Goods & Services Tax: A Dream of NDA Government

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This document is intended to circulate information on GST development so far intended to guide professionals to update themselves within limited time and further you can follow my blog www.taxopinions.wordpress.com & also my twitter handle **@Charteredfriend** for more updates on GST Development (#GSTUPDATES on Twitter)

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Preface

This Publication aims to educate the stakeholders about recent efforts of NDA Government to implement the biggest tax reform in the country and to introduce with the issues faced by the government in pushing the constitutional amendment through the upper house of the parliament.

The government wants to implement GST from April 1, 2016.

The goods and services tax (GST) Constitution amendment Bill is likely to be listed for discussion in the Rajya Sabha not before December 14, which would leave the government with eight days of the winter session to get the key tax reform passed by the Upper House and subsequently the amended Bill by the Lok Sabha before the session ends on December 23.

Central ministers said they haven't lost hope about the GST Bill being passed in the ongoing session, despite no clear indications emerging from the Congress leadership, particularly from Congress President Sonia Gandhi and Vice-President Rahul Gandhi.

The Congress has conveyed to the government that while it had agreed that the Rajya Sabha's Business Advisory Committee allocate four hours for a discussion on the Bill, the Bill should only be listed in the day's business after the Upper House discusses other issues of urgent public importance, especially the drought situation in large parts of the country and the price rise.

Congress sources maintain the party wants the government to "resume threadbare discussions on all stated conditions". While 1% inter-state tax is being junked, there are still hectic bargain on two other conditions: of capping GST rate at 18% and framing independent dispute-settlement body.

A government panel last week suggested a standard goods and services tax (GST) rate of 17 per cent-18 per cent, which raised the chances of a consensus on the landmark tax reforms bill to get through in the ongoing session.

Let's watch out how NDA Government moves further under the vision of our Honorable Prime Minister Sh. Narender Modi & consistent efforts made by our Honorable Finance Minister Sh.Arun Jaitley.

Best Regards

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Disclaimer

Information provided in this publication has been collected from different sources and this publication is solely prepared and presented to educate my professional colleagues about the recent developments in GST.

Mostly information reproduced from government sources available in public domain hence information is reliable and since it is a discussion on proposed constitutional amendment for GST hence all the relevant articles of constitution are also included in this publication at relevant places.

Please write to author for any discrepancy noticed in the publication and will be corrected in the next edition.

Your feedback is valuable for the success of this publication.

Happy Reading ☺

Best Regards
Saurabh Chhabra

DEDICATED TO MY PARENTS & ALMIGHTY

Part-I (Goods and Services Tax: An Overview)

Introduction

The Constitution provides for the division of taxation powers between the centre and states. Currently, indirect taxes are imposed on goods and services. These include excise duty, sales tax, service tax, octroi, customs duty etc. Some of these taxes are levied by the centre and some by the states. For taxes imposed by states, the tax rates may vary across different states.

The concept of Value Added Tax (VAT) was introduced for central excise duty in 1986 (first as MODVAT and then as CENVAT). Prior to this, excise duty was levied on both inputs used and the output produced. This meant that an amount paid as tax on the input was subject to taxation again at the output level (with limited set offs). This was applicable to each intermediate good in the manufacturing process. This "tax on tax" led to cascading of taxes. This problem was sought to be addressed by the VAT regime under which tax paid on the inputs is deducted from the tax payable on the output produced. Similarly, sales tax also had a cascading effect through the distribution chain. All states have now adopted the concept of VAT for state sales tax. The issue of cascading taxation was partly addressed through the VAT regime. However, certain problems remained. For example, several central and state taxes were excluded from VAT. Sectors such as real estate, oil and gas production etc. were exempt from VAT. Further, goods and services were taxed differently, thereby making the taxation of products complex. Some of these challenges are sought to be overcome with the introduction of the Goods and Services Tax (GST).

The GST regime intends to subsume most indirect taxes under a single taxation regime. GST is a value added tax levied across goods and services. This is expected to help broaden the tax base, increase tax compliance, and reduce economic distortions caused by inter-state variations in taxes.3 In 2011, the Constitution (115th Amendment) Bill, 2011 was introduced in Parliament to enable the levy of GST. However, the Bill lapsed with the dissolution of the 15th Lok Sabha. Subsequently, in December 2014, the Constitution (122nd Amendment) Bill, 2014 was introduced in Lok Sabha. The Bill was passed by Lok Sabha in May 2015 and referred to a Select Committee of Rajya Sabha for examination.

The introduction of Goods and Services Tax (GST) would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it would mitigate cascading or double taxation in a major way and pave the way for a common national market. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%. Introduction of GST would also make Indian products competitive in the domestic and international markets. Studies show that this would instantly spur economic growth. Last but not the least, this tax, because of its transparent character, would be easier to administer

Genesis

The idea of moving towards the GST was first mooted by the then Union Finance Minister Shri P. Chidambaram in his Budget for 2006-07. Initially, it was proposed that GST would be introduced by 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. **Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies.** Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on the GST in November, 2009. *This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.*

Salient Features of GST

The salient features of GST are as under:

(i) GST would be applicable on supply of goods or services as against the present concept of tax on the manufacture of goods or on sale of goods or on provision of services.

(ii) GST would be a destination based tax as against the present concept of origin based tax.

(iii) It would be a dual GST with the Centre and the States simultaneously levying it on a **common base**. The GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States would be called State GST (SGST).

(iv) An Integrated GST (IGST) would be levied on inter-State supply (including stock transfers) of goods or services. This would be **collected by the Centre so that the credit chain is not disrupted.**

(v) **Import** of goods or services would be treated as inter-State supplies and **would be subject to IGST in addition to the applicable customs duties.**

(vi) For an **initial period of two years** or as *further extended on the recommendation of the GST Council*, a ***non-vatable additional tax*** not exceeding 1% on inter-State supply of goods would be levied and ***collected by the Centre and assigned to the originating State***.

(vii) CGST, SGST & IGST would be levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GST Council.

(viii) GST would replace the following taxes currently levied and collected by the Centre:
- Central Excise duty
- Duties of Excise (Medicinal and Toilet Preparations)
- Additional Duties of Excise (Goods of Special Importance)
- Additional Duties of Excise (Textiles and Textile Products)
- Additional Duties of Customs (commonly known as CVD)
- Special Additional Duty of Customs (SAD)
- Service Tax
- Cesses and surcharges insofar as far as they relate to supply of goods or services

(ix) State taxes that would be subsumed within the GST are:

- State VAT
- Central Sales Tax
- Purchase Tax
- Luxury Tax
- Entry Tax (All forms)
- Entertainment Tax (not levied by the local bodies)
- Taxes on advertisements
- Taxes on lotteries, betting and gambling
- State Cesses and surcharges insofar as far as they relate to supply of goods or services

(x) GST would apply to all goods and services except Alcohol for human consumption.

(xi) GST on petroleum products would be applicable from a date to be recommended by the Goods & Services Tax Council.

(xii) **Tobacco and tobacco products** would be subject to GST. In addition, the **Centre could continue to levy Central Excise duty.**

(xiii) A **common threshold exemption** would apply to both CGST and SGST. Taxpayers with a turnover below it would be exempt from GST. **A compounding option** (i.e.to pay tax at a flat rate without credits) would be available to small taxpayers below a certain threshold. The threshold exemption and compounding provision would be optional.

(xiv) The **list of exempted goods and services** would be kept to a minimum and it would be harmonized for the Centre and the States as far as possible.

(xv) **Exports would be zero-rated.**

(xvi) Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST paid on inputs may be used only for paying SGST. **In other words, the two streams of input tax credit (ITC) cannot be cross utilised, except in specified circumstances of inter-State supplies, for payment of IGST.**

The credit would be permitted to be utilised in the following manner:

a) ITC of CGST allowed for payment of CGST;
b) ITC of SGST allowed for payment of SGST;
c) ITC of CGST allowed for payment of CGST & IGST in that order;
d) ITC of SGST allowed for payment of SGST & IGST in that order;
e) ITC of IGST allowed for payment of IGST, CGST & SGST in that order.

(xvii) **ITC of Additional Tax would not be permitted**.

(xviii) Accounts would be settled periodically between the Centre and the State to ensure that the SGST used for payment of IGST is transferred by the Centre to the Destination State where the goods or services are eventually consumed. Similarly the IGST used for payment of SGST would be transferred by the originating State to the Centre.

(xix) The **laws, regulations and procedures** for levy and collection of CGST and SGST would be **harmonized to the extent possible**.

GST and Centre-State Financial Relations

Currently, fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the originating States. As for services, it is the Centre alone that is empowered to levy service tax. Since the States are not empowered to levy any tax on the sale or purchase of goods in the course of their importation into or exportation from India, the Centre levies and collects this tax as additional duties of customs, which is in addition to the Basic Customs Duty. This additional duty of customs counterbalances excise duties, sales tax, State VAT and other taxes levied on the like domestic product. **Introduction of the GST would require amendments in the Constitution so as to concurrently empower the Centre and the States to levy and collect the GST.**

4.1 The assignment of concurrent jurisdiction to the Centre and the States for the levy of GST would **require a unique institutional mechanism that would ensure that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needs to have Constitutional force.**

Constitution (One Hundred and Twenty Second) Amendment Bill, 2014

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both.

