

Do ends justify means?



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A dilemma from times immemorial; Ramayana or Mahabharata times or current day!

Is it good to use any means to achieve specific end so long as it for larger good? A debate where the father of our nation, Mahatma Gandhi, had a contrary view and so do others. There is equally large number of thinkers and intellectuals who endorse the

proposition that ends do justify means. To my mind, the crux is the context, the context in which one is applying this doctrine. Different contexts elicit different views, different perceptions.

I propose to examine application of this doctrine in the context of taxation where the aim of every policy maker, law maker and law implementer/enforcer is to maximise revenue while ensuring equal and fair treatment of all equally placed persons, and the means to achieve that objective is to have policy, laws and regulations which facilitate such collection with minimum hardships to tax payers, creating a balance between benefits and costs.

In fact, some nations require the exchequer to place estimated cost (in terms of time and money, both) of implementation of a tax change proposal for both, the tax department and tax payers when presenting proposal to the legislators¹. Legislators and even the executives themselves, on such cost – benefit analysis, may drop proposals for tax changes though, the proposal could have plugged revenue leakage.

Also, in developed economies, invariably, reasonable time is provided, usually, at least one year, for the tax payers to prepare for the change after changes in the law and procedure are finally announced and legislated. No surprises and no last minute anxiety and rush!

We, as a nation have adopted, the Rajdharma, as explained by Chanakya, our ancient teacher, philosopher, economist, jurist and royal advisor, and reiterated by all, from highest judiciary to law makers, to “*collect taxes as bee collects honey from flowers*”. Both survive and flourish.

It is on this yard stick that I propose to test application of the doctrine of maximum gain with minimum costs in the field of taxation. And, I am taking two illustrative situations; implementation of the new Goods and Services Tax in field of indirect taxation and pursuit of unaccounted money and checking compliances with other laws through Income tax law in the field of direct taxation. In both

cases, ends sought to be achieved are absolutely, laudable.

Let me start with historic reform of our indirect taxation system; introduction of Goods and Services Tax, a new system of taxation replacing erstwhile system of taxing manufacturing activity (Central Excise Duty), provision of services (Union Service Tax) and sale of goods (State Value Added Taxes) effective 1 July, 2017.

This new system of indirect taxation is most needed in modern day India, a more connected both, digitally and physically, a more educated and a more advanced, economy.

The benefits that the new system could and sought to achieve were many, many; creation of single market, common rate, common tax law, common rules, common regulations across the nation, simplification of law and compliance and enhancing ease of doing business, removal of tax cascade, ease of movement of goods across nation (no check posts), removal of tax arbitrage and unhealthy competition among states by enticing industries to move to specific state with specially designed tax incentive scheme, improving compliance and above all, addressing the challenge of leakage of tax revenue.

The wait, as would happen in such a major reform, and not unusual, was long, preparations were underway for fairly long time – it is coming, it is coming... discussions and consultations were on. Drafts of laws, rules and regulations were made available, suggestions called for, sent, challenges pointed out, bills passed, enacted into law, GST Council held many meetings to iron out creases and the process to achieve most challenging task of implementing GST was on.

People were eagerly waiting for the final date of implementation and when that date was announced albeit with fairly short notice, there was excitement all around and apprehensions too! Stakeholders had foreseen some pain, some hardships and were prepared to accept it as the end was justified – ease of doing business with all attendant benefits.

It was the level of pain, level of hardships and its consequential impact for stakeholders at large that raised and continues to raise the question as to the implementation means adopted to achieve the most needed and sought after objective.

Could we have been better prepared? Could we have approached challenges with more open mind – was mindset change on part of all, law makers and executive not a must for such a massive reform? Could we have given greater and deeper consideration to the difficulties and issues pointed out by wide sections of the society? Could we have handled the tasks more efficiently and swiftly? Could we have been sympathetic in dealing with transition credits – could we have adopted guiding principle that tax credits due to tax payers should not be denied and state must go out to facilitate its transition

? Could we have been more considerate and guided businesses, especially, small and medium ones when they were struggling to understand the system and comply with it rather than imposing fines and penalties? And, many more....

The State desired to have a dream GST system, an ideal one, which no other country, advanced and not so advanced was able to adopt. Could we have made this most difficult task of transition to the dream system less difficult, less hurting? Of course, we could have! We had strong commitment from the topmost level and all stakeholders. What would it have taken? A positive answer to all the questions listed above; a mind-set change?

That was not to be. One accepts that implementation of such a dream system is a formidable task and rather, extremely difficult to achieve in real world and that too, a fully electronic one, in a large nation of diversity like ours when the final announcement of implementation was made just few weeks ahead of the stroke of midnight of introduction of the system.

So, there were several pain points and, to reduce the pain, the hardships, we took several decisions, in hurried manner to address challenges faced by some, more vociferous sections, which caused greater unrest and unease, in general.

