Research Paper
Impact Factor: 4.729
Refereed, Listed & Indexed

IJBARR
E- ISSN -2347-856X
ISSN -2348-0653

A COGNIZANCE OF GOODS AND SERVICES TAX (GST)

Ekjyot Kaur Gujral
Assistant Professor of Economics, Army Institute of Law, Mohali.

1. Introduction

India has a federal form of government and hence a federal finance system. The quintessence of federal form of government is that the Centre and the State Governments should be independent of each other with the provision of separate sources of raising adequate revenues to discharge the functions delegated to it. Financial independence and adequacy serve as a pillar for the successful functioning of this form of government. Fiscal federalism involves the division of responsibilities in respect of taxation and public expenditure among the different layers of the government, namely the Centre, the States and the local bodies. The Taxation system in India manifests itself at various levels. Although it was simplified after the reforms initiated in the year 1991[1], still the system remained quite complex with a plethora of taxes. The taxes in India are levied by the Central and the State governments. The authority to levy tax is derived from the Constitution of India which apportions the power to levy various taxes between Centre and State[2]. Some taxes are levied by the local bodies also. Then there are Direct taxes and Indirect taxes. The Direct taxes like the Income tax are those taxes where the impact and incidence of the tax are on the same individual. In simpler terms, the tax that cannot be transferred or shifted to another person and an individual pays them directly to the government. In this case, the burden of the tax falls completely on the individual who earns a taxable income and cannot shift the tax to others.On the other hand, the Indirect taxes are those taxes where the impact and incidence of tax are on different individuals. These are the taxes which can be shifted to another person like the Value Added Tax (VAT) that is included in the bill of goods and services that you procure from others. The initial tax is levied (incidence) on the manufacturer or service provider, who then shifts this tax burden (impact) to the consumers by charging higher prices for the commodity by including taxes in the final price.Indirect taxes are levied by the central and state governments. There are many types of indirect taxes like excise duty, sales tax, service tax, VAT, custom duty etc. Goods and Services tax(GST) is related to indirect taxes levied in India.

Indirect taxes are somewhat regressive in nature and add to income inequalities because the burden of tax is easily shifted to the consumers who pay them via the price of goods and services purchased. Also at the consumer level, it is very difficult to evade these taxes unlike the direct taxes. Another complication with the indirect taxes is that they tend to encourage inflation. These taxes also play an instrumental role in the growth strategy of an economy since they reduce consumption and encourage more savings. Since indirect taxes cover each and every member of the society via different goods and services, they constitute a very integral part of the revenue of the government. Up to 31st January, 2016 the indirect taxes collection has grown by 33.7% and direct taxes collection has grown by 10.9%. Government has reached 73.5% of the Annual Budget Estimates target and has received Rs.10.66 lakh crore tax collections. The target by Annual Budget Estimates was set at Rs.14.49 lakh crore[3].

When the Value Added Tax[4] (VAT) was introduced at the Central and the State level, it was considered to be a major step forward in the arena of indirect tax reforms in India. If the VAT was a major change from the pre-existing Central excise duty at the national level and the sales tax system at the State level, then the Goods and Services Tax (GST) will certainly be an added advantage and a more logical phase in the pervasive indirect tax reforms in the country. With the release of First

---

[1] *In 1991, a Tax Reforms Committee was set up by the government under the Chairmanship of Raja J. Chelliah to examine the then tax structure of the country and suggest appropriate changes. The committee submitted its report to the Government in January 1993 and made several recommendations for reforming India's tax structure.*

[2] *The taxation powers and the spending powers and responsibilities between the Union and the state governments have been divided by the Indian constitution. The 7th schedule of the constitution defines the subjects on which Union or State or both can levy taxes. Further, as per the 73rd and 74th amendments of the constitution, limited financial powers have been given to the local governments and enshrined in Part IX and IX-A of the constitution.*

[3] *https://www.bankbazaar.com/tax/difference-between-direct-tax-and-indirect-tax.html accessed on 21/08/2016.*

[4] *VAT was introduced in the Indian taxation system from 1st April 2005. It is a multi-step tax levied on each stage of production of goods and services and forms an integral part of GDP.*

