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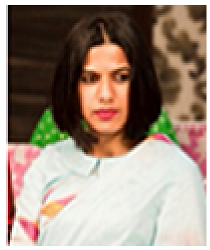
Interplay Between PMLA and GST



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Introduction

The Prevention of Money Laundering Act, 2002 (hereinafter referred as **"PMLA"**) is a significant legislation enacted by the Indian Government in 2002 with the primary objective of combating Money Laundering[1] and related financial crimes. The Act was brought into force (w.e.f 1-07-2005)[2]. To address the growing concern of illicit funds flowing through the Indian financial system and to align India's Anti-Money Laundering (AML) efforts with International Standards.

On The other hand the Goods and Services Tax (hereinafter referred as **"GST"**) is a comprehensive Indirect Tax reform introduced in India on July 1, 2017. It replaced multiple indirect taxes such as Central Excise Duty, Service Tax, Value-Added Tax (VAT), and others, creating a unified tax structure. GST is a destination-based tax that is levied at every stage of the supply chain, from manufacturers to consumers, with the aim of streamlining the taxation system and promoting ease of doing business.

Both PMLA and GST are two vital pillars of India's Financial Regulatory framework. While PMLA focuses on curbing money laundering and related offenses, GST aims to streamline the taxation system and promote economic growth. This article explores the dynamic interplay between these two significant legislations, analysing their objectives, mechanisms, and the ways in which they reinforce each other. Furthermore, it delves into the challenges and opportunities arising from their harmonization to combat financial crimes, promote tax compliance, and foster a robust Economy.

Convergence of PMLA and GST

Despite apparent differences, there is a major convergence of objectives between PMLA and GST, since both legislations target illegal financial transactions that jeopardise the integrity of the financial system and the national economy, here are some Common Goals between PMLA and GST:

(*a*) Curbing Financial Crimes: Both PMLA and GST are instrumental in curbing financial crimes that threaten the stability of the economy. The PMLA targets money laundering, which involves the conversion of ill-gotten gains into seemingly legitimate assets, while the GST targets tax evasion, wherein individuals and businesses unlawfully evade taxes, leading to revenue loss.

(*b*) Enhancing Transparency: Both laws seek to enhance transparency in financial transactions. PMLA mandates reporting entities to maintain records of financial transactions and report suspicious activities to the authorities. Similarly, the GST regime mandates businesses to maintain detailed transaction records, promoting greater transparency in the taxation system.

(*c*) Strengthening Compliance: PMLA and GST lay significant emphasis on compliance with financial and tax regulations. PMLA necessitates compliance with stringent due diligence and KYC (Know Your Customer) norms to prevent money laundering, while GST mandates compliance with tax laws, including timely and accurate filing of tax returns.

Instances of Financial Crimes Affecting Both PMLA and GST:

1. Fraudulent Input Tax Credit (ITC) Claims: Unscrupulous businesses can attempt to claim false ITC under the GST regime, resulting in tax evasion. Such fraudulent ITC claims could be a way to launder money, disguising illicit funds as legitimate business expenses.
2. Hawala Transactions: Hawala is an informal system of transferring funds without actual movement of money, often used for money laundering and tax evasion. Both PMLA and GST authorities are vigilant in monitoring suspicious hawala transactions to curb financial crimes.

Role of PMLA in Combating Tax Evasion

PMLA empowers investigative agencies like the Enforcement Directorate (ED) to scrutinize financial transactions and identify tax evasion cases[3].

It helps uncover cases where illicit funds are used to evade taxes or where tax evaders attempt to legitimize their ill-gotten wealth through money laundering.

Role of GST in Detecting Money Laundering

GST's comprehensive reporting mechanisms create a paper trail of transactions, making it difficult for criminals to launder money without leaving behind traces.

The GST Network (hereinafter referred to as **"GSTN"**) and its data analytics capabilities aid in detecting suspicious transactions that could be indicative of money laundering[4]. Recently, the Ministry of Finance, Department of Revenue has issued a notification[5] dated 7 July, 2023, placing GSTN under the purview of PMLA[6]. This inclusion allows the Enforcement Directorate (ED) to share relevant information or material with GSTN if they have reasons to believe that there has been a violation of the GST provisions. These modifications were made in exercise of the powers conferred by clause (ii) of sub-section (1) of section 66 of the PMLA, which governs information dissemination[7].

