A Conceptual Study on Indirect Taxes and their Growth in India in the GST and Pre GST era

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Abstract

This paper attempts to study how **earlier indirect tax regime, there were many indirect taxes** levied by both the state and the centre significant replaced by **CGST, SGST, and IGST in the GST** regime. Before GST was implemented, the VAT system was being followed in the country. There are numerous differences between GST and the previous system ranging from the levies, taxes, exemptions, validations, and more. GST has been a major structural reform of the current government. Replacing multiple taxes and cesses of state and central governments into a single tax has been a major relief to trade and industry. At the same time reduction in overall tax incidence has brought relief to the end-consumers. The IT driven tax filing system of GST has made it difficult for intermediaries in the value added chain to evade taxes. The movement of goods across the country has become faster and less cumbersome with the help of a single e-way bill carried by the transporter, and because of abolition of state check posts. GST has given a big boost to the manufacturing sector as a whole, which will accelerate the growth of the economy. Initial difficulties faced in implementation of GST were not unexpected. However, they were quickly resolved because of the flexibility shown by the GST council in correcting course. The experience of other countries where GST was introduced shows that all of them faced some teething troubles for the initial two to three years. As compared to Australia and Malaysia, the Indian experience shows that GST has settled down fairly well.

Now GST has much wider acceptability even among MSMEs. The question now is what GST's future course should be in India. So far, the government has gone by the maxim 'the best should not be the enemy of the good'. But we must continue on a quest for the best. Having implemented GST in a vast country like India after taking 31 states on board, it is time to perfect the system gradually. In order to move towards an ideal GST, we must set an agenda for the next three to five years. Our first attention should go in the direction of stabilising revenue both for states and Centre. While states are already comfortable because of the compensation mechanism in which 14% incremental growth rate of revenue is assured, the Centre still needs to worry about its revenue. GST revenue is undoubtedly going to get a major boost when the government implements the new system of return filing in which there will be perfect matching of invoices for availing input tax credit. At present, the total tax liability declared by registered dealers every month is Rs 5 lakh crore, of which approximately a lakh crore is paid in cash and the remaining Rs 4 lakh crore is settled by way of input tax credit.

Key words: CGST, SGST, IGST , GST, VAT, input tax credit, indirect tax

Introduction

The previous tax structure has been replaced by GST and a number of changes have taken place as a result. The levy of GST compensation cess adds another tier to this rate structure. The present clamour in the national debate seems to be pitched for two changes: (i) obviating or pruning the 28% tier and (ii) merging the 12% and 18% tiers (where most of the goods and services are taxed), i.e., more in line with the RNR model. In this article, we analytically position these alternatives to adjudge their merit, suitability and importance.The political rhetoric notwithstanding, a nuanced analysis which factors in both economic and administrative view-points reveals that making these choices is not a simple matter. The original GST rate structure was arrived at by consolidating the pre-GST tax incidence on the various goods and services and transposing them in the GST rate schedule. Thus, for instance, luxury hotels, cars, etc, that were subject to higher tax rates found themselves in the 28% bracket.From an economic standpoint, as the 13th Finance Commission's Task Force on GST also acknowledged, standard rates are 'highly regressive … [as] the incidence of taxation on articles consumed by the common man will rise, while the rate of tax on luxuries will fall'. In addition, the price-elasticity analysis and revenue-augmentation capacity also endorse the necessity for a higher tax rate. Thus, a demand to permanently do away with the highest tax-bracket of 28% may gain some political mileage but will be detrimental to the interest of the common man as the latter will end up subsidising consumption of luxurious and sin-goods.High tax-rate, in general, is unviable for the economy as it discourages consumption and directly affects economic output. Simultaneously, it could lead to inflationary pressure as tax is a major component of the supply price. Conversely, a moderate tax-rate promotes compliance by discouraging clandestine supplies as high rates discourage domestic manufacturers, encourage imports and increase the propensity of smuggling. The current customs duty on gold and its negative fall-outs establish this fact.

