GST AS A REFORMATIVE TOOL FOR INDIRECT TAXES

Akshay Kumar Chawla,

Student,
BBA.LL.B (Hons.)- 5th Year
Law College Dehradun, Uttaranchal University
Dehradun, India,

ABSTRACT **:** The present article is an attempts to analysis GST AS A REFORMATIVE TOOL FOR INDIRECT TAXES. The author aims to study GST under the light of Indian taxation system and to explore the taxation system in ancient world. Indian taxation system is divided into two parts Direct and Indirect taxation system and GST serves as the part of indirect taxation system. In year 2000 a committee was established to make GST law in the country, since then it took 17 years to implement this law. It was in year 2016 the bill was passed by **Lok sabha** and **Rajya sabha**. On 1st July 2017 the GST law was enforced. Goods and Services tax popularly known as GST is an indirect tax that has replaced all indirect tax in India such as vat, sales tax, etc. Under GST regime tax is charge at all level. In Intra-state sales Central GST and State GST is charged while in inter-state sales Integrated GST is charged. It is been almost two years since Goods and Services tax has been rolled out , replacing around 17 indirect taxes and a lot more cess. The expectation from GST was very high. Business houses weather small or big expected less tax , less paperwork, transparent laws, and easy book keeping .Consumer want to pay less taxes and taxpayers wanted a easy law to abide while the government want to take more business under tax ambit , thereby increasing tax ratio and maximizing profits. The author tend to study all aspects of taxation under Indian taxation regime.

I. INTRODUCTION

The goods and services tax (GST) is a value-added tax levied on most goods and services sold for domestic consumption. The GST is paid by consumers, but it is remitted to the government by the businesses selling the goods and services. In effect, GST provides revenue for the government.[i]The word tax is derived from the Latin word “taxo” which means a mandatory financial charge. A taxpayer (an individual or other legal entity) is a person who pays such financial charge to the governmental organization in order to fund various public expenditures. A failure to pay, along with evasion of or resistance to taxation, is punishable by law. Taxes consist of direct or indirect taxes.

Tax collection in different countries is to fund the governmental schemes and public expenditure. Some countries levy flat rate of interest on annual income while other levy scale based taxes on annual income ammounts. Most countries charge a tax on corporate income as well as on dividends, while some Countries also impose wealth taxes, property taxes, sales taxes, value-added tax, payroll (wage) taxes, and/or tariffs.

According to Hugh Dalton, “a tax is a compulsory contribution imposed by a public authority, irrespective of exact amount of services rendered to the taxpayer in return, and not imposed as a penalty for any legal offence. [ii]

The legal and the economic definition of taxes differ from each other such as economists do not regard many transfers to governments as taxes. For example, tuition at public universities, and fees for utilities provided by local government. From the view of economists, a tax is a non-penal, yet compulsory transfer of resources from the private to the public sector, levied on a basis of predetermined criteria. Government levy taxes in monetary form in modern taxation system.

The taxation system of the country is the backbone of the entire development system of the country. It serves as the road map of the economic structure of the country the inflow and outflow of the money determines the future of the economy which in terms determines the future of the country. The strong revenue collection mechanism insures the welfare of the society. India has a well-structured taxation system. Taxes serve as the largest source of income for the government. The money so generated is deployed for various projects, for the development of the nation. Taxes are determined by the Central and State Governments with the help of local authorities like municipal corporations. The government cannot impose any tax that is not passed by law.

II. HISTORICAL BACKGROUND

The Taxation principles are as old as Human Society. Several ancient civilizations, such as the Greeks and Romans, levied taxes on their citizens for military expenses and other public services. Taxation evolved with expansion of civilizations.

“The earliest known tax records, dating from approximately six thousand years B.C., are in the form of clay tablets found in the ancient city-state of Lagash in modern day Iraq,”[iii] .The early taxation system was kept easy and taxes were minimum until in the situations of emergency or hardships.

The Greek, Romans and Egyptians levied taxes on their citizens in order to generate funds which were used to sponsor the centralized government. Several Taxes were imposed by the Greeks which are still in order in some developed nations such as property and goods taxes. Unlike the Greek, The Roman started levied heavy taxes on the citizens as the power and the corruption of the empire's Central Government increased. The excessive tax levied on citizens resulted in collapse of the Roman Economy during the 4th and the 5th centuries.

International Prospective

Taxation system in its early era was not only limited to European and Mediterranean civilizations; ancient Chinese societies also levied taxes on their citizens. The Chinese property tax that was instituted around 600 B.C. which required 10 percent of cultivated land to be dedicated to the central government. All produce so generated from the dedicated portion of land was taken as a tax.

