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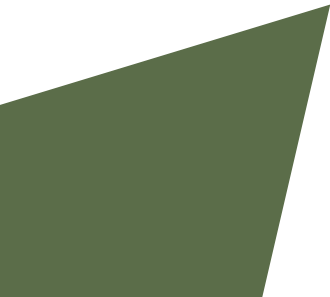
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Goods and Service Tax (GST)

Akash

ABSTRACT

Time changes the day, new things and concepts around us invents and implements. India's most important tax reform has overcome initial jitters but remain a work in progress. In this article the author wants to throw some light on the recently implemented and most argumentative concept called Goods and Service Tax (GST) which was passed in the parliament on 29th March 2017. The very purpose of the article is to acknowledge the nation about the newly implemented GST Act. Still today many people are way back about GST. Few people know this concept, but majority of the population don't know what exactly the GST mean. This writing is needed so that people should understand what the government is framing and implementing and should have their own views and opinion about GST. The author is writing this article with the motive so that every single lay man will get an instance of GST. This article will cover the idea and need to implement this concept, meaning of GST, impact on Indian economy, advantages and challenges of Goods and Service Tax (GST).

SCENARIO BEFORE GST

Progress of any country somehow depend upon the policies of the tax which play a vital role and have direct impact on country's economy in terms of equity and efficiency. A good taxation policy is that which take care of entire income distribution and also produce tax revenue in such a manner for Central and State government which can lead to overall benefit in the nation's infrastructure, defence, public amenities, people's security etc. The framework to impose indirect taxes comes under Constitutional provisions of India. Article 246, Seventh Schedule gives the right to Central and State Governments to levy taxes and collect indirect taxes on the basis of goods and services transactions. The taxation system varies from manufacturer to manufacturer on point of sale or level of imports or exports.

IDEA BEHIND GST

The idea of moving toward and bringing up of Goods and Service Tax (GST) was first suggested and raised for the discussion by the then Union Finance Minister in his budget for 2006-07. The talks of assisting in GST took concrete shape with the introduction of Constitution (122nd Amendment) Bill, 2014. The Bill was passed by the parliament on 8th August 2016 and came into existence in India on 1st July 2017. The main purpose behind bringing up this GST concept is to abolish all the indirect tax in one form. The principle idea behind GST is One nation, One tax.

INTRODUCTION

Tax has been evolved from the Latin word *taxo*, A Tax is a mandatory financial charge or some other type of levy imposed on the taxpayer by a governmental organization in order to fund various public expenditures.¹ One fails to pay taxes will be punishable by law. Taxes are broadly categorised into direct tax and indirect tax. A direct tax is imposed directly on the taxpayers. It is directly paid to the government by the individual on whom it is imposed so. A person pays income tax on his income directly to the government. Generally direct tax cannot shift to others and is progressive in nature. On the other hand, indirect tax is a tax which can be shifted to another person. Tax collected on sale and supply of any commodity by a person is just a conduct. Tax incidence is passed on each

¹ Charles E. McLure, Jr. "Taxation". *Britannica*. Retrieved 3 March 2015.

and every stage till the product reaches the final consumes. So, in indirect tax it is the only consumer who bears the frequency of commodity tax.

The Goods and Service Tax (GST) is a vast and pivotal concept which personifies the huge tax structure by supporting as well as enhancing the economic growth of the country. GST is a comprehensive tax levy on manufacturing and consumption of goods and services at the national level.² The rationale behind GST is to amalgamate the Central and States taxes into a single tax payment. In order to prevent the payment of multiple taxes such as service tax and excise tax at Central level and Value Added Tax (VAT) at the state level, GST would coalesce these numbers of taxes and creates an equable market throughout the country.

GST is a journey able tax, denotation is, the base of the tax will transfer to consumption from origin. Thereby, the end user or the consumer will be liable to pay the tax and exports and manufacturers are exempted from the burden of tax. Under GST multiple taxes transfer to single taxable event, like how people need to pay multiple taxes in the form of central excise in case of manufacturing, state tax Value Added Tax (VAT) in case of sale of goods and service tax in case of sale of service.

