

GST: Indian Constitutional Law and Philosophy

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Abstract: This study covers a brief overview of Goods and services tax in the country. GST is one of the structural reforms in the field of indirect taxation. In India, the value chain of business process consist of incidence of multiple and double taxation from the stage of production to the consumption. The present paper elucidates the drawbacks of existing indirect taxation structure; and introduces the concept of GST and its role to consolidate the Indian market to become a global competitive one.

Key Words: Goods and Services Tax, CGST, SGST, IGST

Introduction

In July 2017, the Government of India heralded a goods and services tax regime by bringing forth the 101st amendment to the Constitution through an unusual midnight session of Parliament. The government claimed the new tax would unify the Indian market. Any fears that the tax would disrupt Indian federalism were sought to be eased by describing the effort as an example in cooperation between the states and the Union. The then chief economic adviser to the government of India, Arvind Subramanian, described the move as a “voluntary pooling of sovereignty”.

GST stands for goods and services tax. The tax came into effect from 1 July 2017 through the implementation of the One Hundred and First Amendment of the Constitution of India by the Indian government. GST is meant to simply by the indirect tax regime of India by replacing a host of taxes by a single unified tax. The main purpose of GST is to bring about the single uniform system of taxation in the sale, manufacture and consumption of goods and services. The GST is said to reduce the level of tax evasion and corruption. Goods and services tax (GST) is also a game changer for the Indian economy. The GST system in India tries to minimize the complexity by applying a common base and rate across the country. However, the multiple rate structure and an enforcement framework using onerous reporting requirements for business place a huge compliance burden on business especially SMES by providing a longer transition period for them to be a part of the full GST requirement.

In framing the Constitution, the Constituent Assembly was conscious of making careful divisions of power between the Union and the state governments. Although there were certain areas in which the Union was accorded pre-eminence, when it came to taxation, the framers were keen to vest in the States substantial responsibility. The compartments that were drawn out ensured that the powers of taxation were not mutually exclusive. Income tax (excepting tax on agricultural income) was offered to the Union, along with some indirect taxes such as customs and excise duties. State governments, on the other hand, were given the exclusive authority to tax both sale of goods and the entry of goods into a state. This division was made by inserting these subjects respectively into Lists I and II of Schedule VII of the Constitution. Critically, the concurrent list, that is List III, did not contain any taxing subject. Therefore, on a reading of Articles 245 and 246 and the entries in Lists I and II of Schedule VII, a clear division of power between the Union and the states could be gleaned out.

The 101st amendment toppled this arrangement. It removed from List II a slew of subjects over which hitherto the state government had enjoyed absolute power. These included, for example, entry 52, which was “taxes on the entry of goods into a local area for consumption, use or sale therein”; and entry 55, which dealt with taxes on advertisements. Entry 54 was substituted by a new entry, which had the effect of removing the power to tax on sale or purchase of goods excepting certain categories of products, such as fuel, natural gas, and liquor. The amendment also introduced a new provision, Article 246A, which would, as a stand-alone clause, provide a power to tax goods and services.

Silent features of GST (Goods and Services Tax)

1. All transaction on goods and services will be covered up except exempted goods and services.
2. Meaning of taxable person, taxable events, measure to levy tax etc. would be same in CGST and SGST.
3. Pan card based identification number would be allotted to the taxpayer to facilitate tax payment and return.
4. Tax return to be filled separately to the central and state government.
5. Input credit can be claimed from respective department where GST paid.
6. GST would be applicable if there is an import of good and services.
7. The union government will compensate the states for a period of 5 years or more on recommendation of GST council for the loss of revenue arising out of GST implementation.
8. Administration of CGST will be controlled by Central Government and administration of SGST will be controlled by respective State Government.
9. The power making law on taxation of goods and services lie with both Central and State government. A law imposed by central government on GST will not overrule state GST law.
10. Integrated goods and services tax (GST) also known as interstate goods and services tax. It is a component of GST which is charged on supply of goods and services in the course of interstate trade and is collected by central government and distributed to imported states as destination based tax.

