2016

# The Constitution (One Hundred and Twenty Second Amendment) Bill 2014

## An Act which enable Government to make law on Goods and Services tax.

This booklet contain detailed analysis on " The Constitution ( One Hundred And Twenty Second Amendment) Bill, 2014 and amendments as moved on 03rd of August 2016 before Rajya Sabha.

CA SUNIL KUMAR

08/08/2016

**ACKNOWLEDGEMENT AND OTHER:**

It makes both of us very proud, that with the best efforts of us, we are able to compile this Constitutional Amendment Booklet. My Friend Ajay, his contribution at various stages is commendable. I express my thanks to him for his full co-operation for making this compilation successful.

**References Used to compile this booklet:**

a. The Constitution (One Hundred And Twenty Second Amendment) Bill, 2014 amended till date.
b. Amendments as moved by Hon. Finance Minister before the Upper House of Parliament on 03rd August 2016.
c. Debate documents of Upper House
d. FAQ of Empowered committee of State Finance Ministers.
e. Some other sources e.g. Newspaper, Internet in general.

Although, every precaution has been taken while drafting this booklet, but error could be there. If you found any error during reading, please let us know. We will be thankful to you.

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THE CONSTITUTION (122Nd AMENDMENT) BILL, 2014

A

BILL

Further to amend the Constitution of India

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of Indian as follows:-

*1. (1) This Act may be called as the Constitution (One Hundred and First Amendment) Act, 2016.*

*(2) It shall come in to force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.*

***<u>Analysis:</u>***

Rajya Sabha gives its assent on the bill on 03rd of August 2016. Now, very first question arises what will be the next procedure? For this purpose, Article 368(2) of the constitution needs to read, which says as under:

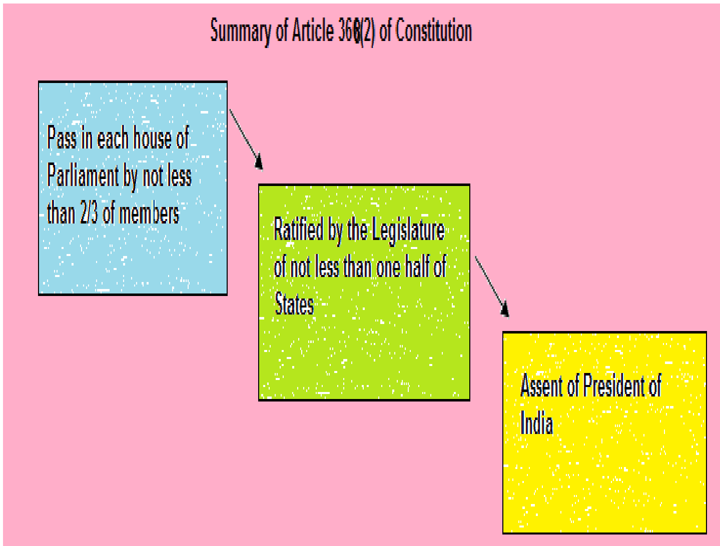
*An amendment of this constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a Majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended with the terms of the Bill:*

*Provided that if such amendment seeks to make any change in –*

*a) Article 54, article55, article 73, article 162 or article 241, or*
*b) Chapter IV of Part V, Chapter V of Part VI, or Chapter 1 of Part XI, or*
*c) any of the Lists in the Seventh Schedule, or*
*d) the representation of the states in Parliament, or*
*e) the provisions of this article,*

*the amendment shall also require to be ratified by the Legislature of not less than one-half of the States by resolutions to that effect passed by those Legislature*

Therefore, following will be the next steps:




**<u>Interesting Facts:</u>**

Government expects 50% states to ratify GST bill in 30 days.

***(Economic Times dated 05th August, 2016)***

Mr. Amit Shah Summons Cms of BJP ruled state to ratify GST. Presently, BJP ruled in 9 states.

