

Home, Sweet Home! – Will GST make it a reality !!!

(Santosh Hatwar)

When my dearest friend Jai Kumar asked me to make a contribution to the guest column of the monthly newsletter originating from the stables of 'swamy associates', I asked him if there is any specific area that I should focus upon keeping in mind the esteemed recipients of this master-piece of a monthly anthology of tax related information. He mentioned 'anything under the sun'.

With this, the first thought that struck my upper crust was 'shelter' from the fiery sun during this hot summer. Come rain or shine, all of us aspire to be in the cool confines of that beautiful place that we call our 'home sweet home'.

While the first guest in the inaugural newsletter, my buddy Suresh, focussed on the genesis of this wonderful firm completely dedicated to the services of their clients, the second one from dearest Raghu gave us a dose of taxation in our daily lives, spanning from the good old GST to the brand new GST. In this backdrop, I felt that it is time to delve into some serious issues concerning taxation and hence this focus on 'home sweet home'.

The global financial turmoil of 2008 and 2009 had its impact on our economy causing severe job losses (though not properly acknowledged by the Government) affecting all sectors of the economy including the realty sector. During these tough times, both home owners and property developers had a tough time – one scrambling to retain their homes bought on loans and the other finding new customers for their projects already on stream. The Government attempted to do its own bit by offering stimulus packages (which was of course rolled back in the recent budget thanks to some signs of revival in the economy).

But cashing in on this ordeal were the service tax authorities, who issued show cause notices unabatedly to property developers. The protracted tussles between tax authorities and the property developers often tripped the customers and tossed their budgets with 'out of the blue' additional demands from the developers midway through the construction. This has forced customers to shell out more from their already strained pockets, lest, their dream of owning their sweet home would remain just that.

It's been five years since we have seen introduction of this levy, by brining into the tax fold 'construction of complex service' and

midway (from June 2007) there was a change of track by the government by introducing 'works contract service' encompassing five different areas including 'construction of a new residential complex or part thereof' and 'commercial or industrial construction' which was already brought into the tax fold in the year 2004 itself.

During these five years of litigation, much water flowed down the rivers straddling our landscape, without any serious attempt to resolve any issue in sight. This is partly due to gross misunderstanding of the law by both the developers (and their tax advisors) and the tax authorities. I am not going into the nitty-gritty of this at this stage because it is all there out in the open.

For this muddle, the blame solely lies with the Government – for framing a slipshod legislation to topping it up with fuzzy clarifications. In my view, the Government attempted to bring the realty sector into the service tax net, to cash in on the huge demands fuelling the boom in these sectors during the first half of the last decade. While it is the prerogative of the Government to bring in or leave out any sector from the tax net, it appears that the powers that be in the CBEC and the Finance Ministry did not do their homework while bringing realty sector into the service tax net.

In the absence of a nuanced and methodical approach, what we see today is a huge mess in the realty sector. While builders, armed with some advisories from 'tax experts' cried hoarse that their activities were not at all taxable, the tax authorities did not heed their cries and went after them with vengeance. Sandwiched between these two warring factions are the home owners – on whose heads hangs the Damocles' sword of additional burden that could befall the builder, if the demand goes against them – for which they were never prepared in the first place.

In fact, the Government should have done its homework better and brought this sector into the service tax net after undertaking detailed studies of the various business models followed by the realty sector across the country. This could have helped the Government in crystallizing a better legislation to target this sector and ensure smooth administration of taxation in this sector. There is no point in shedding crocodile tears over locked revenue in litigation when Government itself is the fountainhead of all this litigation.

However, emerging unscathed from this chaos is a happy tribe – tax lawyers/consultants – whose coffers filled with every incoming show cause notice.

Let us all hope that the Government has learnt its lessons well and brings out a robust GST legislation minimizing litigation in this booming sector. We cannot completely eradicate litigation; at least we can contain it, if better sense prevails over the wise men in Delhi.