During the medieval period, fair taxation was an issue for the English citizen. Poll tax, property tax, church taxes were levied on most of the citizens in the jurisdiction. Even the poor people that did not own their land had to pay property tax for the land they rented. They were also obligated to pay 10 percent of their labour or produce to the church as tax.

During the colonial period as wealth started to inflow in Europe from the colonies in Asia, Africa and America; taxation policies developed quickly. Great Britain was the first one to institute General Income Tax in 1799 which was collected to fund their war against Napoleon France. This tax was collected on the basis of Income, as most modern system do.

Indian Prospective

In India the direct taxation system is in force in one or the other way from the ancient times. Manu Smriti and Arthasastra both talk about different taxes. In order to have a sound taxation system the taxes should be levied on income and expenditure and king should not impose high rate of taxes neither exempt all.

According to Manu Smriti, The collection of taxes should be arranged in such a manner by the king that it should not be a burden on the taxpayer. It says that traders and artisans should pay 1/5th of their profits in silver and gold, while the agriculturists were to pay 1/6th, 1/8th and 1/10th of their produce depending upon their circumstances.[iv]

Kautilya describes the tax administration in the Mauryan Empire. It is remarkable that the present day tax system is in many ways similar to the **system of taxation in vogue about 2300 years ago.** It also laid down that during war or emergencies like famine or floods, etc. the taxation system should be made more strict and the king could also raise war loans. The land revenue could be raised from 1/6th to 1/4th during the emergencies. The people engaged in commerce were to pay big donations to war efforts. **Kautilya's concept of taxation emphasized equity and justice in taxation.** The affluent had to pay higher taxes as compared to the poor.[v]

Arthasastra mentioned that each tax was specific and there was no scope for arbitrariness. Tax collectors determined the schedule of each payment, and its time, manner and quantity being all pre-determined. The land revenue was fixed at 1/6 share of the produce and import and export duties were determined on ad-valorem basis. The import duties on foreign goods were roughly 20% of their value. Similarly, tolls, road cess, ferry charges and other levies were all fixed.[vi]

III. EMERGENCE OF GST AND ITS RELEVENCY

Goods and Services tax popularly known as GST is an indirect tax that has replaced all indirect tax in India such as vat, sales tax, etc. The bill was passed in the Parliament on 29th Marc-h 2017 and became an Act which was enforced on 1st July 2017; Goods & Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition.

In year 2000 a committee was established to make GST law in the country, since then it took 17 years to implement this law. It was in year 2016 the bill was passed by Lok sabha and Rajya sabha. On 1st July 2017 the GST law was enforced.

Under GST regime tax is charge at all level. In Intra-state sales Central GST and State GST is charged while in inter-state sales Integrated GST is charged.

Now let us try to understand the definition of Goods and Service Tax – "GST is a comprehensive, **multi-stage**, **destination-based** tax that is levied on every **value addition**."[vii]

Multi-stage

GST is a multi stage tax, as tax is levied on all the stages of the product from raw material to the final finished product.

Let us consider the following case:

Purchase of raw materials

Production or manufacture

Warehousing of finished goods

Sale to wholesaler

Sale of the product to the retailer

Sale to the end consumer

GST is levied on each of these stages which make it a multi-stage tax.

Value Addition

GST is a value addition tax i.e tax is charged on every value addition at every stage of production.
For example: The manufacturer who makes biscuits buys flour, sugar and other material. The value of the inputs increases when the sugar and flour are mixed and baked into biscuits. The manufacturer then sells the biscuits to the warehousing agent who packs large quantities of biscuits and labels it. That is another addition of value after which the warehouse sells it to the retailer. The retailer packages the biscuits in smaller quantities and invests in the marketing of the biscuits thus increasing its value.

Destination Based

GST is a destination based tax i.e. the tax is collected on every destination
For example: Goods manufactured in Punjab and are sold to the final consumer in Chennai. Since Goods & Service Tax is levied at the point of consumption. So, the entire tax revenue will go to Chennai and not to Punjab.Therefore under this system three taxes are applicable: CGST, SGST & IGST.

CGST: Collected by the Central Government on an intra-state sale (Eg: transaction happening within Punjab)

SGST: Collected by the State Government on an intra-state sale (Eg: transaction happening within Punjab)

IGST: Collected by the Central Government for inter-state sale (Eg: Punjab to Chennai.

IV. FUTURE POSPECTS AND GRAY AREAS

It is been almost two years since Goods and Services tax has been rolled out , replacing around 17 indirect taxes and a lot more cess. The expectation from GST was very high. Business houses weather small or big expected less tax , less paperwork, transparent laws, and easy book keeping .Consumer want to pay less taxes and taxpayers wanted a easy law to abide while the government want to take more business under tax ambit , thereby increasing tax ratio and maximizing profits.

