

Goods and Services Tax (GST) in India: Challenges and Road Ahead

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Abstract

Removal of multiplicity and cascading effect in indirect taxation in the country is a matter of urgent necessity. To solve the problem, Goods and Services Tax is proposed to be implemented. But many hurdles are coming in the way. In one hand there are economic considerations like setting the 'Revenue Neutral Rate' in GST, providing compensation to States in the way of change over from the older system of indirect taxation to the newer system of GST, and exclusion of certain items like petroleum, alcohol, etc. from the ambit of GST. On the other hand there are the problems of political rivalry and settling political scores. In this light, it is worthwhile at this very important moment to point out certain areas of concerns in implementation of GST and also to have a close look at the Constitution (Amendment) Bills tabled by the previous government and the existing government to find out whether the political debate that we are witnessing right now have any serious essence in them or that these are merely narrow political rivalry at the cost of interest of common people.

Key words: GST, GSTN, Revenue Neutral Rate (RNR), Compensation for Revenue Loss.

1. Goods and Services Tax (GST) in India: Fundamentals

Goods and Services Tax (GST) is a single tax to subsume various indirect taxes prevailing in the country. Now we have multiplicity of indirect taxation both at the State and Central level. The basic principle governing GST is the existence of only one tax for supply of goods and service across the country. In the proposed GST structure there are two levels: State Level GST (SGST) and Central Level GST (CGST). After the coming into force of GST its SGST part would subsume State level taxes namely, VAT or Sales tax, Entertainment Tax, Luxury Tax, Taxes on lottery, betting and gambling, State Cesses and Surcharges in so far as they relate supply of

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goods and services and entry tax not in lieu of Octroi and its CGST part would subsume several Central level taxes, namely, Central Excise Duty, Additional Excise Duty, Excise Duty levied Under Medicinal and Toiletries Preparation Act, Service Tax, Additional Customs Duty, Special Additional Customs Duty (SAD), Surcharges and Cesses.

Here, one needs to understand the rationale of having dual GST. India is a federal country where the Centre and States have powers to impose and collect taxes on certain items (as per Seventh Schedule to the Constitution). Now while the Centre is empowered to tax services and goods upto the production stage, the States have the power to tax sale of goods and not provision of services. Thus the Centre is not empowered to levy tax on sale of goods and the States are not empowered to levy tax on supply of services. Thus the Constitution does not vest power either in the Central Government or State Governments to levy tax on supply of goods and services. Thus, the Constitution must be amended in such a way that Centre is empowered to impose tax on sale of goods and the States are empowered to impose tax on supply of services. That is why the Constitution (One Hundred and Fifteenth Amendment) Bill was placed in 2011. The bill could not be passed and now the Constitution (One Hundred and Twenty Second Amendment) Bill was tabled in the year 2014 for the same reason.

In the matter of subsuming indirect taxes in GST the principles that are kept in mind are that taxes or levies to be subsumed should be primarily in the nature of indirect taxes either on supply of goods or on supply of services and that these taxes and levies are to form part of the transaction chain that commences with import or manufacture or production of goods or provision of services and ends on consumption of certain other goods and services. Transformation along this chain will result into value additions in phases. The aim of GST is to trap these value additions and impose tax on these value additions. Taxes, levies and fees which are not related to supply of goods and services should not be subsumed under GST. As the GST is basically a tax on value additions tax paid in previous phase should get adjusted in the tax payable in the later phase. This issue is considered in GST and an Input Tax Credit (ITC) System is also proposed. So tax paid as CGST in one phase can be adjusted as ITC in CGST payable in later phase and similar adjustment would be allowed for SGST. Cross utilization of ITC between CGST and SGST would not be allowed excepting for inter-state trade and commerce.

2. Goods and Services Tax (GST): Stated Advantages

If implemented the transformed indirect taxation in the form of GST is expected to fetch certain benefits. Some of these benefits are listed as follows:

- The cascading effect of CENVAT and service tax would be removed with a continuous chain of set-offs from producers' point to the retailers' point;
- Subsuming of many Central and State indirect taxes and phasing out of CST would reduce the net tax burden of tax on goods;
- Under GST there will be a transparent and complete chain of set-offs which will help in widening the coverage of tax base and improve tax compliance;

- Lesser tax burden on goods and services would reduce the cost of locally manufactured goods and services which would increase the competitiveness of Indian goods and services in the international market and give boost to Indian exports;
- An uniform State GST threshold limit of Rs. 10 lakhs for both goods and services and Central GST threshold limit of Rs. 1.5 crores for goods and an equally high CGST threshold limit is envisaged in proposed GST bill wherein the existing threshold limit for State VAT in majority of States is set as Rs. 5 lakhs. This raising of threshold limit would auger well for the small entrepreneurs and traders;
- Under the GST regime the companies need not set up warehouses in many states and can operate from a regional or a central warehouse and hence the capital efficiency would improve.

