

GST – Great Skeptic Transition

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The word ‘Tax’ is derived from the Latin word “Taxare” meaning “to appraise or assess” and made its appearance in the English language in the 14th century A.D. It has been generally referred to as any contribution imposed by the Government upon individual, for use and services of the state, whether as impost, duty, custom, subsidy or any other things. A strong tax system is fundamental to the development of a state’s economy and infrastructure. The manners in which taxes are administered and collected, and the uses to which they are put, define the symbiotic relationship between the state and its citizens.³

In the present System the power of indirect taxation is split between the central government and the state government that can levy tax in their respective entries of the seventh schedule. The constitution places certain restrictions on indirect taxes, especially, the tax on sale and purchase of goods as under:

1. Article 286(1)

State Government cannot impose income tax on sale or purchase during imports or exports; or the tax on sale outside the state.

2. Article 286(2)

Parliament is authorised to formulate principles of determining when a sale or purchase takes place (a) outside the state (b) in the course of import or export.

3. Article 286(3)

Parliament can place restriction on tax on sale or purchase of goods declared as goods of special importance and the state government can tax such declared goods subject to these restriction.

4. Article 303(1), 303(2)

No discrimination can be made between one state and another nor preference given to one state over another. Such discrimination or preference can be made only by parliament by law, to deal with situation arising from scarcity of the goods.

5. Article 304

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³BIMAL JAIN & ISHA BANSAL, GST LAW & ANALYSIS – WITH CONCEPTUAL PROCEDURES 1 (1st ed. 2016).

State can impose tax on goods imported from other state or union territories, but a state cannot discriminate between goods manufactured in the state and goods brought from other state.

GST – Post Liberalisation Economic Reform

GST is a value added tax and has replace most of the indirect taxes which were existing at the level of state and federal governments. This is a comprehensive tax of almost all goods and services. Though some of the goods like crude oil, natural gas, turbine fuel and alcohol for human consumption are exempted. It would have been better if these goods were added in the GST list to make a uniform pricing all over India. GST is tax on goods and services that is paid by the final consumer while the retailer will be taking credit of the tax he has paid while buying goods for retailing. So in this all the services of retailer or the chain behind him is taxed apart from the actual value of production of that good. The introduction of GST has subsumed a number of union and state taxes replacing them with a single taxation system.

At the central level the following taxes has been subsumed:

1. Central Excise Duty
2. Additional Excise Duty
3. Service Tax
4. Additional Customs Duty

The State Subsumed Are as under:

1. State Value Added Tax/Sales Tax
2. Entertainment Tax
3. Octroi
4. Entry Tax
5. Purchase Tax

GST Regime in Foreign Countries

Almost all countries, barring a few, have moved to the value added tax system i.e. imposition of indirect tax on services and sales of goods. However, only handful of those have adopted the GST model, and customised to suit their own political, economic and geo-political needs.

Among the first countries to have discussed the idea of GST was Australia in 1985 but it was its neighbour New Zealand that first implemented the model of GST on 1st October 1986 and replaced its existing system of sales tax. Canada soon adopted the GST model on 1st June 1991, primarily to boost its manufacturing sector. Singapore was next in line to implement

this tax system on 1st April 1994, but has exempted the export of goods and international services. Australia shifted to GST system on 1st July 2000.

It is noteworthy that all countries mentioned above, differ largely on the modality of the implementation of GST. Firstly, each country has exempted certain goods from the preview of GST based on the requirement of such goods in the particular society. Secondly, the rate of GST is different in different countries and keeps on revising. Thirdly, countries also differ on whether the tax will be levied on the value added or on the end product. Finally, the countries also differ on whether the GST is to be paid by the end user or the manufacturer. In the Indian context it is very interesting to study the development, evolution and implementation effect of GST, on Australia and Canada as both of them are federations like India. As we all know that any economic reform needs some time to adjust and give output so in India it is still unknown the post effect of GST since it's not been a year after the implementation.

GST Regime in India

The concept of GST was first mooted in the year 2000 by the Vajpayee Government. To formulate the modality of the same, the Kelkar Task Force on Fiscal Consolidation was constituted. When the UPA government assumed power, on 28 February, 2006, Mr. P. Chidambaram, the then Finance Minister mentioned GST in his budget speech and declared 1st April, 2010 as the deadline for the implementation of the GST all over India. However, the bill faced objections from the opposition could not see the light of the day.

Under the present NDA Government led by Prime Minister Shri Narendra Modi, the Cabinet approved the constitutional (122nd Amendment) Bill, 2014 on 18th December, 2014 thereafter the bill was introduced in Lok Sabha, on 6th May, 2015. The bill got temporarily stalled in Rajya Sabha after its introduction on 12th May 2015, and was referred to a joint committee of Lok Sabha and Rajya Sabha. On 22nd July 2015 the Parliamentary Select Committee submitted its report. Finally, on 1st August, 2016 the Finance Minister Shri Arun Jaitley introduced the bill based on political consensus and the bill was passed by the Rajya Sabha on 3rd August, 2016.

Also on the eve of 8th September, 2016 the constitutional 101st amendment act got the presidential assent and the goods and services tax became a reality. The act was also notified through the official Gazette on the same day.