Since tax on diesel and petrol gives substantial revenue to states and Centre, it is obvious that bringing them into the GST net will be a difficult decision. But this is doable with proper tax structuring of petroleum products, divided between GST and cess. The items of electricity duty and potable alcohol, on which at present only states have the power to impose levies, can also be brought into the GST net by imposing only state GST on them. But inclusion of these items will help in removing input tax credit blockages; it will be both more efficient for industry and more affordable for consumers. By bringing petrol, diesel and potable alcohol into GST, the rate at which these items are sold to consumers will be common across states. Third, we must try to rationalise the rate structure as and when the scope for revenue sacrifice increases with rising revenues. Initially, we can move from a four slab structure to a three slab structure, and gradually to a two slab structure. Multiplicity of slabs creates classification disputes and duty inversions, necessitating blockage of funds and refunds. Also, modest rates result in better compliance. If we have to move to a three slab structure, no new item should now move from 18% to 12%, or 12% to 5%, or 5% to zero in the interest of revenue neutrality. If we deviate too much from the mean or median rate slab, it will be difficult to then increase GST on these items when the country aspires to have a single slab GST.

We can easily set the goal of having a two slab structure by the end of fifth year from now. Fourth, in the present GST system there are certain items where input tax credit is not allowed which breaks the chain. Some of these sectors are restaurants (GST rate on restaurants is 5% but without input tax credit), transport vehicles, oil or gas pipelines, telecom tower. Exclusion of items from availing input tax credit results in accumulated credit and has a cascading effect. The attempt here is to suggest a road map. The pace of actual implementation can be based on revenue growth and practical considerations of consumer interest. The run-up to the enactment of the GST design revealed that the rate-structure dominated the Parliamentary debate on Constitution Amendment Bill. Its was intensely debated by economists and experts, besides, of course, politicians. The central idea was to arrive at a 'Revenue Neutral Rate' (RNR), a median rate accompanied with a merit (concessional) and demerit (akin to 'sin taxes') rates keeping in mind the fiscal impact and burden on the common man. The committee led by then chief economic adviser, Arvind Subramanian, arrived at a range-bound RNR of 15-15.5%. Despite recommendations, the current GST design has a seven-rate structure for goods (nil, 0.5, 3, 5, 12, 18, and 28) and five for services (nil, 5, 12, 18, and 28). This includes five petroleum products, electricity, real estate and alcohol in that sequence. Among the petroleum products, the two items which can easily be brought into GST are natural gas and aviation turbine fuel (ATF). Exclusion of certain items from GST creates distortions such as cascading of tax and reversal of input tax credit.

Objective:

This paper intends to explore and analyze the tax scenario prior to 1 July 2017, the **Indirect Tax regime in India** comprised of a plethora of indirect tax laws at the central as well as the state level (such as Service tax, Excise duty, Central Sales tax, State Value Added tax, Entry tax etc.). And GST Regime these legislations have been subsumed into **GST** and stands rescinded w.e.f 1 July 2017.

Differences between GST and Previous Tax Structure

Recent tariff curbs on non-essential imports will encourage domestic manufacturing in the medium- to long-term.There are additional benefits accompanying a two- or three-tier tax-rate structure. First, the current spate of advance rulings reveals that classification and rate disputes have begun to occupy the attention of authorities. Most rulings currently being sought are on the rate slab and the desire of business to claim a concessional rate. Merger to bring to effect a harmonised rate would significantly curtain classification disputes (due to tax-arbitrage), and doubles up as a measure to unshackle GST of litigation.Second, trimming the tax-slabs causes business woes on account of inverted duty structure to also diminish. To illustrate, all supplies to Railways are currently pegged at 5% whereas most inputs used for making such supplies are taxed at 18%.