We believed that we are in digital era and everything is possible just in a click! And, reality is exactly opposite! Changes in softwares cannot be made overnight; neither by the government IT network nor by businesses. In fact, businesses were asking for stable law and regulations and time of at least six months for them to modify their software/systems before actual implementation, which remained a dream.

Three years on, we are still struggling with several issues. Can we, at this time, adopt "ease of compliance" and no "loss of earned credits" as the end/the objective that we desire to achieve and work on the means accordingly? We need to go back to the drawing board and give a fresh look with the maxims that a) ease of compliance with certainty and stability of law and regulations, gives maximum tax revenue with minimum hardships; b) the objective of tax department is to collect taxes and not fines and penalties c) most businesses want to be compliant and for few black sheep, one cannot punish all d) one must reach out to Courts in only very complex matters and not burden the judicial system with uncalled for litigation causing huge time and costs e) officers must not feel obligated to be revenue biased but, be fair.

While there are many issues that need attention, I am listing some of them below, to illustrate the challenges and the need for urgent attention:

- Removal of domestic reverse charge – it must be presumed that every person who does business has capability to comply with law
- Simplification of place of supply rules
- Ensuring minimum loss of input tax credits

- Clarity on procedural compliances
- Amendments to law and regulations to make them harmonious
- Continuous training of tax officials and support in understanding issues and responding to them
- Single point contact for representation
- Single Advance Ruling Authority across nation with benches in each state
- Change in constitution of Advance Ruling Authority
- High Level Committee to decide on past issues and mechanism to settle disputes
- Cleaning up of the data in IT system and facility for updation of errors noted from time to time- introduction of module for such updation
- Clearing of all transition issues.

Each of these and other issues could be subject matter of research papers, somewhat on the lines of the ones presented by UK Government as part of "Tax Information and Impact Notes" referred to earlier. Such an exercise would lead to more effective and efficient means to achieve the objective of an efficient tax system facilitating businesses to grow and government to garner its due share of taxes.

Coming to direct taxation now, here again, the end is laudable, to curb unaccounted, cash transactions by imposing heavy tax burden on them as also to ensure compliances with all relevant laws; the issue is the manner of achieving it.

Take for example, real estate transactions where we hear, in some areas, there is no cash and some areas, it could be quite substantial. And, to deal with it, we have provisions² in tax law which states that if the transaction is at lower than stamp duty value, the differential will be taxed in the hands of both, the seller and the buyer. At the same time, we find that, even when there is downward correction in prices, stamp duty valuations remain unchanged! Result is, transactions cannot take place at all! Or, as we hear people saying, it is other way round.

That raises the question whether the means, the provisions in tax law are justified by the end? While the objective is desirable and need of the hour, should the manner of achieving it be to the detriment of the sector as a whole?

Another area which raises concerns is the tendency of income tax law framers to use tax provisions to check compliances with other laws.

One example of this relates to taxation of income derived by trusts or institutions established for charitable activities. Such trusts, that meet conditions specified in the Income tax Act, 1961, enjoy the benefit of exemption from tax³, the objective being that more income is retained by such trusts for charitable activities. Such trusts are formed under different statutes and must also comply with the requirements of those statutes say, Charitable Trusts Acts. A new provision⁴ has been introduced effective 1 June 2020 to the effect that if a trust or institution which is enjoying the benefit of the tax exemption under Income tax Act, has not complied with

requirements of any other law as are material for achieving its objects, the registration granted to the trust or institution is liable to cancellation.

Here again, the end, the objective is desirable but, are the means ? Should non-compliance with other laws not be dealt with under those laws and appropriate action taken under those laws ? Should the language of the law not be precise; how does the tax payer or the tax officer, determine which requirement of the other law is material for achieving objects of the trust or institution ? Would this not lead to more challenges for the trust or institution and clog the judicial system which is already heavily clogged ?

Take another example of tax compliance; the tax audit report⁵. It requires complete reconciliation of GST, tax payable under that law, tax paid, input tax credit claimed and so on. All this data/information is captured in annual

return under GST laws. Why then, is it necessary to seek that information again under income tax law ? Is it serving any additional purpose? What is the objective sought to be achieved? Should income tax law not restrict itself to taxation of income and compliances with other laws be examined under those laws?

And, I again, come back to the question with which I started. Can we, for taxation laws, ensure that the means are set out clearly and do not frustrate the benefit that the end objective would bring about? I am sure, we can and we will!

Let us have faith and trust in our tax payers. Start with the maxim that our objective is to facilitate businesses to carry on their business with greater ease, minimum compliance burden, simple and easy to understand and implement law, equality to all equally placed persons and due tax, as a consequence, will follow.

¹ Ref: Tax Information and Impact Notes published by Uk Govt (<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>)

² Section 50C (applicable to seller) and Section 56(2)(x) (applicable to buyer)

³ Section 11

⁴ Section 12AB

⁵ Section 44AB