3. GST in India: Uniform Goal but Different Approaches

Almost everybody in society or politics recognizes the importance of having a single and simple indirect tax structure and the necessity of removal of multiplicity and cascading effects in taxation. The need to have indirect tax on the basis of value addition was felt by everybody cutting across the political inclinations. Still such a regime is eluding us for so long. The previous attempt to have GST via the introduction of Bill no. 22 of 2011 failed. Then it was Congress-led UPA - II in power at the Centre and the BJP-led NDA was in opposition. Now the renewed effort is there to have GST in the country via the introduction of Bill No. 192 of 2104. And now the BJP-led NDA is in power and Congress is sitting in the opposition. In this light it is worthwhile to compare the two bills to sense whether the conflict is based mainly on politics or mainly on economic and financial considerations. Here we should assess whether these two bills are different in major issues or whether the later one is simply the 'old wine in a new bottle'.

3.1. Points of Convergence in Bill 192 of 2014 and Bill 22 of 2011:

After carefully perusing the two bills one can identify the points of similarities in both the bills. These are noted as follows:

- (a) Insertion of new article 246A:** This is a special provision in respect of goods and services tax in the country which gives the general concurrent power to state legislatures to make laws with respect to goods and services tax imposed by the Union and at the same time gives exclusive powers to Parliament to make laws with respect to goods and services tax where the supply of goods or of services or both takes place in the course of inter-state trade or commerce.
- (b) Insertion of Article 269A:** In line with the exclusive power of the parliament in relation to inter-state trade and commerce the new Article 269A provides that goods and services tax on supplies in the course of inter-state trade and commerce 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 recommendation of the GST Council. At the same time the Parliament would formulate the principle 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.

- (c) **Insertion of new Article 279A and formation of GST Council:** The article provides for the constitution of a Goods and Services Tax Council (GST Council) by the President of India within sixty days from the commencement of the relevant Constitution Amendment Act. The council would be formed with the Union Finance Minister as the Chairperson, and the Union Minister of State in Charge of Revenue or Finance and the Minister in Charge of Finance and Taxation or any other Minister nominated by each State Government as the members. Vice-Chairman of the council would be chosen by the members amongst themselves.
- (d) **Recommendatory Powers of the GST Council:** The recommendatory powers of the GST Council extend simultaneously to the Union and the states and cover the following aspects:
- (i) the taxes, cesses and surcharges levied by the Union, the states and the local bodies which may be subsumed in the goods and services tax;
 - (ii) the goods and services that may be subjected to or exempted from the goods and services tax;
 - (iii) model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services tax and the principles that govern the place of supply;
 - (iv) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
 - (v) the rates goods and services tax;
 - (vi) any other matter relating to goods and services tax as the Council may decide.
- (e) **Concept of Harmonized National Market:** Both the Bills provide that while discharging the functions conferred by this article, the Goods and Services tax Council shall be guided by the need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services. Though this concept is very much useful but it is not a new one as we can find the concept of Harmonised Commodity Description and Coding System in many indirect taxes now prevailing in the country.
- (f) **Excluded Items from GST:** The major items that are proposed to be excluded from the list of items which would be outside the ambit of GST are petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and tobacco and tobacco products. These exclusions were there in the 2011 Bill and these are there in the 2014 Bill.

(g) Transitional Provision and Power of the President to remove difficulties:

Both the earlier Bill and the new Bill have given one year provisional period within which the state legislatures are to accommodate necessary amendments so as to remove any inconsistency with the provisions of the Constitution in the matter of implementation of GST in the country. Again, both the Bills have given a three years period for the President to exercise power to make such provisions, including adaptation or modification of any provision of the Constitution after accommodating necessary provisions to give effect to GST in the country, as appear to the President to be necessary or expedient for the purpose of removing difficulties.