Range of GST

1. It is applied to all taxable goods and services except the exempted goods and services and a transaction below threshold limit.
2. Exempted goods and services include alcohol for human consumption, electricity, custom duty and real estate.
3. Petroleum products (crude oil HSD high speed diesel motor) spirit, natural gas etc. are initially exempted from GST till the GST council announces date of their inclusion.
4. Tobacco products are including in GST along with central excise tax.

Objective

- To Study goods and services tax with respect to India
- To study the issues and benefits associated with goods and services tax

Research Methodology

This study is exploratory in nature and based on the data collected from secondary sources like journals, newspaper articles, books etc.

GST Challenges

GST or Goods and Services Tax is a comprehensive indirect tax on manufacture sale and consumption of goods and services throughout India, to replace taxes levied by central and state government. GST was introduced as the constitution Act 2016, following the passage of constitution 122nd amendment bill. GST will be biggest reform in Indian taxation since 1947 but various challenges has been estimated after its successful implementation. The following challenges faced after implementation of GST in India.

1. **Consent of states:** - For implementing it is critical the GST bill is passed by respective state Government state assemblies so as to bring majority this is a herculean task.
2. **Revenue Neutral Rate (RNR):-** It is one of the prominent factors for its success. We know that GST regime, the government revenue would not be same, we compared to current system hence, and through RNR government is to ensure that its revenue remains the same despite of giving tax credits.
3. **Threshold limit in GST:** - While achieving broad based tax structure under GST, both empowered committee and central government must ensure that lowering of threshold limit should not be a taxing burden on small businessmen in the country.
4. **Robust IT Network:** - Government has already incorporated goods services tax network (GSTN) GSTN has to develop GST portal which ensure technology support for registration, return fill tax payment, IGST settlement etc. Thus there should be a robust IT backbone.
5. **Extensive Training to Tax Administration Staff:** - GST is absolutely different from existing system. It therefore requires that tax administration staff at both central and state to be trained properly in terms of concept, legislation and procedure.
6. **Number of enactments of statutes:-** There will be 2 types of GST laws, one at a central level called central GST (CGST) and other one at state level- state GST (SGST). As there seems to have different tax rated for goods and services at the central level and at the state level, and further division based on necessary and other property based on the need, location, geography and resources of each state.
7. **Additional levy on GST:** - The purpose of additional levy is to compensate state for loss of revenue while moving to GST. We acknowledge that fundamental purpose of GST is to make India as one state where inter-state movement of goods is common. In this situation, it would defeat the very purpose of GST in the country.
8. **Clubbing Taxes:** - The biggest challenge of GST implementation is bringing all the Indirect taxes under one roof, which is the biggest feature of GST. There has been opposition asking to include purchase tax by a few states. Other states are reluctant about alcohol, tobacco products coming under GST. This is due to the fact that a major chunk of state revenue is derived from these products.
9. **Statutory Requirements:** - As the imposition of GST will be delegated to both state and central government the constitution has to grant powers to both through an amendment. It is seen as a different task as the law expects at least two third majorities form the members of the parliament and that is not easy given the current political scenario of the country.
10. **Make shift Arrangements:-** State government are demanding compensation from the central government as they foresee a major dent in the revenue due to GST losses, this is asked for the first 5 year after implementation of GST, for which the central government has agreed to 3 years.
11. **Framework for Tax disputes:** - There has to be a uniform legal procedure for tax disputes and litigation to avoid any confusion.
12. **Defining Inter state Transaction:** - With the transportation services available every where the place of sale and consumption may not be the same. This makes it difficult to go forward with revenue allocation. Hence, it becomes important to define procedure to tackle such problems.

13. **Infrastructure for the collection process:** - Infrastructure has to be designed to track the movement of goods and services between states, collection and monitoring revenue identify defaulters.
14. **Determining GST Rates:** - This is a major step in ensuring the success of GST. Arriving at rates which are conducive to both government and public will be a daunting task.
15. **Numerous offence and penalties under GST:** - There are numerous penalties and offences under GST, principles of which are also mentioned by law. There are many other offences and penalties, which can hinder its popularity in India. The general penalty under GST for any offence for which it is not specifically mentioned will be liable to a penalty extending Rs 25000.
16. **GSTR 3B Issues:** - Under this there is no modification or amendment facility available and in case the changes are to be made then there is a lengthy one month period time for the amendment making it interest liability issue.
17. **Refunds are time taken in GST regime:** - It was assured that 90 % of the refunds of GST would happen in seven days at the time of GST implementation. But on the longer term, it did not happen. The recent unearthing of fake invoices and fraudulent practices to corner input. Tax credit may only lead to more scrutiny and more delays.
18. **Reconciliation in GST:** - The reconciliation process in GST is not new to any taxpayer as this was a common practice in earlier VAT and excise regime. After reconciliation a taxpayer needs to match the data between the books of accounts to complete the process.