IJBARR
E- ISSN -2347-856X
ISSN -2348-0653

Discussion Paper[5] by the Empowered Committee of the State Finance Ministers in November 2009 it is stated that there would be a Dual GST in India, taxation power given to both the Centre and the State to levy the taxes on the Goods and Services although initially it was gestated that there would be a national level goods and services tax. Almost 150 countries have introduced GST in some form. While countries such as Singapore and New Zealand tax virtually everything at a single rate, Indonesia has five positive rates, a zero rate and over 30 categories of exemptions. In China, GST applies only to goods and the provision of repairs, replacement and processing services.[6]

2. What is GST?

Goods and Services Tax would be a comprehensive indirect tax on manufacture, sale and consumption of goods and services throughout India, to replace taxes levied by the central and state governments. Goods and Services Tax would be levied and collected at each stage of sale or purchase of goods or services based on the input tax credit method[7]. This method allows GST-registered businesses to claim tax credit to the value of GST they paid on purchase of goods or services as part of their normal commercial activity[8]. There is no distinction between taxable goods and services and a supply chain, they are taxed at a single rate till the goods or services reach the final consumer. A single authority would be having the administrative responsibility to levy tax on goods and services.

It is basically one indirect tax for the entire nation which will transform India into a common unified market. It is a single tax on the supply of goods and services, right from manufacturer to the consumer. It is a tax on the value addition at each stage of production. The final consumer will bear the GST charged by the last dealer in the supply chain with set off benefits at the previous stages.

GST combines all the indirect taxes into one; in other words, it subsumes all other indirect taxes[9]. It is done for all the Central level and State level taxes. The nature of GST is that it taxes only the final customer. Hence the cascading of taxes is avoided and production costs are cut down. It will have important implications on the Tax Structure, Tax Incidence, Tax Computation, Tax Payment, Compliance, Credit Utilization and Reporting leading to a complete refurbishment of the current indirect tax system. It will also have a bearing on almost all the aspects of the business operations in the country, for example, pricing of products and services, supply chain optimization, IT, accounting, and tax compliance systems.

3. The Initiation Process

In India, with regards to GST, an empowered committee was constituted by Atal Bihari Vajpayee government in 2000 to restructure the GST model and develop the required infrastructure to implement it in the country. Further, in 2004, a task force on implementation of the Fiscal Responsibility and Budget Management Act, 2003(Kelkar Committee headed by Dr. Vijay L. Kelkar[10]) conceived GST while examining the prevailing indirect tax system both at Central and State level. The

[5] A First Discussion Paper (FDP) was released by the Empowered Committee aiming at interactions with industry, trade, agriculture and common people on November 10, 2009. It gave details of the structure of the GST model to be introduced in India and also gave the justification for adopting GST, stating that it would improve the existing VAT. It also described the process of preparation of GST and a comprehensive structure of the GST model.

[6]GirishGarg, Basic Concepts and Features of Good and Service Tax In India, International Journal of scientific research and management (IJSRM),Volume 2, Issue 2, Pages 542-549, 2014, p. 543 accessed online at http://www.ijsrm.in/v2-i2/2%20ijsrm.pdf on 03/09/2016.

[7]A person who was liable to pay tax on his output, whether for provision of service or sale of goods, is entitled to get input tax credit (ITC) on the tax paid on its inputs.

[8]Goods and Services Tax Bill, Wikipedia accessed online at https://en.wikipedia.org/wiki/Goods_and_Services_Tax_Bill

[9] It subsumes the taxes namely Central Excise Duty, Additional Excise Duty, Service Tax, Countervailing Duty and special Additional Duty of Customs, State Value Added Tax or Sales Tax, Entertainment Tax, Octroi and Entry Tax, Purchase tax, Luxury Tax, Taxes on Lottery, Betting and Gambling.

[10] The committee submitted its report in July 2004.

Kelkar Committee observed that a tax reform of nationwide dual GST which would comprehensively tax the consumption of almost all goods and services in the economy would be able to achieve 'a common market, widen the tax base, improve the revenue productivity of domestic indirect taxes and enhance welfare through efficient resource allocation'.[11] In his budget speech in 2006, the then finance minister P. Chidambaram announced the 1st April 2010 as the target date for implementation of GST and for this,another empowered committee of State finance ministers was constituted to plan for the same. The committee submitted its report in April 2008 and released the First discussion paper on GST in November 2009. The Constitution (122nd Amendment) Bill, 2014 was introduced in the Lok Sabha by Finance Minister Arun Jaitley on 19 December 2014, and passed by the House on 6 May 2015. In the Rajya Sabha, the bill was referred to a Select Committee on 14 May 2015. The Select Committee of the Rajya Sabha submitted its report on the bill on 22 July 2015. The bill was passed by the Rajya Sabha on 3 August 2016, and the amended bill was passed by the Lok Sabha on 8 August 2016.[12] It is expected to be implemented from 1st April 2017.

