

Need and Relevance of the Goods and Services Tax (GST) Regime in India: An Analysis in Legal Perspective

¹Dr. Raja Kamal Ch, ²Prof. Vijaya Kumar

¹Assistant Professor, Department of Commerce, Kristu Jayanti College, Bangalore

²R Head, Department of Commerce, Kristu Jayanti College, Bangalore

Abstract: *The introduction of the Goods and Services Tax (hereinafter alluded as GST) system has been actually an extremely huge and progressive advance in the field of roundabout assessment changes in India. By amalgamating countless Central just as State charges into a solitary duty, GST can alleviate the evil falling impacts of old aberrant expense structure. The new system additionally attempts to address the issue of twofold tax collection in a significant manner and easily make ready for bringing a typical public market. From the buyers' perspective, the greatest favorable position of presenting the GST would be as far as re10duction in the general taxation rate on merchandise, which is right now assessed to be around 25%-30%. It would likewise suggest that the real weight of backhanded charges on products and enterprises would be significantly more straightforward to the customer. Appropriation of GST model attempts to make Indian items serious in the homegrown just as worldwide business sectors inferable from the full balance of information charges across the worth chain of creation and dissemination.*

In the above background, the current paper attempts to investigate the development, significance, need, pertinence of GST system in India. The paper further examines the need of Constitutional correction for presenting the GST system in India alongside some Court decisions. Finally the end for certain recommendations have been made.

Keywords: *GST, value addition, cascading effect, input tax credit, threshold limit, consumption, destination, etc.*

1. INTRODUCTION

The arrangement of tax collection involves quite possibly the most critical and urgent parts of any arrangement of organization and administration in all human advancements. The essential design of tax assessment fundamentally gives the arrangement of income assortment for the State hardware and has been one of the significant premise of state working. The designs for cultural turn of events and generally progress of the State can be actualized just when the state of public accounts is helpful for the State's endeavors toward this path.

Antiquated Indian political reasoning has consistently thought to be the issue of public money to be of prime significance, and this is the reason the Mahabharata, Manusmriti, the Arthashastra and Shukranitisar give point by point portrayals of the available resources of making a plentiful depository (Kosha), which is the indistinguishable piece of the seven organs of the state apparatus (Saptanga). These compositions examine the techniques for

income assortment, alongside depicting the methods of tax assessment, with particulars for requiring ordinary and extra expenses in various conditions and for various classifications of populace.

In the soonest time of Indian history, for example during the early Vedic Period, the State most likely depended for its help on the intentional commitments of individuals. However, some strategy for obligatory commitment probably been discovered important in India when a more improved type of government had appeared. The early assessment framework, nonetheless, was an exceptionally straightforward one, and the advancement of a perplexing arrangement of public account was without a doubt a sluggish and progressive cycle. By the fourth century B.C. the arrangement of public money had arrived at an extremely progressed phase of improvement, as is obvious in Kautilya's Arthashastra and the Brahmanical and Buddhist writings.

Along these lines, the unpredictability of the expense framework turned into a significant test which should be tended to soon to make the cycle smooth and logical. The ordinances of conviction and comfort have likewise been the significant standards of tax collection propounded by Adam Smith in 1776 in his commended book named 'Abundance of Nation'. The presentation of GST system is one such advance which attempts to eliminate the won complexities and acquire the straightforwardness the cycle of toll and assortment of expense. It doesn't influence just the circuitous duty system yet additionally contacts the assortment through direct assessment on the grounds that under the new GST system, the falling impact of Central and State level charges will currently be impressively decreased. Subsequently, as new supplies stream into the market, there would be decrease in inserted charges on information sources bringing about expense investment funds on middle of the road inputs. This ought to reflect in higher benefits and higher direct duty incomes. Henceforth, GST is a change in perspective from actual control to account-based control at value-based levels.

Further, trade of information between the GST organization and the Direct Tax Administration would likewise empower the Direct Tax Administration to embrace ongoing check for better observing of duty assortment. As is notable, GST is an objective based utilization charge; the annual assessment is likewise planned as a utilization based direct duty.

There is one more between association between the GST and direct duty through connecting PAN with assortment as obligatory standards. The Government of India has made connecting of PAN with Aadhaar obligatory for the installment of direct duties. The GSTIN is additionally connected to the PAN and the PAN is required for any import or fare movement. Subsequently, GST unexpectedly achieves an immediate handshake between the immediate and roundabout duties.