The Constitution (122nd Amendment) Bill, 2014 was introduced in Lok Sabha on December 19, 2014. It was passed in that House on May 6, 2015.

The Bill has, however, been referred to the Select Committee (of 21 members led by Sh. Bhupendra Yadav, (Hon'ble MP) of Rajya Sabha on 12.05.2015. **The Select Committee has been requested to submit its report on the last day of the first week of the Monsoon session of the Parliament**. After passage of the Bill by both Houses of Parliament, ratification by State legislatures and receipt of assent by the President, the process of enactment would be complete.

The Bill provided for a levy of GST on supply of all goods or services except for the specified goods. The tax shall be levied as Dual GST separately by the Union (CGST) and the States (SGST). The Parliament would have exclusive power to levy GST (IGST) on inter-State trade or commerce (including imports) in goods or services. The Central Government will have the power to levy excise duty in addition to the GST on tobacco and tobacco products. As a temporary measure, for two years (or for such further period as recommended by the GST Council), a non-vatable additional tax not exceeding 1% on inter-State supply of goods would be levied and collected by the Centre and assigned to the originating State.

A GST Council (GSTC) would be constituted comprising the Union Finance Minister, the Minister of State (Revenue) and the State Finance Ministers to recommend on the GST rate, exemption and thresholds, taxes to be subsumed and other features. This mechanism would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as among States.

Article No	Provision
246A (Special provision with respect to goods and services tax) **(Refer suggestions of select committee constituted by Rajya Sabha in Part II)** **(Clause 2 of Constitution Amendment Bill)**	(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 where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce. Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.''
279A (Goods and Services Tax Council) **(Refer suggestions of select committee constituted by Rajya Sabha in Part II)** **(Clause 12 of Constitution Amendment Bill)**	(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundredth Amendment) Act, 2015, 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 Integrated Goods and Services Tax 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. (5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. (6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services. (7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings. (8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions. (9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

	(a) the vote of the Central Government shall have a weightage of onethird of the total votes cast, and (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting. (10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of— (a) any vacancy in, or any defect in, the constitution of the Council; or (b) any defect in the appointment of a person as a Member of the Council; or (c) any procedural irregularity of the Council not affecting the merits of the case. (11) The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendations.
269A (Levy and collection of goods and services tax in course of inter- State trade or commerce) **(Refer suggestions of select committee constituted by Rajya Sabha in Part II)** **(Clause 09 of Constitution Amendment Bill)**	(1) Goods and services tax on supplies in the course of inter-State trade or commerce 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. Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce. (2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce. **Summary**-*The Bill permits the centre to levy and collect GST in the course of inter-state trade and commerce, called the Integrated Goods and Services Tax (IGST). Such tax will be apportioned between the centre and the states in a manner to be decided by a law made by Parliament*
Amendment of Seventh Schedule **(Refer suggestions of select committee**	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:—

constituted by Rajya Sabha in Part II) **(Clause 17 of Constitution Amendment Bill)**	(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."
Clause 18. (Arrangement for assignment of additional tax on supply of goods to States for two years or such other period Recommended by the Council)	(1) An additional tax on supply of goods, not exceeding one per cent, in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in sub-section (2). (2) The net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to

	the States from where the supply originates. (3) The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under sub-section (1). (4) Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce. (5) For the purposes of this section, "State" shall have the meaning assigned to it in clause (26B) of article 366 of the Constitution. **Summary**-*The Bill states that the centre may levy an additional tax of up to 1%, on the supply of goods in the course of inter-state trade for two years or longer, as recommended by the GST Council. This tax will be collected by the centre and accrue directly to the states from where the supply of the good originates.* *This provision may impede a key objective of GST. The GST regime aims to create a harmonised national market for goods and services, and the Bill reinforces this objective. (Clause 12, The Constitution (122nd Amendment) Bill, 2014) Such a harmonised national market is enabled by levying one tax rate across states to ensure free movement of goods whether within a state, or from one state to another.* *The levy of the additional tax distorts the creation of a national market, as a product made in one state and sold in another would be more expensive than one made and sold within the same state. Also, the 1% tax will result in cascading of taxes.* *This effect will be magnified if the production and distribution chain passes through several states, and if the 1% additional tax applies at each state. ("1% tax above GST may hurt Make in India: CEA", Business Standard, May 27, 2015, http://www.business-standard.com/article/economy-policy/1-tax-above-gst-may-hurt-make-in-india-cea-115052700036_1.html)The burden of the cascading tax will be borne by the final consumer of the product.*
Clause 19. 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.
Clause 20. Transitional provisions	Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the

	Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.
Other Amendments	Amendment of • article 248 • article 249 • article 250 • article 268 • article 269 • article 270 • article 271 • article 286 • article 366 • article 368 • Sixth Schedule. Omission of • article 268As

Other Legislative Requirements

Suitable legislation for the levy of GST (Central GST Bill and State GST Bills) drawing powers from the Constitution can be introduced in Parliament or the State Legislatures only after the enactment of the Constitution Amendment Bill and on the recommendation by the GSTC. Unlike the Constitutional Amendment, the GST Bills would need to be passed by a simple majority. Obviously, the levy of the tax can commence only after the GST Law has been enacted by the respective legislatures. Also, unlike the State VAT, the date of commencement of this levy would have to be synchronized across the Centre and the States. This is because the IGST model cannot function unless the Centre and all the States participate simultaneously.

Recent Developments on the GST

Five Committees have been constituted by the Empowered Committee of State Finance Ministers (EC) *to deal with the various aspects of work relating to the introduction of GST*. The **Committees are**:

(i) The Committee on the **Problem of Dual Control, Threshold and Exemptions in GST Regime**;
(ii)The Committee on ***Revenue Neutral Rates for State GST & Central GST and Place of Supply Rules (A Sub-Committee has been constituted to examine issues relating to the Place of Supply Rules);***
(iii)The Committee on ***IGST & GST on Imports (A Sub- Committee has been set up to examine issues pertaining to IGST model);***
(iv)The Committee to examine ***Business Processes under GST Regime (Three Sub-Committees have been constituted to examine issues pertaining to Registration & Returns, Refunds and Payments);***
(v) The Committee to ***draft model GST Law (Three Sub-Committees have been constituted to draft various aspects of the model law);***

The first four Committees have submitted their final reports which are under consideration of the Empowered Committee / Government of India.

CBEC officials, as members of these Committees / Sub-committees, are playing a significant role in the work relating to design and contours of the proposed GST regime. The meetings of the Empowered Committee are attended by the Nodal Member of the CBEC and other officials.

A GST Cell headed by a Commissioner level officer has been created within CBEC which functions in close coordination with TRU. Three Groups have been constituted by CBEC to work on various aspects of the GST.

Role of CBEC

The CBEC is playing an active role in the deliberations in the various Committees constituted by the Empowered Committee. It is expected to play an equally important role in the drafting of GST law and procedures, particularly the CGST and IGST law, which will be exclusive domain of the Centre. This apart, the CBEC would need to prepare, in advance, for meeting the implementation challenges, which are quite formidable. The number of taxpayers is likely to go up significantly. The existing IT infrastructure of CBEC would need to be suitably scaled up to handle such large volumes. Based on the legal provisions and procedure for GST, the content of work-flow software such as ACES (Automated Central Excise & Service Tax) would require review. DG Systems has recently constituted a Steering Committee Steering Committee for implementation of GST System for CBEC. Augmentation in human resources would be necessary to handle such large number of taxpayers scattered across the length and breadth of the country. Capacity building, particularly in the field of Accountancy and Information Technology, for the departmental officers have to be taken up in a big way

The GST law is still evolving and the dialogue continues between the Centre and the States on related issues. A number of procedural, legal and administrative issues relating to GST are under active discussions in various Committees / Sub-committees constituted by the EC and in various Groups constituted by the CBEC.

Bill Summary

The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 (GST)

- The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 was introduced in the Lok Sabha on December 19, 2014 by the Minister of Finance, Mr. Arun Jaitley. It was passed in that House on May 6, 2015.
- The Bill seeks to amend the Constitution to introduce the goods and services tax (GST). Consequently, the GST subsumes various central indirect taxes including the Central Excise Duty, Countervailing Duty, Service Tax, etc. It also subsumes state value added tax, octroi and entry tax, luxury tax, etc.