The rollout of the original GST date that was 1st April 2017 was delayed because there were some states which had not passed the bill in their state assemblies. Finally, on the midnight of 1st July, 2017 by the President of India was declared to be implemented. The timing of the

event was also questioned by the opposition; they viewed this as providing an alternative or devaluating the auspicious day that is of the declaration of Independence on the midnight of 15th August 1947. Consequently, the opposition in the leadership of Congress Party boycotted the event.

The constitutional One Hundred and One (Amendment) Acts, 2016 tries to change the tax net upside down, giving both the Centre and the State the power to make laws on GST as per Section 2 of the Act. The state legislature will have the power to make laws with respect to the intra-state trade and commerce while the parliament will have specific powers to make laws with respect to inter-state trade and commerce, as has been provided under the newly inserted Article 246A. To avoid any conflict of the legislative powers of Centre and state, the residuary power of legislation under Article 248 is made subject to the newly inserted Article 246. In the same pursuit, both the state list and the Union list stand amended to give effect to the substantial GST provisions with respect to legislate as provided under section 17.

The Section 9 of the Constitutional One Hundred and One (Amendment) Act, 2016 states that the newly inserted Article 269A provide that though the levy and collection of tax on inter-state trade and commerce is to be done by the parliament, but the same would be shared by the center and state as per the guidelines and recommendations of the GST Council.

Article 279A has been added to constitute the all-powerful GST Council, so to say a supra-federal body to oversee the functioning, implementation and smooth running of the GST. Article 279A provides for the council to be headed by a chairperson, the Union Minister for Finance, Union Minister of State in charge of Revenue or Finance as member and a Minister in charge of Finance or Taxation or any other minister as nominated by each state government as member.

Article 250 which provides for emergency power of the parliament to legislate with respect to the entries in state list post the proclamation of emergency, stands amended to make provision for the parliament to make laws with respect to GST in a state of emergency.

Similarly, Article 268 has been amended to the extent that excise duty on medicinal & toilet preparation will be omitted from the state list and added to the union list. Further Article 268A, that provides for implementation of service tax, stands repealed as from now the service tax is subsumed in GST. Section 11 of the Constitutional One Hundred and One (Amendment) Act, 2016 provides that Article 271 has been amended to prevent the imposition of surcharge on commodities/services that have been brought within the ambit of GST.

In light of the Constitutional 101st Amendment, the Union of India is obligated to enact legislations with respect to integrated goods and service tax (IGST) and Central Goods and services tax (CGST); whereas the state have to legislate with respect to state goods and services tax (SGST).

GST and Centre-State Relations

The new GST regime sought to be ushered, heralds a tectonic shift in centre-state relations. By unifying the system of indirect taxation, it has led to an apprehension in some quarters that the new taxation regime will undermine the federal structure of governance. A number of state governments have raised their concerns and apprehensions about the impact of the GST system on federalism and the autonomy of states. These include:

1. State losing legislative sovereignty on taxation which is an assault on federalism and will lead leads to states not being able to have their own fiscal policies according to their individual welfare needs.
2. Manufacturing states, like Tamil Nadu apprehend that they are going to permanently lose more than 9,000 corers annually because of destination based taxes.
3. Union Government having veto power in the GST council.
4. Regardless of the size of their economies, all states to have a uniform distribution of vote share which is unfair to economically advanced state.
5. States are not empowered to levy higher taxes over and above SGST on tobacco and tobacco products.

GST Council

The most important and crucial objection is with respect to the GST council as established under the Amendment Act, 2016, which will be a Supra-Federal Statutory Body that will completely oversee the GST regime including rate of GST, entities to be taxed, purview & ambit and also settle the disputes between centre and state(s) and between the states. The council is having two members as representatives of the central government, one of whom the union finance minister shall be the chairperson, whereas each state will only have one representative. The nature of the overwhelming powers of the council may have a far reaching effect and even amount to undermining the legislative sovereignty of both centre and state.

With only one representative in the council, member states will not have adequate say in these matters. The council's decisions, if detrimental, cannot be undone by the states and the states will accordingly have to compromise on their budgets and the entire fiscal policies. The

voting structure of the council is such that the states only have one vote each, whereas the center has an effective veto. Therefore, it will not be out of place to say that council might act as an instrument for the backdoor entry of the central government into the decision and policy making sphere of a duly elected state government.

Conclusion

On this note I would like to conclude while discussing about this Supra-Federal Statutory Body. Above we have discussed about this body in positive note but at the same time, the constitution and power conferred to the GST council, raise serious question about safeguarding the autonomy of states and encroachment of central government into state affairs and federal structure of the nation. In a country large and varied like India, which has many governance units in the form of states that are ruled by political parties having different agendas and ideologies, it will be difficult to harmonize any uniform scheme and that too by a council that is perceived as being bent in favour of the centre and having a voting system where the states will find themselves isolated over their individual concerns. It is worth the wait to see how the centre and state governments deal with these problems in the coming times.

In spite of different political parties, different ideologies we can rise above parochial concerns and to work towards the goal of a strong, united and economically prosperous India, for the sake of the millions of common people grappling with poverty, disease, illiteracy, rural migration, exploitation and corruption since independence, the GST system can be assured success. With the passage of time, the lacunae in the system can be covered up or improved upon. The less developed states would be pulled up and equity will be established in the different areas of the country.

I believe that this the right step towards the “welfare state” idea of the constitution, based on a robust economy and providing equal opportunities of growth and safeguard to all citizens.