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### "GST and Its Way Forward"

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#### **Abstract**

GST is a value added tax. France is the First Country introduced this GST followed by numerous Countries. In India GST was first recommended by the Kelkar Task Force on implementation of Fiscal Reforms and Budget Management Act, 2004. Notwithstanding that, the first Discussion paper on Goods and Services Tax in India was presented by the Empowered Committee of State Finance Ministers dated 10th November 2009. More competitive business environment, uniform tax rates across states, better interstate trade, no confusion with regard to economic activity, no cascading effect i.e., no taxes on taxes, ease on money fronts, and widening tax base, etc., are the interesting features of GST. Increased monopoly of Central Government, States lose a share of revenue, and Burden on tax payers, etc., are the frequently raised criticisms against GST. The other criticisms raised against GST are Legislative powers relating to Tax on Goods Services captured by the GST Implementation Committee and the Central Government. Moreover, GST dues, payment of compensation stopping or delay in payment of compensation ultimately forcing the states to beg the Central Government for the same. The objective of this article is to verify the criticisms levelled against the GST. Exemptions to Charitable and religious activities, Healthcare sector and Legal services are discussed in this Article. In this article doctrinal and analytical method of research is adopted.

“Stay away from negative people. They have a problem for every solution.”

Albert Einstein

Indeed, GST is not a new concept. GST is in practice and implementation in various countries of the world. It is a simplified tax structure adopted by most of the countries. France is the First Country introduced this GST followed by numerous countries.

Though there are different GST plans in the world, but the main formula behind all the plans in vogue will be the one. That is in providing services the Tax paid will be adjusted for the Tax to be paid later for the same service. In other words, collection of tax on the tax is prohibited. In order to reduce the impact of Excise

Tax, Service Tax, MODVAT and CENVAT<sup>1</sup> was introduced respectively.

Obviously these two types of taxes yield good results. Be that as it may, Central Government successfully get consent from the States on the decision of implementing VAT in the place of Sales Tax. Central Governments CENVAT and respective State Governments VAT was implemented individually and successfully. Unfortunately, issues related to interstate sales and interstate services and etc., become unsolved by both Central Government and State Governments. One of the main issues was that, in case of transfer of services – considered as “service” at one point of time and “sale” at another point of time. Ultimately GST is the final solution to all these issues. GST is applicable to sales of goods and all types of services. It is an Indirect Tax.<sup>2</sup> The Central Goods and Services Tax, 2017<sup>3</sup> consisting of XXI Chapters, 174 Sections and III Schedules under Section 7.

### **Central Government Initiative**

It's a Central Governments great initiative to bring all the State Governments on one platform pertaining to Tax on Goods and Services issues. But at this juncture there are some issues which are to be accepted and honoured by both the Central Government and all the State Governments.

Indian Constitution is in Federal in Nature. Power to imposing taxes lies on both Central and State Government equally. Fortunately, or unfortunately States has to lose their one of the main income sources through Sales of Goods. For this, the issue of Big States and Small States is not relevant. State Governments fears and objections about losing of one of the main income sources could be answered and justified by the Central Government by giving statutory promises on payment of compensation, and establishment of proper machinery. Mutual understanding, honouring each other by the Central Government and respective State Governments would lead to the success of implementation of GST. Any decision pertaining to GST should be taken unanimously is the one of the unwritten rules in the entire episode of GST. Notwithstanding that, before taking any decision voting is compulsory.

The efforts of leaders like Mr. Yaswant Sinha, Former President Late Pranab Mukherji, Mr. Chidambaram, Mr. Arun Jaitley etc., for following the above mentioned conditions are unquestionable and remarkable. There is an opinion in the financial experts about GST that, at the time of framing of GST rules and regulations, meeting of all finance ministers and GST Council meetings are organised and conducted without any issues smoothly by late Mr. Arun Jaitley. Though there are some obstructions & discrepancies the process of GST carry forwarded successfully.

There is some opinion that, there is some unrest and unsolved issues in the meetings chaired by the Finance Minister Mrs. Nirmala Sita Raman. A feeling is created that there is a blow to mutual respect and honour between the stake holders i.e., Central

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<sup>1</sup> Adaptation to VAT is named as CENVAT. This CENVAT came into to force in India in 1986 in the form of MODVAT (Modified Value Added Tax).