GST has shown an effective short term and medium term gains ranging from broadening of the tax bases and improved tax collection to more ease of doing business. GST is a more mature policy which reflects the maturity of the institution and democratic trends. The phrase “ONE NATION ONE TAX” required “ONE LAW’ under a federal structure and GST serves as that law. However the first year of GST has a positive response.

What will the future look like?

In the long-term, GST would be more simplified. Globally, countries that have benefitted from GST implementation typically deploy two- or three- rates, as compared to the five-rate structure in India. As the cascading effect disappears, inflation will reduce, thus leading to a positive consumer outlook. As the tax revenue rises, the fiscal deficit would improve. The international business community has welcomed this changing landscape of Indian business, and noted that the GST has helped improve the ease of doing business in India. This is expected to attract more FDI investments and help growth in exports.[viii]

The challenges for GST ranged from adoption to execution. India, traditionally a pen-and-paper economy, struggled to adopt digital platforms. Moreover, given the widespread tax evasion among Indian businesses, ignorance and resistance were major hurdles that are gradually being dealt with and will likely continue in the months to come. However, the short-term impact has been positive despite the challenges. It has led to the removal of multiple taxation regimes. Lower burden of taxes had lead to overall decrease in cost and subsequent increase in production. This is also gradually reducing the burden on the end consumer. Black money, fraudulent practices and tax evasion have reduced, especially as reforms like the **E-way bill** bring in more control and transparency. This has brought in the new health outlook of the economy and had increased tax bases which thereby had lead to increase in government revenue. Upcoming initiatives need to focus on capacity-building and digital adoption.

V. GREY AREAS

Goods & Services Tax (GST) was launched with much enthusiasm at midnight, July 1, 2017 replacing 17 indirect tax laws, at both Central and State level. The learning curve of both, the Government and the industry, has been steep over the near twenty months that have elapsed. Astonishingly, the number of notifications, circulars and press releases has left India gasping and clenching at straws to stay afloat. The long run will prove that GST is certainly good for the Indian economy. Any new legislation takes time to settle down, as will GST. Till then, thoughts and deliberations between the two stakeholders, the Government and the industry, will continue.

VI. JUDICIAL OVERVIEW

Kanagasabapathy Sundaram Pillai v. Union Of India[ix]

The decision of respondent to implement Goods and Services Tax is subject matter of challenge in this petition on the following grounds:

(i) That implementation is without parliamentary sanction and implementation in midst of the financial year, is not valid;

(ii) That the preparations are not well to adopt the new system as the rates of CGST done recently just a week back for which many representation from the public are not yet replied/rectified;

(iii) That the States / UTs many are not yet decided, not made laws and not declared their proposed rates, not prepared well for smooth implementations;

(iv)That the compensation for the first quarter of the financial year not paid apart from the arrears of many aids/schemes/sharing and the states & UTs will become financially critical and unstable.

The honorable court held that petitioner cannot urge and/or seek directions to the respondents to postpone the decision to implement GST with effect from 1.7.2017, for simple reason that herein levy and collection of taxes on goods and services has sanction of law. That from written submission, it is much evident that all such necessary steps are taken by the respondents to ensure implementation of the GST, as it appears (i) over 65 Laces tax-payers have already migrated to GST network and obtained registrations, (ii) the rates and taxes have been notified; (iii) rules have been framed and notified ; (iv) wide publicity is given in public domain; (v) entire machinery has been geared up not only to accept new challenge but to ensure GST is implemented effectively.

In view of these facts, we are not inclined to entertain PIL and the same is dismissed.

Commercial Tax Officer v. Madhu M.B.[x]

The respondent herein, a dealer registered under the KVAT Act and migrated to CGST Act, had purchased a consignment of plywood from a manufacturer at Perumbavoor, and was transporting the same. The goods were detained by the appellants and Ext.P5 notice under **Section 129 (3)** of the Central/State Goods and Services Tax Act, 2017 was issued. The notice contains the irregularities which led to the detention and the irregularity, in substance, is that there were no nexus between the documents accompanied and the actual goods under transport. It was challenging Ext.P5, the writ petition was filed. By the judgment under appeal, the writ petition was disposed of directing the second appellant to make a fresh assessment computing the value of the goods and the tax payable under the CGST Act and SGST Ordinance together with penalty. It was also ordered that on payment of 50% of such demand along with execution of a simple bond, the goods shall be released. It is this judgment which is challenged before the court.

