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The 101st Constitution Amendment Act, 2016 : A Critical Study

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INTRODUCTION

The 101st Constitution Amendment Act, 2016, introduced a national Goods and Services Tax (GST) in India from 1 July 2017. The GST is a Value added Tax (VAT) proposed to be a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level. It replaces all indirect taxes levied on goods and services by the Indian Central and state governments. It is aimed at being comprehensive for most goods and services. It is here imperative to mention that this amendment is going to have far reaching impacts on Indian polity, economy and society at large. It is estimated that this Act would bring gigantic changes and reforms in the arena of tax system of the country.

Main Provisions of 101st Amendment Act:

Insertion of new article 246A

After article 246 of the Constitution, the following article shall be inserted, namely:—

Special provision with respect to goods and services tax :

"246A.(1)Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax here the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Insertion of new article 269A :

After article 269 of the Constitution, the following article shall be inserted, namely:—

Levy and collection of goods and services tax in course of inter-State trade or commerce.

''269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce

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shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Insertion of new article 279A :

After article 279 of the Constitution, the following article shall be inserted, namely:—

Goods and Services Tax Council

‘‘279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister (Chairperson)

(b) the Union Minister of State in charge of Revenue or Finance (Member)

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government (Members)

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

Amendment of Seventh Schedule :

In the Seventh Schedule to the Constitution,—

(a) in List I — Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

“84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products.”; (ii) entries 92 and

92C shall be omitted;

(b) in List II — State List,—

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted, namely:—

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.".

Compensation to States for loss of revenue on account of introduction of goods and services tax :

Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

Thus The proposed Act, which seeks further to amend the Constitution, *inter alia*, provides for—

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State Cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent. In the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits.

Genesis of GST in India:

To know about GST in details, let us have a look at the brief chronology outlining the major milestones on the proposal for the introduction of GST in India. This is as follows.

a. The idea of introducing GST in India was first mooted by the then Finance Minister, Mr. P Chidambaram in his Budget speech for the year 2006-07. It was initially proposed that GST would come into effect w.e. from 1st April 2010.
b. Later an Empowered Committee (EC) of State Finance Ministers was formed to draw up the road map and design of GST.
c. On April 2008, EC headed by the then Finance Minister of West Bengal, Mr. Asim Das Gupta, submitted its report to the Central Government.
d. Joint Working Groups were then setup to examine options on exemptions and thresholds, taxations of services and taxation of inter- state supplies etc.
e. On November 2009 EC released it First Discussion Paper on GST.
f. On 22 March 2011, the Constitution (115th Amendment) Bill was introduced in Lok Sabha which was referred to Parliamentary Standing Committee on Finance which submitted its report on 7th August 2013.The said Bill lapsed as the term of Lok Sabha ended in 2014.
g. On 19th December 2014, Constitution Amendment Bill was introduced in Lok Sabha and passed by Lok Sabha on 6th May 2015.
h. On 12th May 2015 the Bill was referred to 21 Member's Select Committee of Rajya Sabha. On July the Select Committee submitted its report to Parliament.
i. During the Budget season the opposition led by Congress raised some striking points. To solve this problem the President Constituted the GST Council and GST Council gave some recommendation.
j. The Parliament passed 122nd Constitution Amendment Bill 2014. The Bill was passed by the Rajya Sabha on 3rd August 2016 and the Amended Bill was Passed by the Lok Sabha on 8th August 2016.
k. The Bill, after ratifications by the states, received the assent from the President Mr. Pranab Mukherjee on 8th September 2016.
l. Later the Government of India has processed the pattern and functioning of GST Council consisting of Finance Ministers of 29 states and 2 Union Territories in India and then GST has come into effect on and from 1st July 2017.

Objectives of GST:

GST Stands for Goods and Services Tax. GST is a complete tax imposed on manufacture, sale and expenditure of Goods and Services. GST is a multi-tier tax where ultimate burden of tax will fall on the consumer of Goods /Services. It is mostly a proxy of all indirect taxes which are imposed on goods and services by the Central and State Government of India. GST would be levied and collected at each phase of sale or purchase of Goods/Services based on input tax credit (ITC) process. GST is a target based consumption tax on VAT rule.