***(Indian Express dated 05th August, 2016)***

*To ratify at least 16 states out of 30 must give there assent to the amendment of Constitution.*


2. *After article 246 of the Constitution, the following article shall be inserted, namely :-*

*Article 246A:*

1) *Notwithstanding anything contained in article 246 and 254, Parliament, and subject to clause (2) the, legislature of every state, have power to make laws with respect of 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 service tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.*

*Explanation: The provision of this article, shall, in respect of goods and services tax referred to in clause (5), of the article 279A, take effect from the date recommended by the GST Council.*

***Analysis:***

Presently, Article 246 gives the specific power(s) to Union and States respectively to make laws in respect of matters which are provided in there list under Seventh Schedule to the Constitution.

Schedule VII of the Constitution read with Article 246 of the Constitution provides following Lists:

LIST I: Union List: Contains entries over which the Union has a power to legislate.

LIST II: State List: Contains entries over which the State Government has a power to legislate, and

LIST III: Concurrent List: Contains entries over which both the Union and State has a power.


Now, a new article has been inserted under the constitution called Article 246A which is not disturbing Article 246 i.e. none of the list disturbing seventh schedule as specified above.

246A (1) gives power to Union and states to legislate a law in respect of goods and service tax, except in respect of supply of goods or services or both takes place in the course of inter-state trade or commerce. Therefore, there will be 2 laws at centre level (CGST and SGST) and each state will have their own law (SGST).

***Interesting Fact:***

GST Model would implement through multiple statues (one for CGST and SGST statue for every state).

***(Q: 8 of FAQ issued by Empowered committee of State finance minister)***

GST is not applicable (applicable from the date recommended by GST council) on following articles:

- Petroleum products
- High Speed Diesel
- Motor Spirit (Commonly known as petrol)
- Natural gas, and
- Aviation turbine fuel.

3. *In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter " Subject to article 246A, Parliament" shall be substituted.*

**ANALYSIS**

**Article 248:**

~~Parliament~~ ***Subject to article 246A, Parliament*** has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

4. *In article 249 of the Constitution, in clause (1), after the words "with respect to" the words, figures and letter "goods and service tax provided under article 246A or" shall be inserted.*

**Article 249:**

Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-third of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to ***goods and service 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 resolution remains in force.

5. *In article 250 of the Constitution, in clause (1), after the words "with respect to" the words, figures and letter "goods and service tax provided under article 246A or" shall be inserted.*


**Article 250:**

Notwithstanding anything in the 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 service tax provided under article 246A or*** any of the matters enumerated in the State List.

6. In article 268 of the constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

Article 268:

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.

7. *Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eight Amendment) Act 2003 shall be omitted.*

Article 268A:

***~~(1) Taxes on services shall be levied by the Government of India and such tax shall be collected and apportioned by the Government of India and 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) apportioned 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.~~***

It is clear from above that Stamp duty will not subsumed in GST.

8. *In article 269 of the Constitution, in clause (1), after the words "Consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.*

**Article: 269**

(1) Taxes on sales or purchase of goods and taxes on the consignment of goods ***except as provided in article 269A*** shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation: For the purpose of this clause,-

(a) the expression " taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than news papers, where such sale or purchase takes place in the course of Inter State trade or commerce.

(b) the expression " taxes on the consignment of goods" shall mean taxes on the consignment of goods (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.

9. *After article 269 of the Constitution, the following article shall be inserted, namely:-*

*269A*

1) *Goods and service 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 Service Tax council.*

***1A) the amount apportioned to a State under clause (1) shall not form part of Consolidated Fund of India.***

***1B) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246A, such amount shall not form part of Consolidated Fund of India.***

***1C) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated fund of the State.***

***(Newly Insertion)***

*Explanation:- For the purpose of this clause, supply of goods, or of services, or both in the course 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 service, or both takes place in the course of Inter-state trade or commerce.*

<u>ANALYSIS:</u>

As per proposed Article 246A(2), Parliament will have exclusive power to make laws with respect to GST where the supply of goods, or of services, or both takes place in the course of interstate trade or commerce.

