

Goods and Services Tax- A Critical Analysis

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Abstract- The paper is about the biggest tax reform that our India went through as the tax structure has become now direct which was lately indirect since ages, this paper will introduce this indirect tax structure through different explanations, and will explain the principle behind GST Bill which was placed in parliament through 122nd Constitutional amendment. What was a non- GST regime and how will GST function with the salient features of GST and the advantages with the lacunae in it. Concerns which come with the GST Act has also been discussed further with more emphasis led on the vital 122nd amendment made in Indian Constitution.

Index Terms- Constitutional Amendment, Goods and Service Tax, GST Council, Renewed GST Concerns, Salient Features

I. INTRODUCTION:

WHAT IS GST?

The Goods and Services Tax (GST), is till date the biggest tax reform in India's indirect tax structure since the time when economy opened 25 years ago. Officially known as 122nd Amendment Bill of Constitution, has finally been passed. It proposes a national Value Added Tax to be implemented nationwide, which is a comprehensive indirect tax on manufacture, sale and consumption of all the good and services throughout India¹. This reform mainly tackles or replaces the taxes levied by Central and State governments and instead of that would levy and collect tax at each stage of sale or purchase of goods and services based on the input tax credit method.

Now what is Input Tax Credit method²- It is the method which allow GST registered businesses to claim tax credit to the value of GST they paid on purchase of commodities as part of their normal commercial activity. All the goods and services are taxed at a single rate in a supply chain and are not distinguished from one another. These taxable

goods are taxed until it not reaches the consumer. Here the administrative responsibility would generally rest with a single authority to levy tax on goods and services. Other thing is that exports would be zero rated and imports would be levied the same taxes as domestic goods and services adhering to the destination principle.

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¹Goods and Service Tax Bill, available at: https://en.wikipedia.org/wiki/One_Hundred_and_First_Amendment_of_the_Constitution_of_India (Last Modified 15 November,2016).

²VAT Awareness Programme, Input Tax Credit, available at: <https://odishatax.gov.in/VAT/userguide/ugitc.htm>.

II. PRINCIPLE BEHIND GST

The basic idea behind introduction of Goods And services Tax is amalgamating several Central and State taxes into a single tax that in turn would mitigate cascading or double taxation, facilitating a common national market. It is not just being introduced to get rid of the current patchwork of indirect taxes that are partial and suffer from infirmities, mainly exemptions and multiple rates, but also to improve tax compliances. Central Excise duty, additional excise duty, service tax, and additional duty of customs, State VAT, entertainment tax, taxes on lotteries, betting and gambling and entry tax would be subsumed within GST.³

Also, the simplicity of tax will lead to easier administration and enforcement.

From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%.

It would be the most transparent and neutral manner to raise revenue and with the increase of international trade in services, the GST has become a preferred global standard. The primary reason which we can say behind introducing the bill is to pave the way for the centre to tax sale of goods and the states to tax provision of services. Also, to have exclusive power of the Central Government to levy GST on imports and inter-state trade.

A unified GST is an economically efficient solution even for the multinationals, which must compete with the companies in unorganized sector, as it simplifies the indirect tax structure to one general rate that can be paid by all companies.

Under the GST structure, every company gets a deduction on the taxes already paid by its suppliers. That results in every buyer ensuring that his supplier has paid his part to claim his deductions.

III. HOW A FULL GST REGIME WILL WORK⁴

Stage I: MANUFACTURING

Stage II: WHOLESale

Stage III: RETAIL

³Available at: <http://www.gstindia.com/>.

⁴“Goods and Services Tax (GST) Bill, explained” *The Indian Express*, Oct. 19,2016.

A. STAGE I

If a manufacturer of shirts spends input worth Rs 100, a sum that include a tax of Rs 10 in making a shirt. In process of making the shirt he adds value to the materials he started out with, let us take this value to be Rs 30. Therefore, gross value of shirt would be $100+30= 130$. At a tax rate of 10%, the tax on output will then be Rs 13. But under GST, he has already paid tax of Rs 10 on raw materials or inputs. So, the effective GST incidence on manufacturer is $13-10=3$ i.e. Rs 3 only.

B. STAGE II

The wholesaler purchases the shirt at Rs 130, then adds on value of say Rs 20. Gross value is now Rs 150. A 10% tax on this amount will be Rs 15, but again under GST, the wholesaler can set off the tax on his output (Rs 15) against the tax on his purchased good from the manufacturer (Rs 13). Thus, the effective GST incidence on him is $15-13=2$ i.e. Rs 2.

