Octroi to Local Body Tax –The Right Step in the Wrong Direction.

Summary

The Local Bodies of the State are empowered by the State to collect the tax on entry of goods for use/consumption/Sale within areas of the Local Bodies under the Entry No 52 of State List from the Schedule VII of the Constitution of India. Maharashtra is one of only two places in the world to levy Octroi. The other place is Ethiopia.

Maharashtra has introduced the levied of the Octroi in 1965 in its 21 Municipal Corporations. Octroi entails physical verification of goods making for a cumbersome, time consuming and inefficient process. Since levy being paid mostly in cash, the system has been prone to leakages, corruption and political intervention. With the aim to rationalize the system, a committee in 1987 under Maharashtra's former Chief Secretary P D Kasbekar recommended a local body tax in the place of Octroi. After 17 committees and about 25 years of deliberation, Maharashtra has finally decided to implement LBT.

Under LBT - traders and manufacturers will be required to pay on self-assessment on a monthly basis unlike on the entry of goods at the Check Post as in case of Octroi. Importantly, traders will be required to keep thorough records (city wise) of the sale and purchase of goods. Has the Maharashtra Government done the right thing or they have taken the right step in the wrong direction. Read on to know more…..

It's astonished to note that Maharashtra is only second place in the world where the state imposed the Octroi on the Entry of the Good in the State. In India State gets the power to impose such tax under the Entry No 52 of the State list. All the state's Municipality in India, except Maharashtra, has abolished the Octroi Tax and to compensate the loss of the revenue state either increased the VAT Rate or Introduced the Entry Tax on the selective items under the administration of the State VAT department.

Maharashtra's Local Bodies heavily dependent on revenue raised through Octroi. For instance, As per government data, BMC collects Rs 6,100 crore from octroi collection. The total budget of BMC for 2012-13 was Rs 26,581 crore

Procedure of the Octroi at the Check Post

Octroi is the Tax collected by the Various Municipal Corporation of the Maharashtra at the Check Post (Entry point of the each Municipal Corporation of the city) for the goods consumed/ used or sale in the respective jurisdiction of each municipality.

Goods to be consumed/use or Sale in the jurisdiction of the Municipality dealer is required to fill in a application to pay the Octroi on Form 'A' and an Octroi Import Bill on Form 'B' along the Original Invoice, Octroi Inspector shall thereafter make the assessment and give the Original Octroi Receipt and signed Form B to the importer. The mode of the payment under this mode is mostly in cash. Recently to have a check on the corruption at the check posts, online payment system has been introduced under which the trader will have to fill the all the detail online and have the option to pay the Octroi Tax through Net Banking/Credit Card. On the payment of Octroi one PNR number and Random number will generated which is to shown to the officer at the Check Post. Under both the system Inspector can order to unload the goods to ascertain the value and therefore in some cases it's a harassment for the Traders, especially when the trader is not a local player besides it act as hindrance to the free flow of the goods.

If the consignment imported into taxable jurisdiction of Mumbai is for the immediate exportation, i.e. for shipments transiting through Mumbai, then the importer may require to obtain the certified copy of the Form N, which is in triplicate .At the Exit Check post, inspector on verifying the goods with the Form 'N' sign the Original copy of the Form 'N' and hand over it to the importer which shall be treated as the closed copy of the said form. The dealer has to maintain the closed copy of the said form for the purpose of the assessment.

Shortcoming of the Existing System

Octroi system impedes free flow of goods and is prone to corruption and leakages. Octroi inspectors and engineers top the corruption chart in Brihanmumbai Municipal Corporation (BMC), according to data by the civic body on cases registered by the state's Anti-Corruption Bureau (ACB) in the last 10 years. The wards with the highest number of corruption cases are Malad-Goregaon, Bhandup, Kurla and Dadar.

State has given power to each of its Municipality to impose Entry Tax (Octroi/LBT) on the Entry of the goods, it means that if the dealer has imported the goods ,on which he had paid the Octroi in one Municipality and later transferred to its branch which is in Jurisdiction of the another Municipality than he has to pay the tax for in the both jurisdiction ,however dealer can apply for the refund, subject to the condition, afterwards but the refund procedure is too cumbersome and practically difficult, most of the traders usually don't find the economical.

Traders or the Manufacturer usually hire the Octroi agent to pay the duty at the Check Post besides completing all the formality at the Check Post which driver can't fulfill it. But the Dealer has to very cautious with the agent, there has been many instances where agents with the support few Corrupt Check post officers are involved in the malafide practice of issuing the fake Octroi receipt and thereby dubbing both dealer and the Government.

Recently L'orel Cosmetics major L'Oreal India has had to pay the BMC Rs 8.51 crores after 4,732 bogus octroi receipts were seized from a transport agent by the police. On receiving the demand letter from the BMC ,company has file the petition in the High Court which is rejected .In In March, L'Oreal took the case to the Supreme Court, which dismissed its appeal and directed it to pay up within 15 days. The money was paid in April.In the meantime, L'Oreal filed a complaint of cheating against its octroi agent with the economic offences wing (EOW) of the Mumbai police.BMC also seeking the opinion on whether to file an FIR against the company and the agent since the case was one of fraud and cheating.The company may also face the penalty, which may be extended to 10 times of the amount evaded,if it's proved that the it's there is a mala fide intention on the part of the company as well. Definitely company has a tough time ahead.