Advancement of the Concept of GST

Duty is required by Central Government and State Governments in our country. Minor charges like district assessment or neighborhood charges are collected by the Local Body Authorities. Assessment can be comprehensively separated into two classes specifically Direct Tax and Indirect Tax. Direct Tax is paid straightforwardly paid to the Government by the citizen, for example, Income charge, corporate assessment, abundance charge, and so forth Direct duties are required on the pay of the people or the corporate elements. Here the

weight to store charge is on the actual assesseees which can't be moved on others. On another hand, Indirect duty is imposed on the assembling of products and enterprises. It is gathered by a mediator from the purchaser who eventually bears the weight of assessment. Weight to gather and store charges is on the venders instead of the actual citizens. Customs Duty, Excise Duty, Value Added Tax (VAT), Central VAT (CENVAT), Service Tax and so forth are the case of circuitous assessment in India.

The Kelkar Task Force was constituted in 2004 under chairmanship of Shri Vijay Kelkar on the implementation of Fiscal Responsibility and Budget Management (FRBM) Act, 2003. The Committee submitted its report in July 2004 wherein it strongly suggested for a fully integrated and comprehensive GST based on the Value Added Tax principle. However, the formal announcement was made during 2006 budget to introduce a National-level GST and promised to implement it from 1st April 2010. The responsibility of preparing a Design and Road Map for the implementation of GST was assigned to the Empowered Committee of State Finance Ministers (EC). Based on inputs from the Government of India and the States, the EC released its First Discussion Paper on Goods and Services Tax in November 2009.

The Constitution (115th Amendment) Bill was also introduced in the Lok Sabha in March 2011. However, the issue of payment of compensation to the States for loss of revenue remained an important bone of contention between the Centre and the States, and in the face of resistance in the Parliament, the Constitution (115th Amendment) Bill was referred to the Standing Committee on Finance for examination. Deliberations between the Centre and the States on the Constitutional Amendment Bill continued in the Empowered Committee till the dissolution of the 15th Lok Sabha in May 2014. However no consensus could be formed around the contentious issues of compensation, treatment of petroleum products and subsuming of entry tax. Thus, the amendment bill lapsed with the dissolution of the 15th Lok Sabha.

On 19th December, 2014, The Constitution (122nd Amendment) Bill 2014 was presented in the Lok Sabha and was passed by Lok Sabha in May 2015. The Bill was then taken to Rajya Sabha and was passed on to Joint Committee on 14th May 2015. The committee submitted its report on 22nd July 2015. After ratification by required number of State legislatures and assent of the President, this Constitutional amendment was notified as the Constitution (101st Amendment) Act, 2016 on 8th September, 2016. This paved the way for the remarkable progress in the overall journey of GST. After GST Council approved the CGST, IGST, UTGST, and GST (Compensation) Bill in 2017, these Bills were passed in Loksabha on 29th March 2017. The Rajya Sabha then passed these Bills on 6th April, 2017 and were enacted as Acts on 12th April, 2017.

Accordingly, the current Government has indicated a solid political fortitude and ability to bring the 122nd Constitutional Amendment Bill, 2016 lastly they prevailing with regards to passing it. Consequently, the Constitution (101st Amendment) Act was passed in August 2016 by the two houses and got Presidential consent on 8.9.2016 in the wake of being approved by 17 States. It was at last informed on 12.9.2017.

After this alteration, the Central Government has the accompanying Acts sanctioned:

1. The Central Goods and Services Tax Act, 2017;
2. The Integrated Goods and Services Tax Act, 2017;

3. The UT Goods and Services Tax Act, 2017;
4. The Goods and Services Tax (Compensation to States) Act, 2017.

From that point, State Governments passed the State Goods and Service Tax Bills for their separate States. After sanctioning of different GST Laws, GST was effectively actualized by the Central Government on first July, 2017, in the Central Hall of Parliament of India.

