

## **Good and services tax**

### **E- content**

### **Vth semester**

#### **INTRODUCTION:**

Whether it was uniformity of taxation and consequent free interior trade or possession of 'the jewel in the crown' at the root of prosperity of Britain is debatable, nonetheless the words of father of modern economics on the benefits of uniformity of system of taxation cannot be taken too lightly. Before implementation of Goods and Service Tax (GST), Indian taxation system was a farrago of central, state and local area levies. By subsuming more than a score of taxes under GST, road to a harmonized system of indirect tax has been paved making India an economic union.

#### **CONSTITUTIONAL SCHEME OF INDIRECT TAXATION IN INDIA BEFORE GST :**

Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. As per Article 246 of the Constitution, Parliament has exclusive powers to make laws in respect of matters given in Union List (List I of the Seventh Schedule) and State Government has the exclusive jurisdiction to legislate on the matters containing in State List (List II of the Seventh Schedule). In respect of the matters contained in Concurrent List (List III of the Seventh Schedule), both the Central Government and State Governments have concurrent powers to legislate.

Before advent of GST, the most important sources of indirect tax revenue for the Union were customs duty (entry 83 of Union List), central excise duty (entry 84 of Union List), and service tax (entry 97 of Union List). Although entry 92C was inserted in the Union List of the Seventh Schedule of the Constitution by the Constitution (Eighty-eighth Amendment) Act, 2003 for levy of taxes on services, it was not notified. So tax on services were continued to be levied under the residual entry, i.e. entry 97, of the Union List till GST came into force. The 4 | 55 Union also levied tax called Central Sales Tax (CST) on inter-State sale and purchase of goods and on inter-State consignments of goods by virtue of entry 92A and 92B respectively. CST however is assigned to the State of origin, as per Central Sales Tax Act, 1956 made under Article 269 of the Constitution. 2.3 On the State side, the most important sources of tax revenue were tax on sale and purchase (entry 54 of the State List), excise duty on alcoholic liquors, opium and narcotics (entry 51 of the State List), Taxes on luxuries, entertainments, amusements, betting and gambling (entry 62 of the State List), octroi or entry tax (entry 52 of the State List) and electricity tax ((entry 53 of the State List). CST was also an important source of revenue though the same was levied by the Union.

#### **HISTORICAL EVOLUTION OF INDIRECT TAXATION IN POSTINDEPENDENCE INDIA TILL GST**

In post-Independence period, central excise duty was levied on a few commodities which were in the nature of raw materials and intermediate inputs, and consumer goods were outside the net by and large. The first set of reform was suggested by the Taxation Enquiry Commission (1953-54) under the chairmanship of Dr. John Matthai. The Commission recommended that sales tax should be used specifically by the States as a source of revenue with Union governments' intervention allowed generally only in case of inter-State sales. It also recommended levy of a tax on inter-State sales subject to a ceiling of 1%, which the States would administer and also retain the revenue. 3.2 The power to levy tax on sale and purchase of goods in the course of interState trade and commerce was assigned to the Union by the Constitution (Sixth Amendment) Act, 1956. By mid-1970s, central excise duty was