4. Need and Justification of GST

For the emerging economic environment, the introduction of GST to replace the multiple tax structures of Central and State taxes is imperative. Ever more, in the production and distribution of goods, services are used and vice versa. Separate taxation of goods and services repeatedly necessitates splitting of transaction values into value of goods and services, which leads to larger difficulties, administration and compliance costs. Integration of various taxes into a GST system would make it possible to give full credit for the taxes collected on inputs. Since aggregate tax rates will reduce hence it will ensure better tax compliance. With the reduction of tax burden, the competitiveness of Indian products in international market is anticipated to increase.GST being a destination-based consumption tax based on VAT principle, would also significantly help in eliminating economic distortions and will help in expansion of a common national market.

Despite the implementation of VAT, there are some shortcomings in the VAT structure. At the Central level, currently excise duty paid on the raw materialsexpended is being allowed as input credit only. However there is no mechanism for input credit for the other taxes and duties paid for post-manufacturing expenses under the Central Excise Duty Act. Moreover, the credit for service tax paid is allowed to the manufacturer/ service provider only to a limited extent. It is essential that there should be an all-inclusive system under which both the goods and services are covered in order to give the credit of service tax paid in respect of services consumed. At present, the service tax is levied on restricted items only. To reduce the cascading effect of taxes, a large number of services could not be taxed.

At the state level, the State is charging VAT on the excise duty paid to the Central Government, which goes against the principle of avoiding cascading effect of taxes. Presently, in the State level VAT scheme, CENVAT(Central VAT)permissible on the goods remains included in the value of goods to be taxed which is a again a cascading effect on account of CENVAT element. Many States are still continuing with various types of indirect taxes, such as luxury tax, entertainment tax, etc. There is no provision for taking input credit on CST as tax is being imposed on inter-state transfer of goods, leading to added burden on the dealers. This problem will be eliminated through implementation of GST and removal of CST.

5. Salient features of GST Model

1. Aligned with the federal structure of the Indian government, GST model is proposed to be a dual structure (like in Canada) to be levied and collected by the Union government [referred to as Central GST (CGST)] and respective State governments [referred to as State GST (SGST)]. This dual GST model would be implemented and governed by one CGST/IGST statute applicable across the country, SGST statutes for each State, common rules determining valuation, place of supply, place of origin etc. This would imply that the Centre and the States would have concurrent jurisdiction for the entire value chain and the basic principles of law such as chargeability, definition of taxable event and taxable person, measure of levy including

[11] Deloitte and ASSOCHAM India, Goods and services tax in India-Taking stock and setting expectations, accessed online at http://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-gst-in-india-taking-stock-noexp.pdf on 04/09/2016.

[12] PRS, The Constitution (122nd Amendment) Bill, 2014 (GST)accessed online at http://www.prsindia.org/uploads/media/Constitution%20122nd/Brief--%20GST,%202014.pdf on 04/09/2016.

IJBARR
E- ISSN -2347-856X
ISSN -2348-0653

valuation provisions, basis of classification, etc. shall be uniform across State statutes. It has been reported that draft laws are already ready and under internal discussions. Also, various allied rules are in the process of being drafted and finalized[13].

2. The Central GST and State GST would be broadly applicable to all goods and services up to the retail level i.e. till it reaches the final consumer, reflecting the tax base of a typical consumption VAT. Thus, both Central and State GST would be relevant to all transactions involving supply of goods and services made for a consideration except alcoholic liquor for human consumption and all the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Based on recommendations of both the Thirteenth Finance Commission[14] and Empowered Committee, GST on following products shall be levied from a date to be notified by the GST Council

- Petroleum Crude
- High Speed Diesel
- Motor Spirit (commonly known as Petrol)
- Natural Gas
- Aviation Turbine Fuel

3. The Central GST and State GST would be paid to the accounts of the Centre and the States separately. It would have to be ensured that account-heads for all services and goods would have indication whether it relates to Central GST or State GST (with identification of the State to whom the tax is to be credited).