The main objective of GST in India is: One Country, One Tax and One Market. GST has merged a number of indirect taxes into a single tax and thereby would lessen double taxation (i.e tax on tax) *i.e.* cascading effects of taxes through a common national market. It is such type of tax till the final consumer will improve the competitiveness of original goods and services in the market which will impact GDP growth of the country. In this paper an attempt has been made to highlight the mechanism of GST to begin with and thereafter the benefits and difficulties of GST in India.

Integration of taxes in GST:

A large number of indirect taxes are subsumed under GST. The Proposed GST has included various central as well as state level taxes. At the central level the following taxes are being subsumed.

a) Central Excise duty.
b) Additional Excise duty.
c) Service tax.
d) Additional customs duty. Commonly known as countervailing duty.
e) Special additional custom duty.

At the State – level, the following taxes are subsumed,

a) State value added tax/sales tax
b) Entertainment tax (other than tax levied by local body.)
c) Purchase tax
d) Octroi and Entry tax
e) Central sale tax(levied by the central and collected by the state)
f) Luxury tax and
g) Taxes on Lottery, betting and gambling.

Goods and Services covered under GST :

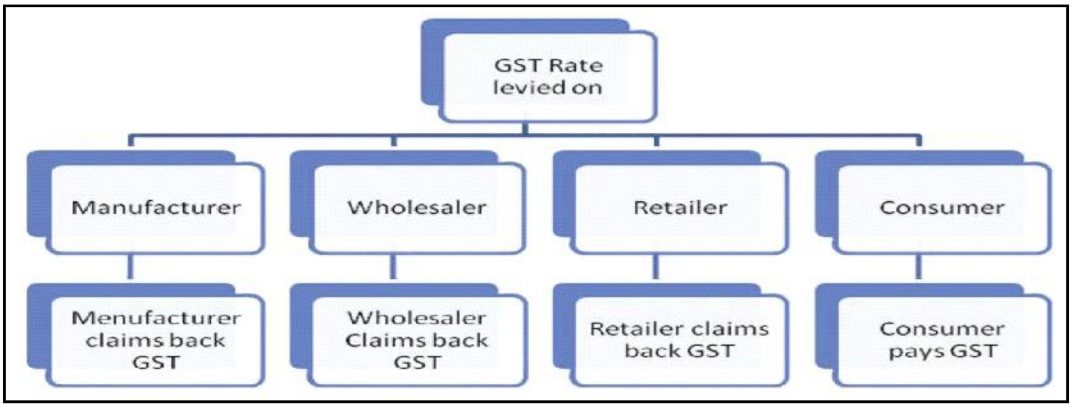
The GST would apply to all goods and services except the following:

i. Petroleum products- five products namely petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel-central Sales Tax.
ii. Real Estate-Stamp Duty plus Property Taxes would be payable.
iii. Electricity-Electricity Duty.
iv. Tobacco products-under GST as well as Central Excise.
v. Alcohol for human consumption- State Excise.

Mechanism of GST

GST is a single tax on the supply of goods and services right from the manufacturer to the consumer. The fine consumer will bear the GST charged by the last dealer in the supply chain with set-off benefits at all the previous stages Supply chain of goods and services from the manufacturer to the consumer is : Manufacturer————> wholesaler————> Retailer ————> consumer.

The mechanism of GST is shown in the following chart.



Impact of GST on Price:

Prices of goods, after the imposition of GST are expected to come down in the long run. The benefits of reduced tax incidence are also passed on to the consumers. GST, being consumption based tax, will result in better revenue collection for states. GST will also eliminate the cascading effect of taxes on the consumers. The Impact of GST has been explained with the help of an example in the following Table 1.

Table 1 : Impact of GST (Amount in Rupees)

Particulars	In GST regime	In Non-GST regime
Manufacturer		
Purchase of Raw materials	100	100
Tax paid@ 10% of Raw materials	10	10
Value added to the materials	30	30
Gross Value of goods	130	130
Tax on Output @10%	13	13
GST incidence on Manufacturer(13-10)	3	---------
Wholesaler		
Purchase value of goods from manufacturer	130	143
Value added (say 'margin')	20	20
Gross Value of goods	150	163
Tax @ 10 %	15	16.3
GST incidence on Wholesaler (15-13)	2	-----
Retailer		
Purchase price of goods from wholesaler	150	179.3
Value added (say 'margin')	10	10
Gross Value of goods	160	189.3
Tax@10%	16	18.93
GST incidence on retailer (16-15)	1	-----
Total GST on entire value chain (10+3+2+1)	16	------
Total tax on entire value chain in full non-GST regime (10+13+16.3+18.93)	------	58.23
Price of goods for the final consumer	166	208.23