- **Concurrent powers for GST**: The Bill inserts a new Article in the Constitution to give the central and state governments the concurrent power to make laws on the taxation of goods and services.
- **Integrated GST (IGST):** However, only the centre may levy and collect GST on supplies in the course of inter-state trade or commerce. The tax collected would be divided between the centre and the states in a manner to be provided by Parliament, by law, on the recommendations of the GST Council.
- **GST Council:** The President must constitute a Goods and Services Tax Council within sixty days of this Act coming into force. The GST Council aim to develop a harmonized national market of goods and services.
- **Composition of the GST Council:** The GST Council is to consist of the following three members: (i) the Union Finance Minister (as Chairman), (ii) the Union Minister of State in charge of Revenue or Finance, and (iii) the Minister in charge of Finance or Taxation or any other, nominated by each state government.
- **Functions of the GST Council:** These include making recommendations on: (i) taxes, cesses, and surcharges levied by the centre, states and local bodies which may be subsumed in the GST; (ii) goods and services which may be subjected to or exempted from GST; (iii) model GST laws, principles of levy, apportionment of IGST and principles that govern the place of supply; (iv) the threshold limit of turnover below which goods and services may be exempted from GST; (v) rates including floor rates with bands of GST; (vi) special rates to raise additional resources during any natural calamity; (vii) special provision with respect to Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and (viii) any other matters.
- **Resolution of disputes:** The GST Council may decide upon the modalities for the resolution of disputes arising out of its recommendations.
- **Restrictions on imposition of tax:** The Constitution imposes certain restrictions on states on the imposition of tax on the sale or purchase of goods. The Bill amends this provision to restrict the imposition of tax on the supply of goods and services and not on its sale.
- **Additional Tax on supply of goods:** An additional tax (not to exceed 1%) on the supply of goods in the course of inter-state trade or commerce would be levied and collected by the centre. Such additional tax shall be assigned to the states for two years, or as recommended by the GST Council.
- **Compensation to states:** Parliament may, by law, provide for compensation to states for revenue losses arising out of the implementation of the GST, on the GST Council's recommendations. This would be up to a five year period.
- **Goods exempt:** Alcoholic liquor for human consumption is exempted from the purview of the GST. Further, the GST Council is to decide when GST would be levied on: (i) petroleum crude, (ii) high speed diesel, (iii) motor spirit (petrol), (iv) natural gas, and (v) aviation turbine fuel.

PART II: Goods and Services Tax (GST): Comparison of the 2014 Bill with the recommendations of the Select Committee, 2015

The Constitution (122nd Amendment) Bill, 2014 was introduced in Lok Sabha on December 19, 2014 and was passed by it on May 6, 2015. The Bill was referred to a Select Committee of Rajya Sabha for examination which submitted its Report on July 22, 2015. The Report contained three Notes of Dissent. The Table below compares the provisions of the 2014 Bill with the recommendations of the Select Committee and the Notes of Dissent.

Clause	Constitution (122nd Amendment) Bill, 2014	Select Committee recommendations, 2015	Notes of Dissent in Committee Report, 2015
Coverage of GST (Clauses 12, 14 and 17)	Alcoholic liquor for human consumption to be exempt from GST. GST is to be levied on petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel at a later date. GST to be imposed on tobacco. Centre to impose additional levy on tobacco.	No changes Proposed	Tobacco and tobacco products, alcohol for human consumption, and electricity supply and consumption must be brought within the purview of GST within five years. States must also be permitted to levy taxes on tobacco. Petroleum products to be kept out of GST.
Dispute resolution (Clause 12)	GST Council to decide upon the modalities to resolve disputes	No changes proposed	Separate GST Disputes Settlement Authority, as provided for in the 2011 Bill, must be included.
GST Council (Clause 12)	Functions to include: Model GST laws, principles of levy and place of supply, rates including floor rates with bands of GST, apportionment of IGST, etc.	Define „bands" (of GST) to include the range of GST rates (over the floor rate) within which CGST and SGST may be levied on specific goods or services or class of good or services. Voting: No changes	A statutory GST Council is not required. A body like Empowered Committee of state Finance Ministers is adequate. A ceiling of 18% must be imposed on GST rates. Special consideration to be given to states or Union

	Voting: 3/4th weighted votes; 1/3 weightage to centre, 2/3 to states.	proposed.	Territories whose population does not exceed 20 lakh, (ex. Goa or Puducherry). Voting: States must have 3/4 of the weighted votes, and the centre must have 1/4.
Additional Tax (in interstate trade) (Clause 18)	An additional tax of up to 1% on the supply of goods will be levied by centre in the course of interstate trade or commerce. The tax will be assigned to the states from where the supply originates. This will be for two years, or longer, as recommended by GST Council.	The 1% additional tax in its present form is likely to lead to cascading of taxes. Add an explanation to the clause to define "supply" to mean all forms of supply made for a consideration".	The 1% additional tax is market distorting, especially since 100% compensation for five years to states has been proposed. Instead of the additional 1% tax, states should be permitted to retain 4% of centre"s share of IGST on all inter-state supplies of goods.
Compensation to states (Clause 19)	Parliament may provide for compensation to states for a maximum period of five years	Compensation to be for a five year period	100% compensation to be provided for five years. Compensation must be deposited in a GST Compensation Fund, under the GST Council.

CLAUSE BY CLAUSE CONSIDERATION BY SELECT COMMITTEE

Clause 1 (Short title and commencement)

This clause provides for short title and commencement of the Constitution (Amendment) Bill.

Recommendation

This clause has been adopted with no change

Clause 2 (Insertion of new article 246A)

This clause makes enabling provisions for the Union and States with respect to GST

Sub-clause (1) of this clause seeks to provide that *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.

Article 246*. Subject matter of laws made by Parliament and by the Legislatures of States*

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

Article 254*. Inconsistency between laws made by Parliament and laws made by the Legislatures of States*

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State

Sub-clause (2) of the said clause seeks to provide that Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce *with an explanation that that provision of this article in respect of goods and services tax referred to in clause (5) of article 279A, that is, on petroleum crude, high speed diesel, petrol, natural gas and aviation turbine fuel shall take effect from the date recommended by the Goods and Services Tax Council.*

In respect of this clause, apprehensions were expressed by some Member that the clause may affect the powers of the State Governments mentioned under the concurrent list. In this regard, **the Committee felt that their apprehensions were unwarranted as the clause will not affect any powers of the State Government under concurrent list.**

As regards the amendments proposed in article 246A (1) to insert the words, "not exceeding 18 per cent" between "goods and services tax" and imposed by the Union or by such State" is concerned, "the Members moving the amendment stressed the need to keep GST rates moderate and reasonable so that consumers are not excessively burdened, and to this end proposed that the GST Council be bound by the Constitution to not exceed 18% as the rate for an adequately revenue-generating GST."

Authors Note-This is one of the condition of congress and will be the major reason for the fight in this session.

Views of the Government

In response thereto, the Ministry of Finance, Department of Revenue has stated that rates of GST cannot be fixed in the Constitution as this is a dynamic variable. The rates of GST would have to be recommended by the GST Council depending on various factors such as economic conditions, revenue buoyancy, etc.

At the same time, every effort would be made by the GST Council to ensure that the rate of GST is reasonable. Further, there may be certain demerit goods such as tobacco, or luxury goods, that may, if the GST Council so decides, attract a higher rate of GST. RNR was calculated by NIPFP before introduction of GST Constitution amendment Bill. NIPFP and the Committee headed by CEA are working out rates under GST as per provisions of Bill.

The Department of Revenue stated that Petroleum products have been included under definition of "goods and services tax" provided in proposed clause (12A) of article 366. An Explanation has been added in proposed article 246A to clarify that GST will not be levied on petroleum and petroleum products till a future date to be recommended by the GST Council. This has been done after FM's meeting with State Finance Ministers on 15.12.2014

<u>and is also as per the recommendations of the Empowered Committee to protect the revenue streams of the States.</u>

With regard to providing for a maximum rate of GST in the Bill, the Department of Revenue mentioned that rates of GST cannot be fixed in the Constitution, as this is a dynamic variable. The rates of GST would have to be recommended by the GST Council depending on various factors such as economic conditions, revenue buoyancy, etc. **To allay fears of revenue loss a provision of compensation to States has been provided in the Bill.** At the same time, every effort would be taken to ensure that the rate of GST is reasonable. Further, there may be certain demerit goods such as tobacco, or luxury goods, that may attract a higher rate of GST.

Views of the Stakeholders

Most of the State Governments in their written replies have objected to bringing petroleum products under the ambit of GST. Another suggestion was to include Aviation Gasoline in that list.

However, the Experts/stakeholders were of the considered opinion that it needs to be emphasised that since a large part of the petroleum and petroleum products are important intermediate inputs, it is absolutely necessary to bring them under the GST ambit sooner than later to eliminate cascading effect and its associated inefficient economic cost. Even in a GST regime, these could be taxed at higher rate if revenues have to be protected. It is well known that petroleum and petroleum products and alcohol together contribute around 40 to 45 per cent of VAT/Sales tax revenues of States. The share of excise duty collection from petroleum and petroleum products is substantial for Central Government as well.