extended to most manufactured goods. Central excise duty was levied on unit, called specific duty, 5 | 55 and on value, called ad valorem duty. The number of rates was too many with no offsetting of taxes paid on inputs leading to significant cascading and classification disputes. 3.3 The Indirect Taxation Enquiry Committee constituted in 1976 under Shri L K Jha recommended, inter alia, converting specific rates into ad valorem rates, rate consolidation and input tax credit mechanism of value added tax at manufacturing level (MANVAT). In 1986, the recommendation of the Jha Committee on moving on to value added tax in manufacturing was partially implemented. This was called modified value added tax (MODVAT). In principle, duty was payable on value addition but in the beginning it was limited to select inputs and manufactured goods only with one-to-one correlation between input and manufactured goods for eligibility to take input tax credit. The comprehensive coverage of MODVAT was achieved by 1996-97. 3.4 The next wave of reform in indirect tax sphere came with the New Economic Policy of 1991. The Tax Reforms Committee under the chairmanship of Prof. Raja J Chelliah was appointed in 1991. This Committee recommended broadening of the tax base by taxing services and pruning exemptions, consolidation and lowering of rates, extension of MODVAT on all inputs including capital goods. It suggested that reform of tax structure must have to be accompanied by a reform of tax administration, if complete benefits were to be derived from the tax reforms. Many of the recommendations of the Chelliah Committee were implemented. In 1999-2000, tax rates were merged in three rates, with additional rates on a few luxury goods. In 2000-01, three rates were merged into one rate called Central Value Added Tax (CENVAT). A few commodities were subjected to special excise duty. 3.5 Taxation of services by the Union was introduced in 1994 bringing in its 6 | 55 ambit only three services, namely general insurance, telecommunication and stock broking. Gradually, more and more services were brought into the fold. Over the next decade, more and more services were brought under the tax net. In 1994, tax rate on three services was 5% which gradually increased and in 2017 it was 15% (including cess). Before 2012, services were taxed under a 'positive list' approach. This approach was prone to 'tax avoidance'. In 2012 budget, negative list approach was adopted where 17 services were out of taxation net and all other services were subject to tax. In 2004, the input tax credit scheme for CENVAT and Service Tax was merged to permit cross utilization of credits across these taxes. 3.6 Before state level VAT was introduced by States in the first half of the first decade of this century, sales tax was levied in States since independence. Sales tax was plagued by some serious flaws. It was levied by States in an uncoordinated manner the consequences of which were different rates of sales tax on different commodities in different States. Rates of sales tax were more than ten in some States and these varied for the same commodity in different States. Inter-state sales were subjected to levy of Central Sales Tax. As this tax was appropriated by the exporting State credit was not allowed by the dealer in the importing State. This resulted into exportation of tax from richer to poorer states and also cascading of taxes. Interestingly, States had power of taxation over services from the very beginning. States levied tax on advertisements, luxuries, entertainments, amusements, betting and gambling. 3.7 A report, titled "Reform of Domestic Trade Taxes in India", on reforming indirect taxes, especially State sales tax, by National Institute of Public Finance and Policy under the leadership of Dr. Amaresh Bagchi, was prepared in 1994. This Report prepared the ground for implementation of VAT in States. Some of 7 | 55 the key recommendations were; replacing sales tax by VAT by moving over to a multistage system of taxation; allowing input tax credits for all inputs, including on machinery and equipment; harmonization and rationalization of tax rates across States with two or three rates within specified bands; pruning of exemptions and concessions except for a basic threshold limit and items like unprocessed food; zero rating of exports, inter-State sales and consignment transfers to registered dealers; taxing inter-State sales to non-registered persons as local sales; modernization of tax administration, computerization of operations and simplification of forms and procedures. 3.8 The first preliminary discussion on transition from sales tax regime to VAT regime took place in a meeting of Chief Ministers convened by the Union Finance Minister in 1995. A standing Committee of State Finance Ministers was constituted, as a result of meeting of the Union Finance Ministers and Chief Ministers in November, 1999, to deliberate on the design of VAT which was later made the Empowered Committee of State Finance Ministers (EC). Haryana was the first State to implement VAT, in 2003. In 2005, VAT was implemented in most of the states. Uttar Pradesh was the last State to implement VAT, from 1st January, 2008. 4. INTERNATIONAL PERSPECTIVES ON GST / VAT: 4.1 VAT and GST are used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT, in 1954. Presently, more than 160 countries have implemented GST / VAT in some form or the other. The most popular form of VAT is where taxes paid on inputs are allowed to be adjusted in the liability at the output. The VAT or GST regime in practice varies from one country to another in terms of its technical aspects like 'definition of supply', 'extent of

coverage of 8 | 55 goods and services', 'treatment of exemptions and zero rating' etc. However, at a broader level, it has one common principle, it is a destination based consumption tax. From economic point of view, VAT is considered to be a superior system over sales tax of taxing consumption because the former is neutral in allocation of resources as it taxes value addition. Besides, there are certain distinct advantages of VAT. It is less cascading making the taxation system transparent and antiinflationary. From revenue point of view, VAT leads to greater compliance because of creation of transaction trails. 4.2 When compared globally, VAT structures are either overly centralized where tax is levied and administered by the Central government (Germany, Switzerland, Austria), or dual GST structure wherein both Centre and States administer tax independently (Canada) or with some co-ordination between the national and sub-national entities (Brazil, Russia). While a centralized structure reduces fiscal autonomy for the States, a decentralized structure enhances compliance burden for the taxpayers. Canada is a federal country with unique model of taxation in which certain provinces have joined federal GST and others have not. Provinces which administer their taxes separately are called 'nonparticipating provinces', whereas provinces which have teamed up with the Federal Government for tax administration are called 'participating provinces'. 4.3 The rate of GST varies across countries. While Malaysia has a lower rate of 6% (Malaysia though scrapped GST in 2018 due to popular uproar against it), Hungary has one of the highest rate of 27%. Australia levies GST at the rate of 10% whereas Canada has multiple rate slabs.