Further, Article 269A(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 interstate trade or commerce.

***<u>Reason for further amendment in Constitution Bill:</u>***

**(1A) The amount apportioned to a State under clause (1) shall not form part of Consolidated Fund of India.**

**<u>ANALYSIS:</u>**

Article 269A(1) prescribes that GST on supplies in the course of inter-state trade or commerce shall be levied and collected by the government of India and apportioned between Union and the States in the manner provided by the parliament on the recommendation of council.

But it does not speaks that where this fund go. Now, the bill amended further and provides that the portion which is apportioned to a state shall not form part of consolidated fund of India and therefore not subject to apportioned.

**(1B) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246A, such amount shall not form part of the Consolidated Fund of India.**

We all know, as per clause (a) of sub-section (5) of Section 35 of draft law on GST which prescribes the manner of utilization of IGST credit available under electronic credit ledger says:

*The amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount* *remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.*

Now, take a scenario where in you have a interstate purchase on which IGST has been paid. On sale of such goods you have charge CGST and SGST because of Intra State supply. Now, assuming that apart from this transaction, you have no other liability, therefore credit of IGST can be utilized against CGST and then SGST. The portion which is adjusted against the SGST cannot be form part of Consolidated Fund of India but will form part of consolidated fund of State and therefore will not subject to apportion.

**(1C) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the consolidated fund of the State.**

This clause is entirely vice versa situation of clause (1B).

*10. In article 270 of the Constitution, -*

*i. In clause (1), for the words, figures and letter " article 268, 268A and article 269", the words, figures and letter " article 268, 269 and article 269A" shall be substituted;*

~~***ii. After clause (1), the following clause shall be inserted, namely:-***~~

~~***"(1A) The goods and service 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 clauses (2)."***~~

ii. ***after clause (1), the following clauses shall be substituted namely:-***

***"(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).***

***(1B) The tax levied and collected by the Union under clause (2) of article 269A, which has been used for the payment of the tax levied by the Union under clause (1) of article 246A and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the states in the manner provided in clause (2).***

***(Newly Inserted)***

**ANALYSIS:**

Article 270:

All taxes and duties referred to in the Union List, except all the duties and taxes referred to in ~~**articles 268, 268A and 269,**~~ ***article 268, 269, and 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 tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).***

It says the portion of CGST is subject to apportioned as per constitution.

***(1B) The tax levied and collected by the Union under clause (2) of article 269A, which has been used for the payment of the tax levied by the Union under clause (1) of article 246A and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the states in the manner provided in clause (2).***

It says amount of CGST and IGST which has been used against the payment of CGST and IGST is also subject to apportionment.

*11. In article 271 of the constitution, after the words "in those articles" the words, figures* *and letter except the goods and service tax under article 246A" shall be Inserted.*

**Analysis:**

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

**Probably,** it indicates that no surcharge can be levied on CGST/SGST.

*12. After article 279 of the Constitution, the following article shall be inserted, namely:-*

*279A*

1) *The president shall, within sixty days from the date of commencement of the Constitution (One hundred and First Amendment) Act, 2016, by order, constitute a council to be called the Goods and service Tax Council.*
2) *The Goods and Service 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 of State Government ……………….. Members.*
3) *The members of the Goods and Service 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 recommendation 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 service tax:*
   c) *Model Goods and Service Tax Laws, principles of levy, apportionment of* ~~***Integrated Goods and Services Tax***~~ ***Goods and service tax levied on supplies in the course of inter-State trade or commerce under article 269A*** *and the principles that govern the place of supply:*
   ***(Substitute)***
   d) *The threshold limit of turnover below which goods and services may be exempted from goods and service 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 Pardesh and Uttarakhand; and*

*h) Any other matter relating to the goods and services tax, as the council may decide.*

*5) The Goods and Service Tax Council shall <u>recommend the date</u> 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 harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services.*