It's not the first time that Vigilance wing has found such practice ,but they have in the past already warned the BMC about the such malpractices ,but it's very hard to see any stick ground action on such dubious agents and the Official.With the increased in the number of such instances ,BMC has launch the online system to check the genuineness of the Octroi Receipt .Traders can check their Octroi receipt at wwww.mcmg.com through Receipt Number or Random.

Company is advised strictly to check the Octroi Receipt from the BMC site before paying to their Octroi agent and highlight the wrong doing of their agent at the appropriate level. Auditors of the companies have to very carefully in checking the samples of the Octroi Payment made by the Company.

<u>What other State has done to replace the Octroi from their State</u>

Many states have over the last decade replaced Octroi with other taxes. Tamil Nadu for instance, imposes a flat rate of 2% as entry Tax. It has also resorted to an additional tax on Land and Building. Kerala has done the same. Punjab gave away the Octroi with no new tax. In West Bengal - Kolkata has adopted a hybrid of various initiatives to offset the loss in revenue from abolishment of Octroi. Revenue from entertainment tax and 16% of Sales Tax and the Development Grants are advanced to the local municipal corporation. Rajasthan has imposed a surcharge on sales tax while most recently, Gujarat abolished Octroi and instead hiked VAT rates by 1%.

Government of Maharashtra instead of the doing away with the entry Tax has introduced the LBT which is same as Octroi with the difference that Trader /manufacturer has to pay the monthly Tax rather than at the time of crossing the Each Check Post on self assessment basis.

The powers to levy LBT in Maharashtra are derived from section 127(2) (aaa) of the Bombay Provincial Municipal Corporation Act, 1949(Now The Maharashtra Municipal Corporations Act -Act No. LIX of 1949). In exercise of the powers conferred by sub section (1) of Section 152T The Government of Maharashtra, made rules vide Noti. No. LBT-0209/CR-65/09/UD-34, dated 25th March 2010 namely "Bombay Provincial Municipal Corporations (local body tax) Rules, 2010 now Maharashtra Municipal Corporations (local body tax) Rules 2013

LBT likely to ease the traffic at the check post in cities like Mumbai,Thane, Pune and Nagpur as trucks won't have to stop at check posts for inspection and octroi payment. The idea behind introducing LBT is to remove the hurdles associated with the current method of collection of octroi duty and improving the speed of the goods movement.LBT attempts to speed up goods movement, stressing self-declaration of goods by traders who will maintain LBT Accounts city wise. Under the New regime of LBT Traders/ Manufacturer has to file Annual return under form E-II within 90 days from the end of the year but more importantly they have keep the record city wise.

But the New System doesn't go well with the Traders, their contention is that octroi abolition and imposition of LBT simultaneously is a betrayal. With VAT in place across the country, a double-tax regime is not acceptable.

<u>Shortcoming in the LBT</u>

Under the Rule 33, Assessment case records shall be preserved for 5 years next following the period to which the assessment relates or for three years, next following the completion of the proceedings under the Act, relating to the said period, whichever is later. But interestingly there is no time limit for the completion of the assessment. But as per various High Courts pronouncements assessment has to be passed within a reasonable time. Further as per the Rule 34 (Reassessment) commissioner may, at the time within three years from the date of the communication of the assessment under the rule 33 after recording the reason in writing may proceed for the reassessment.

Since the time limit for the completion of the assessment has not been defined and the reassessment depend on the date of the communication of the assessment order its make dealers in suspense regarding the maintenance of the records.

What is the valid reason for the reopening of the cases has not been defined in the act, merely change of the opinion of the some aspect of the assessment may be the valid reason for the reopening of the case. This seems very discretionary in nature which van be used to the harassment of the dealer.

Further, the appeal process is not in consonance with the principles of natural justice for the simple reason that if the demand notice is raised by LBT officer, Full payment of disputed tax has to be made for entertainment of appeal, the appeal shall lie to Deputy Com and if demand notice is raised by Deputy Com then appeal shall lie to the Commissioner. Further there is no provision for condonation of delay as well as revision of appeal order. It leads to increase in the litigation at the High court which again is the costlier affair for the company.

Important definition of Goods, dealer and business is loosely defined in the LBT, giving a huge scope to the Administrative officer to misinterpret it to the dealer harassment.

As per the definition of the Dealer, Non-resident dealers like petrol, diesel and oil companies and their dealers, traders doing temporary business like sale, exhibitions and occasional transactions are also covered. Further as per the definition of the 'Business' Professionals like Chartered Accountants, Advocates, Architects, Doctors, Tax Consultants and Service Providers are also covered to the extent of import of goods for consumption or use in profession. This will bring taxability on goods like motor vehicle, CCTV, computer etc if purchased from URD in city area or imported from outside LBT area.