<sup>2</sup> The Central Goods and Services Tax Act, 2017 (12 of 2017) passed by the Parliament with an objective to make a provision for levy and collection of tax on intra-state supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

<sup>3</sup> Hereinafter referred as the “CGST, 2017”

Government and respective State Government.

### **Constitutional Provisions**

Article 246 A of the Constitution of India<sup>4</sup> empowers the Parliament and State Assemblies to pass rules and regulations pertaining to GST except inter-state trade and commerce. Notwithstanding that, as provisions of Article 246 A begins with non-obstante clause which overrides Article 246 and Article 254, for a better understating of Article 246 A one need to understand the provisions of Articles 246<sup>5</sup> and 254<sup>6</sup> first. Moreover, Article 269 A of the Indian Constitution<sup>7</sup> empowers the Central Government to impose GST, and the income generated from GST should be distributed in between States and Central Government according to recommendations of the GST Council. Article 279 A specifies the establishment of GST Council. As per the constitutional mandate Central Finance Minister will be appointed as the Chairperson for the GST Council. There should be an election for the post of Vice-chairman. All decisions relating to taxes, cess, surcharges, and other issues should be taken on the recommendations of the GST Council only.

The present scenario is that, all the rules and guidelines relating to GST are violated. Though the GST Council is created in 2016 its Vice-chair person is not yet appointed. In between October 2020 to April 2021 there was no GST Council meeting conducted. Goods and Services Tax implementation officers committee was appointed secretly and GST Council was kept aside. Moreover, while violating the norms of consulting State Governments, Recommendations of the officers committee are considered as GST rules and regulations by the Central Government. Punjab State Finance Minister Mr. Manpreet Badal raised the concern about the above discussed issues before the GST Council 43<sup>rd</sup> meeting<sup>8</sup>. He also demanded to reduce the charges of GST to help COVID - 19 hospitalization and medications. In GST Implementation Committee include Finance Ministers of more States. After the GST Council meeting 8 members committee is constituted by the Central Finance Minister Mrs. Nirmala Sita Raman to consider reduction of charges relating to COVID – 19. The pity is that, the claim made by the three Finance Ministers from Congress party ruled States were not placed in the committee.

### **Non-payment of Dues**

West Bengal Finance Minister Dr. Amit Mitra on 04th June 2021 wrote a letter to

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<sup>4</sup> Special Provision with respect to Goods and Services Tax

246 A (1) Notwithstanding anything contained in Articles 246 and 254 Parliament, and subject to Clause (2) the Legislature of every State have power to make laws with respect to Goods and Services Tax imposed by the Union or by such State

(2) Parliament has exclusive power 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.

Explanation: The provisions of this Article, shall, in respect of goods and services tax referred to clause (5) of Article 279 A, take effect from the date recommended by the Goods and Services Tax Council.

<sup>5</sup> Subject matter of Laws made by the Parliament and the State Legislatures

<sup>6</sup> Inconsistency between Law made by the Parliament and Law made by the State Legislatures

<sup>7</sup> Levy and Collection of goods and services tax in course of interstate trade and commerce

(1) Goods and services tax

<sup>8</sup> 43rd GST Council meeting was held on 28th May 2021. The Council did not take up the GST rate revisions related to the inverted tax structure.

Central Finance Minister claiming that, till end of January 2021 GST Compensation non payments are accumulated to Rs. 63,000 crores. Punjab, Rajasthan, and Chhattisgarh States also officially declared that Rs.7,393/- crores, Rs. 4,635/- crores, and Rs. 3069/- crores non payment of GST Compensation from Central Government respectively. This claim by 3 States should be taken into seriously. Respective State Governments often claiming about the non-payment of dues by the Central Government.

Dr. Amit Mitra while alleging that a steady breakdown of the spirit of federalism was taking place and urged the Central Finance Minister to undertake a course correction in functioning of the Goods and Services Tax Council.<sup>9</sup> Dr. Amit Mitra remarked that, incorporative federalism is seen but not cooperative federalism. Dr. Mitra further claimed that assurance towards working out for harmony was getting eroded, and said that an undercurrent of the Central Government coming meetings with pre-determined conclusions are evolving.

There are some allegations that the present Central Government is using GST as a tool to threat the State Governments. The status of GST Council has been reduced to a gossiping shop. Tax on Goods and Services and Legal & execution powers are abrogated by GST Implementation Committee and the present Central Government. GST dues, payment of Compensation is stopped or delayed which ultimately leads to a situation that respective States has to beg the Central Government.