It appears that revenue consideration alone is holding back inclusion of these items in GST. *It is necessary for the Bill to specify a specific date for inclusion of these items under GST especially when the economic efficiency benefit from inclusion is much more than the direct short run revenue impact to the Central and the State Governments.*

<u>Recommendation</u>

The clause has been <u>adopted with no change</u>

<u>Clause 3</u> (Amendment of article 248)

<u>248. Residuary powers of legislation</u>

(1) **<u>“Subject to Article 246A”,</u>** Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists

Explanation

This clause seeks to make consequential amendments in article 248 of the Constitution in view of the proposed amendment in clause 2 of the Bill. *Since Union has residuary power to make laws on subjects not mentioned in any of the Lists, it is proposed to make it clear that if anything is not covered specifically then, as per Constitutional Scheme, it would fall under article 248.*

Recommendation

This clause has been adopted with no change.

Clause 4 (Amendment of article 249)

Article 249 Power of Parliament to legislate with respect to a matter in the State List in the national interest

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to **"goods and services tax provided under article 246A or"** any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein: Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period

Explanation

This clause seeks to make consequential amendments in article 249 of the Constitution in view of the proposed amendment in clause 2 of the Bill. This amendment enables

Parliament to make laws in national interest, if so required as per the procedure laid therein.

Recommendation

This clause has been adopted with no change.

Clause 5 (Amendment of article 250)

Article 250 Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation

(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to **"goods and services tax provided under article 246A or"** any of the matters enumerated in the State List

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period

Explanation

This clause seeks to make consequential amendments in article 250 of the Constitution in view of the proposed amendment in clause 2 of the Bill. The amendment makes it clear that Union may legislate as in other cases if a proclamation of emergency is in operation.

Recommendation

This clause has been adopted with no change

Clause 6 (Amendment of article 268)

Article 268 Duties levied by the Union but collected and appropriated by the States

(1) Such stamp duties ~~and such duties of excise on medicinal and toilet preparations~~ as are mentioned in the Union List shall be levied by the Government of India but shall be collected

(a) In the case where such duties are leviable within any Union territory, by the Government of India, and

(b) In other cases, by the States within which such duties are respectively leviable

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State

Explanation

This clause seeks to amend article 268 of the Constitution to omit the duties of excise on medicinal and toilet preparations from the purview of the power of the Government of India in view of the proposed imposition of goods and services tax on goods and services.

Recommendation

This clause has been adopted with no change

Clause 7 (Amendment of article 268A)

~~**Article 268A Service tax levied by Union and collected and appropriated by the Union and the States**~~

~~(1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2).~~

~~(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—~~

~~(a) collected by the Government of India and the States;~~

~~(b) appropriated by the Government of India and the States, in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.~~

Explanation

This clause seeks to omit article 268A of the Constitution as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003. The said article empowers the Government of India to levy taxes on services. As it is proposed to bring tax on services under GST, such a provision would no longer be required for the reason that the provision though enacted, it is yet to be notified so far.

Recommendation

This clause has been adopted with no change

Clause 8 (Amendment of article 269)

Article 269 Taxes levied and collected by the union but assigned to the States

(1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2), namely:

(a) duties in respect of succession to property other than agricultural land;

(b) estate duty in respect of property other than agricultural land;

(c) terminal taxes on goods or passengers carried by railway, sea or air;

(d) taxes on railway fares and freights;

(e) taxes other than stamp duties on transactions in stock exchanges and futures markets;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein;

(g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter State trade or commerce;

(h) taxes on the consignment of goods **"except as provided in article 269A"** (whether the consignment is to the person making it or to any other person); where such consignment takes place in the course of inter State trade or commerce

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law

(3) Parliament may by law formulate principles for determining when a sale or purchase of or consignment of goods takes place in the course of inter State or commerce 270 Taxes levied and collected by the Union and distributed between the Union and the States

(1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2)

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories or to taxes payable in respect of Union emoluments, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is

leviable in that year, and shall be distributed among those States in such manner and form such tie as may be prescribed

(3) For the purposes of clause (2), in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to Union territories

(4) In this article

(a) taxes on income does not include a corporation tax;

(b) prescribed means

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission;

(c) Union emoluments includes all emoluments and pensions payable out of the Consolidated Fund of India in respect of which income tax is chargeable

<u>Explanation</u>

This clause seeks to amend clause (1) of article 269 of the Constitution to insert after the words “consignment of goods” the words, figures and letter “except as provided in article 269A” in view of the new article 269A which provides for levy of goods and services tax on supplies in the course of inter-State trade or commerce and apportionment of such tax between the Union and the States in the manner provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Recommendation

This clause has been <u>adopted with no change</u>

<u>Clause 9</u> (Insertion of new article 269A) (Levy and collection of goods and services tax in course of inter- State trade or commerce)

This clause seeks to insert a new article 269A which provides for goods and services tax on supplies in the course of inter-State trade or commerce which 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. It also provides that Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

As regards this clause, Members sought clarifications about the distinction between "supplies, sales and purchase; and consignment".

Some Members suggested that that after 269A (1), the following proviso may be added:-

Provided that the expression "supplies" shall not apply to goods and services supplied by one unit of a firm to another unit of the same firm under the same ownership in another location or State

Provided further that if two or more firms are together engaged in the supply of the same end product, the expression "supplies" shall not apply to such transactions

Views of the Government

In this regard, the Ministry of Finance, Department of Revenue stated that while "sale" is for consideration, "consignments" are in the nature of branch transfers. "Supplies" would constitute both "sale" as well as "consignment" transactions. Further, since GST charged on supply of goods and services would be Vatable; this would not have any cascading impact. Since input tax credit would be available for GST paid on both sales as well as consignments in the course of inter-State trade, there would be no cascading impact of levying GST on supplies of goods and services in the course of inter-State trade.

The words 'on the recommendations of the GST Council' have been added to proposed article 269A (1) vide this clause. This would ensure that the law made by Parliament for apportioning the proceeds of IGST between the Union and the States will be made on the recommendation of the GST Council. This has been done as per the recommendations of the Empowered Committee after their meeting in Shillong in November 2013.

Views of the Stakeholders

The stakeholders were of the view that proceeds of IGST shall be used for settlement of accounts among the States for flow of input tax credit in inter-State transactions, and in theory, there should be zero balance in the proceeds of IGST in a fiscal year. But, in practice, there may be a distinct possibility of a positive balance in the proceeds of IGST at the end of a fiscal year. In that event, there should be a constitutionally appropriate mechanism for distribution of these remaining proceeds in a year, to be provided in terms of suitable provision in article 269A in clause 9.

Recommendation

The Committee feels that since imposition of GST on the supplies of goods and services in the course of inter-State trade would not lead to cascading of taxes, hence the Clause has been adopted with no change.

Clause 10 (Amendment of article 270)

Article 270 Taxes levied and collected by the Union and distributed between the Union and the States

(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in **articles 268 269 & 269A** respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

(1A) the goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

Explanation

This clause seeks to amend clause (1) of article 270 of the Constitution to substitute the words, figures and letter "article 268, 268A and 269", the words, figures and letter "article 268, 269 and article 269A" in view of the proposed amendments referred to above; to insert a new clause (1A) after the existing clause (1) of article 270 to provide that the goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).

Views of the Stakeholders

It was proposed by one of the State Government that the words "not apportioned" should be replaced with "not appropriated" in order to be in sync with the term used in the proposed Article 269A(1). Likewise, the word "distributed" should be replaced with the expression appropriated".

Recommendation

This clause has been adopted with no change

Clause 11 (Amendment of article 271)

Article 271 Surcharge on certain duties and taxes for purposes of the Union Notwithstanding anything in Articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred in those articles **''except the goods and services tax under article 246A,''** by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part the Consolidated Fund of India

Clause 11 of the Bill seeks to amend article 271 of the Constitution to insert after the words "in those articles", the words "except the goods and services tax under article 246A", with a view to put restrictions on the powers of Parliament to levy surcharge for the purposes of the Union on the GST. In other words, it provides that goods and services on which GST is levied shall not be subject to any surcharge under article 271.

Recommendation

This clause has been adopted with no change.

Clause 12 (Insertion of new article 279A) (Goods & Service Tax Council)

Sub–clause (1) of this clause seeks to provide for insertion of a new article 279A which empowers the President to constitute, by order, a Council to be called the Goods and Services Tax Council consisting of the Members referred to in sub clause (2) of this clause.

Sub-clause (2) of the said clause seeks to provide that the Goods and Services Tax Council shall consist of the Union Finance Minister as Chairperson; the Union Minister of State in charge of Revenue or Finance as Member; the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as Members.

Sub-clause (3) of the said clause seeks to provide that 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.

Sub-clause (4) of the said clause seeks to provide that the Goods and Services Tax Council shall make recommendations to the Union and the States on 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; the goods and services that may be subjected to, or exempted from the goods and services tax; model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply; the threshold limit of turnover below which goods and services may be exempted from goods and services tax; the rates including floor rates with bands of goods and services tax; any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster; 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 any other matter relating to the goods and services tax, as the Council may decide.

