

A Descriptive Study on the Components of Legislature Framework of GST in India

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Abstract

This paper attempts to study how **legislature framework** for Goods and Service Tax (GST) in India set up for fiscal legislation and reviews the suggestions made on GST. In order to implement GST, Constitutional (122nd Amendment) Bill (CAB for short) was introduced in the Parliament and passed by Rajya Sabha on 03rd August, 2016 and Lok Sabha on 08th August, 2016. The CAB was passed by more than 15 states and thereafter Hon'ble President gave assent to "The Constitution (One Hundred And First Amendment) Act, 2016" on 8th of September, 2016. Since then the GST council and been notified bringing into existence the Constitutional body to decide issues relating to GST. The Constitution contains the Union List and the State List within which the power to levy separate taxes is given to the Centre and States respectively. GST was to be levied in such a way that both the Centre and the States received the power to levy and collect it. Further, the legislation had to remain consistent across the Centre and the various State/Union Territory Legislatures. To provide for this, an amendment in the Constitution was necessary. However, the Parliament of India is given the exclusive power to make laws with respect to inter-state supplies. The IGST Act deals with inter-state supplies. Thus, the power to make laws under the IGST Act will rest exclusively with the Parliament.

On September 16, 2016, Government of India issued notifications bringing into effect all the sections of CAB setting firmly into motion the rolling out of GST. This notification sets out an outer limit of time of one year, that is till 15-9-2017 for bringing into effect GST. As per Article 279A (1) of the amended Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A. The notification for bringing into force Article 279A with effect from 12th September, 2016 was issued on 10th September, 2016.

As per Article 279A (4), the Council will make recommendations to the Union and the States on important issues related to GST, like the goods and services that may be subjected or exempted from GST, model GST Laws, principles that govern Place of Supply, threshold limits, GST rates including the floor rates with bands, special rates for raising additional resources during natural calamities/disasters, special provisions for certain States, etc.

Key words: legislature, dual GST, Article 279A, GST Council

Introduction

As per Article 279A of the amended Constitution, the GST Council which will be a joint forum of the Centre and the States, shall consist of the following members: -

- Union Finance Minister - Chairperson
- b) The Union Minister of State, in-charge of Revenue of finance - Member
- c) The Minister In-charge of finance or taxation or any other Minister nominated by each State Government - Members

The Union Cabinet under the Chairmanship of Prime Minister Shri Narendra Modi approved setting up of GST Council on 12th September, 2016 and also setting up its Secretariat as per the following details:

- (a) Creation of the GST Council as per Article 279A of the amended Constitution;
- b) Creation of the GST Council Secretariat, with its office at New Delhi;
- (c) Appointment of the Secretary (Revenue) as the Ex-officio Secretary to the GST Council;
- (d) Inclusion of the Chairperson, Central Board of Excise and Customs (CBEC), as a permanent invitee (non-voting) to all proceedings of the GST Council;
- (e) Create one post of Additional Secretary to the GST Council in the GST Council Secretariat (at the level of Additional Secretary to the Government of India), and four posts of Commissioner in the GST Council Secretariat (at the level of Joint Secretary to the Government of India). The Cabinet also decided to provide for adequate funds for meeting the recurring and non-recurring expenses of the GST Council Secretariat, the entire cost for which shall be borne by the Central Government. The GST Council Secretariat shall be manned by officers taken on deputation from both the Central and State Governments.

The government stated that states and union territories have been paid Rs 52,077 crore since July 2017 to compensate them for the shortfall in their tax revenue. After the last goods and services tax (GST) council meeting in July, it was reported that several states and union territories have reported shortfall in revenue of up to 43%. Given this background, should the GST council have announced cuts in tax rates on several items?

Reports suggest that the bureaucracy was unhappy with this decision since it could lead to an increase in the fiscal deficit. This is an election year, so, there will be pressures for additional expenditures which would lead to a widening of the deficit unless more resources are garnered. The finance ministers of Kerala and Punjab criticised the manner in which these decisions were taken in the GST Council and argued that federalism is being dented. Prime Minister Narendra Modi, addressing the nation in his 'Mann ki Baat' in June, had hailed GST as a "celebration of honesty". He said, "Everything is technologically processed so there is no scope for irregularities in taxation, as it used to be prior to the launch of GST." The moot point is: are revenues from GST more buoyant than earlier? In all, 1.1 crore businesses are registered under GST – initially only half of them filed returns and paid tax. The number has risen to 70% but the tax collection has hardly increased. After crossing Rs 1 lakh crore of collection in April 2017 (due to year-end factors) it was Rs 95,610 crore in June 2017. But refunds are also pending so this figure may not be very different from the earlier monthly figures in 2017-18. The finance minister had earlier announced that 5% of the businesses pay 95% of the tax. So, mere filing of more returns does not necessarily translate into more tax payment. Honesty implies that the black economy is declining. BJP, during its election campaign in 2014, had promised that it would be able to curb the black economy quickly. The government launched demonetisation hoping to eliminate the black economy. But with all the old notes coming back to the RBI, that proved to be futile.

