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# INDIRECT

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**GST & Customs**

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on  
**INDIRECT TAX LAWS**

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&

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# SECTION A : GOODS AND SERVICES TAX (GST)

## CHAPTER

# 01

## GST in India : An Introduction

### 1.1 Introduction

In earlier indirect tax regime, the credit mechanism for indirect taxes levied by the Union Government was governed by the CENVAT Credit Rules, 2004; and the credit mechanism for state-level VAT on sale of goods was governed by the States under their respective VAT Acts and Rules. The VAT legislations allowed ITC of VAT on inputs and capital goods in transactions within the state, but not on inputs and capital goods coming in the State from outside the state, on which central sales tax was paid. CENVAT Credit Rules, 2004 allowed availing and utilization of credit of duty/tax paid on both goods (capital goods and inputs) and services by the manufacturers and the service providers across the country.

The credit across goods and services was integrated vide the CENVAT Credit Rules, 2004 in the year 2004 to mitigate the cascading effects of central levies namely, central excise and service tax. However, the credit chain remained fragmented on account of State-Level VAT as the credit of central taxes could not be set off against a State levy and vice versa. The chain further got distorted as ITC was not available on inter-State purchases. This resulted in cascading of taxes leading to increase in costs of goods and services.

The GST regime promises seamless credit on goods and services across the entire supply chain with some exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services. ITC is considered to be the backbone of the GST regime. In fact, it is the provisions of ITC which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

### 1.2 Genesis of GST in India

- It is now been more than a decade since the idea of national Goods and Services Tax (GST) was mooted by Kelkar Task Force in 2004. The Task Force strongly recommended fully integrated 'GST' on national basis.
- Subsequently, the then Union Finance Minister, Shri. P. Chidambaram, while presenting the Central Budget (2007-2008), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty.
- The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became Constitution (101st Amendment) Act, 2016, which paved the way for introduction of GST in India.
- In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services



Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted. The enactment of the Central Acts is being followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar are among the first ones to pass their respective State GST laws.

- Government has introduced GST in India w.e.f. 1st July, 2017 by achieving consensus on all the issues relating thereto.
- GST is a path breaking indirect tax reform which will create a common national market by dismantling interstate trade barriers. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.
- France was the first country to implement GST in the year 1954. Within 62 years of its advent, about 160 countries across the world have adopted GST because this tax has the capacity to raise revenue in the most transparent and neutral manner.

### 1.3 Concept of GST

- **Valued Added Tax:** GST is a value added tax levied on manufacture, sale and consumption of goods and services.
- **Continuous Chain of Tax Credits:** GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- **Burden Borne by Final Consumer:** The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.
- **No Cascading of Taxes:** Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

### 1.4 Need for GST in India

#### I. DEFICIENCIES IN THE EXISTING VALUE ADDED TAXATION

- (1) In the present regime, a manufacturer of excisable goods charges excise duty and value added tax (VAT) on intra-state sale of goods. However, the VAT dealer on his subsequent intra-state sale of goods charges VAT (as per prevalent VAT rate as applicable in the respective state) on value comprising of (basic value + excise duty charged by manufacturer + profit by dealer).
- (2) Further, in respect of tax on services, service tax is payable on taxable services provided w.e.f. 1 July, 2012, service tax is levied on all 'services' other than the Negative list of services as provided under Section 66D of the Finance Act, 1994 or else otherwise exempted vide the Mega Exemption Notification No. 25/2012 - ST dated 20 June, 2012 ("the Mega Exemption Notification").
- (3) Presently, from 1st June, 2016, service tax is levied @ 15% [Service tax @ 14%, Swachh Bharat Cess (SBC) @ 0.5% (w.e.f. November 15, 2015) and Krishi Kalyan Cess (KKC) @ 0.5% (w.e.f. June 1, 2016)] on specified services provided by service providers in India.
- (4) The existing indirect tax framework in India suffer from various shortcomings. Under the existing indirect tax structure, the various indirect taxes being levied are not necessarily mutually exclusive. To illustrate, when goods are manufactured and sold both central excise duty (CENVAT) and State-Level VAT are levied. Though CENVAT and State-Level VAT are essentially value added taxes, set off of one against the credit of another is not possible as CENVAT is a central levy and State-Level VAT is a State levy. Moreover, CENVAT is applicable only at manufacturing level and not at distribution levels. The existing sales tax regime in India is a combination of origin based (Central Sales Tax) and destination based multipoint system of taxation (State Level VAT). Service tax is a value added tax and credit across the service tax and the central excise duty is integrated at the central level.