Idea of GST

Merchandise and Ventures Tax is perhaps the most unmistakable aberrant expense change which brings subsumed other roundabout charges collected by State and Central Government. GST is a thorough roundabout expense which is imposed on assembling, deals and utilization of products and enterprises all through India. It was acquainted all together with bring 'One Nation, One Tax' and try not to course impact in tax collection. Head administrator of India, Narendra Modi in his discourse during the usage of GST on July first, 2017 said that GST would shred off around 500 charges which were collected by Central and State Governments to have 'One Nation One Tax' all through the country. The presentation of Goods and Services Tax (GST) has supplanted the old roundabout duty system, which depended on 3 records in seventh Schedule to the Constitution of India. The accompanying Central and State backhanded duties are a few instances of old aberrant assessment system which have been abrogated by the current new GST systems:

Focal Taxes:

- Central Excise obligation
- Additional obligations of extract
- Excise obligation collected under Medicinal and Toiletries Preparation Act
- Additional obligations of customs (CVD and SAD)
- Service Tax
- Surcharges and Cesses

State Taxes

- State VAT/Sales Tax
- Central Sales Tax
- Purchase Tax
- Entertainment Tax (other than those required by neighborhood bodies)
- Luxury Tax
- Entry Tax (All structures)
- Taxes on lottery, wagering and betting
- Surcharges and Cesses

The followings are some significant highlights of the GST laws which need a notice here for better comprehension of the subject:

- GST is an objective based utilization charge which has been imposed on worth expansion.
- Its trouble is borne by the last purchaser.
- It is accomplished by keeping up the progression of Input Tax Credit (ITC).
- It forestalls the falling impact which is the main component of GST.
- It is essentially a duty on inventory of products or administrations or both, aside from charges on stockpile of alcoholic alcohol for human utilization.

- The word utilized here in the meaning of GST is 'supply' and not 'deal'. Consequently, stock exchanges, branch moves, and so forth will likewise get covered due to utilization of term supply under the GST net.
- A helpful and useful double GST model has been embraced in India according to the government structure.

- Alcoholic alcohol for human utilization is outside the extent of GST will in any case remain completely under the ward of State Government.
- However oil and fuel, tobacco and land area have been presently kept out of the GST ambit.
- In instance of supply inside State, the two governments will charge GST at the same time i.e., Center will charge CGST and State/UT will charge SGST/UTGST at half rate each.
- 29 States have their State GST Act and 7 UTs have their Union Territory GST Act (But Delhi and Puduchery will have SGST Act as they have lawmaking body)
- In instance of outside State supply, Center will charge IGST at full rate and appropriate portion of it to the State where it is burned-through.
- Main Act is CGST Act; IGST Act is likewise a significant and little enhancement to it. SGST/UTGST Acts are practically like CGST Act and not having anything unique.

Ability to Levy GST

- A recently embedded arrangement i.e., Article 246A has made ready for presentation of another GST system in India.
- It says that despite anything contained in Articles 246 and 254, the Parliament and State Legislature can make law.
- The GST will apply on last date in regard of following items:

Petroleum unrefined, High Speed Diesel, Motor Spirit (Petrol), Natural Gas, Aviation Turbine Fuel.

- A separate notice will be there in regard of above things.
- Article 248 was altered just to add at the last i.e., "subject to Article 246A"
- Article 248 says that the Center can gather charge on anything not shrouded in any of the 3 records. It is residuary force.
- As per Article 265, there should be an authority of law for any duty and assortment of any assessment.
- For such position, there should be undeniable enactments for burden of each sort of GST.
- The CGST Act, 2017 offers capacity to Central Govt. to exact CGST for intra-State supply.
- The separate SGST Acts offer ability to State Governments to collect SGST for intra-State supply.
- The IGST Act, 2017 offers capacity to Central Govt. to collect IGST for between State supply.
- The UTGST Acts offer capacity to Central Govt. to exact UTGST rather than SGST for intra-State supply.
- Compensation cess is exacted under GST (Compensation to States) Act, 2017 on certain 'extravagance' or 'negative mark' or 'sin' products by Central Govt. to repay the States for the deficiency of incomes, assuming any, emerging from the execution of GST.
- It would be took into consideration 5 years after execution.

- The base year would be 2016 i.e., going before year not long before execution of GST.
- This cess is significant for keeping up the government design of the Constitution.

Need of Constitutional Amendment for Introduction of GST

Monetary forces between the Central and the State Governments are plainly differentiated in the Constitution of India with basically no cover between the individual spaces. Article 265 orders a similar unmistakably for having charging arrangements before any toll and assortment of assessment. The Center has the forces to collect assessment on the assembling of products (aside from alcoholic alcohol for human utilization, opium, opiates and so on) while the States have the forces to impose charge at a bargain of merchandise.