Some Members proposed that under clause 4 (c), among the "principles" to be considered by the GST Council while preparing GST laws the principle of "share of local bodies in revenue buoyancy and compensation for losses sustained through taxes subsumed" should be included as articles 243H and 243X provide for State Legislatures to, by law, ensure the "sound finances" of the local bodes. This would also enable State Finance Commissions set up under articles 243 I and 243 Y to provide for augmenting the share of local bodies in revenue buoyancy generated by the adoption of GST.

With reference to sub-clause (4) (g) which provides for "special consideration" to certain States, some Members proposed, in keeping with article 243 B (2), that "special consideration" may also be extended to States like Goa and Union territories like Puducherry by adding at the end of 4(g) " and any State or Union territory having a population not exceeding twenty lakhs".

Sub-clause (5) of the said clause seeks to provide that the Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. These items have been kept out of GST to protect the revenue interest of the States.

Some members sought the inclusion in clause 12(5) of highly revenue generating products like tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption within a period not later than five years so that India, within a few years, fulfills the fundamental GST objective of making the entire nation a single common market for all products.

Sub-clause (6) of the said clause seeks to provide that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

Sub-clause (7) of the said clause seeks to provide that one half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings so that the States have say in the matters of their interest.

Sub-clause (8) of the said clause seeks to provide that the Goods and Services Tax Council shall determine the procedure in the performance of its functions.

Sub-clause (9) of the said clause seeks to provide that every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the vote of the Central Government shall have a weightage of one-third of the total votes cast, and the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting. Sub-clause (10) of the said clause provides that No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of— any vacancy in, or any defect in, the constitution of the Council; or any defect in the appointment of a person as a member of the Council; or any procedural irregularity of the Council not affecting the merits of the case. Sub-Clause (11) of the said Clause provides that the Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.

In respect of this clause some Members proposed amendment that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the destination based taxation principle and need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:-

(a) The vote of the Central Government shall have a weightage of one fourth of the total votes cast, and

(b) The votes of all the State Governments taken together shall have a weightage of three-fourth of the total votes cast, in that meeting. And the vote of each state shall have a weightage proportionate to the population of that State.

After 279A, add the following new article 279B:

(1)Parliament may, by law, provide for the establishment of a Goods and Services Tax Dispute Settlement Authority to adjudicate any dispute or complaint referred to it by a State Government or Governments of the Government of India arising out of a deviation from any of the recommendations of the Goods and Services Tax Council constituted under article 279A that results in a loss of revenue to a State Government or Governments or the Government of India or affects the harmonized structure of the Goods and Services Tax.

(2) The Goods and Services Tax Dispute Settlement Authority shall consist of a Chairperson and two other Members.

(3) The Chairperson of the Goods and Services Tax Dispute Settlement Authority shall be a person who has been Judge of the Supreme Court or Chief Justice of a High Court to be appointed by the President on the recommendation of the Chief Justice of India.

(4) The two other members of the Goods and Services Tax Dispute settlement Authority shall be persons of proven capacity and expertise in the field of law, economics or public affairs to be appointed by the President on the recommendation of the Goods and Services Tax Council.

(5) The Goods and Services Tax Dispute Settlement Authority shall pass suitable orders including interim orders.

(6) A law made under clause (1) may specify the powers which may be exercised by the Goods and Services Tax Dispute Settlement Authority and provide for the procedure to be followed by it.

(7) Notwithstanding anything in this Constitution, Parliament may, by law, provide that no Court other than the Supreme Court shall exercise jurisdiction in respect of any such adjudication or dispute or complaint as is referred to in clause (1).

Explanation- For the purposes of this article, “State” includes a Union territory with Legislature.

Views of the Government

Proposed article 279A (4) (c):

The GST Council would now make recommendations on the model GST laws, principles of IGST apportionment, and place of supply rules. This has been done as per the recommendations of the Empowered Committee after their meeting in Shillong in November 2013. It may not be appropriate for the GST Council or any other body to stipulate the share of local bodies in the revenues collected by the respective States. 73rd Amendment of the Constitution provides for setting up of State Finance Commissions which have been given the responsibility to make recommendations on principles which govern distribution of finances between the States and local bodies i.e., Panchayats and Municipalities. Deficiencies, if any, in functioning of State Finance Commissions in individual States may have to be dealt with separately.

The Department further clarified that taxing powers of local bodies --

Panchayats and Municipalities -- are derived from Acts and laws passed by the State Legislatures. The State Legislatures, under Article 243H and 243X of the Constitution, are authorized to make laws, which are the taxes that the local bodies will levy. This power has not been interfered with and the current structure in the Constitution remains intact.

So far as other arrangements which are currently provided under the Constitution with regard to formation of the State Finance Commissions and with regard to devolution which the State Governments should make are concerned, they also remain intact in the Constitution. These have not been interfered with.

Proposed article 279A (4) (e)

To give flexibility to the States, the provision of 'bands' over the GST floor rates, to be recommended by the GST Council, has been introduced. Depending on the local situations and requirements, the States have the option to levy slightly higher tax within this band. This shall also enable the States to cushion the impact of any potential loss of revenue arising out of implementation of GST. The word "band" does not need to be defined in the Constitution but would need to be defined in the model State tax law or the SGST law and the CGST law which shall be recommended by the GST Council. This provision has been made as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendations of the Parliamentary Standing Committee.

Proposed article 279A (4) (f), (g)

Special category status has been granted to 11 States by the National Development Council comprising the Prime Minister, Union Ministers, Chief Ministers and members of the erstwhile Planning Commission (Now NITI Aayog). Provision of special category States is not based on population but on specific issues such as hilly and difficult terrain, strategic location along borders with neighbouring countries, economic and infrastructural backwardness, and non-viable nature of state finances. The proposed amendment shall mean inclusion of the State of Goa and UT of Puducherry in the list of States with special provisions. Goa has the highest per capita income in the country while Puducherry has fifth highest per capita income in the country. Neither of them have any of the specific problems listed in the criteria above.

Proposed article 279A (5)

Initially, as recommended by the Parliamentary Standing Committee on Finance and the Empowered Committee in its Bhubaneshwar meeting in January 2013, 'petroleum products' had been proposed to be subsumed in GST. However, since taxes on petroleum products constitute a major portion of State revenues, many States expressed apprehension over possible revenue loss in case petroleum products are subsumed under GST. Hence, these products have been constitutionally brought under GST and it has been provided that they would not be subject to GST till notified at a future date on the recommendation of the GST Council. It may be mentioned that petroleum products constitute a major input in most manufacturing industries and their non-inclusion would mean these industries would not be able to claim input tax credit for such inputs resulting in cascading of taxes and increased cost of production. It is expected that once GST regime is stabilised, the States may want to include petroleum under GST after two or three years itself. As per the proposed amendment, the GST Council shall not be able to make any recommendation before five years to include petroleum products under GST. Hence, it is better to keep the option open for Council to decide rather than binding the GST Council for five years.

Further, the Bill leaves it to the GST Council to recommend the date on which GST shall be applicable on petroleum products. Since the States would have 2/3rd vote share in the Council, if the States do not want GST to be imposed on petroleum products, in any case it would not be possible for GST to be imposed on petroleum products as long as the States do not agree. Further, losses, if any suffered by the States, will be compensated by the Centre.

Proposed article 279A (9)

The structure of GST Council represents the federal nature of governance in this country.

This has been done as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendations of the Parliamentary Standing Committee. This provision has been consciously adopted to ensure the federal balance in the functioning of the GST Council, and also to enhance co-operative federalism. The existing pattern of vote-share in the GST Council ensures that no decision can be taken by the Council either by the Centre or the States acting on their own. Hence, neither the States nor the Centre alone can take a decision in the Council. Providing 3/4th weightage to the States would upset the federal balance between the Centre and the States. Presently, in the concurrent list, in case of any difference between Central and State legislation, the Central legislation prevails. The present weightage of votes in the GST Council would ensure that neither the Centre nor the States are able to take a decision without the support of the other. In other words both would enjoy a veto.

Further, with Centre holding only 1/3rd of the votes, the Centre would require support of 20 States/Union Territories to get a resolution passed. This shows that Centre would need co-operation of States to get any decision taken at the GST Council.

Proposed article 279A (11)

The hitherto proposed article 279B for the creation of a GST Dispute Settlement Authority has been omitted, and a provision has been made in Article 279A itself empowering the GST Council to decide about the modalities to resolve the disputes arising out of its recommendations .The States were apprehensive that the proposed GST Dispute Settlement Authority under proposed article 279B would affect the fiscal powers of the States and the Union. Hence, this provision has been done away with. This has been done as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendation of the Parliamentary Standing Committee.

It may further be mentioned that Article 279A (11) only provides that GST Council may decide the 'modalities' to resolve disputes arising out of its recommendations. The 'modalities' could include any dispute resolution mechanism which could be inter-alia negotiation, mediation, arbitration or even a judicial authority as deemed appropriate by the GST Council depending on the nature of dispute before it. Thus, as per the proposed Bill, the GST Council shall, by itself, not be resolving the disputes but decide on the modalities for resolving the disputes.