*7) One half of the total number of Members of the Goods and Services Tax shall constitute the quorum at its meeting.*

*8) The Goods and Services Tax Council shall determine the procedure in the Performance of its functions.*

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

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

*b) The votes of all the State Governments taken together shall have a weight age of two-third of the total votes cast.*

*In that meeting.*

*10) No act or proceedings of the Goods and Service 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 merit of the case.*

~~11) *The Goods and Services tax Council may decide about the modalities to resolve disputes arising out of its recommendations."*~~

***11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute—***

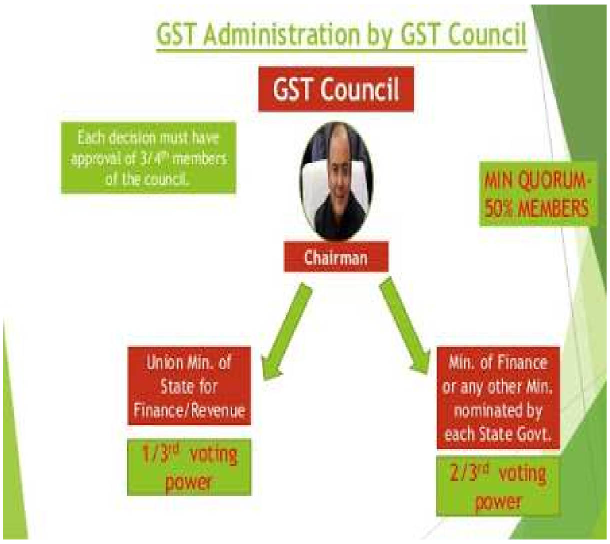
***a) Between Government of India and one or more States; or***

***b) Between the Government of India and any State or States on one Side and One or more other States on the other side; or***

***c) Between two or more States,***

***arising out of the recommendations of the Council or implementation thereof.***

**(Newly Inserted)**




**ANALYSIS:**

**Constitution:** The president shall, with 60 days from the date of commencement of the 122nd Constitution Amendment Act, by order, constitute a Council to be called the Goods and Service Tax Council.

**Members:** The GST Council shall consist of the following members, namely:--

a) the Union Finance Minister …………. Chairman.
b) the Union Minister of States in charge of revenue or Finance . ……………… Members:

C) the Minister in Charge of Finance or Taxation or any other Minister Nominated by each State Government ………… Members,

The Members of the GST Council referred above shall choose one amongst themselves to be the Vice-Chairman of the Council for such period as they may decide.

**Matters where GST Council make recommendations:**

a) the taxes, cesses and surcharge levied by the Union, the States and the local bodies which may be subsumed in the GST;

b) goods and services that may be subject to, or exempted from the GST;

c) Model GST laws, Principle of Levy, Apportionment of IGST and the principle that govern the place of supply;

d) Threshold limit of turnover below which goods and services may be exempted from GST;

e) rates including floor rates with bands of GST;

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 Pardesh, Assam etc.

h) any other matter relating to the GST, as the GST Council may decide.

**Recommendation about petroleum products:**

The GST council shall recommend the date when the goods, named petroleum crude, HSD, Motor spirit etc. would be subsumed in GST.

**Meetings of the GST Council and proceedings:**

- One half of the total number of members of the GST council shall constitute the quorum at its meetings.
- Every decision of the GST Council shall be taken at a meeting, by a majority of not less than ¾ of the weighted Votes of the members present and voting, in that meeting, in accordance with the following principles, namely :--

  **a)** the Vote of the Central Government shall have a weight age of one third of the total votes cast, and
  **b)** the Votes of all the State Governments taken together shall have a weight age of two-thirds of the total votes cast.