### **Person liable for GST Registration (Section 22)**

#### **1. If aggregate turnover exceeds specified threshold limit in a financial year**

Every supplier of goods or services is required to registration in the State or Union Territory from where he makes the taxable supplies, if the aggregate turnover exceeds specified threshold limit in a financial year.

#### **2. In case of transfer of services on account of succession etc**

Where business is transferred, whether on account of succession or any other reason to another person as a going concern. The transferee or successor is required to be registered from the date of such succession / transfer.

Any other reason: includes transfer / change in the ownership of business due to death of the sole proprietor.

#### **3. In case of any amalgamation / demerger by any order of High Court etc.**

Where the business is transferred pursuant to sanctions of scheme / arrangement of amalgamation / demerger of 2 or more companies pursuant of an order of High Court or Tribunal, the transferee is to be registered with effect from the date on which the ROC issues a certificate of incorporation giving effect to such order.

#### **4. Registration required only for a place of business from where taxable supplies takes place**

A person is required to obtain registration with respect to his “each” place of business in India from where he makes the taxable supplies.

However, supplier is not liable to obtain registration in a State / Union Territory from where he makes an exempt / non taxable supplies.

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<sup>9</sup> <https://economictimes.indiatimes.com/news/economy/policy/west-bengal-fm-amit-mitra-asks-sitharaman-to-undertake-course-correction-in-gst-council-functioning/articleshow/83788074.cms>

**Other provisions relating to Registration**

Section	Provision
23	Person not liable for registration
24	Compulsory registration in certain cases
25	Procedure for registration
26	Deemed registration
27	Special provision for casual taxable person & Non resident taxable person
28	Amendment of Registration
29	Cancellation or surrender of registration
30	Revocation of cancellation of registration

**Step by step Chapters in Central Goods and Services Tax, 2017 (CGST) to understand the Concept**

No	Concept wise Chapters	Chapter & Sections <sup>10</sup>
1	Registration	Chapter VI. Sections 22 to 30
2	Supply under GST	Defined under Section 2(5) and various sections of CGST, 2017. Chapter IV.
3	Charge of GST	Provided under various sections of the CGST, 2017.
4	Exemption of GST	Chapter III. Section 11 / Chapter V. Section 18(4) / Chapter XXI. Section 174 (2) (c) Provisio etc.
5	Time of supply of Goods or services	Chapter IV. Sections 12 to 14
6	Place of supply	Chapter V. Section 51
7	Value of supply	Chapter IV. Section 15
8	Tax invoice, Debit note, Credit note	Chapter VII. Sections 31 to 34
9	Accounts and Records, E-way bill	Chapter VIII. Sections 35 to 36
10	Input tax credit	Chapter V. Sections 16 to 21
11	Payment of tax	Chapter X. Sections 49 to 53 A
12	Liability to pay tax in certain cases	Chapter XVI. Sections 85 to 94
13	Return	Chapter IX. Sections 37 to 48
14	Refund	Chapter XI. Sections 54 to 58
15	Assessment and audit	Chapter XII. Sections 59 to 64 Chapter XIII. Sections 65 to 66
16	Demand and recovery	Chapter XV. Sections 73 to 84
17	Appeals & revision	Chapter XVIII. Sections 107 to 121
18	Offences & penalties	Chapter XIX. Sections 122 to 138
19	Inspection, search, seizure and arrest	Chapter XIV. Sections 67 to 72
20	Advance Ruling	Chapter XVII. Sections 95 to 106
21	Import and export under GST	Various Sections of CGST, 2017
22	Job work	Chapter XX. Section 141 & Chapter XXI Section 143

<sup>10</sup> The Central Goods and Services Tax Act, 2017 (12 of 2017)

**Exemption from GST**

Notification Number: 12 / 2017. Central tax (rated) dated 28.06.2017

**Exemption under GST – Legal Services**

**Legal services by Arbitral Tribunal** to following recipient are exempt from GST :

- (i) Other than business entity – it is exempt
- (ii) Business entity – aggregate T / O of business entity is up to Rs. 20 / 10 lakhs – exempt
- (iii) Business entity – aggregate T / O of business entity is above Rs. 30 / 20 lakhs – taxable
- (iv) CG, SG, UT,<sup>11</sup> Local authority, etc. - it is exempt