From the Table 1, it is clear that in non GST regime the value of the goods is Rs. 208.23 with tax Rs. 58.23 and in case of GST regime value of goods will be cheaper i.e Rs. 166 with tax Rs. 16. This is because of multiplicity of taxes, non availability of input tax credit across the board and cascading effect of taxation as well in non GST regime.

GST: Major Advantages :

– ***Easy compliance:*** For the implementation of GST, the Central and State Governments have jointly registered goods and services tax network (GSTN). Hence all sorts of tax payer services such as registration returns payments etc would be available to tax payers online. This would make compliance easy and transparent.

– ***Uniformity of Tax Rates:*** GST will ensure that indirect tax rates are common across the country and such uniformity of tax rates would increase certainty and ease of doing business. Uniform tax rate will also help curb black money and corruption in tax administration i.e it will reduce tax evasion.

- ***Removal of cascading:*** There would be a minimal cascading effect of tax because of seamless tax credits throughout the value chain and across the boundary of steps. This will reduce this cost of doing business.
- ***Improvement in competitiveness:*** Transaction cost of doing business will be reduced and it will improve the Competitiveness for trade and industry.
- ***Gains to manufacturers:*** The subsuming of central and state taxes under GST, and comprehensive set-off of input goods and services would reduce the cost of locally manufactured goods and Services. This will raise the competitiveness of Indian goods in the International market and will boost our export.
- ***Transparency:*** Under GST there would be only one tax right from the manufacturer to the consumer and this will lead to transparency to the consumers.
- ***Relief*:** Prices of goods are expected to fall as benefits of reduced tax burden are passed on to the consumer.
- ***Simple and Easy:*** Multiple indirect taxes are replaced by GST at the central and state level. Backed with a robust IT system, GST will be simpler and easier to administer than other indirect taxes levied so far by the central and state.
- ***Better control on Leakage*:** GST will bring forth better tax compliance due to robust IT system. Due to the seamless transfer of input tax credit (ITC) for one stage to another in the chain of value addition, the design of GST would reduce the leakage in the system.
- ***Higher Revenue:*** GST is expected to reduce the cost of collecting tax revenue of the Governments and this will lead to higher revenue collection.

Shortcomings of GST :

- ***Exclusion of Several Taxes*:** Multiple indirect taxes both at the central level and at the state level are subsumed under GST. However there are other numerous state and central taxes that remain out of the basket of GST.
- ***Effect on Real Estate :*** Some Economists say that GST in India would impact negatively on the real estate market. GST would add up to 8% to the cost of new home and reduce the demand by about 12% (12 %).
- ***Price Escalation of Retail Products:*** Prior to the introduction of GST, there was a minimal amount of tax on retail products. However, with the initiation of GST, the prices of such products like medicines, garments and clothes, construction materials, and other commonly used commodities have escalated much. As a result, consumers are to face many a difficulty in the way of their living in everyday life.
- ***Adverse effect on Aviation Industry:*** The aviation industry would also be affected. Service taxes on airfare at presents range from six to nine per cent. With GST, the rate will surpass 15 per cent. This will create adverse effect on the air Passengers.
- ***High Rate of GST:*** It may be said that whatever be the rate of GST in other countries, the rate of GST in India is too high for the poor and middle class people of an underdeveloped economy like India, although rates of GST are supposed to remain within a particular range. High rates of GST on essential and basics inputs will give rise to many difficulties in the process of production as well as in the distribution channel. It is opined that the Government of India should reconsider the rates of GST in the interest of the people of the country.

Conclusion:

GST is the single biggest tax reform in India since Independence. GST is likely to improve tax collections and boost India's economic development by breaking tax barrier between states and integrating India through a uniform tax rate. All sections of the economy *viz.*, big, medium, small scale units, importers, exporters, traders, Professional, Industrialists and consumers will be directly affected by GST. As Indian we have a lot of hopes from the government regarding the execution of GST in India in the days to come.

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