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Gods and Service Tax - WORLD SCENARIO

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Abstract

The Constitution of India provides for division of powers of taxation between the Centre and States. While the Centre is empowered to tax services and goods up to the production stage, the States have the power to tax sale of goods. However, the States do not have the powers to levy a tax on supply of services. On the other hand, the Centre does not have any power to levy tax on the sale of goods. Therefore, as per the constitutional rule neither Centre nor States have the power to tax the 'supply of goods and services'. Moreover, the Constitution also does not empower the States to impose tax on imports. Therefore, it is essential to amend the Constitution to empower the Centre to levy tax on sale of goods and States for levy of service tax and tax on imports and other consequential issues for the smooth functioning of the GST.

The present paper is an attempt to examine the legal aspects of the Goods and Service Tax in the light of the proposed GST Act. The legal environment of Centre GST and State GST, its draft, etc. come under consideration of the current study. The report of the Joint Working Group regarding the recommendation of legal provisions of the GST is another study area.

Key Words: Constitution, legal environment, consequential issue

INTRODUCTION

Goods and Services Tax is a broad based and a single comprehensive tax levied on goods and services consumed in an economy. GST is levied at every stage of the production-distribution chain with applicable set offs in respect of the tax remitted at previous stages. It is basically a tax on final consumption. In simple terms, GST may be defined as a tax on goods and services, which is leviable at each point of sale or provision of service, in which at the time of sale of goods or providing the services the seller or service provider may claim the input credit of tax which he has paid while purchasing the goods or procuring the service

GST –Global Prespective

More than 140 countries have already introduced GST/National VAT. France was the first country to introduce GST system in 1954. Most countries have a single GST rate. Typically it is a single rate system but two/three rate systems are also prevalent depending upon the requirement of the implementing nation. Standard GST rate in most countries ranges between 15-20%. All sectors are taxed with very few exceptions/ exemptions. Full tax credits on inputs – 100% set off is allowed. Canada and Brazil alone have dual VAT system, which India also proposes to implement.

.1. FRANCE

France was the first country ever to introduce GST in 1954. High sales taxes were the reason behind smuggling that encouraged introduction of GST. The dual system of GST was introduced and was implemented under two-fold system, Central Goods & Services Tax (CGST) and State

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Goods & Services Tax (SGST). As the name suggests CGST was an alternative for all central taxes like service tax & excise whereas, SGST included all state levied taxes.

Under the system end customers were not allowed GST credit but all producers, traders and service providers in supply chain were allowed credit who used the goods or services bought to produce or sell to end customers. Exemptions were given on:- Transactions with government officials ,Transactions with diplomatic missions, Transactions relating to exports Goods and services specifically listed are exercised by the government.

2. CANADA

The GST was introduced in Canada on January 1, 1991, by then Prime Minister Brian Mulroney and his finance minister Michael Wilson. The GST replaced 13.5% Manufacturers' Sales Tax.. In Canada, the Harmonized Sales Tax combines the Goods and Services Tax (GST) and Provincial Sales Tax (PST) into a single sales tax. The introduction of the GST was very controversial. The GST rate is 5%, effective January 1, 2008. The Goods and Services Tax is defined in law at Part IX of the Excise Tax Act. GST is levied on supplies of goods or services purchased in Canada and include most products, except certain politically sensitive essentials such as groceries, residential rent, and medical services, and services such as financial services. Businesses that purchase goods and services that are consumed, used or supplied in the course of their "commercial activities" can claim "input tax credits" subject to prescribed documentation requirements (i.e., when they remit to the Canada Revenue Agency the GST they have collected in any given period of time, they are allowed to deduct the amount of GST they paid during that period). This avoids "cascading" (i.e., the application of the GST on the same good or service several times as it passes from business to business on its way to the final consumer).

But there are certain items that are either "exempt" or "zero-rated". For tax-exempt supplies, the supply is not subject to GST and suppliers do not charge tax on their exempt supplies. Suppliers that make exempt supplies are not allowed to recover GST paid on inputs acquired for the purposes of making or supplying the exempt good or service. Tax exempt items include long term residential rents, health and dental care, educational services, day-care services, legal aid services, and financial services. Goods are zero rated to remove cascading effect of tax. To zero rate the goods government charge 0% GST on them and allow them GST paid on purchases made. Common zero-rated items include basic groceries, prescription drugs, inward/outbound transportation and medical devices. Certain exports of goods and services are also zero-rated In the provinces of Nova Scotia, New Brunswick, Newfoundland and Labrador, Ontario and British Columbia, the harmonized sales tax (HST)replaces both the federal GST and the provincial sales tax and is applied on the same basis as the GST.