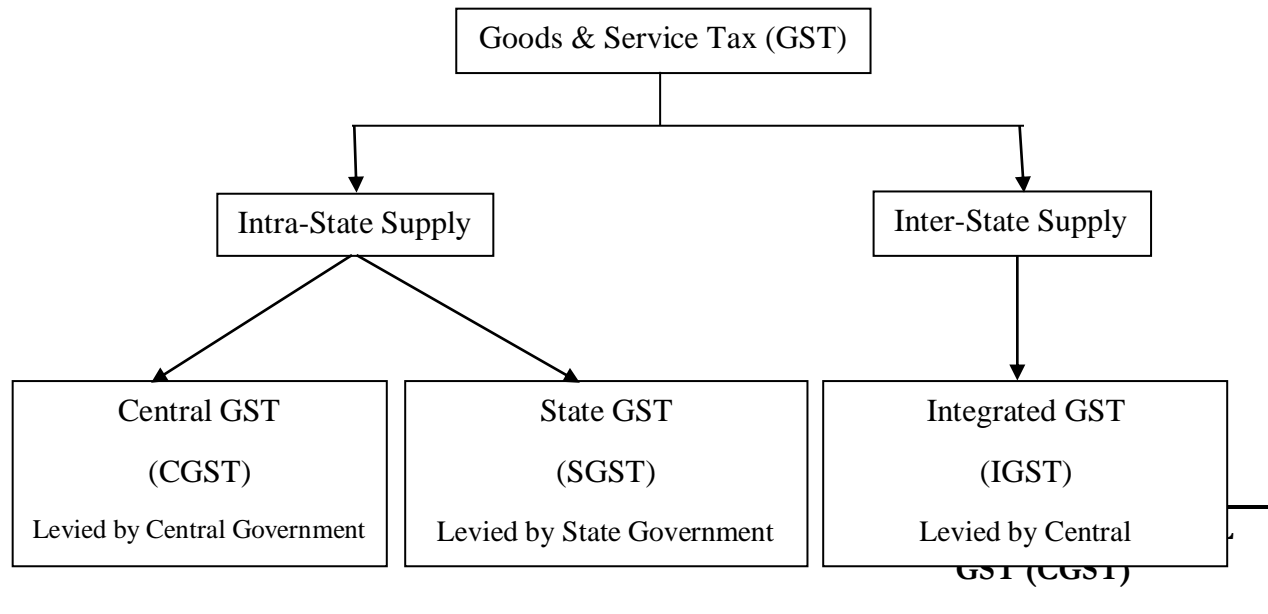
To understand the concept of Central Goods and Service Tax (CGST), Integrated Goods and Service Tax (IGST) and State Goods and Service Tax (SGST) under GST, it is important to understand the concept of inter-state vs intra-state supply of goods and services. An inter-state supply of goods and services is, where the location of the supplier of goods and services and the supply of the same are in the different state. Whereas the intra-state supply is the one where the supply and the supplier of the goods and services are in the same state.

HOW GST IS ENLIST

Central and State government both imposes GST on supply of goods and services. The power to tax on supply of goods and services is vested in the hands of central and the state government. However, central government has the power to tax on inter-state supply of goods and services while the revenue of the final transaction will be transferred to state similar to intra-state transaction.

² The Economic Times (2009) Featured Articles from The Economics Times.

OUTLINE OF GST LEVY



Under GST, Central Goods and Service Tax (CGST) is a tax imposed on Intra-State supplies of goods and services by the central government and is governed by CGST Act. State Goods and Service Tax (SGST) is also imposed on same Intra-State supplies of goods and services but is governed by state government. This infers that both Central and State Government will agree on combining their levies with an appropriate ratio for revenue sharing between them. Section 8 of GST Act states that the taxes be levied on all intra-state supplies of goods and services but the rate of tax shall not exceed 14%, each.³

MEANING OF STATE GST (SGST)

Under GST, State Goods and Service Tax (SGST) is a tax levied and governed under SGST Act by the respective state government in intra-state supply of goods and service. As discussed above CGST is also levied on the intra-state supply of goods and service but is governed by the Central government.

³ Section 8 of GST ACT 2017, Composite supply, mixed supply.

MEANING OF INTERGRATED GST (IGST)

IGST is governed by Integrated Goods and Service Tax Act 2017. IGST will be charged whenever there is a transfer of supply of goods and services from one state to another state. Whatever be the revenue collected from this tax will be divided between Central government and State government as per the rates specified by the government. Imports of goods and services will also be covered under inter-state transaction so IGST will be imposed on such transaction.

Illustrations:

Let's assume that John is a business dealer in Uttar Pradesh who deals and sold goods to Henry in Uttar Pradesh of worth Rs. 1,00,000. And suppose GST rate is 18% comprising of CGST rate of 9% and SGST rate of 9% each. Now in this case the dealer that is John will collect Rs. 18,000, from this Rs. 9,000 will go to Central government and other Rs. 9,000 will go to Uttar Pradesh.