Parameter	VAT	GST
Structure	Under the old taxation system, the central taxes applicable were custom duty/central excise duty, central sales tax on commodities and services, surcharge and cesses. The state taxes included state VAT, WCT, entertainment tax, luxury tax, tax on gambling, betting and lottery, sales tax deducted at source, and surcharge and cesses.	Under GST, all the central and state taxes will be subsumed and a single tax will be levied on all commodities and services apart from motor spirit, petroleum, natural gas and high-speed diesel.
Basis of Levy	Under VAT, tax will be levied at the place where goods are manufactured or sold, or the place at which services are rendered.	Under GST, tax will be levied at the place of consumption, like a destination-based tax.
Registration	Under VAT, the registration is decentralised under state and central authorities.	Under GST, there will be uniform e-registration depending upon the PAN of the entity.
Validation	Under VAT, the system will partly validate the returns, and full verification will be subject to assessments by state or central authorities.	Under GST, the validation will take place on the system, and consistency checks will be carried out on input credit availed, tax payments, and utilisation.
Filing of Returns and Collection of Tax	Under the old scenario, service tax and central excise were uniform, but VAT varied from state to state.	Under GST, the process is uniform and the dates for collecting or depositing tax and filing returns are common.
Service Tax	Under VAT, the centre charges service tax on a list of services under the Finance Act on provision/payment basis.	Under GST, the State GST subsumes service tax depending upon rules relating to Place of Supply.
State VAT	Under VAT, all commodities apart from those exempt are taxed.	Under GST, the State GST subsumes this tax.
Excise Duty	Under VAT, excise duty will be levied up to the point of manufacturing.	Under GST, the excise duty will be replaced by Central GST and tax will be levied up to retail level.
Basic Customs Duty	Under VAT, the centre charges tax on imports under a separate act.	No change.

Special Additional Duty	Under Vat, the centre charges tax on imports separately.	Under GST, this duty is subsumed by State GST.
Entry Tax	Under VAT, entry tax is charged by certain states for inter-state transfers, detained as import in local area.	Under GST, entry tax is not applicable, but an additional 1% will be levied as tax on inter-state supply of certain commodities.
Central Sales Tax	Under VAT, CST is charged at a concessional rate of 2% so far as inter-state transfers are concerned against C-Forms. The full rate applicable otherwise ranges from 5% to 14.5%.	Under GST, the Integrated GST subsumes CST.
Tax on Export of Commodities and Services	Under VAT, this tax is exempt.	No change.
Tax on Inter-State Transfer of Commodities to Agent or Branch	Under VAT, this tax is exempt against Form F.	Under GST, this tax is levied but dealers will have access to full credit.
Cross Set-Off of Levy	Under VAT, set-off of service tax and excise duty is permitted.	Under GST, set-off between State GST and Central GST is not allowed.
Tax on Transfer of Commodities to Agent or Branch	Under VAT, this tax is generally exempt, but its applicability depends upon state procedures.	Under GST, this tax may be levied unless TIN of the transferor and transferee is the same.
Disallowance of credit on certain items	Under VAT, there are a few non-creditable commodities and services under VAT as well as CENVAT rules.	Under GST, there will be no such disallowance unless the GST Council specifically allows it.
Disallowance of inputs or input services utilised in exempted commodities or services	Under VAT, this is not permitted.	Under GST, there will be no such disallowance, unless the GST Council finalises a list of those items falling under the Negative List.

Cascading Effect	Under VAT, credit between service tax and excise duty is available, but there is no set-off against VAT on excise duty.	Under GST, credit available on the whole amount of taxes up to retailer.
Threshold limits for levy of tax	Under VAT, the threshold for central excise is Rs.1.5 crore, and the threshold for VAT ranges between Rs.5 lakh to Rs.20 lakh depending upon the state. The threshold for service tax is Rs.10 lakh.	Under GST, the State GST will range between Rs.10 lakh to Rs.20 lakh based on recommendations of the GST Council.
Levy of tax on NGOs and government bodies	Under VAT, certain government bodies, non-profit organisations and PSUs will be covered.	No changes.
Exemptions	Under VAT, certain areas such as the North-East will be able to enjoy exemptions.	Under GST, there will be no such exemptions, and the GST Council may introduce an Investment Refund Scheme for certain zones.

