IMPACT AND ISSUES OF GST IN PHARMA AND FMCG INDUSTRY.

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GST

- GST is levied on each and every supply of goods and services or both with fewer exceptions like tax free goods and services,
- It is also applicable on inter-State branch transfer of goods as well as supply of goods and services to agent,
- Unlike excise and custom it is transaction based levy,
- ITC is available on corresponding inputs, capital goods including expenses for providing taxable supply and zero rated supply with few exceptions.

IMPACT

- After the completion of one year of GST there is not much negative impact of GST on trade and industry,
- But serious impact on tax professionals in terms of increased compliances,
- Strict time bound e-compliances, not allowing corrections or revision of returns and other technical glitches created un resolved problems leading to unwanted litigation and increased work load of every one.

WAY AHEAD

- The Government has realized the problems and is proactive,
- Determined to take remedial actions,
- Proposed to allow much needed feature for amendment to return,
- Technical supports is improved,
- Businessmen and tax professionals learnt from past mistakes and corrected their sustems,
- Expected to stabilize and show better performance in coming time.

PHARMA AND FMCG INDUSTRY

- Pharma and FMCG industry due to their peculiar business have some issues in GST.

The Common features of this industry are;-

- Multi State business module,
- Fixed MRP,
- Involves large scale wholesale and retail Channel,
- Multi Modules of Marketing,
- Domestic as well as Foreign Procurements etc.
- Government Control on production, finance and prices,
- Challenges of E commerce etc.

ISSUES

- Issues relating to GST law arises in respect of following broad areas;-

i) Selection of appropriate marketing policies,
ii) Policy of sales promotion and discounts,
iii) Goods Return including of expired goods,
iv) Fixation of MRP and impact of change in rate of tax,
v) Tax on warranty and AMC,
vi) Composite and mixed supply,

ISSUES

Vii) Block Credit of ITC on samples, loss of Goods etc.,

Viii) Insurance on Stock,

x) Credit Note and Debit Note,

Selection of Appropriate Marketing Policies

- The GST being payable on each stage of supply coupled with ITC on corresponding inward supply smoothly passes burden of GST to consumer,
- Earlier due to CST applicable on inter State sale there was a tax burden to the extent of CST which is removed,
- Further, the levy of excise and service tax not eligible for ITC resulted in to increase in cost of goods ,
- This is done away with in GST.

Selection of Appropriate Marketing Policies

- Based on complexity of earlier tax laws, various options of marketing policies were evaluated and best policy was opted.
- In GST tax is payable on each and every supply including inter State branch transfer and consignment transfer eligible for ITC ,
- The trade and industry has more freedom and flexibility for selection of marketing policy.

Marketing Policies

- The options for marketing are as under;-

i) Multi State Branch,
ii) Sole selling agencies,
iii) Sales through Subsidiary Marketing Company,
iv) Direct retail trade,
v) On line Sales
vi) Sales through Franchisee etc.

Selection of Appropriate Marketing Policies

- Each option has pros and cons to be evaluated by management .
- Besides finance and other logistic issues , the valuation rule providing for open market value or 90% of selling price by branch creates certain problems in selecting marketing through multi State branch or Sole selling agencies.
- Further the cross charging levy also creates problems that needs to be taken care.

Policy of Sales Promotion and Discounts

- GST is transaction value based tax and payable at the time of supply of goods on the value of goods payable,
- Which needs to be required to be shown in invoice.
- Pre sale Discounts eligible for deduction but post sale depends upon terms of the agreement deductible subject to certain conditions.
- This provision needs to be taken care while framing various Sales Promotion Schemes and Discounts.

Goods Return including of Expiry Goods

- Return of goods is inevitable in any trade and industry.
- The GST law provides more liberal rule for allowing claim of deduction for Goods return.
- The claim of goods return is allowable till the date of filing of annual return or return for September of next year whichever is earlier.

Goods Return including of Expiry Goods

- But for expiry goods where period could be more than 2 years it is difficult to have return of goods within statutory periods.
- The Pharma and food Industry needs to take back expired goods and to be destroyed as per the provisions of the Food and Drugs Act.
- Earlier department clarified that return of expired goods beyond statutory period will be treated as supply of goods and liable to GST.