Advantages of GST after Implementation

1. **GST eliminates the cascading effect of tax:** - GST is a comprehensive indirect tax that was designed to bring the indirect taxation under one umbrella. More importantly it is going to eliminate the cascading effect of tax that was evident earlier.
2. **Composition schemes for small business:** - Under GST small business can benefit as it gives an option to lower taxes by utilizing the composition schemes. This move has brought down the tax and compliance burden on small business.
3. **Simple and easy online procedure:** - The entire process of GST is made online and it is super simple. This has been beneficial for start up especially, as they do not have to run from pillar to post to get different registrations such as VAT, excise and service tax.
4. **The number of compliance is lesser:** - Earlier there was VAT and service tax, each of which had their own return and compliances under GST, there is just one, unified return to be filed. Therefore the no. of returns to be filed has come down.
5. **Defined treatment for E-commerce operators:** - E-commerce brands were treated as facilitators or mediators by states like Kerala, Rajasthan and West Bengal which did not require them to register for VAT.

Disadvantages of GST

1. **Increased costs due to software purchase :-** Business has to either update their existing accounting or ERP software to GST compliant one or buy a GST software so that they can keep their business going. But both the options lead to increase cost of software purchase and training of employees for an efficient utilization of the new billing software.
2. **Being GST compliant:-** Small and medium sized enterprise (SME) who have not yet signed for GST have to quickly grasp the nuances of the GST tax regime. They will have to issue GST Compliant invoices, be compliant to digital record keeping and of course, file timely returns.

3. **GST will mean an increase in operational costs:-** As already established the GST is changing the way how tax is paid, businesses will now has to employ tax professionals to be GST complaint This will gradually increases cost for small businesses as they will have to bear the additional cost of hiring experts.
4. **SMES will have a higher Tax burden:** - Smaller business, especially in the manufacturing sector will face difficulties under GST. Earlier, only businesses whose turnover exceeded Rs. 1.5 core had to pay excise duty. But not any business whose turnover exceeds Rs. 20 lakh will have to pay GST.
5. **GST is an online taxation system:** - Unlike earlier businesses are now switching from pen and paper invoicing and filing to online return filing and making payments. This might be tough for smaller businesses to adapt to.
6. **Many goods and Services are not cornered under GST:** - Certain items like petroleum products Petrol and diesel do not come under GST ambit. This is being seen as a major disadvantage for oil companies who are unable to get input tax credit. On fuel products as those are not taxed under GST.

Conclusion

The GST system is basically structured to simplify current indirect tax system in India. A well designed GST is an attractive method to get rid of deformation of the existing process of multiple taxation. Also government has promised that GST will reduce the compliance burden. At present there will no distinction between imported and Indian goods and they would be taxed at the same rate. GST will face many challenges after its implementation and will result to give benefits. In overall GST plays a dynamic role in growth and development of our country.

References

1. <http://www.gstcouncil.gov.in>
2. <http://www.gstindia.com>
3. [http://www.wikipedia.org/Goods_and_Services_Tax_\(India\)](http://www.wikipedia.org/Goods_and_Services_Tax_(India))
4. Vasanthagopal, R.(2011). GST in India: A big leap in the indirect taxation system, International Journal of Trade, Economics and Finance, 2(2), 144.
5. Jaiprakash (2014). Indirect tax reforms in India and a way ahead for GST, International Journal of Computing and corporate research, vol 4(1).
6. Das, A. (2017). Positive and Negative impact of GST on Indian economy. International Journal of Management and Applied Science, 3(5), 158-160.