On hearing the rival submissions made at the Bar, the court find that **Section 129 of the CGST Act** and SGST ordinance provides for detention, seizure and release of goods and conveyances in transit. The amounts payable on the passing of the final order are those specified in sub-section 1. Sub-section 5 provides that on payment of the amount referred to in sub-section 1, all proceedings in respect of the notice specified in sub-section 3 shall be deemed to be concluded. The statute also makes provisions for release of the goods pending passing of the order under sub-section **Section 129(2)** provides that, the provisions of **Section 67(6)** shall apply for detention and seizure of goods and conveyances. **Section 67(6)** provides that, the goods seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. **Rule 140** provides that, the seized goods may be released on a provisional basis upon execution of a bond for the value of goods in **FORM GST INS-04** and furnishing of a security in the form of a Bank Guarantee equivalent to the amount of applicable tax, interest and penalty payable.

The above statutory provisions, therefore, provide a mechanism for adjudication following detention of goods including for the provisional release thereof pending adjudication. When the statute itself provides for such a mechanism, a deviation there from cannot be ordered. If that be so, the provisional release in the manner as is ordered in the judgment under appeal cannot be sustained. However, taking note of the provisions of **Rule 140 (2)** obliging a dealer to produce the goods as and when demanded, and considering the inconvenience and prejudice that is likely to be caused on account of the delay, we need hardly emphasize the necessity for an expeditious adjudication even in cases goods are released provisionally. However, in this case, it is unnecessary for the court to deal with that issue at greater length as the Government Pleader himself has agreed that the adjudication will be completed, within one week.

In such circumstances, the court set aside the judgment under appeal and directs that the respondent shall produce a copy of this judgment before the second appellant, who thereupon, will issue necessary notice and conduct physical verification in the presence of the respondent and complete adjudication, at any rate, within one week.

The court also gives liberty to the petitioner to comply with **Rule 140(1)** and get provisional release on that basis. Writ appeal is disposed of accordingly.

VII. CONCLUSION

Good and Services tax is the most celebrated as well one of the most controversial taxation reform that was introduced in India. The word tax is derived from the Latin word **"taxo"** which means a mandatory financial charge and taxation means the process to collect tax from the individuals and firms. Tax is collected by the government to fund the state sponsored schemas. In some countries tax is levy on flat rate of interest while in some other countries it is levy on scale bases. The taxation system of the country is the backbone of the country's economic structure and therefore need to be reformed with time to time and **GOODS AND SERVICE** tax is one such reform.The **goods and services tax (GST)** is a value-added tax levied on most goods and services. The **GST** is paid by consumers, but it is remitted to the government by the businesses selling the goods and services. GST is a reformative tool to reform the tax structure in the country and to enhance tax collection and to reduce tax invasion in the country. GST has been beneficiary to the Indian taxation system and has evolved since its first day of inception i.e. 1st July 2017. Goods and Services tax is an indirect tax that has replaced all indirect tax in India such as vat, sales tax, etc. The bill was passed in the Parliament on 29th March 2017 and became an Act which was enforced on 1st July 2017; Goods & Services Tax Law in India is a **comprehensive, multi-stage, destination-based tax that is levied on every value addition.**

In year 2000 a committee was established to make GST law in the country, since then it took 17 years to implement this law. It was in year 2016 the bill was passed by **Lok sabha** and **Rajya sabha**. On 1st July 2017 the GST law was enforced.

Under GST regime tax is charge at all level. In Intra-state sales Central GST and State GST is charged while in inter-state sales Integrated GST is charged.

It is been almost two years since Goods and Services tax has been rolled out , replacing around 17 indirect taxes and a lot more cess. The expectation from GST was very high. Business houses weather small or big expected less tax , less paperwork, transparent laws, and easy book keeping .Consumer want to pay less taxes and taxpayers wanted a easy law to abide while the government want to take more business under tax ambit , thereby increasing tax ratio and maximizing profits.

Goods and Services tax being one of the most celebrated taxation system and had upgraded Indian economy, and in my prospective is been working towards the betterment of the taxation structure of the Indian economy. GST has shown an effective short term and medium term gains ranging from broadening of the tax bases and improved tax collection to more ease of doing business. GST is a more mature policy which reflects the maturity of the institution and democratic trends. The phrase "ONE NATION ONE TAX" required "ONE LAW' under a federal structure and GST serves as that law.

[i] https://www.investopedia.com/terms/g/gst.asp

[ii] http://kalyan-city.blogspot.com/2010/12/what-is-tax-definition-adam-smith.html

[iii] the Association of Municipal Assessors of New Jersey (AMANJ) website.

[iv] https://www.jagranjosh.com/general-knowledge/history-of-taxation-in-india-1481028305-1

[v] https://www.jagranjosh.com/general-knowledge/history-of-taxation-in-india-1481028305-1

[vi] https://www.jagranjosh.com/general-knowledge/history-of-taxation-in-india-1481028305-1

[vii] https://cleartax.in/s/gst-law-goods-and-services-tax/

[viii] https://cleartax.in/s/gst-law-goods-and-services-tax/

[ix] **2017(9)TMI 389**

[x] AUGUST 30, 2017