#### **DESIGNING GST:**

In the discussion that preceded amendment in the Constitution for GST, there were a number of thorny issues that required resolution and agreement between Central Government and State Governments. Implementing a tax reform as vast as GST in a diverse country like India required the reconciliation of interests of various States with that of the Centre. Some of the challenging issues, addressed in the run up to GST, were the following: 7.2 Origin-based versus Destination-based taxation: GST is a destination based consumption tax. Under destination based taxation, tax accrues to the destination place where consumption of the goods or services takes place. The existing VAT regime was based on origin principle where Central Sales Tax was assigned to the State of origin where production or sale happened and not to the State where consumption happened. Many manufacturing States expressed concerns over the loss of revenue on account of shift from origin based taxation to destination based taxation. 13

#### **CONSTITUTIONAL AMENDMENT:**

1 As explained above, unification of Central VAT and State VAT was possible in form of a dual levy under the constitutional scheme. Power of taxation is assigned to either Union or States subject-wise under Schedule VII of the Constitution. While the Centre is empowered to tax goods up to the production or manufacturing stage, the States have the power to tax goods at distribution stage. The Union can tax services using residuary powers but States could not. Under a unified Goods and Services Tax scheme, both should have power to tax the complete supply chain from production to distribution, and both goods and services. The scheme of the Constitution did not provide for any concurrent taxing powers to the Union as well as the States and for the purpose of introducing goods and services tax amendment of the Constitution conferring simultaneous power on 16 | 55 Parliament as well as the State Legislatures to make laws for levying goods and services tax on every transaction of supply of goods or services was necessary. 8.2 The Constitution (115th Amendment) Bill, 2011, in relation to the introduction of GST, was introduced in the Lok Sabha on 11.03.2011. The Bill was referred to the Standing Committee on Finance on 29.03.2011. The Standing Committee submitted its report on the Bill in August, 2013. However, the Bill, which was pending in the Lok Sabha, lapsed with the dissolution of the 15th Lok Sabha. 8.3 The Constitution (122nd Amendment) Bill, 2014 was introduced in the 16th Lok Sabha on 19.12.2014. The Constitution Amendment Bill was passed by the Lok Sabha in May, 2015. The Bill was referred to the Select Committee of Rajya Sabha on 12.05.2015. The Select Committee submitted its Report on the Bill on 22.07.2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by Lok Sabha in August, 2016. Further the bill was ratified by required number of States and received assent of the President on 8th September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16.09.2016. 8.4 The important changes introduced in the Constitution by the 101st Amendment Act are the following: a) Insertion of new article 246A which makes enabling provisions for the Union and States with respect to the GST legislation. It further specifies that Parliament has exclusive power to make laws with respect to

GST on interState supplies. b) Article 268A of the Constitution has been omitted. The said article empowered the Government of India to levy taxes on services. As tax on 17 | 55 services has been brought under GST, such a provision was no longer required. c) Article 269A has been inserted which provides for goods and services tax on supplies in the course of inter-State trade or commerce which 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 Services Tax Council. It also provides that 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 inter-State trade or commerce. d) Article 270 has been amended to provide for distribution of goods and services tax collected by the Union between the Union and the States. e) Article 271 has been amended which restricts power of the Parliament to levy surcharge under GST.

### **GOODS & SERVICES TAX NETWORK:**

Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN would provide three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for 27 States who have opted for the same. Infosys has been appointed as Managed Service Provider (MSP). GSTN has selected 73 IT, ITeS and financial technology companies and 1 Commissioner of Commercial Taxes (CCT, Karnataka), to be called GST Suvidha Providers (GSPs). GSPs would develop applications to be used by taxpayers for interacting with the GSTN. The diagram below shows the work distribution under GST.

### **. GST LEGISLATIONS:**

Four Laws namely CGST Act, UTGST Act, IGST Act and GST (Compensation to States) Act were passed by the Parliament and since been notified on 12.04.2017. All the other States (except J&K) and Union territories with legislature have passed their respective SGST Acts. The economic integration of India was completed on 08.07.2017 when the State of J&K also passed the SGST Act and the Central Government also subsequently extended the CGST Act to J&K. 11.2. In its 28th meeting held in New Delhi on 21.07.2018, the GST Council recommended certain amendments in the CGST Act, IGST Act, UTGST Act and the GST (Compensation to States) Act. These amendments have been passed by Parliament and have been enacted w.e.f. 01.02.2019, as the Central Goods and Services Tax (Amendment) Act, 2018, the Integrated Goods and Services Tax (Amendment) Act, 2018, the Union Territory Goods and Services Tax (Amendment) Act, 2018 and the Goods and Services Tax (Compensation to States) Amendment Act, 2018, respectively

