

History of Goods and Services Tax in India in the Light of Constitutional and Legal Framework with Special Reference to Constitution (101st amendment) Act, 2016: An Analysis

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I. Introduction

The uniform system of taxation with greater economic effect in the name of Goods and Services Tax (GST), implemented on July 1, 2017, is regarded as a major transformative taxation reform till date in India in the domain of the multiplicity of indirect taxes that were in force in our country until recently. Earlier the country had a system of indirect taxes with goods being taxed at the manufacturing stage by the Central Government and then subsequently taxed when a sale occurred by the respective State Governments whereas services were being taxed by the Central Government only. The Act is uniform because it seeks to bring almost all goods (except few) bought and services rendered within the nation has brought the Indian indirect taxation system under its unique ideology 'one nation, one aspiration and one tax.' It is also a comprehensive, multi-stage, destination based tax that is levied on every value addition. The Act is the culmination of the long journey India has undertaken to provide indirect tax a new shape and dimension with a view to foster economic development.

II. Meaning of GST

It is a single tax on the supply of various goods and services which subsumed the earlier catena of the indirect taxed (Central as well as State indirect taxes) that was in force in our country in the name of Central Excise, Service Tax, Value Added Tax (VAT), Entry Tax, Octroi Duty, Purchase Tax, Entertainment Tax etc.

It is a multi-stage tax that is imposed in various stages of supply; from purchasing of raw materials for the production/manufacture till the finished goods reached to the hand of the consumer. The taxes get accumulated with the original price and due to the effect of input tax credit, the cascading effect of tax i.e. tax on tax is possible to remove. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on the value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all previous stages.

It is a destination based or consumption based tax. Hence the tax is levied at the point of consumption which is significantly different from the earlier indirect tax

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system. The parody behind destination based taxation is, the producing/selling State gets nothing while consuming States receive complete share of revenue.

Lastly, GST is a value addition tax as it is added to the price of the product and the customer who purchases the product pays the sales price including the GST and the same is collected by the seller which ultimately goes in the hand of the government by way of revenue.

III. The Journey of GST

The first important step in the field of GST can be traced back in the year 1986 when the then Finance Minister Vishwanath Pratap Singh for the first time proposed a significant upgradation of the excise taxation structure in the 1986-87 budget with an intention of extending the Modified Value Added Tax (MODVAT) to all goods under the excise duty. He observed “in excise taxation a vexatious question which has been often encountered is the taxation of inputs and the cascading effect of this on the value of the final product¹.....” From the above observations it could be noticed that how the concept of input tax credits², one of the most essential feature of GST was introduced in the Budget in the context of excisable commodities.

The term ‘Goods and Services Tax’ was for the first time brought to the day light by Prime Minister Atal Bihari Vajpayee in 2000 when he introduced the concept by setting up a committee headed by the West Bengal Finance Minister Asim Dasgupta with a view to design a GST model.

Later, in 2003 the Government set a taskforce under Mr. Vijay Kelkar (Advisor of Finance Minister) to recommend tax reforms. Mr. Kelkar submitted its report in the next year recommending for the replacement of the existing indirect taxation system. Based on this report and also on the basis of the suggestions made by the 12th Finance Commission, in 2006 the Finance Minister (the then) P. Chidambaram for the first time introduced the concept of GST in the Budget emphasising on the setting up of an Empowered Committee consisting of the State Finance Ministers who would lay out the road map for GST. This Committee submitted its report in 2008 and then released the first discussion paper to the public in 2009. The important recommendations of the Empowered Committee are:

- i. GST would be divided mainly into CGST and SGST.

¹ T.C.A. Sharad Raghavan, GST Unpacked: Beyond the Jargon, Westland Publications Ltd., 1st Edn., 2017, at p. 26.

² It is the mechanism under which at the time of paying tax on sales (output) the seller can reduce the tax already paid on purchases (input) on the basis of tax invoice, e.g. if tax payable on output is Rs. 200/- and that on input was Rs. 150/- the seller can claim input credit of Rs. 150/ and the purchaser only need to pay Rs. 50/- as GST.

- ii. It would be applicable to all transactions of goods and services except the exempted goods and services.
- iii. That it would be based on single taxation system for both goods and services.
- iv. Treatment of CGST and SGST would be made separately.
- v. It would not be applicable to a transaction below a certain limit.
- vi. Administration of the CGST would be assigned to the Centre and of the SGST to the respective States.
- vii. Subsume of different indirect taxes under the umbrella of GST.
- viii. Introduction of the IGST for inter-State transaction of goods and services.
- ix. Finally, the introduction of two types of rates for all goods and services.