3.2. Points of Divergence in Bill 192 of 2014 and Bill 22 of 2011:

Though the two bills are similar in certain points still there are certain points of dissimilarities in these two bills. These are as follows:

- (a) Floor rate or Band of rates in GST:** In respect of rates of goods and services tax there was no floor rate or bands of rates for goods and services tax in the earlier Bill (2011) which is there in the new Bill (2014).
- (b) Special GST Rate:** In the new Bill, recommendatory power of GST Council includes power to decide special rate or rates for a specified period to raise additional resources during any natural calamity or disaster. That provision was not there in the previous Bill (2011):
- (c) Special Provisions for Certain States:** In the new Bill (2014), recommendatory powers of GST Council also includes special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Skkim, Tripura, Himachal Pradesh and Uttarakhand (total 11 states). Such special provision was absent in the previous Bill (2011);
- (d) Additional Tax on Inter-state Trade and Commerce:** The new Bill (2014) provides for an additional tax on supply of goods, not exceeding one percent, in the course of inter-state trade and commerce shall be levied and collected by the Government of India for a period of two years or such other period as the GST Council may recommend and such tax shall be assigned to the states. Provision for such additional tax was not there in the earlier Bill (2011). The new Bill also provides that the net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the states from where the supply originates. In the matter of formulating principles for determining the place of origin from where the supply of goods take place in the course of inter-state trade and commerce the Parliament is given the necessary power under the new Bill. Again, the Government of India is given to authority to exempt any item of goods from the ambit of such additional tax.

- (e) **Date of Levy of GST on Petroleum etc.:** In the new Bill (2014) power is given to GST Council to recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- (f) **Methods of Taking Decisions:** In the earlier Bill (2011) every decision of the GST Council taken at a meeting shall be with the consensus of all the members present at the meeting. But the new Bill (2014) provides that every decision of the Goods and Services Tax Council shall be taken at a meeting by a majority of not less than three-fourths of the weighted votes of the members present and voting in accordance with the principles that the vote of the Central Government shall have a weightage of one-third of the total votes cast and the votes of all State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.
- (g) **Resolution of Disputes:** In the previous Bill the matter of settling the dispute was on a Dispute Settlement Authority (DSA) which may be established by the Parliament. As per that Bill, the reference of dispute or complaints to the DSA must come from the State Government or Government of India and the reference must be in respect of any deviation from the recommendations of GST Council that results into loss of revenue or effects on harmonized structure of goods and services tax in the country. But the new Bill (2014) placed dispute resolution under the domain of GST Council by providing that GST Council may decide about the modalities to resolve disputes arising out of its recommendation. The DSA envisaged in the earlier Bill designed to include one Judge of the Supreme Court or Chief Justice of a High Court (to be appointed by the President on the recommendation of Chief Justice of India and two other members who shall be persons of proven capacity and expertise in the field of law, economics or public affairs (to be appointed by the President on the recommendation of GST Council). Thus the earlier Bill was designed to include several persons from the society with varied interest area in the GST environment but the new Bill is very much restricted in this aspect.

4. Revenue Neutral Rate (RNR) in GST and Compensation for Revenue Loss: The Key Concern of the States

The term revenue neutral implies changes in the tax laws that result in no change in the amount of revenue coming into the government's coffer. Thus it can be taken as a taxing procedure that allows the government to still receive the same amount of money despite changes in tax laws.

In the past many government panels and independent experts put the revenue neutral rate for GST in the range of 12% to 20%, but Delhi based National Institute of Public Finance and Policy (NIPFP) which was asked to compute revenue neutral rate for GST calculated in to be 27%. NIPFP recommended a composite RNR of 26.68% for GST taking 2011-12 as the base year for its revenue projections but has been

asked to update it with the latest (2013-14) figures of economic output. The proposed tax rate consists of two components – 12.77% central GST or CGST and 13.91% state GST or SGST. The GST rate recommended by NIPFP is the same as the combined (marginal) central and state taxes on goods at present but it is lower than the combined central and state taxes on services of 28.5%, which would apply once the Finance Bill, 2015, is passed (The Financial Express: 11-04-2015).