**Legal service by a partnership firm** of Advocate, an individual Advocate other than a senior Advocate to following recipient are exempt:

- (i) An advocate or partnership firm of Advocates providing legal services – exempt
- (ii) Other than business entity – exempt
- (iii) Business entity - aggregate T / O of business entity is up to Rs. 10 / 20 lakhs – exempt
- (v) Business entity - aggregate T / O of business entity is above Rs. 10 / 20 lakhs – it is taxable under RCM
- (iv) CG, SG, UT, Local authority, etc. - it is exempt

**Legal services by Senior Advocate** to the following recipients are exempt from GST

- (i) Legal Services by Senior Advocates: An Advocate or partnership firm of Advocate providing legal services – It is taxable. However, firm can claim exemption as business entity having T /O up to Rs. 20 lakhs.
- (ii) Legal Services by Senior Advocates to other than business entity – exempted
- (iii) Legal Services by Senior Advocates to Business entity:
  - (a) Aggregate T / O of business entity is up to Rs. 10 / 20 lakhs – exempted
  - (b) Aggregate T / O of business entity is above Rs. 20 lakhs – taxable under RCM

**Exemption under GST – Health Care Services**

**Entry No: 96 :** service by a veterinary clinic in relation to health care of animal or birds

**Entry No: 74 :** service by way of :

- (a) Healthcare services by a clinical establishment on authorised medical practitioner or para medics
- (b) Services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

**Entry No: 73 :** services provided by the cord blood banks by way of preservation of stem cells or any other services in relation to such preservation.

**Entry No: 75 :** services provided by the operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the process incidental thereto.

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<sup>11</sup> CG – Central Government, SG – State Government, UT – Union Territory

**Entry No: 74 A :** services provided by rehabilitation professionals recognised under Rehabilitation Council of India Act, 1992 by way of rehabilitation therapy of counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centres established by CG, SB, UT or any entity registered under Section 12 AA of the Income Tax Act.

**Food supplies to patient:** taxability of food supplied in hospital premises can be understood with the help of below mentioned classification :

**Food supplied by hospital canteens to patient:**

Patient admitted: Food supplied to the patients as advised by the Doctor / nutritionists – It is a part of composite supply of healthcare and not separately taxable.

Patient not admitted: taxable

Food supplied by hospital canteens to others such as Doctors, staffs, visitors, etc. – taxable.

**Exemption under GST: Charitable and religious activity related services**

For exemption of services by charitable / religious Trusts following two conditions are necessary:

- (i) The entity is registered under Section 12AA of the Income Tax Act, 1961. and
- (ii) The entity carries out one or more of the specified charitable activities.

**Charitable activities:**

- (a) Public health services
- (b) Advancement of religion, spirituality or yoga
- (c) Advancement of educational programme / skill development
- (d) Preservation of environment including waterfalls, forests and wildlife

**Services by a person:**

- (i) Conduct of religious ceremony – tax exemption
- (ii) Renting of precincts of a religious place of entity registered under Section 12 AA of IT Act.

**Conditions:**

Renting of precincts of religious place is exempt from GST. However, the exemption shall be subjected to per day / per month rental limit as specified in respective entry.

However, **exemption shall not apply** to the following:

- (i) Renting of room where charges are Rs. 1,000 or more per day
- (ii) Renting of premises, community halls, kalyana mandapams, or open area, and the like where charges are Rs. 10,000 or more per day
- (iii) Renting of shops or other spaces for business or commerce where charges are Rs. 10,000 or more per month.

**Exports and GST**

Exports do not come under the purview of the GST but exporters can claim reimbursements of the tax paid on inputs from the revenue department. In order to make the Indian Goods and Services more competitive in the international markets the Central Government mooted this policy. As per the Economic Times, 23 June 2021, Exporters partaking three-way contracts or tripartite agreements through

multinationals are under the GST scanner.<sup>12</sup> The main contention is that “all the tripartite agreements may not fall within the purview of intermediary services and hence it is important to examine whether the services are rendered on own account”.<sup>13</sup> This new examination of Fintec and IT/ITeS companies arose after a fragmented decision by the division bench of the Bombay High Court on repayments.