C. STAGE III

When the retailer buys the shirt, it is for Rs 150, he adds value and the gross value let us say goes up to Rs 160. A 10% tax on this will be Rs 16. But by setting off this tax of Rs 16 against the tax on his purchase from the wholesaler (Rs 15), the retailer brings down the effective GST incidence on himself to be Re 1 ($16-15$).

Thus, the total GST on the entire value chain from input to the consumer is, $Rs\ 10+3+2+1= 16$.

IV. WHEN IN A NON- GST REGIME⁵

In a full non-GST system, there is a cascading burden of “tax on tax”, as there are no set-offs for taxes paid on inputs or on previous purchases.

Thus, if we consider the same example as above, the manufacturer buys raw materials/inputs at Rs 100 after paying tax of Rs 10. The gross value of the shirt (good) he manufacturers would be Rs 130, on which he pays a tax of Rs 13. But since there is no set-off against the Rs 10 he has already paid as tax on raw materials/inputs, the good is sold to the wholesaler at Rs 143 ($130 + 13$).

With the wholesaler adding value of Rs 20, the gross value of the good sold by him is, then, Rs 163. On this, the tax of Rs 16.30 (at 10%) takes the sale value of the good to Rs 179.30. The wholesaler, again, cannot set off the tax on the sale of his good against the tax paid on his purchase from the manufacturer.

The retailer, thus, buys the good at Rs 179.30, and sells it at a gross value of Rs 208.23, which includes his value addition of Rs 10 and a tax of Rs 18.93 (at 10% of Rs 179.30). Again, there is no mechanism for setting off the tax on the retailer’s sale against the tax paid on his previous purchase.

The total tax on the chain from the raw material/input suppliers to the final retailer in this full no-GST regime will, thus, work out to $Rs\ 10 + 13 + 16.30 + 18.93 = Rs\ 58.23$. For the final consumer, the price of the good would then be $Rs\ 150 + 58.23 = Rs\ 208.23$.

Compare this Rs 208.23 — with a tax of Rs 58.23 — to the final price of Rs 166, which includes a total tax of Rs 16, under GST.

V. HOW DID GST CAME INTO EXISTENCE

For the first time it came into picture was in Budget of 2006-07, where it was announced that GST will be on platform by April 1, 2010. Subsequently, Empowered Committee (EC) of state Finance Ministers tasked with drawing up roadmap and design. Then in April 2008 EC headed by West Bengal Finance Minister AsimDasgupta submitted report to the central government, which offered its views and comments in October and December of the year. Joint working groups were then set up to examine options on exemptions and thresholds, taxation of services and inter-state supplies, etc.

November 2009, EC released its First Discussion Paper. Again on March 22, 2011, the constitution 115th Amendment Bill was introduced in Lok Sabha; which was referred to the then standing committee on Finance, which submitted its report for it on August 7, 2013. But Bill lapsed as term of Lok Sabha ended in 2014.

Next time when GST came to light was with a new Constitutional Amendment; the 122nd Amendment Bill which was introduced on 19 December, 2014 in Lok Sabha. And after massive efforts it finally passed on May 6, 2015. In other 6 days the Bill was referred to a 21 member- Select Committee headed by BhupendraYadav. On 22nd July the committee submitted its report at Monsoon and Winter Sessions 2015.

At Budget Session 2016, Bill was not tabled in the face of opposition led by the Congress.

And Further What ..

President will constitute the GST Council which shall make recommendations on :

- Taxes to be subsumed
- Exemptions
- Model GST laws, Principles of Levy, etc.
- Threshold for exemption
- Rates, including floor and bands
- Special rates for specified period
- Date from which GST to be levied on crude, high speed diesel, natural gas, aviation turbine fuel and petrol

⁵“Goods and Services Tax (GST) Bill, explained” *The Indian Express*, Oct. 19,2016.

- Special provision for the Northeast, Jammu and Kashmir, etc.

Parliament will have to pass legislation on central GST and Integrated GST and including all 29 states will pass their state GST Acts.

The GST Council⁶

The council will consist of the union Finance Minister as Chairman and MoS in charge of Revenue; Minister in charge of Finance or Taxation, or any other Minister, nominated by each state. The decisions will be made as per by three-fourths majority of votes cast; centre shall have one third of vote cast and state shall together have two-thirds. And for resolving disputes arising out of its recommendations may be decided by the Council itself.