3. AUSTRALIA:-

The GST (Goods and Services Tax) is a value added tax on the supply of goods and services in Australia, including items that are imported. In most cases, GST does not apply to exports of goods or services, or other items consumed outside Australia. It was introduced by the Howard Government on 1st July 2000, replacing the previous Federal wholesale sales tax system and designed to phase out a number of various State and Territory Government taxes, duties and levies such as banking taxes and stamp duty. The basic premise of the new tax was to broaden the tax base, which was heavily biased toward the provision of services.

Prior to the GST, Australia operated a Wholesale Sales Tax (WST) which imposed a tax on wholesales of goods. The GST is levied at a flat rate of 10% on most goods and services, apart from GST exempt items, and input taxed goods and services. Critics have argued that the GST is a regressive tax, which means tax will consume a higher proportion of income of low income grouped families, compared to those earning large incomes. Due to the corresponding reductions in personal income taxes, state banking taxes, federal wholesales tax and some fuel taxes that were implemented when the GST was introduced; people were effectively paying no extra tax.

The preceding months before the GST became active saw a spike in consumption as consumers rushed to purchase goods that they perceived would be substantially more expensive with the GST. Once the tax came into effect, consumer consumption and economic growth declined such that by the first fiscal quarter of 2001, the Australian economy recorded negative economic growth for the first time in more than 10 years. Consumption soon returned to normal however. The Government was criticized by small business owners over the increased administrative responsibilities of submitting Business Activity Statements (BAS) on a quarterly basis to the Australian Taxation Office

3. HONG KONG

Goods and Services Tax (GST) was a proposed Value Added Tax in Hong Kong. Consultation over a period of nine months was launched on 19, July 2006 and stirred considerable controversy .It launched a fierce debate amongst local taxpayers, lawmakers, journalists, politicians, who hotly debated the need for the tax, and the shape any taxes should take. The plan to levy GST was dropped on 5, December 2006.The GST would be levied at a flat rate of 5%. The government would undertake to decrease or eliminate other taxes to make it revenue neutral.

INGAPORE:-

Before 1986, Singapore's corporate income tax rate and top marginal personal income tax rate both stood at 40%. Singapore's government decided that it needed to shift from direct to indirect taxes to sustain global competition in attracting investors and to sustain its economic growth. Goods and Services Tax was introduced in Singapore on April 1, 1994, at 3%, the present rate is 7% which was revised on 1 July 2007. Singapore's GST is a broad based consumption tax levied on import of goods, as well as nearly all supplies of goods and services. The only exemptions are for the sales and leases of residential properties and most financial services. Export of goods and international services are zero-rated Some critics consider GST to be a regressive tax. To maintain the progressive nature of total taxes and transfers on individuals, Singapore reduced income tax on lower-income earners, as well as instituted direct transfer payments to lower-income groups, resulting in an overall lower tax burden for most Singaporean households. In 2010, 84.2% of all GST paid was collected from foreigners and the top 40% of Singaporean households, while the bottom 20% of households contributed only 4% of all GST paid.

5. NEW ZEALAND:-

Goods and Services Tax (GST) is a value added tax introduced in New Zealand on October 1, 1986 at 10%. It was raised to 15% on 1, October 2010. End-users pay this tax on all liable goods and services directly included in purchase price of goods and services. GST registered organizations only pay GST on the difference between GST-liable sales and GST-liable supplies (i.e. pay GST on the difference between what they sell and what they buy: income less expenditure). This is accomplished by reconciling GST received (through sales) and GST paid (through purchases) at regular periods (typically every 2 months, with some qualifying companies opting for 1 month or 6 month periods), then either paying the difference to Inland Revenue Department (IRD) if the GST collected on sales is higher, or receiving a refund from IRD if the GST paid on purchases is higher. Businesses exporting goods and services from New Zealand are entitled to "zero-rate" their products - effectively, they charge GST at zero percent. This permits the business to claim back the input GST but the eventual, non-New Zealand based consumer does not pay the tax

There are very few exemptions - all types of food are taxed at the same rate.