Can it promote honesty? Demonetisation is a one-shot measure which can't stop the process of black income generation. GST, in contrast, can potentially check this process. But will it? Businesses generate black incomes via under and over invoicing of their sales and purchases. A trader selling 100 yards of cloth at Rs 10 per yard may declare only 95 yards sold at Rs 9.5 per yard. A sale of Rs 1,000 is shown as Rs 902.50 via under invoicing. Black income of Rs 97.50 is generated. To produce this textile, the producer may have bought cotton worth Rs 300 but declared it as Rs 350 via over invoicing and generated a black income of Rs 50. He may have employed two workers and paid them Rs 20 each but may declare that he had employed three people and paid them Rs 25 each. This is muster roll fudging and another black income of Rs 35 accrues. He also over invoices overheads, like, transportation, entertainment and so on. Thus, 20% of the revenue becomes black income while the white income, the declared profit becomes negligible. There is a catch. If person A buys from person B (whether raw material cotton or the finished cloth), then A would want to show a higher cost while B would want to show a lower revenue. This is feasible only if there are two books of accounts and it will escape detection if the tax authorities cannot match the invoices. Earlier, without computerisation of accounts of all businesses, the tax authorities could not match the billions of invoices generated monthly by businesses. GST and computerisation changes this by enabling the matching the invoices of sellers and buyers.

Objective:

This paper intends to explore and **analyze GST legislative framework** for indirect tax that will combine the different taxes charged by the State and Central government into one comprehensive Tax

CONSTITUTIONAL SCHEME OF INDIRECT TAXATION IN INDIA

Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. As per Article 246 of the Constitution, Parliament has exclusive powers to make laws in respect of matters given in Union List (List I of the Seventh Schedule) and State Government has the exclusive jurisdiction to legislate on the matters containing in State List (List II of the Seventh Schedule). In respect of the matters contained in Concurrent List (List III of the Seventh Schedule), both the Central Government and State Governments have concurrent powers to legislate. Before advent of GST, the most important sources of indirect tax revenue for the Union were customs duty (entry 83 of Union List), central excise duty (entry 84 of Union List), and service tax (entry 97 of Union List). Although entry 92C was inserted in the Union List of the Seventh Schedule of the Constitution by the Constitution (Eighty-eighth Amendment) Act, 2003 for levy of taxes on services, it was not notified. So tax on services were continued to be levied under the residual entry, i.e. entry 97, of the Union List till GST came into force. Both have to file returns on the GST network (GSTN).

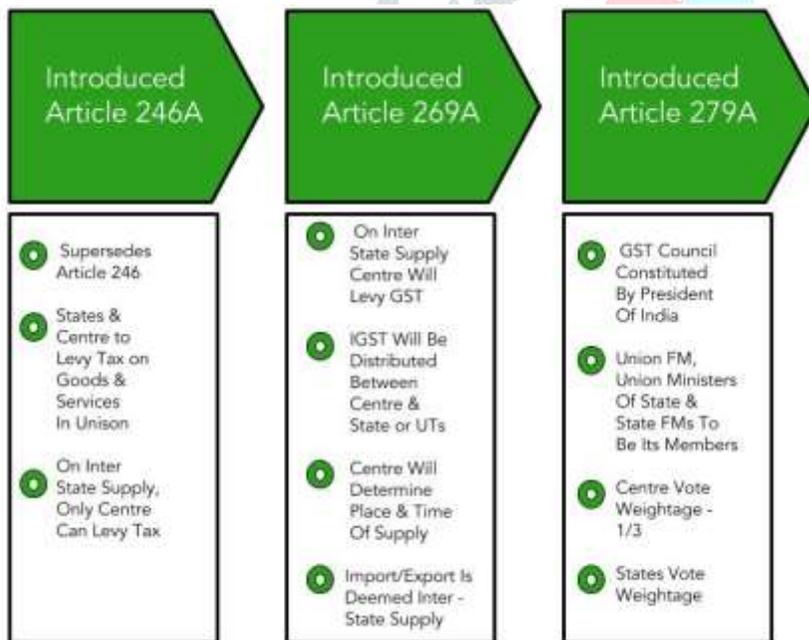
Each business has to register and is allotted a number (GSTIN) and all their invoices carry this number so that they can be cross checked. Since, theoretically, all transactions from raw material to the final product/service are tracked this is feasible in principle. So, theoretically, due to computerisation, mis-invoicing is not possible and black incomes cannot be generated by businesses in legal activities. Of course, illegal activities like producing spurious drugs, adulterating food and smuggling can continue to generate black incomes. However, what if no bill is issued and transactions remain outside the GST network from beginning to end? Cases of fake billing to claim input credit have been surfacing with regularity. Various exemptions granted under GST make this easy. The exemptions were necessitated by the need to serve multiple goals such as keeping essential goods cheap by not taxing them, or leaving small businesses out of the GST network so as not to adversely impact them.