The state revenue neutral rate of 27% is assumed to be very high and would have inflationary impact. The Finance Minister put that revenue neutral rate to be a leak and not yet a seriously determined rate. But if we look at the rate of excise duty and VAT we can see that adding these two taxes we get 27% rate (12.5% for excise duty and 14.5% for VAT). So, if the GST is not lower than that rate it could not create any advantage in the market and then its reformative dent would be lost to a very good extent.

But the states feel this revenue neutral rate to be lower than what is proposed. "States are of the view that 27% is not enough and the empowered committee (of state finance ministers) is yet to approve this recommendation (made by NIPFP)," KM Mani, Kerala's finance minister who was recently made the chairman of the empowered committee, said.

On estimation of a revenue-neutral rate, the 14th Finance Commission has said: "There are several challenges and many unresolved issues. In the absence of clarity on the design of a GST and the final rate structure, we are unable to estimate revenue implications and quantify the amount of compensation in case of revenue loss to the states due to the introduction of GST."

One of the most contentious issues for the rollout of GST has been the compensation to be paid by the Centre to states. The Central Government via the Constitution (Amendment) Bill proposes to have 100% compensation for the States in first three years, 75% in the fourth year and 50% in the fifth year. But the States are demanding 100% compensation for the first five years. Now the 14th Finance Commission is admitting its inability to determine the loss of actual revenue incurred by the states and so, it could raise questions on the Centre's proposed compensation model (Business Standard: 25-02-2015).

5. GST and Politics

If we look at the two Bills concerning implementation of GST, namely Bill No. 22 of 2011 and Bill No. 192 of 2014, then we can easily identify that there is not much of difference in respect of essence of the two bills. Still when the previous bill was introduced in 2011 it was vehemently opposed by BJP and its allies. Now the new bill is placed by BJP-led government and it is time for Congress and its allies to settle score. As the topic of taxation of goods and services is a matter contained in the concurrent list, it is not sufficient to pass the bill in both houses of the Parliament rather the bill is to be passed by majority of State Governments. And here lies the importance of political will. This much needed political will is seemed to be absent.

In support of this view of lack of political will we can follow certain events in the recent past.

Keeping the government on tenterhooks on key reform measures like the Insurance Bill and Goods and Services Tax, the Congress party said there is “no blank cheque” on its support on these in Parliament as the “devil lies in the details”. The party spokesperson Abhishek Singhvi described the proposed GST as “entirely a Congress baby” which it has in principle “no reason to jettison” but party’s support was “subject to nitty gritty”. He, meanwhile, recalled that the passage of the GST Bill, when the UPA had brought it, was opposed tooth and nail by Prime Minister Narendra Modi, who was then the Gujarat Chief Minister. He said, “BJP’s opposition to GST was irresponsible, petty and against public interest”. He also accused BJP of “doublespeak” and having “selective amnesia” for raising the matter of disruptions in Parliament (PTI: 22-12-2014).

As an aftermath of Constitutional (One Hundred Twenty Second) Amendment Bill, 2014, the Central Government place the GST Bill in the Parliament on 24th April, 2015. Demanding that the bill is to be sent to the Standing Committee first and then to be placed in the Parliament for necessary approval, Congress President Ms. Sonia Gandhi and some other opposition parties walked out of the Parliament (Ananda Bazar Patrika: 25-04-2015). Sending any bill to the Standing Committee is a very popular tactics for delaying any matter for any length of time as the Standing Committee is empowered to take indefinite time to discuss and finalise any matter referred to it.

6. Concluding Remarks

That system like GST is needed cannot be questioned. But before making such a huge change over from older system of separate taxations to a newer system single tax needs careful consideration of economic matters, arranging for necessary infrastructure, etc. And for all these we require healthy relations between political parties, open-minded considerations of the economic matters etc. Unfortunately these are not present in enough quality. Still now we are concerned about settling the political scores and as such forget about developing necessary infrastructure to enable us to really implement the system. The prime mover of GST framework is the GST Network. But GSTN is currently facing a chicken-egg situation. It needs to get work right away in appointing a service provider and testing the system that will involve 6.5 million dealers in myriad intricate transactions. All this takes time, the luxury of which the GSTN does not appear to have since it has been April 1, 2016 as hard target. Yet it cannot be started until these issues are sorted out and the law passed; no IT company will sign on until there is clarity on these multiple fronts (Business Standard: 22-12-2014). If this goes on then we must be sure that there will be another set of setting deadlines and failure to comply the deadlines and nothing more.

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