4. Taxes paid on inputs (goods/services) against Central GST shall be permitted to be utilized as input tax credit (ITC) against output tax liabilities under Central GST and same principle applies to State GST. Cross utilization of input tax credit between the Central GST and the State GST would not be allowed except in case of inter-state supply of goods and services. Therefore, it shall be obligatory for the taxpayer or exporter to maintain separate details in books of account for utilization or refund of credit.

5. The power to make laws with reference to the supplies in the course of inter-state transactions of taxable goods will be conferred upon the Union Government. On such transactions, Centre would levy Integrated GST (referred to as IGST which would be Central GST plus State GST) with suitable provision for consignment or stock transfer of goods and services. Hence, after adjusting available credit of IGST, CGST, and SGST on his purchases, the inter-state seller will pay IGST on value addition. The importing dealer will then claim credit of IGST while clearing his output tax obligation in his own State. The pertinentinformation will also be submitted to the Central Agency which will act as a clearing house mechanism, authenticate the claims and notify the respective governments to transfer the funds.

6. Since GST is applicable on the consumption of all goods and services, it will subsume all the taxes currently being levied by the Centre and States like Central Excise duty, Additional Excise duty, Service tax, Additional Customs duty and Special Additional duty, State level taxes like VAT or sales tax, Central Sales tax, Entertainment tax, Entry tax/Octroi, Purchase tax and Luxury tax. But taxes on entertainment at panchayat, municipality or district level will continue. GST may be levied on the sale of newspapers and advertisements. This would mean considerable incremental revenues for the Government. Stamp duties which are typically levied on legal agreements by states, will continue to be imposed.

7. The Centre and the States would have concurrent jurisdiction for the entire value chain and for all taxpayers on the basis of thresholds for goods and services prescribed for the Centre and the States. The taxpayer would be required to submit the periodical returns, in a common format, to both the Central GST and the concerned State GST authorities. Each taxpayer would be allotted a PAN-linked taxpayer identification number with a total of 13/15 digits. This would bring the GST PAN-linked system in consonance with the prevailing PAN-based system for Income tax, simplifying data exchange and taxpayer compliance.

[13] *Supra* note 11

[14] The President constitutes a Finance Commission for a period of five years as per Article 280 of the constitution. The Thirteenth Finance commission was constituted in 2007 with Dr. Vijay L. Kelkar as the Chairman and it functioned from 2010-2015.

8. For the tax payer's convenience, functions such as valuation, implementation, scrutiny and audit would be undertaken by the authority which is collecting the tax, along with the sharing of information between the Centre and the States.

9. As far as the rate of tax is concerned, there will be a two-rate structure- a lower rate for necessary items and items of basic importance and a standard rate for goods in general. There will also be a special rate for precious metals and a list of exempted items. Also the Ministry of Finance during discussions with the select committee on GST opined that certain demerit goods such as tobacco or luxury goods may, if the GST Council so decides, be subject to higher rate of GST. For Central GST relating to goods, the States considered that the Government of India might also have a two-rate structure, with conformity in the levels of rate with the State GST. For taxation of services, there may be a single rate for both CGST and SGST. The Government is considering pegging the revenue neutral rate of GST at 18% to 22%. This represents the aggregate of Central GST and State GST payable on the transaction. However, it may be noted that at this stage, the Government is yet to indicate whether the revenue neutral rate of tax on goods and services would be the same.

10. Exports and supply outside tax jurisdiction would be zero-rated including supply to Special Economic Zones (SEZs) with such benefits only permissible to the processing zones of the SEZs.With the required Constitutional Amendments, the Imports would be subject to GST based on the destination tax principle. Both Central GST and State GST will be levied on import of goods and services into the country.

6. Impact of GST on various sectors

6.1 Real Estate

Transfer of (completed) properties may continue to be outside the purview of GST and be liable only to applicable stamp duties. In case this sector is brought within the ambit of GST, it is likely to result in transparency, which will significantly reduce tax evasion through more efficient transaction-tracking methods, and improved enforcement and compliance. However, if real estate output is exempted, then input GST credit could be a substantial cost for the sector, resulting in blockage of credit and higher costs to end consumers[15].

