GST's impact on the *power sector*

Abhishek Jain

With this Budget session witnessing the passage of the crucial Goods and Services Tax (GST) bills by the Parliament, the Government has finally brought India on the verge of its biggest tax reform since Independence. Touted as a reform that would create a single seamless nationwide market in India, GST is expected to soften the prices for most supplies by reducing the related business transaction costs.

As most industries prognosticate various efficiencies and reduced costs under the GST regime, some are cynical of similar benefits accruing to them, one of which is the power sector. While the power or energy sector is an essential building block of economic growth and development, it has historically been plagued with various policy and regulatory issues, including taxation-related issues.

Currently, most indirect taxes paid on procurements — including excise duty, service tax, VAT/CST, clean energy cess and stowing excise duty — are a cost for the power industry because of the output being either exempt from or subject to electricity duty, which is essentially payable in cash. Here, it is pertinent to note that even while the Constitution engrafts the enabling provisions for levy of GST on supply of electricity (being "goods"), the continuation of Entry 53 of the State List, which empowers only the state to levy tax on consumption or sale of electricity, and based on several media reports, it emerges that GST would not be levied on electricity/power, including generation, transmission and distribution thereof. Hence, the situation under the GST regime would be similar as it is today, with tax costs either increasing or decreasing depending on the taxes payable on such procurements under the GST regime.

In summary, a nil rate/exemption to generation/transmission and distribution of power would culminate into input taxes, which will continue to be a cost for the power sector because of the inability to either avail/utilize such credits or claim a refund of them (refund of unutilized input tax credit is restricted to cases of zero rated supplies or inverted duty structure, other than nil rated or fully exempt supplies).

Thermal power: generating and transmission thereof

While most industries anticipate a decrease in tax costs on account of increased fungibility of credits, full credit of taxes paid on inter-state sales etc., similar benefits may not accrue to the thermal power sector, where the tax rates for procurements would increase. To illustrate, the tax cost in setting up a power plant may increase from the current approximate rate of 15% in case of inter-state procurement to 18% under the GST regime. Similarly, there could be a possible increase in the tax costs for major input services, with costs increasing from the current approximate rate of 15% to 18% under the GST regime.

On similar lines, implementation of GST could entail an increased cost for the electricity transmission sector as well, with the tax costs on grid set-up increasing from the current approximate 15% rate in case of inter-state procurement to 18% under the GST regime. Separately, the discontinuance of the current "in-transit sales" exemption on inter-state sales for bought-outs may further increase the tax costs on account of levy of tax on the contractor margin as well.

Similarly, while clean energy cess and stowing excise duty would be subsumed under the GST regime, the prices of coal may increase or decrease depending on the GST and compensation cess rate, subsummation of royalty, current supply chain arrangement and state of operation.

Tax costs could further increase if the current indirect tax exemptions for projects financed by certain multilateral agencies such as the World Bank or Asian Development Bank are discontinued under the GST regime.

Renewable energy sector

The renewable energy sector is eligible for various tax exemptions and concessions owing to the significant set-up costs associated with it as well as the Government's agenda of promotion of green energy. Currently, the renewable energy sector enjoy benefits of concessional rate of duty for major procurements (including capital goods). In a scenario where there is a pruning of such exemptions/concessional rate of duties under the GST regime, the tax costs for the sector could witness a steep increase, leading to rise in tariffs by nearly 10%, as per a study released by the Council on Energy, Environment and Water.

Other impact areas for the power sector as a whole

There are various other provisions of the GST legislations that may be worrying for the power sector, including the applicability of GST on stock transfer of goods. As regards stock transfer of goods, or "diversion" in the power industry terminology, GST would apply on inter-state movement of consumables/parts. This would further augment the tax costs for the power sector, where a one-to-one correlation of the input tax credit pertaining to it is not established. Also, as the recipient location of such material diversions would typically be engaged in the provision of exempt supplies, valuation rules as prescribed under the GST regime would trigger, resulting in GST being payable on deemed valuation mechanisms such as open market value/value of like kind and quality/110% of the cost of production.

While compliances are expected to increase across industries under the GST regime, an additional aspect of worry for the power sector would be determining the value of supplies from and to a particular state for the purpose of raising the corresponding bill of supply. This could make it difficult to determine the "made from" and "received at" locations for the transmission sector because the country, being one power grid, has various interconnecting transmission lines with no dedicated lines transmitting electricity from one location to another.

Conclusion

While the above issues may lead to anxiety for the power sector as a whole, certain provisions under the GST regime such as works contract for immovable property being clarified as a "service" and the abolition of statutory forms such as Form C should benefit the sector as a whole.

However, given the Government's concerted efforts for a green environment coupled with a reduction in the prices for the common man, the Government may continue various current exemptions/ concessions for the power sector, thereby curtailing to an extent the impact of non-availability of credits and related increased tax costs for the sector. Further, anti-profiteering measures and contract revalidation could help the power sector negate some of the consequences of the introduction of GST.