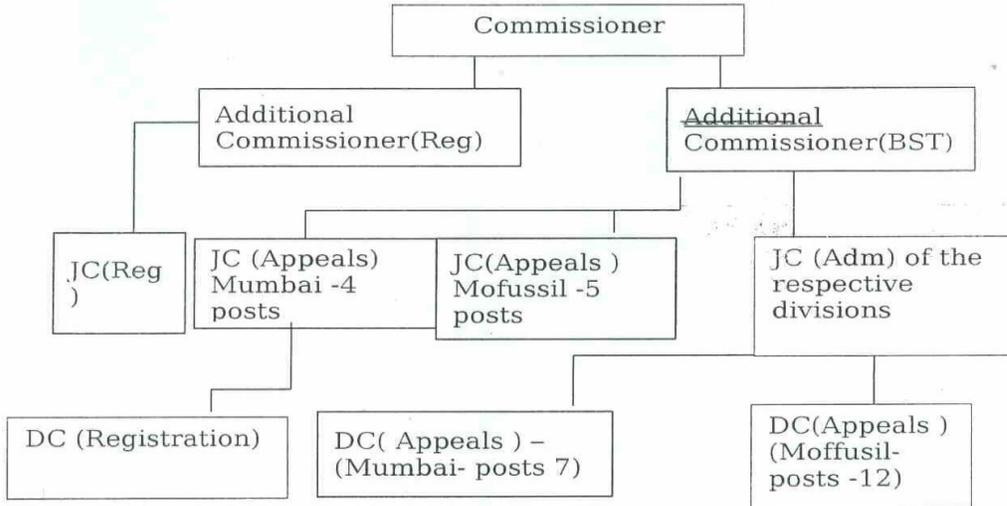
In addition, the following ADRs may be worth consideration:

- Creation of online Dispute Resolution mechanism for accessing ADR authority (neutral third party) to settle select category of cases has a large scope for settling disputes. Accepting Arbitration, Mediation, Re-conciliation as possible ways of dispute resolution is the need of the hour.
- On-line platform linking all national ADR entities shall be helpful in creating uniformity across the country.

7. Concluding Remarks:

GST implementation is the most comprehensive and ambitious Indirect Tax reform. This is for the first time that Indirect taxes of the Centre and the States will be brought at one platform through common assessment procedures and unified returns. However, this will bring up a lot of unforeseen and unprecedented issues for resolution. Though some of the issues have been anticipated and their solutions suggested, a lot of further research needs to be carried out in this direction. A comprehensive co-ordination is necessary between the State and the Centre so that the huge expectations of the trade and the industry regarding simplicity and seamless flow of Goods and Services not only within States, but across States would be met. It is felt that this can only be achieved if the States and the Centre rise above their parochial jurisdictional concerns for the common developmental goal of the Country as a whole.

3.1 ORGANISATIONAL CHART OF APPEALS



3.2 Hierarchy in appeals

Sr.No.	Order passed by	Appellate authority
1.	Sales Tax Officer/Assistant Commissioner of Sales Tax.	Dy. Commissioner of Sales Tax.
2.	Dy. Commissioner of Sales Tax or Senior Dy. Commissioner of Sales Tax.	Joint Commissioner of Sales Tax.
3.	J.C. or Addl. Commissioner of Sales Tax or Commissioner of Sales Tax.	Maharashtra State Sales Tax Tribunal

Orders passed in appeal*	Appellate authority
J.C. or Addl. Commissioner of Sales Tax or Commissioner of Sales Tax.	Maharashtra State Sales Tax Tribunal

Department of Revenue III

NO. OF CASES PENDING AS ON 31.10.2014							
Sl. No.	Appellate Forum	Total No. of Deptt. Appeals	Total Amount Involved in Deptt. Appeals	Total No. of Party's Appeals	Total Amount Involved in Party's Appeals	(Amount ₹ in crores)	
						Grant Total No. of Appeals (D+P)	Grant Total Amount Involved
1	Supreme Court	2307	8596.64	1183	3226.53	3490	11923.17
2	High Court	7157	9627.26	7957	10418.66	15134	20045.90
3	CESTAT	20409	19298.73	51343	112081.60	71752	131380.33
	Total	29883	37622.62	60483	125726.78	90376	163349.4
4	Commissioner (Appeal)	4366	959.04	3290	9318.60	37256	10577.64
	Grand Total (1+2+3+4)	34249	38581.66	93383	135345.38	127632	173927.04

Sources:

- **Kelkar Task Force on implementation of the Fiscal Responsibility and Budget Management (FRBM) Act, 2003**
- **Report of Task Force on GST- Thirteenth Finance Commission**
- **FICCI Paper on suggested model of GST**
- **Annual Report 2014-15, Ministry of Finance, Government of India**
- **73rd Report (2013) of the Standing Committee on Finance on Constitution (115th) Amendment Bill**
- **Newspaper reports**
- **Inputs from Tax administrations in UK, Netherlands and Belgium**