Exceptions include rents collected on residential rental properties, donations and financial services. Because businesses claim back their input GST, the GST inclusive price is usually irrelevant for business purchasing decisions, other than in relation to cash flow issues. Consequently, wholesalers often state prices exclusive of GST, but must collect the full, GST-inclusive price when they make the sale and account to the IRD for the GST so collected. The headline price must always be GST-inclusive in advertising and stores. The only exceptions are for businesses which claim a mainly wholesale client-base. Otherwise, displaying a prominent GST-exclusive price (i.e. smaller than the GST-inclusive price), is illegal.

6. NORWAY:-

In Norway, VAT is split into three levels: 25% is the general VAT for most goods, 14% for foods and other related stuff, 8% for person transport, movie tickets, and hotel stays. Books and newspapers are free of VAT.

7. ICELAND:-

In Iceland, VAT is split into two levels: 25.5% for most goods and services but 7% for certain goods and services. The 7% level is applied for hotel and guesthouse stays, license fees for radio stations, newspapers and magazines, books; hot water, electricity and oil for heating houses, food for human consumption (but not alcoholic beverages), access to toll roads and music.

8. SWEDEN:-

In Sweden, VAT is split into three levels: 25% for most goods and services including restaurants bills, 12% for foods (incl. bring home from restaurants) and hotel stays (but breakfast at 25%) and 6% for printed matter, cultural services, and transport of private persons. Some services are not taxable for example education of children and adults if public utility, and health and dental care, but education is taxable at 25% in case of courses for adults at a private school. Dance events (for the guests) have 25%, concerts and stage shows have 6%, and some types of cultural events have 0%. For reference of reader's the white paper on GST, i.e. first discussion on GST is given below. My book is summarizes important parts of this First Paper in a easy language.

3. **BRAZIL**

The Tax on Circulation of Goods and Services (ICMS) is the main State tax, and is due on operations involving circulation of goods (including manufacturing, marketing, and imports) and on interstate and inter-municipal transport and communications services. ICMS is non-cumulative, and thus tax due may be offset by credits arising from the purchase of raw materials, intermediary products, and packaging materials which allows the taxpayer to record input tax credits from the ICMS paid on the purchase of raw materials, intermediary products, packaging materials. Tax credits for goods destined to become fixed assets may be accepted, subject to certain restrictions. Rates applied to interstate commerce are 7% or 12%, depending on the destination. Export goods are exempted from ICMS

EUROPEAN UNION

The European Union Value Added Tax ("EU VAT") is a value added tax encompassing member states in the European Union Value Added Tax Area. Joining in this is compulsory for member states of the European Union. As a consumption tax, the EU VAT taxes the consumption of goods and services in the EU VAT area. The EU VAT's key issue asks where the supply and consumption occurs thereby determining which member state will collect the VAT and what VAT rate will be charged. Each Member State's national VAT legislation must comply with the provisions of EU VAT law as set out in Directive 2006/112/EC. This Directive sets out the basic framework for EU VAT, but does allows Member States some degree of flexibility in implementation of VAT legislation. For example different rates of VAT are allowed in different EU member states. However Directive 2006/112 requires Member states to have a minimum standard rate of VAT of 15% and one or two reduced rates not to be below 5%. Some Member States have a 0% VAT rate on certain supplies- these Member States would have agreed this as part of their EU Accession. Treaty, (for example, newspapers and certain magazines in Belgium). The current maximum rate in operation in the EU is 25%, though member states are free to set higher rates. VAT that is charged by a business and paid by its customers is known as “output VAT” (that is, VAT on its output supplies).

VAT that is paid by a business to other businesses on the supplies that it receives is known as “input VAT” (that is, VAT on its input supplies). A business is generally able to recover input VAT to the extent that the input VAT is attributable to (that is ,used to make) its taxable outputs. Input VAT is recovered by setting it against the output VAT for which the business is required to account to the government, or, if there is an excess, by claiming a repayment from the government. The VAT Directive (prior to 1 January 2007 referred to as the Sixth VAT Directive) requires certain goods and services to be exempt from VAT (for example, postal services, medical care, lending, insurance, betting), and certain other goods and services to be exempt from VAT but subject to the ability of an EU member state to opt to charge VAT on those supplies (such as land and certain financial services). Input VAT that is attributable to exempt supplies is not recoverable; although a business can increase its prices so the customer effectively bears the cost of the ‘sticking’ VAT (the effective rate will be lower than the headline rate and depend on the balance between previously taxed input and labour at the exempt stage).