If there should be an occurrence of between states deals, the Center has the forces to demand an expense (the Central Sales Tax) however, the assessment is gathered and held altogether by the starting States. The reception of GST was unrealistic inside the at that point existing Constitutional limitations via Articles 245 and 246. That is the reason, this Constitutional alteration was fundamental prior to establishing the concerned enactments identified with GST. The old circuitous assessment system depended on 3 records in seventh Schedule to the Constitution of India according to the government structure. The new system was executed exclusively after the death of the Constitution (101st Amendment) Act, 2016.

With respect to administrations, it is the Center alone that is enabled to impose Service Tax. Since the States are not enabled to exact any assessment on the deal or acquisition of merchandise over the span of their importation into or exportations from India, the Center requires and gathers this expense notwithstanding the Basic Customs Duty. This extra obligation of customs (regularly known as CVD and SAD) balance extract obligation, deals charge, State VAT and other assessments collected on the like homegrown item. Presentation of GST required alterations in the Constitution to enable the Center and the States simultaneously to demand and gather GST.

The task of simultaneous ward to the Center and the States for the duty of GST required an interesting institutional system that would guarantee that choices about the construction, plan and activity of GST are taken together by the two. To address all these and different issues, the Constitution (122nd Amendment) Bill was presented in the sixteenth Lok Sabha on 19.12.2014. The Bill accommodates a toll of GST on stockpile, all things considered, or benefits aside from liquor for human utilization. The assessment will be imposed as Dual GST independently, yet simultaneously the Union (CGST) and the States (SGST). The Parliament would have elite ability to exact GST (IGST) on between state exchange or business (counting imports) in merchandise and enterprises. The Central Government will have the ability to collect extract obligation notwithstanding GST, on tobacco and tobacco items.

The constitution Amendment Bill was passed by the Lok Sabha in May, 2015. The Bill with specific alterations was at last passed in the Rajya Sabha and from that point by the Lok Sabha in August, 2016. Further, the Bill has been approved by the necessary number of States and has since gotten the consent of the President on eighth September, 2016 and has been authorized as the 101st Constitution Amendment Act, 2016.

This Amendment has made the fabulous arrangement for remunerating the States for loss of income to them because of presentation of GST, assuming any, for a very long time. The arrangement has been obviously made with respect to isolate notice date for relevance of GST on oil and fuel later on the suggestion of GST Council. Ability to require IGST is given to the Central Government at full rate on between state supplies, and income must be dispersed between the Center and States at half-half rate.

Force has likewise given to the Central Government to frame the GST Council, the most remarkable body, which will have the greater part of forces, such as choosing rates, making exclusions, choosing edge limits, and so on identifying with GST. The GST Council has now been told w.e.f. twelfth September, 2016. GST Council is being helped by a Secretariat. The Goods and Service Tax Council contains the Union Finance Minister, the Minister of State(Revenue) and the State Finance Ministers to suggest on the GST rate, exception and limits, charges to be subsumed and different issue. One-portion of the all out number of individuals from GSTC structure majority in gatherings of GSTC. Choice in GSTC are taken by a lion's share of at least three-fourth of weighted votes cast. Focus has 33% weightage of the complete votes cast and all the states taken together have two-third of weightage of the all out votes cast.

All choices taken by the GST Council has been shown up at through agreement. The choice of practicing a vote has not been turned to work date. To guarantee smooth turn out of the GST, different Committees and Sectoral bunches has been framed including individuals from both Center and States.

Recent Court Rulings on GST

In the scenery of above conversations, the judgment of Kerala High Court in Sheen Golden Jewels v. State Tax Officer , must be perceived. In its constricted structure, it exposes, as per the candidates of this case, from 16.09.2016, the State's administrative ability to burden on those things currently eliminated from that Entry. They demand that Section 19 of the CA Act permits "break or transitory continuation" of the multitude of Acts made before under the unamended Entry 54 simply up to 16.09.2017. As a for example, the solicitors attest that the Kerala Value Added Tax Act has become a dead letter from 16.09.2017. Segment 174 of the Kerala Goods and Services Act, 2017, is a saving arrangement achieved by the State Legislature to save the exchanges under the State's different pre GST laws. The Court has been called upon to inspect the sacred legitimacy of Section 174 of the KSGST Act. Its weakness is set up despite Section 19 of the CA Act. The solicitors contend, in addition to other things, the State has no administrative ability to supersede Section 19 of the CA Act.