Information Sharing and Collaborative Efforts

The effective implementation of PMLA and GST requires seamless information exchange and collaborative efforts between their respective authorities. By combining data from both sources, authorities can identify patterns and trends in financial activities that may indicate potential money laundering or tax evasion.

Furthermore, the exchange of information facilitates early detection of financial crimes. By sharing suspicious transaction reports, red flags and other relevant data, PMLA and GST authorities can respond quickly to emerging threats and take appropriate action to prevent illegal activities. It also ensures more comprehensive investigation of cases involving financial crimes.

Challenges in Harmonizing PMLA and GST

While integrating GSTN under the purview of PMLA for investigation purposes might seem like a way to enhance financial crime detection. The convergence of PMLA and GST is essential for fostering a cohesive and robust financial regulatory system in India. While both legislations share common objectives, their harmonization poses significant challenges due to-

(*a*) Data Privacy and Confidentiality Concerns: Goods and Services Tax network holds vast amounts of sensitive financial and personal data of taxpayers and businesses. Integrating it with PMLA would raise data privacy and confidentiality concerns. Ensuring secure data handling and compliance with data protection laws would be paramount to safeguard taxpayer information.

(*b*) Focus on Core Objectives: GSTN's primary objective is to streamline tax administration and facilitate smooth tax compliance. Merging it under PMLA for investigation purposes could divert attention from its core responsibilities, potentially impacting tax collection and taxpayer facilitation.

(*c*) Risk of Misuse: Granting PMLA authorities access to GSTN data for investigation purposes might raise concerns about misuse or unauthorized access to taxpayer information. Proper checks and balances must be established to prevent any misuse and protect taxpayers' rights.

Addressing these challenges would require careful consideration, coordination among various stakeholders, and strict adherence to data protection and privacy regulations to safeguard taxpayer information while achieving the objective of effective financial crime prevention.

Impact on India's Economy and Future Prospects

As we assess the combined impact of PMLA and GST, it becomes evident that financial compliance plays a pivotal role in India's economic growth and presents promising future prospects for sustainable development-

(*a*) Improved Revenue Collection: The unified tax regime has reduced tax evasion and the cascading effect of taxes, leading to increased tax compliance among businesses. This rise in revenue has bolstered the government's capacity to invest in infrastructure and public services, stimulating economic growth.

(*b*) Strengthening Investor Confidence: The convergence of PMLA and GST has instilled greater trust in India's financial ecosystem among domestic and international investors. The crackdown on money laundering and financial crimes has bolstered India's reputation as a transparent and compliant business destination, attracting higher foreign direct investment and promoting economic growth.

(*c*) Enhanced Financial Compliance: The synergies between PMLA and GST have facilitated a more comprehensive approach to financial compliance. The exchange of information between authorities has strengthened the ability to detect and prevent financial crimes, fostering a culture of voluntary compliance among taxpayers and businesses.

Conclusion

The interplay between GST and PMLA exemplifies the power of collaboration and synergy in strengthening India's financial integrity. While GST focuses on efficient taxation and revenue collection, PMLA concentrates on thwarting money laundering and related offenses. Together, they form a formidable alliance, facilitating a more transparent and compliant financial ecosystem. As India's regulatory framework evolves, continuous efforts to enhance the interplay between GST and PMLA will be crucial in reinforcing the nation's commitment to financial compliance and economic growth.

1. Section 3 of PMLA, 2002 defined the definition of Money Laundering.
2. Section 1(3) of PMLA Act, 2002, 1st July, 2005, vide notification no. G.S.R. 436(E), dated 1st July, 2005, see Gazette of India, Extraordinary, Part II, sec. 3 (i)
3. Under Section 17 of the PMLA, 2002 and Section 8 of the FEOA, 2018, the Authorised Officer (Enforcement Directorate) has power of search and seizure.
4. Section 146 of the CGST Act, 2017 deals with the Common Portal (GSTN) and provides the legal framework for the establishment and functioning of the Goods and Services Tax Network (GSTN).
5. Section 2(r) of PMLA, 2002 define the definition of "Notification".
6. Notification No.-F. No. P.12011/2/2009-ES Cell-DOR.
7. Section 66 sub section (i) clause (ii) of Prevention of Money Laundering Act, 2002, which states the provisions regarding "Disclosure of information".