INTERNATIONAL PERSPECTIVES ON GST / VAT:

VAT and GST are used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT, in 1954. Presently, more than 160 countries have implemented GST / VAT in some form or the other. The most popular form of VAT is where taxes paid on inputs are allowed to be adjusted in the liability at the output. The VAT or GST regime in practice

varies from one country to another in terms of its technical aspects like ‘definition of supply’, ‘extent of coverage of

These exemptions and multiplicity of tax rates has made GST complex. Complexity in rules enables black incomes to be generated. Officials scrutinising the accounts of a business are unable to catch manipulation of complex rules in the short time they have. That is why taxation should be simple, which is possible if it does not try to achieve multiple goals. GST has become complex because of its faulty design and the massive data requirements. Black incomes are also generated by misclassification of goods. Perfectly fine chemicals may be shown as scrap sold at throw away prices. Ceramic tiles may be declared as damaged and sold at a discount. Further, multiplicity of tax rates enables businesses to misclassify goods and services and evade tax. Professional fees can be under invoiced since they have few inputs. Doctors seeing 25 patients may claim that they have seen 20 patients. The e-way bill introduced to track movement of goods and check black income generation has also added to the complexity. Scrutiny of the content of the vehicle is required and this has encouraged the reappearance of the inspector raj. Without checking, misclassification becomes easy. Under GST, trucks can be stopped for checking anywhere and not just at the state borders. The police seem to be doing this and there are reports of extortion of money.



Changes in laws often lead to problems and GST is no different. Crooked businesses have to develop new ways of bypassing the new laws. For example, in 1982, when a law was introduced in Mumbai to acquire under-valued flats, transactions stopped. But, within 18 months, they revived and exceeded the old level because a way was found of circumventing the new law. Reports of evasion of GST are slowly growing, implying that the process of discovery is on. GST cannot check the process of black income generation in spite of computerisation; its form is changing. The need is to transform the human element but then GST would not be needed to generate ‘honesty’ and tackle the black economy. As with any structural reform, GST

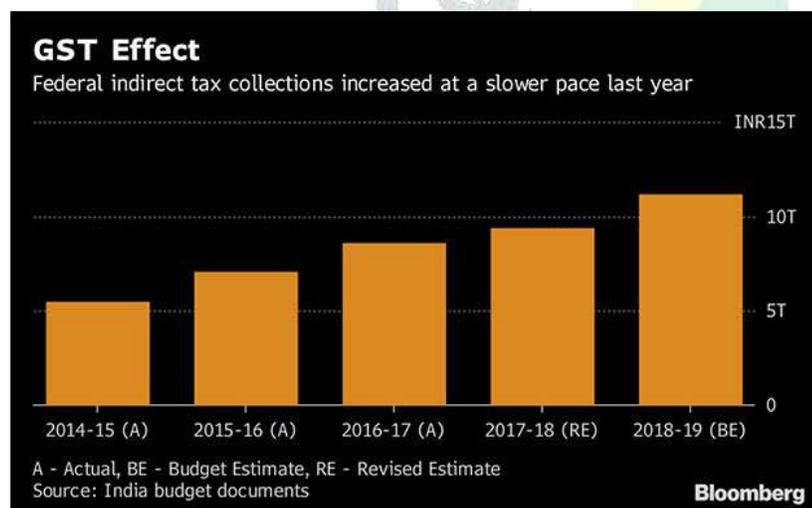
too is evolving and will eventually accommodate excluded items. One year is perhaps a short time to evaluate the performance of GST but its still worth an assessment.

