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The unsavoury controversy of IGST exemption to the import of oxygen concentrators

For past almost two years, Covid-19 Pandemic has gripped the world and the Indian Sub-Continent cannot be expected to remain immune to this life threatening virus. In fact, the 'second wave' of this Pandemic has turned out to be much more lethal than the 'first wave'! Particularly, the number of people who has succumbed to this virus due to non-availability of oxygen is disturbingly high.

Amidst this crisis, the importance of 'Oxygen Concentrator' as a life-saving equipment has suddenly caught the attention of the entire nation! Admittedly, the country is not only facing the shortage of oxygen cylinders but also of oxygen concentrators and therefore, there is no alternative but to depend upon the imports of this equipment.

It is therefore not surprising that all eyes were on the Government's tax policy, not only concerning the imports of the lifesaving drugs but also of the lifesaving equipments like oxygen concentrators.

On April 24, 2021, Central Government issued a notification no.28/2021-Cus. granting full exemption from payment of customs duty and Health Cess to the oxygen concentrators imported into India. This notification shall remain in force till July 31, 2021.

However, at the same time, the imports of oxygen concentrators for personal use attracted IGST @ 28% as against its imports for commercial use that attracted the IGST @ 12%. Needless to say, this illogical and unjustified differential tax treatment led to wide scale resentment and protests. Obviously, it was a sheer absurdity that a person who is desperately in the need of oxygen concentrator and who somehow manages to arrange for one from abroad for his personal use, would still end up coughing up 28% IGST on its import! Finally, sensing the growing discontentment amongst the people, the Central Government issued a notification no.30/2021-Cus on May 01, 2021 providing for a concessional rate of IGST at 12% on the oxygen concentrators imported for personal use. This was done ostensibly to bring a parity between the import of this equipment for commercial use and personal use.

Close on the heels of the above notification, the Central Government issued an Exemption Order no.04/2021-Customs dated May 3, 2021, inter alia, granting full exemption from payment of IGST to the oxygen concentrators, when imported into India, by the specified agencies, subject to the conditions specified in the Order.

Here, it is necessary to point that the aforesaid customs notifications and exemption Order have been

issued by the Central Government under S.25(1) or S.25(2), as the case may be, of the Customs Act, 1962 and the same are not based on any recommendations of the GST Council.

However, there was a furore against this irrational and controversial policy of granting total exemption from IGST when the oxygen concentrator is imported by the canalising agencies and levying 12% IGST thereon when imported by a person (read 'patient') who is fighting for his survival and has somehow managed to arrange for one by way of gift! Peeved at this discriminatory tax treatment, a Delhi based octogenarian Mr. Gurcharan Singh, who has been fighting Covid-19 battle having been affected by it, knocked the doors of the Delhi High Court and challenged the constitutionality of the levy of IGST @ 12% on the import of the subject equipment and received as gift from his nephew for his treatment. On May 21, 2021, the High Court delivered its judgement and with piercing observations and concise but critical and profound analysis, declared the aforesaid customs notification no.30/2021Cus. ibid as unconstitutional. However, as was expected, the judgement was immediately challenged by the Government and the Supreme Court has, on June 1, 2021, stayed the said judgement of the High Court.

Whatever may be the ultimate judicial outcome of this dispute but isn't it unfortunate that this controversy should arise in the first place? What is the rational and propriety in levying 12% IGST on the import of this life saving equipment or device received from abroad by way of gift for the personal treatment? When the Government acknowledges the shortage of the oxygen concentrators in the country, isn't the levy of 12% IGST thereon when imported for personal use is like 'rubbing salt into the wounds'? How can a person afford the levy of 12% IGST on import of this equipment which he may have either been lucky to get as gift from abroad or has been able to get only after some herculean efforts? Isn't this provision absolutely irrational, unjustified, inhuman and reflective of the bureaucratic mind-set? No doubt, the grant of exemption from tax to any product lies within the full discretionary powers of the Central Government but isn't the grant of exemption from IGST in this particular case in the 'public interest'?

It may be noted here that that the power to grant exemption from IGST in respect of the import of the oxygen concentrator or any imported goods is vested in the Central Government under S. 25 of the Customs Act, 1962. The Central Government is neither dependent upon nor does it require the recommendation of the GST Council for exercising this power vested in it. As a matter of fact, if one were to closely and critically examine the relevant Constitutional provisions and the provisions of the IGST Act, 2017, the Customs Tariff Act, 1975 and the Customs Act, 1962, then it would become clear that in the matter of the grant of exemption from any customs duty including IGST on the import of any goods, the GST Council has no role to play whatsoever nor any such role is envisaged by the lawmakers. One therefore fails to comprehend as to on what basis the GST Council is 'deliberating' the issue of grant of the IGST exemption to the Oxygen Concentrator, amongst other goods, and 'constituting' the 'Group of Ministers' to look into this issue and make its recommendations?

And while this drama is being played out, 'Gurcharan Singhs' are screaming with pain from hospital beds: 'We can't breathe; give us oxygen concentrators!'

[Concluded]

[The concluding comment of this article is inspired by the imaginary dialogue "I can't breathe" written by Mr Vijay Kumar, Editor-in-Chief of Taxindiaonline.]