

Are half-baked anti-profiteering rules a nightmare in the making?

Businesses are worried whether anti-profiteering rules under GST would lead to witch-hunting by taxmen

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Revenue secretary Hasmukh Adhia and finance minister Arun Jaitley at a GST Council meeting. Photo: PTI

In the current format, the government's anti-profiteering rules on the goods and services tax (GST) raise more questions than answers. While the intent is to curtail inflation post-GST implementation, the notification suffers from a lamentable lack of clarity on many aspects, increasing uncertainty for businesses.

To begin with, the law would be applicable to all businesses irrespective of their nature or revenue. Since businesses are already struggling to brace for the 1 July deadline, tax experts say it would have been better if these provisions were restricted to those having oligopolistic markets or ones where a significant inflationary spiral is expected due to GST.

“The concern at this point in time is whether the sweeping provisions provided in the law can be effectively enforced without affecting business confidence. Also, every reduction in tax rates or increase in input tax credit may not lead to a corresponding reduction in prices as there could be simultaneous upward movement of costs of raw material or forex swings,” said M.S. Mani, senior director (indirect tax) at advisory firm Deloitte India.

There is no clear timeline that has been provided for the implementation of the law. Most importantly, there is no mention whether the mechanism for implementing anti-profiteering measures will be product-based or entity based. The rules only talk about the composition of an anti-profiteering committee and that it has the power to determine the methodology and procedure.

Globally, various economic factors like supply and demand conditions, cost structure of the supplier, and geographical location of the marketplace is considered to determine this mechanism. For instance, in Malaysia, the net profit margin methodology is used.

Anti-profiteering has not yielded the desired results in some countries where it was adopted. It proved to be a disaster in Malaysia as it is said to have been misused by tax officials, which led to tax terrorism.

Businesses here too are worried whether anti-profiteering would lead to witch-hunting by taxmen. Apart from tax authorities, it can also be misused by firms who may reduce prices and then file complaints against their rivals, pointing out that rivals hadn't followed suit. "For instance, if the purchase price of a beverage company reduces, then the competitor beverage company too would be expected to reduce the prices. In that case, will it get penalized for not immediately reducing the price? This is not known yet, as the comparable costs could differ from the size of the company and other costs attributed," said Suresh Rohira, partner at tax advisory firm Grant Thornton India Llp.

On the other hand, a key challenge for authorities would be to prove whether the cost should be reduced. It will be tedious for authorities to actually cross-examine each and every item that is used to produce a particular product— especially of small and medium enterprises. Even if prices are reduced, it is unlikely that a full passage of the input tax benefit that a business gets will happen.

"Businesses have been under pressure to maintain their margins because of various local and global factors. With WPI (Wholesale Price Index-based) inflation at such lows, pricing power of manufacturers has taken a hit. So, in case they get some relief on taxation front, they may want to use that to keep margins stable instead of passing on," said Madan Sabnavis, chief economist at CARE Ratings.

Computing the same for services will be all the more difficult because there is an intangible element involved.

The rules also talk about state-wise committee and investigations, which would just add to the distress of businesses. But an important question is whether the government has the infrastructure in place to deal with a situation where there could well be a plethora of complaints and investigations. Also, companies that feel unfairly targeted may approach the courts, which could lead to an enormous amount of litigation.

To conclude, the poorly framed anti-profiteering rules indicate that the provision is a pressure tactic being used by the government to boost compliance. If implemented without clarity about the aforementioned factors at the earliest, it could deal a blow to business confidence.

First Published: Wed, Jun 21 2017. 07 54 AM IST