IV. The Hindrances

In order to implement all the above recommendations made by the Empowered Committee, the Government had to bring in Constitutional Amendments. A joint working group was created on 30, 2009 'to prepare, in a time bound manner a draft legislation for Constitutional Amendment, draft legislation for CGST, a suitable Model Legislation for SGST and rules and procedures for CGST and SGST'³. And for the same end then Finance Minister Pranab Mukherjee in his 2009-10 Budget speech set out the deadline of 1st April, 2010 which was pushed back by a year to 1st April, 2011. In the same year the government led by the Congress party puts forth the Constitution (115th amendment) Bill, 2011. Unfortunately, it could not be possible due to the stiff resistance by the BJP on several aspects of proposed legislation and the same was sent to the Standing Committee for detailed examination of the Bill. It was in the month of August, 2013 the Standing Committee submitted its report which was duly approved by a Panel with few amendments to the provisions for the tax structure. After the victory of the BJP in the 2014 election, prompt initiative was taken for the approval of the Constitution (122nd Amendment) Bill, 2014⁴. Time and again the bill was subject to stiff opposition. In 2015, Mr. Arun Jaitley, Finance Minister sets 1st April, 2016, as the deadline for the rollout of the GST. This back and forth continued and finally on August 3, 2016, after much agitation the Rajya Sabha passed⁵ the Bill. After the ratification

³ Supra note 1 at p. 47.

⁴ Officially known as the Constitution (One Hundred Twenty Second Amendment) Act, 2016.

⁵ The Bill was passed by the Lok Sabha on 6th May, 2015.

by sixteen States, on 8th September, 2016 President Mr. Pranab Mukherjee gave his assent to the Bill⁶.

V. Constitutional Parameters

As mentioned above, the enactment of a legislation subsuming almost all the indirect taxes under the GST is not possible without making amendment of the Constitution of India. Besides Article 246⁷, 248⁸ and 265,⁹ Articles 268 to 292 under the Centre-State financial relations are also deserve to be mentioned because these Articles have bearings on taxes levied by the concerned government and collected by the respective Governments in accordance with such provisions. The Articles are to be read with various items listed in the Seventh Schedule¹⁰ as referred in Part XI of the Constitution of India. However, the specific provisions on GST are of recent inclusion and has been incorporated by the Constitution (101st Amendment) Act,

⁶ Total four Bills concerning GST has become Acts, viz Central GST Bill, Integrated GST Bill, Union Territory Bill and GST (Compensation to States) Bill.

⁷ Article 246 of the Constitution of India states: "Subject-matter of laws made by Parliament and by the Legislatures of States-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List".

⁸ Article 248 of the Constitution of India states: Residuary Powers of Legislation- "(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in Concurrent List or State List.

(2) Such power shall include the power of making any law imposing tax not mentioned in either of those lists".

⁹ "No tax shall be levied or collected except by authority of law".

¹⁰ Entries 83, 84, 92A, 92B, 92C and Entry 97 of the Union List and Entries 51, 52, 53, 54 and 62 of the State List

2016. The relevant Articles are Articles 246A,¹¹ 269A¹² and 279A¹³ of the Constitution of India. The amendment also inserted in Article 366 few clauses such as clauses (12A),¹⁴ (26A)¹⁵, (26B)¹⁶ and Clause (12)¹⁷ of Article 366 of the Constitution of India are also relevant in this context. Apart from the above Articles, the following table contains the listed items on GST:

¹¹Article 246A of the Constitution of India states: “Special Provision with respect of Goods and Services Tax- (1) Not with standing anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) *Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.*

Explanation—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council”.

¹²Article 269A of the Constitution of India states: **Levy and collection of goods and services tax in course of inter-State trade or commerce-**

“ (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned by the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation- For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under Article 246A has been used for the payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce”.

¹³Article 279A provides for constituting a Council called the Goods and Services Tax Council within 60 days from date of commencement of 101st Constitution Amendment Act, 2016.

¹⁴ “Goods and Services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.

¹⁵ The clause defines the term “Service” as anything other than goods.

¹⁶The clause defines the term “State” which means with reference to Articles 246A, 268, 269, 269A and Article 279A includes a Union territory with legislature.

¹⁷ The clause defines the term “Goods” which includes all materials, commodities, and articles.

Relevant provisions on GST under the Lists of the Seventh Schedule of the Constitution of India on GST.