### **ROLE OF CBIC:**

CBIC is playing an active role in the drafting of GST law and procedures, particularly the CGST and IGST law, which will be exclusive domain of the Centre. This apart, the CBIC has prepared itself for meeting the implementation challenges, which are quite formidable. The number of taxpayers has gone up significantly. The existing IT infrastructure of CBIC has been suitably scaled up to handle such large volumes of data. Based on the legal provisions and procedure for GST, the content of work-flow software such as ACES (Automated Central Excise & Service Tax) would require re-engineering. The name of IT project of CBIC under GST is 'SAKSHAM' involving a total project value of Rs. 2,256 Cr. 12.2 Augmentation of human resources would be necessary to handle large taxpayers' base in GST scattered across the length and breadth of the country. Capacity building, particularly in the field of Accountancy and Information Technology for the departmental officers has to be taken up in a big way. A massive four-tier training programme has been conducted under the leadership of NACIN. This training project is aimed at imparting training on GST law and procedures to more than 60,000 officers of CBIC and Commercial Tax officers of 44 | 55 State Governments. 12.3 CBIC would be responsible for administration of the CGST and IGST law. In addition, excise duty regime would continue to be administered by the CBIC for levy and collection of central excise duty on five specified petroleum products as well as on tobacco products. CBIC would also continue to handle the work relating to levy and collection of customs duties. 12.4 Director General of Anti-profiteering, CBIC has been mandated to conduct detailed enquiry on anti-profiteering cases and should give his

recommendation for consideration of the National Anti-profiteering Authority. 12.5 CBIC has been instrumental in handholding the implementation of GST. It had set up the Feedback and Action Room which monitored the GST implementation challenges faced by the taxpayer and act as an active interface between the taxpayer and the Government. 13. GOODS & SERVICES TAX NETWORK: 13.1 Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN would provide three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for 27 States who have opted for the same.

#### **Promote “Make in India”:**

GST will help to create a unified common national market for India, giving a boost to foreign investment and “Make in India” campaign. It will prevent cascading of taxes and make products cheaper, thus boosting aggregate demand. It will result in harmonization of laws, procedures and rates of tax. It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth. Ultimately it will help in poverty eradication by generating more employment and more financial resources. More efficient neutralization of taxes especially for exports thereby making our products more competitive in the international market and give boost to Indian Exports. It will also improve the overall investment climate in the country which will naturally benefit the development in the states. Uniform CGST & SGST and IGST rates will

#### **Registration and Threshold**

Threshold limit of aggregate turnover for exemption from registration and payment of GST for suppliers of services would be Rs. 20 lakhs and Rs. 10 lakhs in the States of Manipur, Mizoram, Nagaland and Tripura.

Threshold limits of aggregate turnover for exemption from registration and payment of GST for the suppliers of goods would be Rs. 40 lakhs and Rs. 20 lakhs in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand with effect from 01.04.2019 The following classes of taxpayers shall be exempted from obtaining registration: a. Suppliers of services, having turnover up to Rs. 20 lakh, making inter State supplies; b. Suppliers of services, having turnover up to Rs. 20 lakh, making supplies through e-commerce platforms Taxpayers may opt for multiple registrations within a State/Union territory in respect of multiple places of business located within the same State/Union territory

Mandatory registration is required for only those e-commerce operators who are required to collect tax at source. Registration to remain temporarily suspended while cancellation of registration is under process, so that the taxpayer is relieved of continued compliance under the law A Removal of Difficulty order has been issued

Migration: 9.4.3.1 One more window for completion of migration process is being allowed. 22 | 55 The due date for the taxpayers who did not file the complete FORM GST REG-26 but received only a Provisional ID (PID) till 31.12.2017 for furnishing the requisite details to the jurisdictional nodal officer was extended till 31.01.2019. Also, the due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period July, 2017 to February, 2019 / quarters July, 2017 to December, 2018 by such taxpayers was extended till 31.03.2019. 9.4.4 Composition Scheme: 9.4.4.1 Composition scheme has been formulated for small businessmen being supplier of goods and supplier of restaurant services. Under the scheme, person with annual turnover up to Rs. 1.5 crore (Rs. 75 lakhs in States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand) needs to pay tax equal to 1% to 5% on his turnover and needs to file his returns annually with quarterly payment from FY 2019-20. 9.4.4.2 Composition scheme has been made available for suppliers of services (to those who are not eligible for the presently available Composition Scheme) with a tax rate of 6% (3% CGST +3% SGST) having an annual turnover in the preceding FY up to Rs. 50 lakhs. They would be liable to file one Annual Return with quarterly payment of taxes. This has been made effective from 01.04.2019. 9.4.4.3 Taxpayers under Composition scheme have been allowed to pay ‘self-assessed tax’ on a quarterly basis till 18th of the month

succeeding such quarter and furnish a return till 30th April for the previous financial year. 4 Composition scheme shall not be available to inter-State suppliers and 23 | 55 specified category of manufacturers