This results in excess input credit accumulation which results in working-capital bottlenecks and, in most cases, incremental cost, as business can't absorb by way of input credit. This facet is critical as GST is based on a value-added tax model wherein the input credit feature forms the core element of the tax design, and also ensures that business remains neutral to the tax regime. With lower tax-rates, the very reasons for inverted duty structure would vanish.Merging tax-slabs augurs well for Make-in-India.

This is principally on account of

(i) overall reduction in tax incidence,

(ii) simplification of the tax-regime, and

(iii) obviating the state-bias with some goods attracting 5% or 12% vis-à-vis 18%, etc.

These positive fallout can be reserved for domestic supplies by necessary changes in the customs duties.While the issues that a multiple tax-rate structure faces are important, they are not always overwhelming. The current GST design is a work-in-progress. It is important to allow time for stabilising collections, assessing the status on compensation to states and GST's overall impact on Centre's fiscal policy. Petroleum products, which form the bulk of consumption and contribute most to indirect tax collections (of Centre and states), are presently outside GST.

GST Fiscal pressure

Permanently excluded from the GST design is alcohol, a significant source of tax revenue, and its inclusion will entail a constitutional amendment. Real estate transaction costs such as stamp duties are also not a part of the GST structure. Besides, several levies are yet to be subsumed in the GST design—levies on vehicles, electricity tax, toll tax, etc, muddy the harmonised framework that GST ought to represent. These are the real mid- to long-term challenges.Added to the long list is the Union government's solemn obligation to ensure that the states' revenues attain a y-o-y growth of 14%, failing which a compensation provision kicks in. Fiscal pressure for attaining the monthly collection of Rs 1 lakh crore of revenues is a significant road-block that is a hurdle for further reform. In a recent statistical revelation by the finance minister, it was stated that only six states had achieved the revenue-growth target, while seven were very near to achieving it. However, eighteen states are still lagging on revenue collection targets. This is bound to put further pressure on the Centre's fiscal discipline.

Tax-analytics and reinforced compliance, no doubt, expand the tax-base, but they don't provide the maneuverability to permit decisions which have an impact on tax collection, such as abolishing the 28% slab or merging the standard slab of 18% and 12%. It cannot be overstated that buoyancy in revenue collections is necessary for national growth and stability, besides fiscal discipline.The GST Council, constituted in September 2016, has had unanimity in its functioning and decisions that are largely undeterred by political consequences an, hence, is reflective of cohesiveness and maturity. Given that, so far, no state has deviated from its recommendations, notwithstanding political pressures, point towards no dilution of political will to take GST reform forward.

However, the larger imperfections in the design, that were consciously left out from the original scheme, need to be addressed. The rate structure woes will themselves perish in this grandiose paradigm. The Central Board of Indirect tax and Customs (CBIC) has issued the format of annual returns under the Goods and Service Tax (GST). The Taxpayers have to file their first GST annual returns pertaining to the Financial Year 2017-18 by December 31, 2018. The government has introduced different types of annual return keeping in mind the various categories of taxpayers. For instance, GSTR-9 for regular taxpayers and GSTR-9A for composition scheme taxpayers have been issued.

GST Mechanism

All the taxpayers registered under GST except input service distributors, casual taxable persons, non-resident taxable persons and persons liable to deduct tax at source, and are required to file the annual returns.

Here are some key points one must keep in mind before filing the annual returns for the FY 2017-18:

1. Reconciliation of the books of accounts and tax invoices are issued during July 2017 to Mar 2018 is of utmost importance; this should match the turnover declared in the audited financial statements. It is important

for the figures in the books of accounts and the invoices to match or else the GST paid will be incorrect. Along with the invoices, debit and credit notes shall also be in agreement with books of accounts.

2. Stock transfer between the units/branches of the company should be matched with the books of accounts to avoid any discrepancy in the stock-in-hand balance of the books and that of the GST data.