6.2 Financial Services

In a number of countries GST is not charged on financial services. In India, however, the banking and financial services are being taxed under the ambit of the service tax regime at a rate of 14.5%. If the rate of GST is expected to be around 18 percent to 20 percent, then the rate of these services will go up. For the financial service providers the things may become more cumbrous as instead of the current single, centralised registration compliances, after GST they would be required to adhere to compliances across multiple states. Interest on loans, trading in securities, foreign currency and retail services are also expected to fall within the ambit of GST contrary to the suggestion by the banking industry as a part of their recommendations that such services and income should not come under GST.

6.3 Food Industry

The application of GST to food items will have a significant impact on those who are living under subsistence level. But at the same time, a complete exemption for food items would drastically shrink the tax base. Food includes grains and cereals, meat, fish and poultry, milk and dairy products, fruits and vegetables, candy and confectionary, snacks, prepared meals for home consumption, restaurant meals and beverages. Even if the food is within the scope of GST, such sales would largely remain exempt due to small business registration threshold.[16]

6.4 Information Technology enabled services

The domestic supply of software should also attract GST on the basis of mode of transaction, to be in sync with the best International practices. That is, if the software is transferred through electronic form, it should be considered as Intellectual Property and regarded as a service. And if the software is transmitted on media or any other tangible property, then it should be treated as goods and subject to GST. Implementation of GST will also help in uniform, simplified and single point taxation and thereby reduced prices.

[15] Forbes India, 4 August 2016 Issue, RajyaSabha passes GST Bill: How it will impact various sectors, accessed online at http://forbesindia.com/article/real-issue/how-gst-will-impact-various-sectors/43877/1 on 12/09/2016.

[16] *Supra* note 6 at p. 547

IJBARR
E- ISSN -2347-856X
ISSN -2348-0653

6.5 Travel, tourism and hospitality

India's travel, tourism and hospitality industries have multiple taxes, levied by both the centre and the states. It is expected that under GST, supplies of hotels and restaurants will be subjected to a single tax. At present, no credit is available on input services related to renovation or construction of hotels and resorts. This is expected to change under GST. R&D cess, payable on franchise fees and technical know-how, is likely to be subsumed under GST, thus simplifying compliance procedures and reducing multiple taxes[17].

6.6 Alcoholic beverages

Since alcohol does not promote human welfare therefore alcohol for human consumption is proposed to be kept outside the GST regime, and hence will continue to attract state excise and VAT. The inputs, however, are likely to fall under the domain of GST. Subsequently, there may be blockage of input credit, leading to higher production cost and inefficiency in production and distribution. Higher input costs and its cascading effect on taxes may push prices upwards, and may also have an adverse impact on exports. Restaurants and bars serving alcohol, may be required to undertake dual compliance for selling both GST and non-GST products.

6.7 Education sector

Currently, various tax exemptions and benefits are enjoyed by the education sector. The services provided by schools and colleges are either not taxed or are covered in the negative list. The situation is expected to continue even after the implementation of GST. In case it does not, the sector may be able to avail the CENVAT credit or input credit on the duty paid on purchase of inputs and services. These will probably bring down the final cost for the industry.

6.8 Health sector

This sector also enjoys several tax exemptions and benefits. It is still uncertain whether these benefits will remain under GST. The service-oriented health insurance and diagnostic centres may fall under higher tax rates thus making such services more expensive for consumers.

7. Conclusion

GST is a logical step in the arena of indirect tax reforms in the country which will encompass every section of the economy including big, medium, small scale units, intermediaries, importers, exporters, traders, professionals and consumers who shall be directly affected by it. Experts are of the opinion that GST is expectedto improve tax collections and boost economic development of India by breaking tax barriers between States and assimilating the country through a uniform tax rate. Under GST, the burden of taxation will be divided equitably between manufacturing and services. Although it will lower the tax rates and increase the tax base, it has many challenges with regards to its implementation. The taxes that are generally included in GST would be excise duty, countervailing duty, cess, service tax, and state level VATs among others. There are numerous other states and union taxes that would still be out of GST. With regards to the tax management and infrastructure it is up to the states and the union to comprehend how they are going to make GST a simple one. Realisation of any tax reform policy or managerial measures depends on the inherent simplifications of the system along with conformity with the administrative measures and policies. As GST is a destination-based tax, the determination of the destination of certain services might be a challenge. At present, services are taxed at the place of rendering the service. This may lead make it difficult to determine state GST, central GST or inter-state GST on B2B and B2C transactions. Hence, the implementation has its share of positivity and difficulty. If India has to move on the path of growth, then GST would serve as an accelerator to the process.

[17]*Supra* note 15