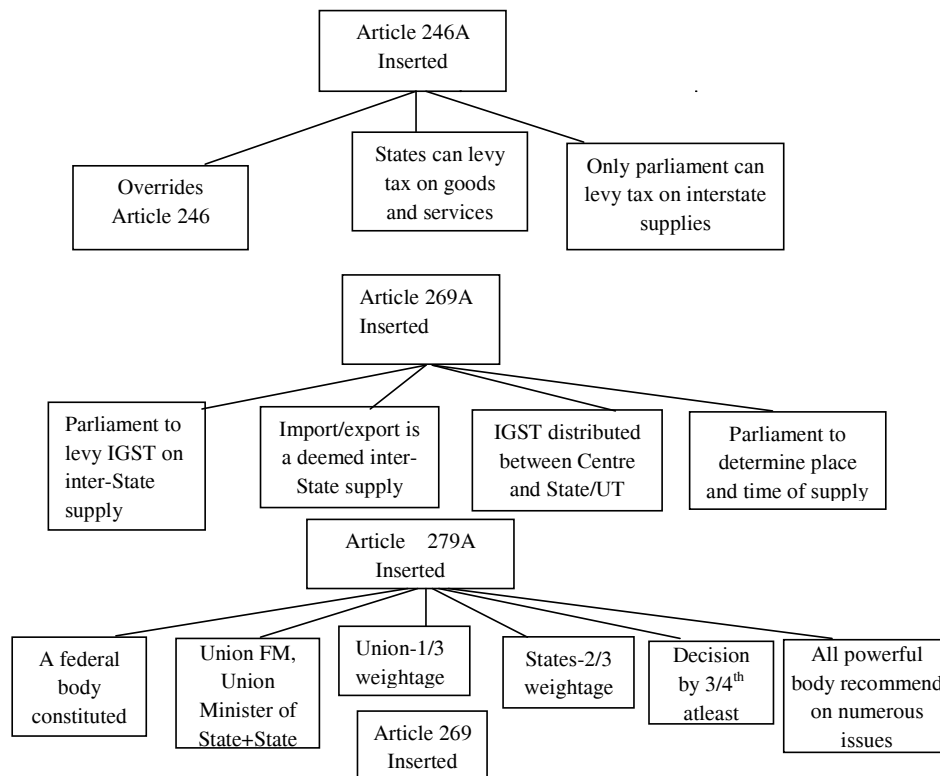
Union List (List I)	State List (List II)
Entry 84-Duties of excise on the following goods manufactured or produced in India, namely: petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and tobacco and tobacco products.	Entry 54- Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.
Entry 92A- Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.	Entry 62- Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.
Entry 92B- Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.	

V. I. An Overview of the Constitutional Provisions

Under the old indirect tax structure, numbers of taxes were being levied by the Central and the State Government including the local authority and each tax was imposed in specific event and within the ambit of the law. In order to accomplish the motive of “one nation and one tax” under the concept of GST, the existing laws were considered inadequate. It was felt that without conferring equal power on the Parliament and the legislature of every State, a uniform and comprehensive laws with respect to GST would not be possible. Owing to the repugnant provision (Article 254) in the Constitution of India, it was felt that in case of inconsistency between the Union and the States laws, the law passed by the former shall prevail over the later and hence the States would never be agree to levy GST by enlisting it under the Concurrent List. Therefore, the need to insert a new Article was felt and the outcome is the insertion of Article 246A in the Indian Constitution. The enactment of Central Goods and Services Tax (CGST) and State Goods and

Services Tax (SGST) are on the basis of Article 246A (1) of the Constitution of India. Similarly, clause (2) empowers the Parliament to make laws with respect to goods and services tax when transaction is in the course of inter-state trade or commerce, which gave rise to Integrated Goods and Service Tax (IGST).

Also, article 279A has been inserted in the Constitution which provides that the President of India shall constitute GST Council which shall consist of Union Finance Minister as a Chairperson, Union Minister of State in charge of Finance as a member, the State Finance Minister or State Revenue Minister or any other minister nominated by each State as a member of the council. The council shall select one of them as Vice Chairperson of Council¹⁸. The new inserted Articles may be analysed as under:



¹⁸ Abhinav Chhabra, Constitutional Background for GST, Dec. 11, 2017, Available at: <https://hkcindia.com/constitutional-background-for-gst/> (Last visited on 24th May, 2019).

V.II. Amendments of Existing Articles

Apart from the above referred Articles the Constitution (101st Amendment) Act, 2016 has amended some existing Articles to give effect of the GST. For example, Article 248 which contains the residuary powers of legislation has been amended to the tune ofthe power of the Parliament has been made subject to Article 246A replacing the words “Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.”

Similarly, Article 249¹⁹ has amended to the extent that “the resolution of Rajya Sabha can mandate the Parliament to make laws with respect to GST as provided in Article 246A also and not just restrict the same to matters specified in State List.