Thus it's not wrong to say that it's not a well drafted and comprehensive act. The Government of Maharashtra has promised in 2005 to scrap out Octroi with no new Tax in lieu of Octroi, however keeping an eye on the huge collection they have introduced the LBT.

Another point against LBT is the multiple effect of the Tax. Unlike in the Indirect Taxes like Service Tax, VAT and Excise, there is no concept of set-off of input credit. LBT like Octroi will levied, every time the goods cross the city limits they will be liable for LBT and levy of LBT may exceed the value of goods itself. A simple reading of the Act would necessarily warrant a LBT when goods are imported from one city to another, each municipal corporation is acting as a different entity despite the fact that the legislation empowering the levy is same. That shows that legislators have not taken in to consideration practical problem faced by the Dealers. This might encourage the corruption and harassment of the dealers

The Act is not a well worded or suited for taxation. With lot of alternative avenues open for collecting enough revenues for the corporations, the legislature chooses to continue with the entry tax in another form of LBT.

Standing Committee on the GST View on the Octroi/Entry Tax-

Standing Committee Initially Proposed to replace the Entry No 52 of the State List with wording "Taxes on the entry of goods into a local area for consumption, use or sale therein to the extent levied and collected by a Panchayat or a Municipality"

Most of the States are strongly opposed to this amendment. However, as per new proposed Entry 52, the levy of Entry Tax by local bodies would create barriers to trade and commerce and would induce complexities in the business environment by distorting the tax structure and raising compliance burdens. In fact, at present States have introduced Entry Tax in lieu of Octroi for obviating certain fundamental problems with the levy and collection of Octroi by the local bodies and proceeds are distributed to the local bodies. It will not, therefore, be desirable to go back to the earlier system of levy and collection of Octroi by local bodies, as it will bring back the old issues and hinder free movement of goods as well as free flow of trade.

The Committee therefore desire that entry tax in general should be subsumed in GST. But to soften the blow on states, it recommended that states should collect entry tax for distribution to local bodies instead of leaving it to be collected by different local bodies. **The relevant Clause / sub-clause in the Bill may be modified accordingly so as to empower the States to collect entry tax for distribution to local bodies instead of leaving it to be collected by different local bodies.**

However many members in the standing committee is of view that Entry No '52' of the state list shall be deleted altogether. Government again in Oct'13 revised version of the Constitution (115th Amendment) Bill, after considering the comments of the Parliamentary Standing Committee, meant to pave way for the Goods and Services Tax (GST), proposes the **abolition of entry taxes and octroi** levied by state governments and municipalities irrespective of when the unified indirect tax regime is ushered in.The revised Bill proposes to take away the power of states and municipalities to levy entry taxes and octroi, respectively, these will have a maximum life of a year after the Constitution is amended. However, the consolation offered by the government of allowing states to add a small margin to the revenue-neutral GST rate (RNR) to offset revenue losses from removal of entry taxes and Octroi will not take effect until the implementation of the new tax regime. The implementation of GST, it is believed, could take longer than.

The Standing committee has done its best to ease the trade by subsumed Entry Tax of any nature under GST to simplify Tax regime in india and thereby increasing Trade, but it will interesting to see how the state like Maharashtra would react to such proposal and what final stand Finance Ministry would take on this in the Parliament.

Conclusion

Maharashtra Government has presented the old wine in the new bottles, presenting the Entry Tax under the name of the LBT would not do away the basic sin associated with the Entry Tax specially when it's collected by the local bodies directly. Ideally Maharashtra should have opted the other available option like increased in the Vat Rate and distributes the Revenue generated from the it to its local bodies, this should have help the dealers in the payment of Taxes, filling of the return and assessments and also dealer would be more comfortable in dealing with only one Government department .From the Government perspective also this should have reduced the administrative work of the collecting the additional taxes.

Even the Confederation of Indian Industry (CII) has stressed that Entry tax imposes a major cost burden on the industry and is a deterrent for their operations and expansion plans. The problems get compounded when entry taxes levied on the industrial inputs and on transit sales. Such taxes go against the concept of the common market. Further, Entry tax has been a subject of protracted litigation at all levels. Article 301 of the Constitution provides for freedom of trade and commerce throughout the territory of India and precludes the States from taxing inter-state transactions to prevent/minimize barriers to inter-state trade. On the other hand, Article 304 of the Constitution allows the legislature of the State to impose tax on goods imported from other States or the Union territories, in line with the tax imposed on similar goods produced in that State, to avoid any discrimination between imported goods and locally manufactured goods. Continuation of entry tax outside the GST would perpetuate such complexities and litigation and impose barriers to trade. It is therefore suggested that entry tax should be fully subsumed in the GST.

We must really hope that Finance Ministry would take a firm stand to subsume all type Entry Tax into GST to remove the bottleneck to trade.

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