The significance of Article 265 of the Constitution of India can't be understimated for any reasons identifying with tax collection, regardless of whether it is levy or assortment or any connected perspectives. On account of Art. 265, if each duty must be forced by "law" no doubt, notices the Supreme Court in Chhotabhai Jethabhai Patel and Co. v. Association of India , to follow that it must be forced by a law which is legitimate. The law ought to satisfy following models:

1. within the authoritative fitness of the governing body;
2. the law ought not be precluded by a specific arrangement of the Constitution such as, Arts. 276(2), 286, etc; and

3. the law or its pertinent bit ought not be invalid under Art.13 being disgusting to those opportunities which are ensured by Part III of the Constitution.

By summarizing this case, the Court held that "for any expense to be forced, it requires an available occasion setting off the toll and an available individual to release it. So the applicants battle that the toll, evaluation, and assortment more likely than not been finished before 15.09.2017 under any expense system which has been "subsumed" by the GST system. At that point, the inquiry is, have GST laws under the CA Act subsumed all the State charge institutions, which prior drew their authenticity from the unamended Entry 54. "

There are two significant and important decisions of Courts of Law which need notice here for understanding the effect of the subject. One is articulated by the Supreme Court of India and another by the Calcutta High Court. In one case, it has been held that there is no compelling reason to give GST by the loft proprietors.

It has been additionally held that "With the Entry 54 of List II inaccessible for the State to join Section 174 of KSGST Act, the entire saving instrument versus exchanges before 16-09-2017 disintegrates – it is misrepresentation on the candidate's part to content that the State does not have the authoritative ability to establish Section 174 of KSGST Act. Article 246A is the uncommon arrangement on the GST. It enables both the Union and the State, unexpectedly, to have synchronous - not simultaneous forces to enact on specific things. Surely simultaneousness respects the Doctrine of repugnancy, however synchronous administrative force doesn't. That is, both the Legislatures, say one from the Union and other from the State, exist together work in a similar circle subject to other sacred shields."

In State of West Bengal v. Calcutta Club Ltd., the purpose of question was the requiring expense to non individuals from club and excluding same from its individuals which is only separation. In reality if there should arise an occurrence of club, giving a few advantages to individuals who pooled the assets are only surrender of the rights by different individuals from the club. That is the reason it ought not add up to supply or deal. According to the past decisions of the courts, all individuals from club are joint proprietors of the club and in this manner, they are additionally considered as trustee of the club. The exchanges among individuals are not deal in light of the fact that there is neither agreement nor any sort of bartering here. In any case, then again, move to non individuals is clearly a deal, that is the reason it would add up to pulling in expense on such exchanges.

2. CONCLUSION AND SUGGESTIONS

Presently it is verifiable truth that unexpectedly, in the tax collection field, both the Union and the State Governments have come to appreciate synchronous and simultaneous forces, by putting paid to the repugnancy teaching, in any event, specifically zones of tax collection. With the addition, revision, and cancellation of a couple of sacred arrangements through the 101st Constitution Amendment Act, 2016 especially with the inclusion of Article 246A of the Constitution and erasure of Entry 52 of List II in Seventh Schedule, there has been an awesome realignment of authoritative forces of the Union and the States. Presently, Entry 54 stands adjusted.

Since usage, the Goods and Services Tax seems to have diminished the asset creating limit of States and has added to deteriorating between State imbalance. Presently after around three years after its usage, the degree to which the Goods and Services Tax (GST) system is an improvement upon the previous arrangement of numerous extract and deals charges stays muddled.

Based on issues and difficulties looked after the usage of GST laws, the accompanying recommendations are submitted:

3. REFERENCES

- [1] Technological glitches of the GST organization ought to be figured out on a war balance premise.
- [2] More help might be given to little and medium scale ventures and administrators and especially decreased cycles ought to be pertinent to them since they don't have satisfactory money or asset to go along especially after COVID 19 pandemic.
- [3] Rates ought to be justified more and decreased in like manner to make India serious and in revenue of consistence and further financial development.
- [4] Valuation Rules need greater clearness.
- [5] The technique of dispensing the income to States might be additionally sped up to give more monetary help to States.