3. Matching of e-way bill data with the tax invoices issued during the period is also very necessary. The e-way bill data state-wise should be carefully mapped with the invoices to keep track of the goods transported and GST paid thereon.

4. Taxpayers should ensure that all the purchase & other service invoices are accounted for in the books of accounts and input tax credit has been duly availed. Any disparity between the input tax credit claimed and tax paid on purchases will result in an incorrect claim of ITC in GST returns.

5. Once the purchase invoices are in agreement with the books of accounts, the taxpayers should ensure that the purchase data is duly uploaded by the suppliers; this data will be reflected in the GSTR-2A form.

6. Before going forward with filing the annual returns, the taxpayers should reconcile all the monthly or quarterly GST returns with the books of accounts. The taxable, exempted and non-GST turnover should be carefully matched. Any difference should be immediately corrected.

7. Ensure that the invoices on which input tax credit has been claimed should be paid within 180 days to the suppliers. If not, the credit availed on the same will be reversed and the taxpayers will be liable to pay such amount along with the interest and penalty if any.

8. While reconciliation the GST paid by electronic cash or credit ledger, the taxpayers should also account for GST paid under Reverse Charge Mechanism (RCM) on the applicable expenses.

9. Make sure that you follow the tips mentioned above, before the December 31, 2018. The rationale behind the filing of the annual return is to consolidate and declare all the information furnished in the monthly or quarterly GST returns during the year.

Reconciliation under Goods & Services Tax (GST)

Reconciliation under Goods & Services Tax (GST) is about matching the data filed by the supplier with those of the recipients and recording all the transactions that have taken place during that period. The reconciliation process ensures that no sales or purchases are omitted or wrongly reported in the GST returns. The taxpayers must reconcile their data on a regular basis with that of the vendors to claim eligible Input Tax Credit (ITC). The process of reconciliation is simple, but can be time-consuming, as the taxpayers are required to continuously keep an eye on any discrepancy or mismatches that may affect the ITC claim. This article will bring about clarity to an otherwise tedious process in less than 5 easy steps.

1. Under the reconciliation process of GST for the financial year (FY) 2017-18, the taxpayers are required to mandatorily file all the periodic GST returns. Even if the due date for a particular GST return is missed, it should be filed along with the interest or the late fees as applicable. As long as the GST returns are not filed, matching and reconciliation process will not take off. The taxpayers need to update their books of accounts and align the tax returns accordingly. Unless and until all the GST returns are filed, the taxpayers won't be able to claim adequate ITC.

2. Furthermore, the taxpayers should identify the mismatches and correct the relevant entries in the books of accounts. They should also amend these details in the coming GST return filing period. GST laws do not allow for revision of tax returns filed in the previous periods. However, it does allow for filing of the corrected entries via an amendment return in the next periodic return. These amendment entries should be filed in GSTR 1 & GSTR 3B, accordingly. Make sure you carefully match the purchase register with GSTR 3B (uploaded month wise) and with GSTR 2A details (uploaded by the supplier). It is important to streamline the books of accounts, the GSTR-3B return, and GSTR-2A form to fully avail the ITC on the relevant purchases; otherwise, the taxpayer will lose ITC claim and will end up paying extra taxes.

3. The congruity between the books of accounts and the GST returns is crucial for claiming ITC. Additionally, taxpayers while claiming ITC on purchases should keep a check on taxes paid under the reverse charge mechanism. However, a taxpayer can only avail credit of taxes paid under reverse charge mechanism only if the goods and/or services are used or will be used for purpose of business.

4. Communication is the key, especially amongst the vendors and customers. This coordination results in uniform reporting of the details in the GST returns. Chances of mismatches, omission or incorrect entries are reduced when the suppliers' and the recipients' synchronize their details and then file GST returns. It is also very important to identify the non-compliant vendors, interact with them, and resolve the queries; this will help the recipients maximise ITC. Now, advanced reconciliation software can help reduce this communication gap between the suppliers and the recipients. These software enable the users to send a reconciliation mismatch report to the vendors or suppliers to resolve any issue arising out of it.