Both the parliament and state houses will have the power to make laws on the taxation of goods and services. Here parliament's laws will not override a state law on GST. There is an exclusive power to Central Government to levy, collect GST in the course of interstate trade or commerce, or imports which is known as IGST (Integrated GST) and central law will prescribe manner of sharing of IGST between Centre and state, based on GST Council's views.

VI. SALIENT FEATURES OF GOODS AND SERVICE TAX, BILL

- This is a dual GST model as it shall have two components, one levied by Centre which is referred as CGST and the other levied by the States referred as SGST. Rates for both would be appropriately prescribed, reflecting revenue considerations and acceptability.
- This dual model would be implemented through multiple statutes. And the basic features of law like chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes.
- The CGST and SGST would be applicable to all transactions of goods and services except the exempted goods and services, which are outside the purview of GST and also to the transactions which are below the threshold limits.
- The taxes are to be paid to the accounts of centre and state separately. It should ensure that account-heads for all services and goods would have indication whether it relates to Central GST or State GST.
- Since they are to be treated separately, taxes paid against the CGST shall be allowed to be taken as input tax credit (ITC) for the central GST and could be utilized only against the payment of CGST.

- Cross utilization of ITC between the Central GST and the State GST would not be allowed except in the case of Inter-State supply of goods and services under the IGST model.
- Ideally, the problem related to credit accumulation on account of refund of GST should be avoided by both the Centre and the States except in the cases such as exports, purchase of capital goods, input tax at higher rate than output tax etc. where, again refund/adjustment should be completed in a time bound manner.
- The administration of the Central GST to the Centre and for State GST to the States would be given. This would imply that the Centre and the States would have concurrent jurisdiction for the entire value chain and for all taxpayers on the basis of thresholds for goods and services prescribed for the States and the Centre.
- To the extent feasible, uniform procedure for collection of both Central GST and State GST would be prescribed in the respective legislation for Central GST and State GST.
- The present threshold prescribed in different State VAT Acts below which VAT is not applicable varies from State to State. A uniform State GST threshold across States is desirable and, therefore, it is considered that a threshold of gross annual turnover of Rs.10 lakh both for goods and services for all the States and Union Territories may be adopted with adequate compensation for the States (particularly, the States in North-Eastern Region and Special Category States) where lower threshold had prevailed in the VAT regime.
- The taxpayer would need to submit periodical returns, in common format as far as possible, to both the Central GST authority and to the concerned State GST authorities.
- The States are also of the view that Composition/Compounding Scheme for the purpose of GST should have an upper ceiling on gross annual turnover and a floor tax rate with respect to gross annual turnover. In particular, there would be a compounding cut-off at Rs. 50 lakh of gross annual turn-over and a floor rate of 0.5% across the States.
- Each taxpayer would be allotted a PAN-linked taxpayer identification number with a total of 13/15 digits. This would bring the GST PAN-linked system in line with the prevailing PAN-based system for Income tax, facilitating data exchange and taxpayer compliance.
- Keeping in mind the need of tax payer's convenience, functions such as assessment, enforcement, scrutiny and audit would be

⁶Available at: <http://www.gstindia.com/>.

undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States.

VII. THE CONSTITUTION (122ND AMENDMENT) GST BILL, 2014: CONSTITUTIONAL AMENDMENT⁷

The high points-

- The bill amends the constitution to introduce the goods and services tax.
- Both the parliament and the state legislatures will have concurrent powers to make laws on GST. But only the centre may levy an integrated GST on the intermediate supply of goods and services, imports.
- Alcohol for human consumption has been exempted from this. Also it will apply to petroleum products later.
- The council made for GST Bill will recommend rates of tax, period of levy of additional tax, principles of supply, special provision to certain states etc.
- It empowers the centre to impose additional tax of 1% on the inter-state supply of goods for two years or more. This tax will accrue to states from where the supply originates.
- Parliament may, by law, provide compensation to states for any loss of revenue from the introduction of GST, up to a five year period.

Issues and analysis-

- An ideal GST regime intends to create a harmonised system of taxation by subsuming all indirect taxes under one tax. It seeks to address challenges with the current indirect tax regime by broadening the tax base, eliminating cascading of taxes, increasing compliance, and reducing economic distortions caused by inter-state variations in taxes.
- The provisions of this Bill do not fully conform to an ideal GST regime. Deferring the levy of GST on five petroleum products could lead to cascading of taxes.
- The additional 1% tax levied on goods that are transported across states dilutes the objective of creating a harmonised national market for goods and services. Inter-state trade of a good would be more expensive than intra-state trade, with the burden being borne by retail consumers. Further, cascading of taxes will continue.

