IT & ITeS sector in a tax quandary

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Synopsis

The country's $147 billion IT and ITeS industry, including the back offices of several multinationals such as Genpact and WNS Global, has sent an urgent request to the government on denial of export status that has made them liable to 18% goods and services tax.

New Delhi: Country's $147 billion IT and ITES industry including back offices of several multinationals such as Genpact and WNS Global has sent an urgent request to the government on denial of export status, which has made them liable to 18% goods and services tax (GST).

Industry fears it could cascade into denial of refunds on taxes paid on inputs, audits and investigation and tax recovery notices for tax. The industry has sought immediate government intervention in the matter.

According to industry estimates, close to 200 plus companies have some form of dispute on the definition of “intermediary” services. There is no GST levied on goods or services exported, but intermediary services are taxed even if supplied to foreign entities. Back office services such as BO were in pre-GST regime treated as exports and not taxed.

GST authorities have started disputing the export status of different streams of revenue and seeking to treat the same as “intermediary” services.

Industry body Nasscom has represented the matter to the finance and commerce ministries for expeditious resolution.

“There are increasing cases where the GST authorities have aggressively interpreted the scope of intermediary services to cover ITeS/ BPM,” it said in a representation, seen by ET.

The implication of treating ITeS/ BPM as “Intermediary”, it said, is that the exports get taxed at 18%. “In the immediate refund claims on input credit of GST are denied. This is resulting in denial of refunds, excessive investigations, litigation and making ITeS/ BPM in India uncompetitive,” it added.

The issue arose following a Maharashtra Appellate Authority for Advance Rulings decision in case of VServe Global. The AAAR in February, 2019 upheld an AAR decision that ruled that back-office support services to overseas customers were intermediary services and hence liable to tax and not eligible for tax refunds.

The Central Board of Indirect Taxes and Customs (CBIC) attempted to clarify the issue via a circular in July, 2019, but that created more confusion as interpretation of whether the service would qualify as exports was left to tax authorities.

It led to issuance of a spate of notices and denial of credit by authorities.

The circular was subsequently withdrawn. A revised circular, as announced by the GST Council meeting in September 2019, is yet to be issued.

“NASSCOM has discussed this in detail with the CBIC and they seem to agree with our suggestion, but clarity is still awaited,” said Keshav Murugesh, group chief executive officer of WNS Global Services, a NYSE listed company in the Business Process Management business.

India has more than 500 global in-house delivery centres, employing over 350,000 people. As per industry, an 18% levy on these services will derail the cost dynamics of the back-office model that operates on thin margins and faces competition from other low-cost jurisdictions.

“It’s time due importance is given to 'Served from India' as 'Make in India' and necessary clarifications are issued to put to rest these disputes,” Bipin Sapra, partner, EY.

Genpact recently filed a writ in Punjab High Court. “A more permanent solution could be to amend the GST law to carve out the IT-BPM sector in the GST “place of supply” provisions and clarify export status. This has been done recently for the Pharma R&D sector as well,” said Mahesh Jaising, Partner and National Leader Indirect tax, Deloitte India.

A Genpact spokesperson said regulatory clarity will help. “The IT / BPM industry is a significant employment generator and source of revenue for India. This issue requires clarification, which will go a long way in enabling us to continue to be a country that is easy to do business with and a market of choice for multinational companies,” the spokersperson said.