5. Lastly, the taxpayers should report all the rectified sale or purchase transactions of the FY 2017 -18, for the September returns.

Any amendments or changes to the previously filed returns can be done within the same timeline. GST reconciliation is a recurring event, it must be performed periodically to claim maximum credit and to avoid mismatches on a larger scale. The taxpayers shall communicate the queries with his recipients or vendors at the earliest and file error-free returns. Thus, if the reasoning applied in the Mohit Minerals case is adopted, it seems like the Centre and states have a carte blanche to levy cess over and above GST and may not even need prior approval of the GST Council.The resultant situation is likely to contradict the spirit of the GST framework and revert the economy back to the previous regime where multiple levies and consequent

cascading were prevalent. The GST was aimed at eliminating these problems to formulate a single nationwide market.

In fact, various amendments were made to the Constitution that further underlined the intent of maintaining a 'one nation one tax' policy. Articles 271 and 248 were amended to restrict the government's power to levy a surcharge and invoke residuary provisions to impose a further tax on goods and services covered under the GST.Before resorting to Article 246A and Article 270 to validate future levies of cess, it is important to acknowledge that the SC's judgment in the Mohit Minerals case is specific to the levy of compensation cess. There is a specific provision that mandates the Centre to compensate states for loss caused due to implementation of the GST i.e., Section 18 of the Constitution (Hundred and First Amendment) Act, 2016. While it is true that the aforementioned provision did not significantly contribute to the SC's decision, there is no definitive answer as to whether the outcome will change in case of other levies that may not be supported by a constitutional mandate. Therefore, in our view, the debate surrounding the legality of cess over GST is far from over.

Conclusion

Pre-GST, the statutory tax rate for most goods was about 26.5%, Post-GST, most goods are expected to be in the 18% tax range. 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. The GST replaced existing multiple taxes levied by the central and state governments. The legal permissibility of levying a cess over and above GST has been a source of constant debate, which has amplified in importance and relevance in the past few weeks. To begin with, the Supreme Court (SC) recently passed a judgment upholding the constitutional validity of GST Compensation Cess and observed that the Centre has the power to levy such a cess. Though, at present, no other cess is imposed over GST, a Group of Ministers (GoM) has been constituted to examine the feasibility and legality of levying a cess to compensate Kerala for the loss caused due to floods.While the Court's decision has upheld the constitutionality of the compensation cess, the reasoning adopted and its interpretation of various Constitutional provisions raise many other issues regarding the interface of the Constitutional framework and GST.

In the case of Union of India v. Mohit Minerals Pvt. Ltd., while declaring the levy of compensation cess to be legally permissible, the SC relied on multiple provisions. First, reference was made to Article 270 of the Constitution that deals with distribution of taxes between Centre and state to conclude that the Parliament is authorised to levy cess. Secondly, the SC held that the Centre's power to tax goods and services under Article 246A of the Constitution is a specific power that has a wide import. From a combined reading of these two provisions, the Court concluded that the Centre is empowered to levy a cess on supply of goods and services. Section 18 of the Constitution (Hundred and First Amendment) Act, 2016, which requires the Centre to

compensate states on account of loss caused due to the introduction of the GST regime was also considered by the SC.

Lastly, as a response to the respondent's submissions claiming that a cess would violate the intent of the Hundred and First Amendment, the court clarified that that amendment was enacted to subsume various cesses, however, there was no bar imposed on the fresh levy of cesses over and above the GST. Thus, from a holistic reading of all these provisions, the SC upheld the constitutionality of compensation cess.Though the observations of the Court were with respect to the compensation cess, the reasoning behind the court's decision could lead to the conclusion that any cess can now be levied on supply of goods and services by exercising powers under Article 246A read with Article 270. However, such an interpretation of the judgment is likely to open the Pandora 's Box to numerous similar levies in the future that may undermine the coherence and uniformity aimed through GST. For starters, the Court has not stated that the power to levy cess is restricted to only specific circumstances. There is also no similar restriction in the bare text of Article 246A.

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