### **Controversy on intermediary’s**

The controversy over the imposition of Goods and Services Tax on middlemen has surfaced again, the Gujarat High Court focused on the dispute. The issue is whether some Indian units or BPOs of multinational companies are actually supplying or exporting services. As per GST, if exports are not made then the framework should be taxed at 18%. Many BPOs had requested the Gujarat High Court to review its stand. Hon’ble High Court accepted the review petitions.<sup>14</sup>

Gujarat High Court had ruled that the provisions are Constitutional but the Court would now relook the issue. Many Indian exporters are already facing a lot of pressure due to Covid and the GST burden makes them uncompetitive due to the competition from neighbouring Countries and the Court’s stand would certainly give huge respite.

Due to certain provisions in the current GST Law intending agents have to pay tax on services rendered in India but if they open an office in Dubai, Hong Kong or Sri Lanka, they are being penalised for qualifying as “intermediary” under Section 2 (13) of the CGST Act, 2017.

This ruling also could impact the BPOs and several other captive units of multinationals say tax experts. In 2018 Authority of Advancing Ruling (AAR) ruled that back office support services qualify as “intermediary” support services and not exports. Tax department has been issuing notices to BPOs in this regard.

The BPOs had first claimed that the tax department’s stand was unconstitutional. The High Court however ruled that the indirect tax department was within its rights and hence the stand was unconstitutional.<sup>15</sup>

### **Recommendations of 44th GST Council**

On 12th June 2021, GST Council in its 44th meeting took a decision to change in GST Rates on goods being used in Covid-19 relief and management applicable till 30th September, 2021:

#### **A. Medicines**

<b>S.No.</b>	<b>Description</b>	<b>Present GST Rate</b>	<b>GST Rate recommended by GST Council</b>
1.	Tocilizumab	5%	Nil
2.	Amphotericin B	5%	Nil

<sup>12</sup> <https://www.timesnownews.com/business-economy/economy/article/exporters-having-tripartite-agreements-with-multinationals-under-gst-scanner/774617>

<sup>13</sup> Ibid

<sup>14</sup> [https://www.business-standard.com/article/economy-policy/igst-on-intermediaries-gujarat-high-court-admits-a-petition-to-review-121032000001\\_1.html](https://www.business-standard.com/article/economy-policy/igst-on-intermediaries-gujarat-high-court-admits-a-petition-to-review-121032000001_1.html)

<sup>15</sup> Ibid



3.	Anti-Coagulants like Heparin	12%	5%
4.	Remdesivir	12%	5%
5.	Any other drug recommended by Ministry of Health and Family Welfare (MoHFW) and Dept. of Pharma (DoP) for Covid treatment	Applicable rate	5%

### **B. Oxygen, Oxygen generation equipment and related medical devices**

S. No.	Description	Present GST Rate	GST recommended by GST Council	Rate by
1.	Medical Grade Oxygen	12%	5%	
2.	Oxygen Concentrator / Generator, including personal imports thereof	12%	5%	
3.	Ventilators	12%	5%	
4.	Ventilator masks / canula / helmet	12%	5%	
5.	BiPAP Machine	12%	5%	
6.	High Flow nasal canula (HFNC) device	12%	5%	

### **C. Testing Kits and Machines**

S. No.	Description	Present GST Rate	GST recommended by GST Council	Rate by
1.	Covid Testing Kits	12%	5%	
2.	Specified Inflammatory Diagnostic Kits, namely D-Dimer, IL-6, Ferritin and LDH	12%	5%	

### **D. Other Covid-19 related material**

S. No.	Description	Present GST Rate	GST recommended by GST Council	Rate by
1.	Pulse Oximeters, incl personal imports thereof	12%	5%	
2.	Hand Sanitizer	18%	5%	
3.	Temperature check equipment	18%	5%	
4.	Gas/Electric/other furnaces for crematorium, including their installation, etc.	18%	5%	
5.	Ambulances	28%	12%	

### **Conclusion**

Before the advent of GST, we had numerous types of different taxes to be paid at different levels of business chain. Nevertheless, GST is a bold step. Criticisms like Legislative powers relating to Tax on Goods Services captured by the GST Implementation Committee and the Central Government; GST dues, payment of compensation stopping or delay in payment of compensation ultimately forcing the states to beg the Central Government for the same are found to be baseless and untrustworthy. As Albert Einstein said, "Stay away from negative people. They

have a problem for every solution.”

Criticism is much easier than anything else. There may be few flaws or inconsistencies but we can iron them out we move with the time. Profits of industrial advancement and revenue growth can be realised in due course. Relevant steps should be considered to protect against unwarranted litigation and to make the system more tax payer friendly.

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