Views of the Stakeholders

The Stakeholders were of the view that vote of the Central Government and State Government shall have the weightage of 1/4th and 3/4th respectively otherwise it would be difficult to get the proposals approved, in the constitution of GST Council instead of the words 'Union Minister of State in charge of Revenue or Finance" it should be 'Ministers' in charge for these functions, as these positions are not explicitly mandated in the Constitution, No dispute resolution mechanism can be meaningful and effective without an explicit linkage between the empowerment clause for the levy of GST (Articles 246A and 366(12A)) and the GST Council recommendations, Goods and Services Tax Council shall be guided by the destination based taxation principle and need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services, Requisite provisions may be incorporated to make the decisions of the GST Council binding on the States and the Union, Include the State/UT of Goa and Puducherry in Article 279A (4) (G), The Threshold limit for applicability of GST may be fixed at Rs. 50 Lacs, GST Rate may be kept in the range of 16-18%, Tax rate on Goods and Services is to be same to avoid disputes, Tax on interstate supply of goods from one state to other of the same company may be exempted from the purview of GST, The Input taxes paid by the exporters are to be refunded automatically, etc.

Recommendation

After having deliberated on the issue of finances of local bodies, the Committee strongly feels that the revenues of local bodies need to be sustained and protected for ensuring that standards of local governance are maintained. The Committee, thus, strongly recommends that the State Governments take adequate measures to ensure that adequate revenues flow to the local bodies, and their resources are not adversely affected. The Committee noted that Article 243H and 243X contain provisions for State Legislatures to authorize Panchayats and Municipalities to collect and appropriate taxes in the State list. The Committee further noted that Article 243I and 243Y provide for setting up of State Finance Commissions to make recommendations regarding devolution of funds to local bodies. The Committee noted that the above provisions notwithstanding, local bodies find managing their resource requirements quite challenging.

In light of above, with respect to Article 279A 4(e), the Committee strongly recommends that the word 'band' used in the proposed Article may be defined in GST laws. The Committee recommends the following definition of 'band':

"Band": Range of GST rates over the floor rate within which Central Goods and Service Tax (CGST) or State Goods and Services Tax (SGST) may be levied on any specified goods or services or any specified class of goods or services by the Central or a particular State Government as the case may be.

With respect to Article 279A (5), taking note of the provision that inclusion of petroleum products into GST can take place only on recommendation of GST Council which could happen only with the consent of both the Centre and the States, the Committee recommended that the clause be adopted with no change.

The Committee is aware that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

In view of the clarifications submitted by the Department of Revenue and Legislative Department, the Committee finds no merit in disturbing the voting pattern proposed in the Bill, as the same has been worked out on a formula where no one is at an disadvantageous or dominating position be it Centre or States. Moreover, under clause 2 Parliament and the Legislature of every State shall have power to make laws with respect to GST simultaneously.

In the GST Council, all the decisions have to be taken collectively by the Centre and States and in order to take decision on any issue 75% votes are necessary. So, in order to strike a fine balance Centre vote share has been kept at 1/3rd and that of the States at 2/3rd. In that backdrop, the Committee recommends that these amendments may not be necessary since our Constitution is a federal Constitution and so, it is necessary to make the provisions providing for a manner that disallow the dominance of one over the other. Keeping this in view, the voting formula has been worked out. Hence, the clause has been adopted with no change.

The Committee, having noted the point mentioned by the Department of Revenue that the GST Council shall decide only the 'modalities' to resolve disputes, did not agree to recommend inclusion of Article 279B as was proposed in Constitution(115th Amendment) Bill, 2011.

Clause 13 (Amendment of article 286)

Article 286 Restrictions as to imposition of tax on the sale or purchase of goods.

1) No law of a State shall impose, or authorise the imposition of, a tax on ~~the sale or purchase of goods where such sale or purchase takes place~~ "the supply of goods or of services or both, where such supply takes place"—

(a) outside the State; or

(b) in the course of the import of the goods **& services** into, or export of the goods **& services** out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a **~~sale or purchase of goods takes place~~** **"supply of goods or of services or both" shall be substituted"** in any of the ways mentioned in clause (1).

~~(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—~~

~~(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or~~

~~(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b),~~

~~(c) or sub-clause (d) of clause (29A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.~~

Explanation

This clause seeks to amend clauses (1) and (2) of article 286 of the Constitution which is a consequential amendment in view of the proposed amendments in clause 2 of the Bill.

One Member proposed insertion of a new clause (1A) in article 286 of the Constitution to provide as under-

"No law of a State shall impose, or authorize the imposition of, any restriction on reimbursement of a tax levied under the law of a State in respect of any supply of goods or of services of both inside the State, when such goods or services or both are supplied in the course of inter-State trade or commerce or export outside the territory of India.

Explanation. – For the purpose of this clause, consumption or use of goods or services or both whether partly or wholly, in supply of any other goods or services or both in the course of inter-State trade or commerce or export outside the territory of India, shall be deemed to be supply of goods or services or both in the course of inter-State trade or commerce or export outside the territory of India to the extent of such consumption or use.

Views of the Government

Article 286 put restriction on the imposition of tax on the sale or purchase of goods if such sale or purchase takes place outside the States or in the course of import of goods into or export of goods outside the territory of India. By making amendments so as to substitute the words "sale or purchase of goods" the words "supply of goods or services or both", the restrictions would continue to apply any IGST or CGST and therefore it may not be necessary to go for the above amendment.

Some Members sought the definition in the Constitution amendment Bill itself of the term "supply" in proposed clause I (A) of article 286.

Recommendation

The term 'supply' would be defined in the various GST laws relating to CGST and SGST. Hence, the Committee feels that it would not be appropriate to insert the definition of supply in this clause. This clause has been adopted with no change

Clause 14 (Amendment of article 366)

Article 366 – Definition In this Constitution, unless the context otherwise requires, the following expressions have l, the meanings hereby respectively assigned to them, that is to say

'(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;

'(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A, 268, 269, 269A and 279A includes a Union territory with Legislature;

Clause 14 of the Bill seeks to insert a new definition clause (12A) in article 366 of the Constitution to define the words "goods and services tax". It also seeks to insert two clauses (26A) and (26B) to define the words "Services" and "State", respectively.

Some Members proposed amendments in clause (12A) to delete the word "any" and the words "except taxes on the supply of alcoholic liquor for human consumption so as to progressively ensure a true common market for all goods".

In (26A) delete "anything other than goods" and substitute with "commercial transactions in intangibles so as to avoid the circular definition of 'services' meaning 'anything other than goods."

Views of the Government

In this regard the Ministry of Finance, Department of Revenue has stated that term 'services' has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes.

On the issue of inclusion of Petroleum and petroleum products under GST constitutionally, Department of Revenue in their written submission stated that:

Petroleum and petroleum products have been included under GST constitutionally by keeping only "alcoholic liquor for human consumption" outside of definition of "goods and services tax" given in newly introduced clause (12A) of article 366. However, GST would be leviable on these products only w.e.f. the date recommended by the GST Council. This has been done taking into consideration the concern expressed by Empowered Committee in their various meetings about the likely loss of Revenue, if the Petroleum products are included in GST. Parliamentary Standing Committee had recommended that there should be no exclusions from GST provided under the Constitution Amendment Bill.

The Department of Revenue mentioned that petroleum products constitute a major input in most manufacturing industries and their non-inclusion would mean these industries would not be able to claim input tax credit for such inputs resulting in cascading of taxes and increased cost of production. It is possible that once GST regime is stabilised, the States may want to include petroleum under GST after two or three years itself. In such a situation, since petroleum products have been included Constitutionally, including petroleum products under GST would not require a Constitution amendment.

<u>Views of the Stakeholders</u>

The Experts/Stakeholders were of the considered views that:

Definition of Services

"Supply of Services' means any business activity which is not supply of goods."

In view of Article 246A empowering both Centre and States to levy tax on supply of goods and services, it is the view that the Clause (29A) of Article 366 may be considered for deletion as this would become redundant.

Petroleum

The international practice is to include petroleum in the GST base, and then apply a supplementary excise on selected petroleum products (e.g., petrol and diesel). A credit is allowed for the GST portion of the tax to commercial or industrial use of the fuels, but not for the supplementary excise. It would be advisable for India also to adopt this structure.

Thus, it is recommended that the provisions limiting the scope of GST (to exclude petroleum products) be deleted. Specifically, Explanation to Article 246A is redundant. The GST Council has the powers in any case to exclude any products from the GST base, if it so decides.

Goods and Services Tax

It is advisable to change the definition of 'goods and services tax' in Article 366 (12A) as follows. Further, goods in Article 366(12) need to be redefined to include real property.

"Goods and services tax" means a multi-stage destination-based value added tax on supply of goods, or services, or both, and levied as per the framework recommended by the GST Council.