Goods Return including of Expiry Goods

- Later it was clarified that return of expired goods will not be treated as supply of goods and no tax is payable.
- But the clarification is salient about reversal of ITC as ITC needs to be reversed in respect of goods lost, destroyed, written off or disposed by way of gift or free samples.
- Whether the ITC needs to be reversed for return of expired goods by the retailer or manufacturer or no need to reversed?

Fixation of MRP and Impact of Change in Rate of Tax.

- The Legal Metrology Act provides for uniform Maximum Retail Price of goods to be printed on each goods packed for sale.
- It is to be stated inclusive of all taxes.
- GST has subsumed most of all other taxes applicable up to the retail sale and provides for uniform rate of tax all over India at each stages of sale.
- It is now very easy to ascertain incidence of tax burden on goods up to the retail sale to be included in retail price.

Fixation of MRP and Impact of Change in Rate of Tax.

- But change in rate of tax in between has impact on MRP already fixed.
- The intention of the Government is that each reduction in rate of tax must pass on to the retail customer or consumer of goods.
- The industry is required to see that the benefit of reduced tax burden passes to the customer.

Fixation of MRP and Impact of Change in Rate of Tax.

- The Government of India through Ministry of Consumer Affairs is very prompt and issues immediate advisories to reduce the MRP on stock of goods as well as printed packing materials,
- By way of fixing of additional sticker or stamping or online printing subject to condition that earlier label or sticker showing MRP must be visible.

Fixation of MRP and Impact of Change in Rate of Tax.

- But in case of increase in rate of tax no such benefit or concession to increase the price,
- The manufacturer or importer as the case may be needs to reimburse the retailer or the retailer may have to bear the burden of increased rate of tax.
- The valuation rule do not allow the deduction for reimbursement of increased rate of tax given to the recipient post sale.

GST on Warranty and AMC

- Warranty and AMC are part of sale of certain FMCG,
- Under earlier law warranty as well as AMC were subject to both service tax and vat,
- Now it is taxable under the GST law,
- Post sale warranty is taxable as supply of service,
- Pre sale warranty will be consider as composite supply and taxable at the rate of goods.

Tax Management of Warranty and AMC

- This differential treatment for rate of GST on pre and post sale warranty and AMC needs to be taken care while fixing the price of goods and period of warranty and AMC.

Composite and Mixed Supply

- GST law provides for different rate of tax for composite and mixed supply,
- In case of Composite Supply the rate of tax of principal or dominant supply shall apply ,
- Whereas in case of mixed supply maximum rate applicable to goods shall apply.
- While selecting product mix for gift pack etc., the provisions relating to Mixed and Composite Supply is to be considered.

Block Credit of ITC on Samples, Loss of Goods etc.

- Section 17(5) (h) does not allow ITC on ;-

-goods lost,

-stolen,

-destroyed,

-written off or

disposed of by way of gift or free samples .

Block Credit of ITC on Samples, Loss of Goods etc.

- In Pharma industry ITC on physician sample may attract disallowance of ITC,
- In other industry also ITC on goods supplied as free sample also gets disallowed.
- This provision may not apply to marketing and sales promotion schemes like one plus one free etc.
- In that case price of goods supplied is charged at a price of unit declared in the scheme nonetheless there is a sale of all unit of goods supplied and not given by free.

Insurance on Stock

- The stock of goods was generally valued at excluding vat but including excise and other taxes which were not subject to ITC,
- IN GST now there is no component of any other taxes except custom duty,
- Therefore the value of stock of goods may be less than earlier,
- While taking or renewing policy of insurance this aspect needs to be considered.

Insurance on Stock

- Further, in Maharashtra the ITC credit for vat was allowed even the goods were lost or destroyed,
- Therefore while settling the claim, the insurance company was valuing loss of goods at cost less vat credit.
- In GST, the ITC on corresponding receipt of goods is to be reversed therefore while lodging the claim for the loss, the goods should be valued at cost plus reversal of ITC, if any.

Credit Note and Debit Note

- The GST laws provides for issue of credit and debit note in certain circumstances and allows reduction in value of goods sold and payment of GST thereof,
- Subject to condition that ITC should be reversed by recipient.
- The issue of credit and debit note applies only in specified circumstances in respect of goods or services supplied earlier.
- In case of other charges for any service or goods supplied by recipient to the vendor, the tax invoice should be issued and not credit or debit note.

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