**Dispute Redressal Mechanism:**

There are some other provisions of GST council also but the amended one is Dispute Redressal mechanism. During the debate dated 03rd August, 2016 Mr. P. Chidambaram said and I quote *"Please remember that dispute resolution between the Centre and States, between one States and one or more States, between a group of States and a group of states, is not a matter on which the Constitution is silent. Article 131 speaks loud and clear. It provides for Machinery for dispute resolution."*

In replying to above Hon. Finance Minister said and I quote *"I have before me the recommendations of the Standing Committee, which were then processed by the Ministry of Finance, and the Ministry of Finance, on the 11th of March, 2014, on paper, accepted that recommendation. Therefore, the language of what was accepted in March,2014, by the Ministry of Finance and the then minister in Finance is exactly what I incorporated in the December, 2014 amendment. And I am now told, " your Bill is completely flawed. But I did not want a confrontation on this issue and, therefore, when we sat in a process of discussion, on one of the questions which were raised, broadly, the consensus was that there would be a dispute Redressal mechanism which would be decided by the GST Council Itself. The power vests in the Council to decide the nature of mechanism required for a dispute Redressal. So, we accepted that."*

**Interesting Quote:**

*"Two third of voting power, in the GST council, would belong to the States, and one third of the Voting power, in the GST Council, would belong to the Centre. The Votes required to settle a particular issue are three fourth and therefore, necessarily, the GST Council has to work, particularly, under a consensus and, therefore, the Centre and the States will have to work together. The Centre have no Veto Power on states and states have no veto power on the Centre."*

**(Hon. Finance Minister during Speech dated 03rd Aug, 2016)**

*13. In article 286 of the Constitution,-*

*i. In Clause (1),-*

*A. For the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of services or both, where such supply takes place" shall be substituted;*

*B. In sub clause (b), for the word " goods", at both the places where it occurs the words "goods or services or both" shall be substituted;*

*ii. In clause (2), for the words " sale or purchase of goods takes place", the words "supply of goods or services or both" shall be substituted;*

*Clause (3) shall be omitted.*

**ANALYSIS:**

Article 286

(1) No law of State shall impose, or authorize 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~~*** ***goods or services or both*** into or export of the **~~goods~~** ***goods or services or both*** out of, the territory of India.

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

**~~(3) Any law of a State shall, in so far as it imposes, or authorization 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), sub- clause(c) or sub clause (d) of clause (29A) of article 366,**~~

~~**be subject to such restriction and condition in regard to the system**~~

*14. In article 366 of the Constitution,-*

*(i) after clause (12) , the following clause shall be inserted, namely:-*

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

*(ii) after clause (26), the following clauses shall be inserted, namely:-*

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

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

**<u>Analysis:</u>**

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.

Looking at the definition of goods and service tax alcoholic liquor for human consumption is outside the scope of GST. Even if, on future date, the Government consider to bring alchol within the GST scope, it would require another constitutional amendment.

It is important to note the amendment define the term services but does not define the term goods. The term "goods" has already been defined in article 366(12) <u>"goods" includes all material, commodities and articles.</u>

*15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "article 162 or article 241" the words, figures and letter 162, article 241 or article 279A" shall be substituted.*

<u>Analysis:</u>

As said above Article 368 gives the mechanism that how the constitution amended. Article 279A has been included in the matter which affects state rights. Therefore any change in the GST Council provisions as laid down in article 279A would require the state ratification also.

*16. In the Sixth schedule to the constitution, in paragraph 8, in sub paragraph (3), -*

*i. In clause (c), the word "and" occurring at the end shall be omitted;*

*ii. In clause(d), the word "and" shall be inserted at the end;*

*iii. After clause (d),the following clause shall be inserted, namely-*

*(e) Taxes on entertainment and amusements.*

**<u>ANALYSIS:</u>**

SIXTH SCHEDULE
[Article 244(2) and Article 275(1)]

**Provisions as to the administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram**

8 (3)

The District council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say –

(c) taxes on the entry of goods into a market for sale therein, and tolls on passenger and goods carried in ferries; ~~and~~

(d) taxes for the maintenance of school, discrepancies or roads ***and***

***(e)Taxes on entertainment and amusements.***

It clarify from above GST will not subsume the Taxes on Entertainment and Amusements to the extent levied and collected by a Panchyat or a Municipality or a Regional Council or a District Counil.