"Goods" includes, for purposes of the goods and services tax, all materials, commodities, articles, and immovable property

Recommendation

Endorsing the view of the Department, the Committee feels that 'services' has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes. Further, having noted the points mentioned by the Department of Revenue regarding inclusion of petroleum products under GST, the clause has been adopted with no change

Clause 15 (Amendment of article 368)

Article 368 Power of Parliament to amend the Constitution and procedure therefor

This clause seeks to amend article 368 of the Constitution in view of the proposed amendments referred to in clause 12 of the said Bill so as to apply the special procedure provided in the proviso to clause (2) thereof which requires the ratification of the Bill by the Legislatures of not less than one half of the States in addition to the method of voting provided for amendment of the Constitution.

Recommendation

This clause has been adopted with no change.

Clause 16 (Amendment of Sixth Schedule)

This clause seeks to amend the sub-paragraph (3) of paragraph 8 of the Sixth Schedule to the Constitution with a view to empower the District Council for an autonomous district to have the power to levy and collect taxes on entertainment and amusements within such district.

Recommendation

This clause has been adopted with no change

Clause 17 (Amendment of Seventh Schedule)

This clause seeks to amend the Seventh Schedule of the Constitution to substitute the items under entry 84 of the List I and to omit entries and 92 and 92C; to omit entries 52 and 55 of List II and substitute the entries 54 and 62 of List II of the Seventh Schedule to the Constitution. These amendments are consequential to the insertion of new article 246A.

With a view to progressively promoting a common market in all goods and services, some Members proposed amendment to Entry 84 of Union List as follows:

(g) Sale and consumption of electricity'

(h) Alcohol for human consumption.

Some Members also sought clarifications as it does not figure in the Constitution (a) (ii): What is entry 92C?

Recommendation

Regarding the aforesaid Entry, the Committee is of the view that Entry 92C was inserted by the Constitution (Eighty-Eighth Amendment) Act, 2003 to empower the Union to impose service tax on certain services read with article 268A of the Constitution.

Notwithstanding, the service tax levied under the Finance Act, 1994 were continuing as such. The amendment was carried out in the Constitution but the provision was never brought into force. Since Parliament has enacted the said constitutional provision and as such the provision stands as the part of Constitution; and therefore, unless it is omitted by a Constitution Amendment Act by Parliament, it will continue to sit in the Constitution. On the need for formal repeal, the Law Commission, in its One Hundred and Forty-eighth Report on "Repeal of Certain Pre-1947 Central Acts", has observed that "the statues, unlike human beings, do not die a natural death, with the possible exception of statute whose life is pre-determined by the Legislature at the time of their enactment. A statute, unless it is expressly enacted for a temporary period, survives until it is killed by repeal. To this extent, statutes enjoy immortality." Therefore, it is necessary to omit the said provision to ward of any future doubts about GST.

(iii) After Clause 17(b) (i), add: Entry 53 shall be omitted

(iv) Further amend entry 54 to add between "alcoholic liquor for human consumption," and "but not including sale" the words: and tobacco and tobacco products and sale and consumption of electricity,

(v) Further amend Clause 17(b) (iv) to read as follow:

Entry 62 Taxes on entertainment and amusements and any other taxes, duties, tolls, levies, or royalties devolved by State legislatures to institutions of local self-government under articles 243 H and 243 X to the extent levied, collected and appropriated by a Panchayat or a Municipality or a Regional Council or a District Council".

Views of the Government

Inclusion of electricity under GST has not been envisaged ever since the First Discussion Paper was published in 2009 on GST. Neither the Empowered Committee, nor the Parliamentary Standing Committee ever recommended inclusion of electricity under GST. Taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution.

Entry 53 of List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122nd Amendment) Bill, 2014.

Further, in the case of alcohol, the States have been consistently opposing the inclusion of alcohol under GST. Even in the First Discussion Paper, it had been recommended that alcohol be excluded from GST. This is also as per the recommendations of the Empowered Committee.

Under the proposed Constitution scheme, the Centre has the power to tax one demerit good (tobacco), while the States have the power to tax the other demerit good (alcohol). Tobacco, unlike alcohol has been subsumed in GST, and the States will have the right to levy SGST on it. This arrangement was specifically recommended in this light where alcohol, being the other demerit good, has not been subsumed into GST, and States retain the powers to levy excise duty as well as sales tax on alcohol. Centre has no powers vis-à-vis alcohol.

Views of the Government

As regards petroleum and petroleum products, the views of the Department have been recorded while dealing with the proposed Article 279A (5).

In their written replies, the Department of Revenue stated that all forms of Entry Tax have been subsumed under GST by omitting Entry 52 of List II (State list) of Seventh Schedule. The Parliamentary Standing Committee had recommended Entry tax to be subsumed under GST. At the same time, a Constitutional commitment has also been given to the States that their losses caused due to introduction of GST would be compensated for five years. The Department has also mentioned that provision of Entry tax is an impediment to creation of common market, which is a goal of GST, as it acts like a tariff barrier on movement of goods into a local area and discriminates between goods produced within and outside the area. It impedes free movement of goods and also increases compliance cost for business.

Views of the Stakeholders

Clause 17 (b) (ii) in List II-State List

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, tobacco and tobacco products 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.";

State Governments may be allowed to levy higher taxes on tobacco and tobacco products; betting and gambling activity may be kept out of the purview of GST; retain Entry 52 and Omit Entry 55; Insert a new Entry 54A “other polluting goods and services to be notified by GST Council.

Clause 17 (b) (iii) in List II-State List

55. Taxes on advertisement other than advertisements published in the newspapers and advertisements broadcast by radio or television,”

Electricity

Electricity must form an integral part of the GST base, as is any other normal good. It is therefore suggested that electricity duty also be subsumed within the GST framework. This approach can reduce the cost of electricity by 20%, significantly enhancing the competitiveness of our domestic manufacturing sector.

The GST need not be a full replacement of the electricity duty. Only a part of the duty can be replaced by GST, which should be fully creditable to industrial/commercial users of electricity.

Given that Article 246A empowers the Union and States impose GST, notwithstanding anything contained in articles 246 and 254, GST can be extended to electricity even if Entry 53 in List II – State List (Taxes on the consumption or sale of electricity) is not omitted. Continuing this entry would allow States the flexibility to levy a supplementary tax to electricity in addition to GST, if they consider it necessary or desirable.

Real Estate

Real Estate merits inclusion in GST from another significant perspective, i.e., to bring transparency to the sector. Real estate is known to be the breeding ground of corruption. Bringing this sector into GST will significantly reduce tax evasion through more efficient transactions tracking and improved enforcement and compliance.

For inclusion of real Estate in the GST base, the definition of ‘goods and services tax’ under Clause 14 of the Bill should be broadened to include property, movable or immovable as suggested below.

Given the practice in other jurisdictions to levy supplementary taxes in the form of land transfer taxes, levy stamp duties, and registration fees on real property transactions, the existing entries in the Union and State Lists relating to these taxes on land and buildings can be left unchanged. The tax rates and base for these levies can be adjusted (including reducing them to zero) as per the recommendations of the GST.

Alcohol

Any explicit restrictions on the application of GST to alcohol in the Constitution itself are thus not appropriate. Accordingly, a change in the definition of GST in Article 366(12A) is recommended.

Alcohol should be given the same treatment as is being given to Petroleum and its products. In that case, the clause 'except taxes on the supply of the alcoholic liquor for human consumption' would have to be deleted from the definition of GST at Clause 12A of the Bill. Further, as has been done in the case of Petroleum and its products, the levy of GST on Alcohol may be postponed to a later date to be decided by the GST council. Till that time, the States will continue to levy State Excise duty and State VAT on Alcohol. The advantage would be that no further amendment of the Constitution would be needed, when the States agree to bring in Alcohol within GST at a later date.

Entertainment Tax

The Bill proposes that local levies such as octroi and entry taxes should be fully subsumed under the GST. This is necessary to ensure free flow of goods and services within the common market of India. This is equally true of the entertainment tax. The funding needs of the local bodies can be better addressed through vertical devolution of State GST revenues to local bodies, as opposed to such nuisance taxes which are difficult to administer and comply with, and do not yield much revenue. The quantum of revenues earned by local bodies from entertainment tax levied and collected by them is insignificant and constitutes a miniscule fraction of their budgets. For smaller towns and cities, the revenues from the tax might not cover even the cost of administration and enforcement.

It is recommended that Entry 62 in List II – State List be omitted.

Entry 84

List I Union List, the powers of the Union to levy supplementary taxes on petroleum and tobacco are limited to excise on the manufacture or production of these goods. By contrast, the powers of States for levy of supplementary taxes extend to purchase or sale of the specified products. It is desirable that the Union powers also be likewise extended to sale or purchase of the specified goods.

Purchase Tax/Entry Tax/Octroi are to be allowed as input Tax credit.

Recommendation

The Committee is of the view that the entry in the list II- State List empowers the State Government to make laws in respect of the subjects mentioned therein. The Committee is also of the considered view that taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution. Entry 53 of the List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122nd Amendment) Bill, 2014. The Committee also noted the rationale for the provisions relating to alcohol for human consumption and tobacco as provided by the Department of Revenue.