DENMARK

In Denmark, VAT is generally applied at one rate, and with few exceptions is not split into two or more rates as in other countries (e.g. Germany), where reduced rates apply to essential goods such as e.g., foodstuffs. The current standard rate of VAT in Denmark is 25%. That makes Denmark one of the countries with the highest value added tax, alongside Norway and Sweden.A number of services are not taxable, for instance public transportation of private persons, health care services, publishing newspapers, rent of premises (the lessor can, though, voluntarily register as VAT payer, except for residential premises) and travel agency operations.

India

Background of Goods and Services Tax (GST) in India

The Kelkar Task Force on implementation of the Fiscal Responsibility and Budget Management (FRBM) Act, 2003 had pointed out that although the indirect tax policy in India has been steadily progressing in the direction of VAT principle since 1986, the existing system of taxation of goods and services still suffers from many problems. The tax base is fragmented between the Centre and the States. Services, which make up half of the GDP, are not taxed appropriately. In many situations, the existing tax structure has cascading effects. These problems lead to low tax-GDP ratio, besides causing various distortions in the economy. In this context, the Kelkar Task Force had suggested a comprehensive Goods and Services Tax (GST) based on VAT principle. The effort to introduce the new tax regime was reflected, for the first time, in 2006-2007 Union Budget Speech. The then Finance Minister Mr. P. Chidambaram remarked that there is a large consensus that the country must move towards a national level GST that must be shared between the center and the states. He proposed 1st April 2010 as the date for introducing GST. Introduction of an integrated Goods and Services Tax (GST) to replace the existing multiple tax structures of Centre and State taxes is not only desirable but imperative in the emerging economic environment

SALIENT FEATURES OF PROPOSED GST IN INDIA

Dual GST Model

Different models of GST are implemented across the globe. Many countries have a unified GST system. However, countries like Brazil and Canada follow a dual system wherein GST is levied by both federal and state or provincial vernments. In India, a dual GST is being proposed wherein a central goods and services tax (CGST) and a state goods and services tax (SGST) will be levied on the taxable value of a transaction. The implementation of the dual GST structure in India is the most practical decision. Dual GST is required in India because India is a federal country where both Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in line with the Constitutional requirement of fiscal federalism. In this model the Central GST and State GST will operate in a parallel fashion. Importantly, there will be no distinction between goods and services for the purpose of the tax with a common legislation applicable to both. It is expected that the proposed concurrent dual GST system would preserve and protect the fiscal powers and at the same time rationalize the indirect tax structure by subsuming a plethora of central and local taxes into a consolidated levy.

With a central VAT (Cenvat) and a state VAT already in place, it appears that the proposed dual rate structure would merely fine tune the present system. In simple terms, the excise duty (and allied levies) and service tax would comprise the Central GST and the State GST would comprise of State VAT, State Service Tax (new levy) and few more local levies. Central GST may not have any significant impact as CENVAT Credit of Excise duty and Service Tax available at present would be continued. The State GST is likely to encompass local levies like entry tax, luxury tax, Entertainment tax, and other cess on goods besides the proposed service tax levy.

Input tax hitherto not available on entry tax (in certain States) and other levies will be a positive development. The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient are both located within the State. So on one invoice there will be two taxes – a central tax and the state tax. Both will be levied hopefully on identical values. So if a person is buying something for Rs 100 and suppose the central tax rate is say 6% and the state tax rate is 7% – there will be a tax of Rs 6 at the center level and tax of Rs 7 at the state level – and will have to pay tax of 13% in total. So even though there are two calculations it is really one tax of 13% in one sense.

Conclution

As the dual GST is expected to be a simple and transparent tax structure with only one or two rates of taxes, the result would be a reduction in the number of taxes at the Central and state levels, cut in effective tax rate for many goods, removal of the current cascading effect of taxes, reduction of transaction costs for taxpayers through simplified tax compliance, and increased tax collections due to wider tax base and better compliance. Being a consumption-based tax, dual GST will result in better revenue collection for states with higher consumption of goods and services. The backward and less-developed states would see fall in collections. The Centre is expected to put in place a mechanism to compensate states for any revenue loss due to GST.

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