GST Council's preproposal and cess

The introduction of CENVAT removed to a great extent cascading burden by expanding the coverage of credit for all inputs, including capital goods. CENVAT scheme later also allowed credit of services and the basket of inputs, capital goods and input services could be used for payment of both central excise duty and service tax. Similarly, the introduction of VAT in the States has removed the cascading effect by giving set-off for tax paid on inputs as well as tax paid on previous purchases and has again been an improvement over the previous sales tax regime. India needs the revenue to keep its budget deficit in check as Modi prepares to ramp up spending on welfare programs from health to farming before general elections next year. The government has already widened its deficit goal for the current fiscal year to 3.3 per cent of gross domestic product from 3 per cent, putting pressure on bond yields.

The budget gap may reach 3.5 per cent of GDP this year as GST revenue trails, Suvodeep Rakshit and Upasna Bhardwaj, analysts at Mumbai-based Kotak Mahindra Bank, said in a note on Monday.

But there may be signs of improvement. Nomura Holdings Inc. analysts say the introduction of electronic bills for transporting goods between states has led to a rise in GST collections, giving them confidence that the budget targets will be met. Finance Minister Piyush Goyal said on Sunday tax collections are expected to pick up during the rest of the year and the government will likely raise Rs 13 lakh crore from GST.



The tax proposal being mooted by the GST Council (Council) in light of the present situation is the imposition of a sugar cess within the GST regime. The Council recently appointed a group of ministers to weigh in on the proposal. The clearance from the law ministry has been given while the attorney general's office is yet to vet the proposal. In the meantime, the Centre released a relief package of `70 billion for the sugar industry.

In recent years, we have encountered the term 'cess' often, starting from the Swachh Bharat Cess to the most recent GST Compensation Cess. A cess is an earmarked levy, meaning that the proceeds are to be applied for a pre-determined end purpose. Proceeds from such cesses are to be identified separately within the Consolidated Fund of India. The proceeds must be appropriated and utilised only for the earmarked purpose. Cesses imposed by the Centre for 'specific purposes' are not shared with the state governments on account of Article 270.

A cess may bear the characteristics of a tax or a fee. Taxes are compulsory payments to be made by the public at large for helping the government garner revenues for fulfilling its obligations as a welfare state. Fees, on the other hand, are payments collected by the government to render specific services to the payer. As a consequence, a person paying a tax has no right to a quid pro quo upon contribution, while a person paying a fee does.

Media reports suggest that the sugar cess rate would work out to `3 per kg. Also, the cess would be applied over and above the applicable GST rate of 5%. By design, the sugar cess appears to be a cess with the characteristics of a tax (cess tax). The earmarked purpose is to compensate the farmers who are the beneficiaries, but the bearers of the burden will be the public.

The legality and propriety of this imposition needs to be tested against various parameters. The first point relates to the vision of the GST which is, 'one nation one tax'. All cess taxes and surcharges relating to the supply of goods and services are to be subsumed within the GST to achieve the said goal. In preparation for GST, a number of commodity / industry specific cesses such as sugar cess, tea cess, and jute cess were repealed. Even the power to impose trade barriers such as entry taxes were withdrawn with the advent of the GST. To re-introduce sugar cess is not just going against the grain of the GST law, but could lay a wrong precedence for other sectors to introduce such levies.

States certainly have a vested interest in securing the interests of the local industry, which could lead to divisive and polarised voting in the Council, which has hitherto been avoided. This can be seen from the opposition of some States (Kerala, West Bengal and Andhra Pradesh, to name a few) and the support of others (such as Uttar Pradesh, Maharashtra, and Bihar, which are among the largest producers of sugar).

The second aspect is a nuanced legal argument. Cess taxes are referred to in Article 270 but this is with respect to the proceeds outside the divisible pool. By itself, Article 270 does not empower the Centre to impose cess taxes. The competence has to be drawn from other provisions of the Constitution.

Conclusion

CGST, SGST or UTGST and IGST are the different levies introduced under the GST framework in India from 1st July 2017. Since GST has been implemented in India in its dual modal i.e. both Central and state government can levy and collect taxes simultaneously there was urge to give them specific legislative powers. The above mentioned different Acts lay down the foundation guidelines on the scope and powers to different authorities. Whether it was uniformity of taxation and consequent free interior trade or possession of 'the jewel in the crown' at the root of prosperity of Britain is debatable, nonetheless the words of father of modern economics on the benefits of uniformity of system of taxation cannot be taken too lightly. Before implementation of Goods and Service Tax (GST), Indian taxation system was a farrago of central, state and local area levies. By subsuming more than a score of taxes under GST, road to a harmonized system of indirect tax has been paved making India an economic union.

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