Consider that a big businessman Tushar from Goa had sold goods to Siddharth from Himanchal Pradesh of worth Rs. 1,00,000. And suppose that the GST rate is 18% comprised of 18% IGST. In such case, Tushar has to charge Rs. 18,000 as IGST. This IGST will go to the Centre.

SOME OF THE SIGNIFICANT RULINGS UNDER THE GST IN PAST FEW YEARS

From the beginning of new indirect tax regime, the policy decisions and the concepts of GST changes a lot. On the other side, the Indian courts have also contributed to this change. There was advance ruling which highlighted a lacuna in the current law.

A division bench of the Delhi High Court interpreted the provisions of CGST and clarified that reverse charge mechanism (RCM) is applicable to legal services by the advocates or firms under the GST. It was also questioned by the court regarding the legal sanctity of the press release issued by the Ministry of Finance on 15th July 2017 clarifying that RCM is applicable to legal services. However, a corrigendum was issued by the Central Government and admitted this position.⁴

⁴ J.K. Mittal v. Union of India, (2017) 003 GST Law Times 0433.

A two-judge bench of the Bombay High Court in *Abicor & Binzel Technoweld Pvt. Ltd. v. Union of India*⁵, asked the Government to resolve the technical glitches in Goods and Service Tax Network (GSTN) soon. The petitioners were granted the interim relief also the court made a controversial comment that GST regime is not 'Tax-Friendly'.

In *M/s Ascics Trading Company v. State of Kerala & Anr.*⁶, the Kerala High Court allowed releasing goods detained by the Commercial Tax Department, Kerala by reasoning that only the Central Government is empowered with the right to prescribe documents which must be carried while transporting goods from one state to another state under the Integrated Goods and Service Tax (IGST) Act.

The Kerala High Court, held that the power of detention contemplated under Section 129 of SGST Act can be exercised only in respect of goods which are liable to be confiscated under Section 130 of the SGST Act.⁷

The Apex Court in *Samaj Parivartana Samudaya & Ors v. State of Karnataka & Ors*⁸, in its first order on GST, directed that the buyer of the mineral purchased in the e-auction shall pay GST on the sale value directly to the lessee, who is responsible for all compliances under the Central Goods and Service Tax (CGST) Act, 2017.

Authority for Advance Ruling (AAR) Kerala has ruled that under the definition of 'outward supply' as defined in Section 2(83) of the Goods and Service Tax Act, 2017, recovery of food expenses from the employees for the canteen services provided by the company would come under that and hence are taxable under the GST laws.

Same as above, the Gujarat AAR held that the supply of service provided by the applicant is in nature of 'outdoor catering' and is liable to GST at the rate of 18%.

There were a lot of changes in the one and a half year old Goods and Service Tax (GST) regime in the year 2018. A two-judge bench of the Madhya Pradesh High Court has held that no GST

⁵ *Abicor & Binzel Technoweld Pvt. Ltd. v. Union of India*, (2018)080 ITPJ (G) 0679.

⁶ *M/s Ascics Trading Company v. State of Kerala & Anr.*, WP(C). No. 31328 of 2017 (M).

⁷ *M/S Indus Towers Limited Vs. The Assistant State Tax Officer*, WP(C). No. 196 of 2018.

⁸ *Samaj Parivartana Samudaya & Ors v. State of Karnataka & Ors*, WRIT PETITION (CIVIL) NO. 562 OF 2009.

exemption can be given to the goods and services supplied to the Duty-Free Shops at International Airports in India.⁹

Recently, the Supreme Court delivered a landmark judgment under service tax laws in the Calcutta Club case.¹⁰ The verdict was that clubs are not entitled to charge, collect and pay service tax on any services made to the members. The reason behind the decision was that if there are no members, there is no club and vice-versa. Few years earlier, the Jharkhand High Court gave a similar ruling in a case involving the Ranchi Club.

The Supreme Court followed its earlier decision on the same topic in the case of *CTO v. Young Men's Indian Association*,¹¹. The necessity for the Apex Court to rule on this matter arose because of the insertion of Clause (e) in Article 366 (29-A) in the Constitution of India through the 46th Amendment. This inserted clause stated that tax on purchase or sale of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member for cash, deferred payment or another valuable consideration.

First and foremost, clubs would be keen to know whether services provided to their members would attract the definition of supply under Section 7 of the CGST Act. Take on the logic of the Calcutta Club decision, the answer should probably be no, as the taxman should not separate the club from its members.