- The Bill permits the centre to levy and collect GST in the course of inter-state trade and commerce. Instead, some experts have recommended a modified bank model for inter-state transactions to ease tax compliance and administrative burden.

VIII. ADVANTAGES OF THE AMENDMENT⁸

BIGGEST BENEFIT is that it will disincentives tax evasion. If we don't pay tax on what we sell, we don't get credit for taxes on your inputs. Also, we will buy only from those who have already paid taxes on what they are supplying. Result: a lot of currently underground transactions will come over ground.

LOWER TAX RATES will follow from GST covering all goods and services, with tax only on value addition and set-offs against taxes on inputs/previous purchases. Right now, we have more tax on fewer items; with GST, there will be less tax on more items. Ideally, no good or service should be tax-exempt, as this will break the

input tax chain.

UNIFIED GST is an economically efficient solution even for the multinationals, which have to compete with the unorganized sector as it simplifies the structure of indirect tax to a one rate that can be paid by all companies.

IX. FLAWS OF THE BILL⁹

The government should remove flaws in the Constitutional Amendment Bill and build a consensus with the states on a flawless GST. The Bill, to give the Centre and states concurrent powers to tax goods and services, is a right step. What is not correct is a 1% extra levy proposed to be charged when goods move from one state to another. If Rajasthan imports goods from Maharashtra, it will pay 1% tax to Maharashtra, but the levy will not be charged if the goods are imported from outside India. Also, the 1% tax would apply multiple times, every time goods move from one state to another, and could cumulate to as much as 5% in a typical supply chain. This will add to the cascade of taxes that products bear and raise the cost of raw materials, capital and finished goods. As there will be no set-offs on the extra levy—to be in force for two years or such other period as the GST Council may recommend. However, producing states want the levy on the grounds that they will lose out when the central sales tax is scrapped. There is no logic as the Centre has already guaranteed compensation to states while transiting to GST. The extra levy will scuttle the Make in India plan. It goes against the grain of GST and renders our exports uncompetitive.

The extra levy should be scrapped. Keeping real estate out of GST is a bad idea as credit will not be available for taxes paid on inputs used in construction such as cement and steel. Construction capital expenditure is 40% of total

⁷ The Constitutional (122nd amendment) Bill, available at: <http://www.prsindia.org/billtrack/the-constitution-122nd-amendment-gst-bill-2014-3505/> (Visited on 16 Nov. 2016).

⁸“GST Bill: green light for ‘one nation, one tax’” *The Hindu*, Aug. 4, 2016.

⁹Raman Mittal, “Goods And Service Tax”, *The Telegraph*.

capital investment in a year, and that's not small change. Bringing real estate under GST will raise investment and push growth.

X. RENEWED GST CONCERNS

With heterogeneous State laws on VAT, the debate on the necessity for a GST has been reignited. The best GST systems across the world use a single GST, while India has opted for a dual-GST model. Critics claim that CGST, SGST and IGST are nothing but new names for Central Excise/Service Tax, VAT and CST, and hence GST brings nothing new to the table. The concept of value-added has never been utilised in the levy of service, as the Delhi High Court is attempting to prove in the case of Home Solution Retail, while under Central Excise the focus is on defining and refining the definition of manufacture, instead of focusing on value additions. The Revenue can be very stubborn when it comes to refunds, as the Maharashtra Government proves, and software entities that applied for refunds on excess service tax paid on inputs discovered.

The all-new Cenvat Credit Rules, 2014 do little to clarify eligibility for input credits, by using general terms such as "any goods which have no relationship whatsoever with the manufacture of a final product" and "services used primarily for personal use or consumption of any employee.

XI. CONCLUSION

The 122nd constitutional amendment bill or the goods and services tax bill intends to create a harmonised system of taxation and cascade double taxation. It seeks to address the challenges of indirect tax regime and bring in a new system. Steps which are serious have been taken and the bill has been passed by RajyaSabha on 3rd August by a full majority and was passed by LokSabha on 8th August. It is to be implemented from 1st April 2017, and is believed to boost the nation's economy and bring fresh investments.

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AUTHOR PROFILE

NupurPriyadarshi, born and raised in a middle class family where choosing law as a career is itself a big for girls is a student from National University of Study and Research in Law pursuing BA-LLb currently in 3rd year. It is her first publication in a journal although she has been a keen student in writing and researching in law subjects. This research work was a tough task but immense patience and hard work with support of faculty members has made her work easy. She is presently working on research subjects of international law and media law.