Hence, the clause has been adopted with no change.

Clause 18 (Arrangement for assignment of additional tax on supply of goods to States for two years or such other period recommended by the Council)

Sub-clause (1) of this clause seeks to provide that an additional tax on supply of goods, not exceeding one per cent in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

Sub-clause (2) of this clause seeks to provide that the net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.

Sub-clause (3) of this clause seeks to provide that the Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

Sub-clause (4) of this clause seeks to provide that Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

Some Members of the Committee proposed to delete this clause because under clause 19, 100 percent compensation be provided for a period not less than five years. In view of guaranteed compensation for any loss incurred by any State or Union Territory, there is no need to levy a market-distorting 1% additional levy.

Views of the Government

In this regard the Ministry of Finance, Department of Revenue has explained that since GST is a destination based tax, the manufacturing States were apprehensive of their loss in revenues. To allay their fears, and to bring them on board, a provision has been made for the levy of 1% additional tax on the supply of goods. This tax shall be credited to the exporting State. Since it is expected that in the medium and long run, the revenues of all the States would increase due to better compliance and enforcement under GST, this provision of 1% additional tax has been made only for the first two years. The GST Council would have the power to recommend continuation of this tax at the end of 2 years, if it so deems fit. This was decided in view of the consultations with State Finance Ministers by FM on 15.12.2014. It is also in line with the recommendations made by the Empowered Committee in their various meetings for the protection of the revenues of the manufacturing States. Clause 18 in itself does not make any distinction of a "manufacturing state" and this tax shall be levied by all States who send their produce outside the State.

Views of the Stakeholders

In place of "An Additional Tax" in Clause 18 (1) and "additional tax" in Clause 18(2), it may be "Central Sales Tax." Instead of introducing a new additional tax, the same purpose may be served by "Central Sales Tax," which is already known to the Centre, the States, in industry, trade and others.

1% levy against the spirit of GST.

Any specific reference to a period of two years would be arbitrary and unnecessary. The portion, "a period of two years", may therefore be considered for deletion.

It is important to recognize that GST is a destination based tax levied at the point of consumption. Introduction of an additional tax on supply of goods, not exceeding one per cent for two years would make the tax partly origin based and partly destination based.

Allowing continuation of origin based tax system would be a major distortion and continuation of significant tax exportation from the richer producing states to the poorer consuming states.

In fact, this method of compensating the manufacturing states through one percent origin based tax is not at all necessary, since in any case the Bill itself envisages compensation by Centre for the states in case of revenue loss. Therefore, the view is that this provision would need to be deleted.

Since, the Bill already contains a provision for compensating the States for any losses under GST for five years, it would result in no net revenue gain to the States where they indeed suffer a revenue loss under the GST and are recipient of compensation from the Centre. It would effectively mean an extra profit to the States who gain revenues from the GST. If so, it does not serve its intended purpose. These concerns warrant a removal of the 1% origin based tax.

Restricting the levy only to 2 years, with no powers to extend the same for any further period

Restricting levy only to interstate sale and purchase of goods this means that no such additional tax should be levied on interstate supply of goods otherwise than by way of sale and purchase.

Recommendation

The Committee feels that the provision of 1% additional tax in its present form is likely to lead to cascading of taxes. Therefore, the Committee strongly recommends that in the concerned GST law, an explanation should be given that for the purpose of Clause 18, the word 'supply' would mean: Supply: "All forms of supply made for a consideration.

Clause 19 (Compensation to States for loss of revenue on account of introduction of goods and services tax)

This clause seeks to provide that 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.

In this clause some Members proposed amendments by adding the words "100 percent" in the second line between "provide for" and "compensation to the States" and by deleting "such period which may extend to five years" and substituting with "a period not less than five years" and to insert a new clause in clause 19 that–

19(1) To this end, there shall be established a Goods and Services Compensation Fund under the administrative control of the Goods and Services Tax Council into which the Central Government shall deposit the Goods and Services Tax Compensation.

By inserting the words, "as well as the panchayats and Municipalities through States" between the words "to the States" between the words "to the States" and "for the loss of the revenue"

Further, some of the Members proposed amendments that for the words "Parliament may", the words "Parliament shall" should be substituted.

Some Members proposed the addition of the words "as well as the Panchayats and the Municipalities through State Legislatures" so as to ensure the "sound finances" of the local bodies while respecting the Constitutional order that as local bodies are in the State List it is for State Legislatures, by law, to "authorise a Panchayat/Municipality to levy, collect and appropriate" such taxes.

Views of the Government

Regarding the said amendments the Ministry of Finance, Department of Revenue has stated that it may not be appropriate to stipulate that States would compensate the local bodies for any losses caused to them. 73rd Amendment of the Constitution provides for setting up of State Finance Commissions which have been given responsibility to make recommendations on principles which would govern distribution of finances between the States and local bodies i.e., Panchayats and Municipalities. Deficiencies, if any, in the functioning of State Finance Commissions in individual States may have to be dealt with separately.

Further, one of the Members proposed amendments that for the words "Parliament may", the words "Parliament shall" should be substituted. Regarding the proposed amendment to substitute the words "for a period of not less than five years", in place of the words "which may extend to five years", the Ministry of Finance, Department of Revenue has stated that to bridge the trust deficit with the States, and to ensure no revenue loss to them, it has been Constitutionally provided that the States shall be compensated for five years for their losses caused due to introduction of GST. This has also been recommended by the 14th Finance Commission.

Views of the Government

Regarding substitution of word 'may' by 'shall', the Legislative Department has clarified that under the Constitution, wherever law making power is conferred on Parliament, the language used is "may" in view of the fact that within the constitutional parameters Parliament is supreme. However, in contrast, wherever, the power to make law is subject to certain contingency, and then in such situation like Proclamation of Emergency, the provisions of the Constitution, uses the word "shall". (as used in article 250 below). In view of this, it may not be necessary to substitute the word "may" with the word "shall"

In this connection, it would be appropriate to reproduce the provisions of the following articles, namely:–

"2. Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Formation of new States and alteration of areas, boundaries or names of existing States.— Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State....

Art 245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

Art 247. Power of Parliament to provide for the establishment of certain additional courts.—notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

Art 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.—

(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

Art 368. Power of Parliament to amend the Constitution and procedure therefor.— (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.".

On the issue of period of GST Compensation, Department has stated that:-

"It is expected that the revenues of the Central and State Governments will not be impacted in the long run. However, due to a shift from origin-based to destination based indirect tax structure, some States might face drop in revenue in the initial years. To help the States in this transition phase, a number of provisions have been incorporated in the Bill as enumerated in Para I, points (a) to (e), above. In the medium and long run, the revenues of all States and Centre are expected to grow due to widening of tax base, better tax compliance and enforcement, and growth in the economy".

Further, the smaller and weaker States will benefit from GST from the start. Since these are primarily consuming States, all SGST collected on goods and services will flow to the consuming States under the GST regime. Hence, the revenue of these States will increase and they are not likely to suffer any loss even during initial years.

Views of the Stakeholders

Parliament shall, 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 a period not less than five years.

In place of "protection to," it may be 'protection of 100 percent to". This will provide required comfort fully to the States and shield against anxiety during the initial phase of introduction of GST.

On the basis of past experience, the need for timely payment of compensation, without delay, in every financial year.

As the Bill made a provision for compensation in the event of revenue loss to the States after the introduction of GST, on the recommendations of the GST council, for such period which may extend to five years, this should provide comfort to the States. Since Union government eventually by law would be committed to compensation for revenue loss, it may be proper to eliminate tax on interstate supply of goods as proposed in the new Bill during the first two years of GST regime to introduce a destination based tax system.

Having agreed to give compensation, there is no harm in Centre agreeing to give 100% compensation for all five years, in case of loss of revenue; – that would raise the comfort level of the States, and bridge the evident trust deficit between Centre and the States.

In view of the clarifications given by the Legislative Department, the Committee feels that there is no justification for substitution of the word 'may' with 'shall'.

Having regard to the concerns expressed by the various States and some of the Members of the Committee in their submissions made before the Select Committee, the Committee recommends amendment in clause 19.

The amended clause 19 should read as follows:

"19. Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for the loss of revenue arising on account of implementation of the Goods and Services Tax for a period of five years."

Clause 20 (Transitional provisions)

This clause seeks to provide for transitional provisions which provides that notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

This clause prescribe a timeframe within which the subsuming of different indirect taxes into GST would take place and enable the competent Legislature to amend or repeal their existing laws to pave the way for imposition of SGST in the States.

Recommendation

This clause has been adopted with no change.

Clause 21 (Power of President to remove difficulties)

This clause seeks to provide that if any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty

However, no such order shall be made after the expiry of three years from the date of such assent. It also seeks to provide that every order made under sub clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

Recommendation

This clause has been adopted with no change.

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Further parts are under process will be published soon;

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