*17. In the Seventh Schedule to the Constitution,-*
*(a) In List 1- Union List,*

i. *for entry—84 the following shall be substituted, namely:--*

   *"84 Duties of excise on the following goods manufactured or produced in India, namely:--*
   a. *Petroleum crude*
   b. *High speed diesel*
   c. *Motor spirit (commonly known as petrol);*
   d. *Natural gas;*
   e. *Aviation turbine fuel; and*
   f. *Tobacco and tobacco products."*

ii. *Entry 92 and 92C shall be omitted:*

*(b) in List—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 interstate 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 entertainment and amusement to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council,".*

**ANALYSIS:**

**SEVENTH SCHEDULE**
**(Article 246)**
**List-I Union List**

**~~84. Duties of excise on tobacco and other goods manufactured or produced in India except –~~**

a. **~~Alcoholic liquor for human consumption;~~**
b. **~~Opium, Indian hemp and other narcotic drugs and narcotics,~~**

   **~~But including medicinal and toilet preparations containing alchol or any substance included in sub-paragraph (b) of this entry.~~**

*84. Duties of excise on the following goods manufactured or produced in India, namely:--*
a. *Petroleum crude*
b. *High speed diesel*
c. *Motor spirit (commonly known as petrol);*
d. *Natural gas;*
e. *Aviation turbine fuel; and*
f. *Tobacco and tobacco products."*

**~~92. Taxes on the sale or purchase of newspaper and on advertisements published therein.~~**

~~**92C.Taxes on Services.**~~

It is clear from above that GST will not subsumed tobacco and its products excise duty will still be levied on it.

Specified petroleum goods will be brought within the GST ambit from a date recommended by GST Council. Union Excise Duty/VAT will continue to be levied on these goods in the present manner. However, it is stated that these goods will also be subject to GST but at zero rate.

**Specified petroleum goods are:-**

- Petroleum crude,
- High Speed Diesel,
- Motor Spirit (Commonly known as petrol)
- Natural gas, and
- Aviation turbine fuel.

*18.* ~~.~~

1) ~~***An additional tax on supply of goods, not exceeding one percent, 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 Service Tax Council may recommend, and such tax shall be assigned to the states in the manner provided in clause (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 clause (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.***~~

***(Deleted by amendment moved on 03rd August 2016)***

**ANALYSIS:**

*The rationale of a GST is that we must avoid multiplicity of taxes; we must avoid cascading of taxes and we must be able to capture every taxable transaction. If you give to some States the power to impose an additional one percent tax, and in the bill that was circulated, it could have been imposed by more than one state as goods pass from State 'A' to State 'B', to State 'C' and to State 'D', it would have led to multiplicity of tax rates, it would have led to cascading, and it would to a situation where several transactions may or may not be captured……………………. Ultimately, for good sense triumphs, you have dropped the one percent tax and I thank you for accepting our suggestion to drop the one percent tax.*

***(Mr. P Chidambaram during debate at Rajya Sabha on 03rd Aug. 2016)***

19.

*Parliament* ~~***may***~~ ***Shall****, by law, on the recommendation of Goods and Service 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.*

*(Words Strike later are amendment of year 2015)*

**ANALYSIS:**

This language has been changed to give comfort to the State Governments. To respect the parliament, we always use the word ‘May’. But the states had an apprehension because of some reason, what if Parliament does not make law. So, they made a suggestion, which the Legislative Department felt was not correct, but government still incorporated it, and, put it as, ‘Parliament shall make a law.”

*20. 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 provision of the Constitution as amended by this Act shall continue to be inforce until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.*

21.

1) *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 adaption 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:*

   *Provided that no such order shall be made after the expiry of three years from the date of such assent.*

2) *Every order made under sub section (1) shall, as soon as may be after it is made, be laid before the each House of Parliament.*