

Kluwer International Tax Blog

Does the National Anti-Profiteering Authority Suffer from the Vice of Excessive Delegation?

Lipika Vinjamuri · Thursday, January 23rd, 2020

In the year 2017, the Indian Parliament enforced “The Central Goods and Services Tax Act, 2017” [hereinafter “CGST”]. The purpose of the Act was to make a provision for levy and collection of tax on intra-State supply of goods or services or both and for other incidental matters by the Central Government. Subsequent to the enforcement of the Act, certain rules were also published for efficient compliance and enforcement of the law. While the CGST Act has received an enormous amount of support and success in India, there has been a wide spread debate with regard to Section 171(2) of the CGST Act and Rule 126 of the CGST Rules.

Broadly, the goal of Section 171 of the CGST Act is to curb the practice of Profiteering, i.e. the section provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should be passed on to the recipient by way of commensurate reduction in prices. In light of this purpose and objective, Section 171(2) of the CGST Act prescribes that the Central Government may by notification constitute an Authority [hereinafter “National Anti-Profiteering Authority”], or empower an existing Authority to examine by means of investigation if a registered person or company has been benefiting by ways of profiteering. Rule 126 of the CGST Rules prescribes that the Authority has the power to determine the methodology and procedure for investigation to determine if the act of profiteering has taken place. Additionally, the section makes no reference to the rules.

Taking into consideration the section and its rule, the topic of debate is the unfettered discretionary power given to the National Anti-Profiteering Authority to prescribe its own method and procedure of investigation paving way for the problem of lack of transparency in the investigatory process. This arbitrary and unfettered discretionary power given to the National Anti-Profiteering Authority is what makes it suffer from the vice of excessive delegation. This problem rises from the fact that the National Anti-Profiteering Authority is given the power to determine the legislative policy of the act which is also termed to be an Essential Legislative Function. There have been several petitions filed in various courts and tribunals in India that highlight aspects as to why the National Anti-Profiteering Authority suffers from the vice of excessive delegation.

Excessive delegation can be determined from the fact that the Essential Legislative functions cannot be delegated. While the law is settled on the fact that the legislature can delegate certain legislative functions to other bodies, it is pertinent to note that this delegation is barred by some limitations. Such limitations require that the legislature must lay down the legislative policy of the Act which broadly include the guidelines and standards for officials or other bodies who are

responsible for enforcing the law. This requirement has been substantiated in a number of cases in the Supreme Court, few of them being, *Jyoti Pershad v. Administrator, Union Territory of Delhi*; *Sita Ram Bishwambhar Dayal v. State of U.P.*; *Avinder Singh v. State of Punjab*; *Registrar of Coop. Societies v. K. Kunjabmu*. Hence, it is a standard of law that determining the legislative policy of the act cannot be delegated. There are a number of components that qualify as the Essential Legislative Functions; however, with regard to the current debate, emphasis has been placed on providing a standard to guide the officials or the body in power to execute the law.

The same has been emphasized in the case of *Harishankar Bagla v. State of M.P.* where the Constitutional Bench of the Apex Court held that:

“The legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct.”

Thus, from the ratio of the *Harishankar Bagla* case, it is noted that providing a standard to guide officials or a body that is executing the law is an Essential Legislative Function and the guidelines should be prescribed by the Legislature in the CGST Act. Additionally, being an Essential Legislative Function, the rule and guidelines for the legislative policy should be prescribed in the main act itself. This position of law has also been reiterated in the *Namit Sharma* case where the court clearly held that there should be elaborate rules on the procedure followed by an authority so as to ensure that there is effective execution of the basic rule of law.

Further in the case of *Dwarka Prasad Laxmi Narain v. State of U.P.*, the Constitutional Bench of the Apex Court held that in a situation where there are no appropriate rules or directions given then there should be no unguided or unfettered discretion available to an authority to decide on the same. Any such execution of an unguided order given by an authority will be an act of injustice. The very fact that there are no appropriate rules or regulations to guide the officials gives rise to the arbitrary use of power by these bodies.

In conclusion, under Rule 126 of the CGST Rules read along with Section 171(2) of the CGST Act should lay down some guidelines and directions for the effective functioning of the law executory bodies and should also ensure that there is transparency in the investigatory process. Squarely applying the ratio's of the above stated Supreme Court cases, it is an established point of law that laying down guidelines and the legislative policy is an Essential Legislative function and should be done by the Parliament itself. This power cannot be delegated to any other body. However, in the case of the CGST Act and its Rules, we see that this function is not only delegated to the National Anti-Profiteering Authority but has also not been laid down anywhere, leaving the authority with unfettered and unguided power. Thus, it is for this very reason, the National Anti-Profiteering Authority suffers from the vice of excessive delegation.

To make sure you do not miss out on regular updates from the Kluwer International Tax Blog, please subscribe [here](#).

Kluwer International Tax Law

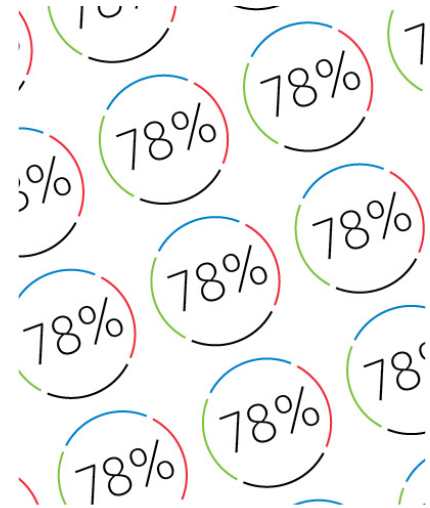
The **2022 Future Ready Lawyer survey** showed that 78% of lawyers think that the emphasis for 2023 needs to be on improved efficiency and productivity. Kluwer International Tax Law is an intuitive research platform for Tax Professionals leveraging Wolters Kluwer's top international content and practical tools to provide answers. You can easily access the tool from every preferred location. Are you, as a Tax professional, ready for the future?

Learn how **Kluwer International Tax Law** can support you.

78% of the lawyers think that the emphasis for 2023 needs to be on improved efficiency and productivity.

Discover Kluwer International Tax Law.

The intuitive research platform for Tax Professionals.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Thursday, January 23rd, 2020 at 5:03 pm and is filed under [India](#), [VAT](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.