IMPACT OF GST ON INDIAN ECONOMY

GST being one of the greatest reforms for the Indian economy, the various factors that have impacted Indian economy are as follows-

(a) *SIMPLE TAX STRUCTURE*- Earlier we used to pay numbers of tax, but now instead of multiple taxation under different stage of supply of goods and services we need to pay only one tax that is GST. This saves time, money of the common people and reduced the working load of the tax department.

⁹ M/s. Vasu Clothing Private Limited v. The Union of India and Others, W.P. No. 17999/2018.

¹⁰ State of West Bengal & Ors. v. Calcutta Club Limited, (2017) 5 SCC 356.

¹¹ CTO v. Young Men's Indian Association, (1970) 1 SCC 462.

(b) *UNIFORM TAX REGIME*- GST being single tax, helped and made it easier to pay taxes uniformly for the taxpayers. Previously there used to be multiple taxation system in every stage of supply chain which confused the taxpayer.

(c) *ECONOMIC UNION OF INDIA*- After GST there is a freedom to carry and transport various goods and services from one state to another state. Goods can be easily transported all over the country which is a benefit to all businesses. This encourages increase in production which somehow contribute to this nation for its development.

(d) *INCREASE IN EXPORTS*- After the introduction of the GST, cost of production in the domestic market falls down, which is a positive influence to tackle with the international market.

(e) *GREATER TAX REVENUES*- A simpler tax is much better than the complicated taxation system, which increases the number of the taxpayer and in turn the tax revenues collected for the government.

ADVANTAGES & CHALLENGES

As every concept has some pros and cons relating to it, but it our duty to see it in a positive way and tries to rectify the challenges over it.

ADVANTAGES-

- (a) Removal of multiple taxation and cascading tax effect meaning tax on tax.
- (b) Increase in the production and demand of goods and services.
- (c) There is a reduction of overall costs due to lower burden of taxes.
- (d) Burden has been decreased on the final taxpayer that is consumer at the end.
- (e) Since the system normally followed by traders and shopkeepers, they will be put on a mandatory check thus, control over the circulation of the black money.
- (f) Revenue of the government increased due to extended tax base.

CHALLENGES-

- (a) If the rates of the GST are over 15%, then the goods would be costlier, should keep a check on the rates of the GST.

- (b) Still there are few states in India which lacks in IT Infrastructure.
- (c) Separate law and acts must be drafted.
- (d) Impact on pricing of goods and services due to subsumed of tax.
- (e) Constitutional amendments to enable levy GST on imports.

WHY NO TO GST

There appears to be certain loopholes in the proposed GST tax regime which may be detrimental in delivering the desired result. India should have adopted national GST instead of dual GST, which resulted in the entire structure of GST fairly complicated in India. The nation has to coordinate with 29 states and 7 union territories to implement such tax regime. And such tax regime is surely to create economic as well as political issue in the country. The sharing of revenues between the centre and the state is yet merely a conflict with no accord arrived in regards to revenue unbiased rates. Chief Economic Advisor on 4 December 2015 suggested the rate of preferential allowance goods to be 12%, standards good to be 17-18% and lavish goods to be 40% which is much higher than the current maximum service tax of 14%. Such initiative is likely to push disdain. The proposed GST structure is probably going to succeed just if the enation has a solid Information Technology (IT) organisation and networks. And there is nothing to curtain as it is well known fact that the nation is still in its budding state as far as technology is concerned especially internet connectivity. Moreover, it seems to be the ignorance on the emerging sector of the e-commerce by the regime proposed. It becomes difficult to track the business transaction taking place through internet. Under e-commerce it is dingy as to whether a product should consider as a product or a service. Moreover, e-commerce has been insulted against taxation under custom duty moratorium on electronic transmission by the WTO Bali Ministerial conference held in 2014.¹² One of the major disadvantages of the GST regime could be the direct spike in the service tax rate from 14% to 20-22%.

¹² Sardana M (2005) Evolution of E-Commerce in India, part 3.

CONCLUSION

Indian governments so far have taken the best decision by implementing the GST. For that reason, India celebrate July 1st as the Financial Independence Day where all the member of the parliament attended the function in the parliament house. Complexities and confusion were expected and will happen. Discussions on discussion will goes on. Though the structure might be not so perfect one but once in a place, such a tax structure will make India a better economy favourable for foreign investment. Until now India was a union of 29 small tax economies and 9 union territories with different levies unique to each state. It is a much-accepted regime because it does away with multiple tax rates by Centre and States.