Along with the above two Articles (Articles 248 and 249), Articles 250, 268, 269 and 270 also have amended and Articles 268 and 268A have been omitted as the same have been subsumed in GST. In Article 250 which deals with Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws with respect to any of the matters enumerated in the State List, the same power has been extended to Goods and Service Tax under Article 246A. Likewise, Article 269²⁰ has been amended to exclude Goods on which is GST will be levied under Article 269A in the course of interstate trade or commerce. Thus this Article will be effective for goods kept out of GST viz. crude, Petrol, HSD, ATF etc. Further, Article 270²¹ has been amended to provide that the taxes collected by the Central Government under Article 246A (1) i.e. CGST shall also be distributed between the states in the manner prescribed. Further, the taxes collected IGST which has been used in payment of CGST and the amount apportioned to central government in IGST shall also be distributed to the states. However, the power to levy a surcharge has not been extended to GST as per Article 271 of the Constitution of India. Finally, Article 368, the amendment provision, provides an amendment in relation of GST Council in the proviso to clause (2) which states that any change that is sought to be made in relation to GST Council will require the ratification of not less than 50% of the states.

¹⁹ Earlier Article 249 read as, “If Rajya Sabha has declared by resolution in national interest that Parliament should make laws with respect to any matter enumerated in the State List, Parliament can make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force”.

²⁰ Earlier the Article state: “Taxes on the sale or purchase of goods /consignment of goods in the course of inter-state trade shall be levied and collected by Central Government but shall be assigned to the States”.

²¹ Article 270 of the Constitution of India provides that a portion of all taxes and surcharges on such taxes that are levied and collected by the Central Government shall be distributed to the states in the manner that is prescribed.

VI. Legislative Framework

Along with the amendment in the Constitution, to empower the Centre and the States to levy and collect the GST, five legislations were given assent by the President on April 12, 2017²², which includes:

- The Central GST Act, 2017 (Intra-State supplies)
- The State GST Act, 2017 (Intra-State supplies)
- The Integrated GST Act, 2017 (Inter-State supplies)
- The GST (Compensation to States) Act, 2017 and
- The Union Territory GST Act, 2017 (Intra-State supplies).

The GST implementation is “dual” in nature - one component is implemented by Centre (CGST) and another component by State (SGST). Under this model, tax is levied concurrently by the Centre as well as the States on a common base, i.e. supply of goods or services or both. The base of tax would be the same by Centre and State governments. A four-tier Goods and Services Tax (GST) rate structure with classified rates of 5%, 12%, 18% and 28% would be applicable across a wide range of goods and services. To safeguard the interest of the poor and to keep inflation under check, several essential items has been exempted from GST. Rates for precious metals has been fixed to 3%. In addition to this special rates of 0.25% on rough precious and semi-precious stones has been fixed. A Cess of 22% or other rates on top of 28% GST applies on few items like aerated drinks, luxury cars and tobacco products. The list of goods and services in case of which reverse charge would be applicable has also been notified.

One notable Act under the GST regime is the Goods and Services Tax (Compensation to State⁰ Act, 2017 which provides for the compensation for a period of five years to be payable to the States for the loss of revenue due to the introduction of the concept of destination based GST.

The input tax credit of CGST would be available for discharging the CGST liability on the output at each stage. Similarly, the credit of SGST paid on inputs would be allowed for paying the SGST on output. No cross utilization of credit would be permitted. The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except on exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of Central Excise.

²² On 1st February, 2019 on the basis of the recommendation made by GST Council certain amendments have been made In CGST Act, IGST Act, UTGST Act and GST (Compensation to States) Act on

In case of inter-State transactions, the Centre would levy and collect the Integrated Goods and Services Tax (IGST) on all inter-State supplies of goods and services under Article 269A (1) of the Constitution. The IGST would roughly be equal to CGST plus SGST.

VI. Conclusion

GST is considered as one of the biggest reforms in India in the area of indirect taxation with a view to achieve the goal of uniformity. With a vision to eradicate the multiplicity of taxation in the field of indirect taxes, the main objective is to consolidate such tax regime, subsuming the same under the GST. The purpose is to overcome the shortcomings of previous indirect tax structure by providing benefit to the consumer to buy the goods and services at a reduced rate by removing the cascading effect. The implementation of GST definitely have paved the way to in the economic development of the country which in turn would lead to improve GDP ratio and also control inflation to a certain extent. Although the GST is considered as boon in the manufacturing sector but it is challenging for the service sectors. However, the same can be fine-tuned for the larger interest of the country having social and business ethics implications. To quote from Raghuvansh by Kalidasa “It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand fold.”