

THE CONSTITUTION (122ND AMENDMENT) BILL, 2014 (GST) : A CRITICAL APPRAISAL

Vikrant Sopan Yadav¹

Introduction :

The Constitution (122nd Amendment) Bill, 2014 (GST Bill) was passed Lok Sabha on May 6, 2015. It was referred to a Select Committee of Rajya Sabha on May 14, 2015. The Committee is scheduled to submit its Report by the end of the first week of the Monsoon session.² GST bill is aimed at creating a pan-India uniform Tax regime with an object of business friendly environment and avoiding cascading of taxes.

Object of GST

- To amend the Constitution of India 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.³
- to create a harmonized system of taxation by subsuming all central and state indirect taxes under one tax.
- to address challenges with the current indirect tax regime by eliminating cascading of taxes, broadening the tax base, and achieving uniformity in inter-state taxes
- to introduce the goods and services tax (GST)
- to provide for concurrent powers of State and Central legislative bodies to make laws on GST.⁴
- to provide for establishment of the GST Council which will consist of the Union Finance Minister, Union Minister of State for Revenue, and state Finance Ministers.

Key Features

- Insertion of new Article 246A in Constitution of India conferring power on both the Union and the State legislatures to legislate on GST.
- GST is applicable on the supply of goods or services.
- The GST Council will recommend rates of tax, period of levy of additional tax, principles of supply, special provisions to certain states etc.
- To provide for centre to impose an additional tax of up to 1%, on the inter-state supply of goods for two years or more.

GST vis-a-vis Current Tax Regime :

- Both Excise and Sales Tax are a VAT system, but the set off for taxes paid is not applicable across these taxes. Therefore, sales tax is applicable to the excise duty (CENVAT) paid. Thus, tax paid is 12 (excise) plus 15.2 (sales tax). Note the 'tax on tax' effect where the final selling price not only has two taxes, but also a tax-on-tax.⁵
- Unlike the current tax regime, which provide for separate tax for goods and for services, GST provides for eliminates the differentiation between a good and a service.
- The current system provides for application of Value Added Tax (VAT) both at the stage of manufacturing (Excise) as well as at the stage of sale (Sales tax). Whereas in GST, VAT is levied only at the point of consumption.
- In addition to VAT imposed by state and center, there are many additional indirect taxes. GST, on the other hand, subsumes all direct and indirect taxes under one tax.

- Input credit set off was not available under the current regime. Whereas, the same is available in all intra as well as interstate transactions.

GST Councils

- All decisions of the GST Council will be made by three fourth majority of the votes cast; the centre shall have one-third of the votes cast, and the states together shall have two-third of the votes cast.
- The GST Council will make recommendations on:
 1. Taxes, cesses, and surcharges to be subsumed under the GST;
 2. Goods and services which may be subject to, or exempt from GST;
 3. The threshold limit of turnover for application of GST;
 4. Rates of GST;
 5. Model GST laws, principles of levy, apportionment of IGST and principles related to place of supply;
 6. Special provisions with respect to the eight north eastern states, Himachal Pradesh, Jammu and Kashmir, and Uttarakhand; and
 7. Related matters.

Issues :

- Alcohol for human consumption has been exempted from the purview of GST.
- Parliament may, by law, provide compensation to states for any loss of revenue from the introduction of GST, up to a five year period.⁶
- GST will apply to five petroleum products (i.e. (a) petroleum crude, (b) high speed diesel, (c) motor spirit (petrol), (d) natural gas, and (e) aviation turbine fuel), at a later date. This differed treatment could lead to cascading of taxes.⁷
- GST Council may decide the mechanism for resolving disputes arising out of its recommendations. This may lead to violation of principle of natural justice i.e. *nemo iudex in causa sua* (“no one can be a judge in his own cause/case”)
- The GST requires a commitment to a stable rate structure. This will compromise the fiscal autonomy of State Governments and deprive them of the only lever of macro-economic policy available to them.⁸
- It was apprehended that the GST could possibly accentuate the vertical imbalance in favour of the Centre through a proportionally larger Central Goods and Services Tax (CGST) rate and access to a larger consumption base, hitherto unavailable to the Centre.⁹
- Small enterprises manufacturing specified goods with an annual turnover of less than Rs. 1.5 crore are presently exempt from excise. The GST will bring them into the tax net. This is in conflict Start up India policy of Central Govt.

Suggestions :

- An independent dispute resolution mechanism should be put in place.
- States should be given the option to adopt GST at their convenience.
- GST should be applied uniformly for all products at the single point of time without any differed treatment.

- Concessions in payment of excise to small enterprises (especially start up's) may be provided.

Conclusion :

Sir Winston Churchill, while delivering speech in debate on the Indian Independence Bill said that, "*A day would come when even air and water would be taxed in India.*"¹⁰ This statement unfortunately has come true. Excessive direct and indirect taxing has prevented foreign business entities from investing in India. This much awaited and much debated GST amendment bill is expected to take a form of law in upcoming monsoon session. This will be positive steps towards uniform tax regime and is expected to improve foreign direct investment in India, thereby causing faster economic growth.

(End notes)

- 1 Asst. Professor, Modern Law College and PhD Research Scholar, Dept. of Law, SPPU
- 2 Available at, <http://www.prsindia.org/uploads/media/Constitution%20122nd/Brief--%20GST,%202014.pdf>, accessed on 7th July 2016
- 3 Statement of Objects and Reasons, The Constitution (122nd Amendment) Bill, 2014 (GST)
- 4 A law made by Parliament in relation to GST will not override a state law on GST, see <http://www.prsindia.org/uploads/media/Constitution%20122nd/Brief--%20GST,%202014.pdf>, accessed on 8th July 2016
- 5 Ibid
- 6 Compensation will be 100% for first three years, 75% in the fourth year and 50% in the fifth year. For details see, Sec. 19, The Constitution (122nd Amendment) Bill, 2014 (GST)
- 7 The 13th Finance Commission and the Department of Revenue had recommended that all petroleum products and alcohol be brought under GST. The Commission had suggested that states could impose an additional levy on petroleum products and alcohol, in addition to GST. For details see, Report of the 13th Finance Commission, Chapter 5, „Goods and Services Tax, Ministry of Finance, December 2009, available at, http://fincomindia.nic.in/writereaddata%5Chtml_en_files%5Coldcommission_html/fincom13/tfc/Chapter5.pdf, accessed on 8th July 2016
- 8 Ibid
- 9 Ibid
- 10 Available at, <http://www.thehindubusinessline.com/opinion/columns/b-s-raghavan/indian-raj-outdoing-british-raj/article3893128.ece>, accessed on 9th July 2015