- (5) Despite the introduction of the principle of taxation of value added in India - at the Central level in the form of CENVAT and at the State level in the form of State VAT - its application has remained piecemeal and fragmented on account of the following reasons :
- No-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.
  - Cascading of taxes on account of (i) levy of Non-VAT Table CST and (ii) inclusion of CENVAT in the value for imposing VAT.
  - No CENVAT after manufacturing stage.
  - Non-integration of VAT and service tax.
  - Double taxation of a transaction as both goods and services.

## II. GST - A CURE FOR ILLS OF EXISTING INDIRECT TAX REGIME

- A comprehensive tax structure covering both goods and services viz. Goods and Service Tax (GST) would address these problems. Simultaneous introduction of GST at both Centre and State levels would integrate taxes on goods and services for the purpose of set-off relief and will ensure that both the cascading effects of CENVAT and service tax are removed and a continuous chain of set-off from the original producer's point/ service provider's point upto the retailer's level/consumer's level is established.
- In the GST Regime, the major indirect taxes have been subsumed in the ambit of GST. The present concepts of manufacture or sale of goods or rendering of services are not longer applicable since the tax is now levied on "Supply of Goods and/or services".

### 1.5 Taxes Subsumed in GST

CENTRAL LEVIES SUBSUMED IN GST	CENTRAL LEVIES NOT SUBSUMED IN GST
(1) Central Excise Duty and Additional Excise Duties	(1) Customs Duty
(2) Excise Duty under Medicinal and Toilet Preparation Act	(2) Central Excise Duty on 5 Petroleum Products and Tobacco & Tobacco Products.
(3) Service Tax	
(4) CVD and Special CVD	
(5) Central Sales Tax	
(6) Surcharges and Cesses in so far as they relate to supply of goods and services.	
STATE LEVIES SUBSUMED IN GST	STATE LEVIES NOT SUBSUMED IN GST
(1) State surcharges and cesses in so far as they relate to supply of goods and services	(1) State Excise Duty on Alcohol Liquor for Human Consumption and Opium, Indian Hemp and other Narcotic Drugs and Narcotics
(2) Entertainment Tax (except those levied by local bodies)	(2) Sales Tax on 5 Petroleum Products and Alcohol Liquor for Human Consumption
(3) Tax on lottery, betting and gambling	(3) Profession Tax
(4) Entry Tax (All Forms) and Purchase Tax	(4) Electricity Duty
(5) VAT/Sales Tax	(5) Stamp Duty
(6) Luxury Tax	(6) Toll Tax
(7) Taxes on advertisements.	(7) Road and Passenger Tax.

### 1.6 Dual GST Model to be Introduced in India



- India has adopted a dual model GST which is imposed concurrently by the Central and States, i.e. Centre and States simultaneously tax goods and services. Centre has the power to tax intra-state sales and states are empowered to tax services. GST extends to whole of India.
- GST is a destination based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof. GST in India will comprise of Central Goods Service Tax (CGST) - levied and collected by Central Government, State Goods and Service Tax (SGST) - levied and collected by State Governments/Union Territories with State Legislatures and Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without State Legislatures, on intra-state supplies of taxable goods and/or services. Inter-State supplies of taxable goods and/or services will be subject to Integrated Goods and Service Tax (IGST). IGST will approximately be a sum total a CGST and SGST/UTGST and will be levied by Centre on all inter-state supplies.
- There is single legislation - CGST Act, 2017 - for levying CGST. Similarly, Union Territories without State Legislatures [Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli & Daman and Diu, Ladakh and Chandigarh] will be governed by UTGST Act, 2017 for levying UTGST. States and Union Territories with their own legislatures [Delhi, Puducherry and Jammu & Kashmir] have to enact their own GST legislation for levying SGST. Though there would be multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification and valuation of goods and services, procedure for collection and levy of tax and the like would be uniform in all the SGST legislations, as far as feasible. This would be necessary to preserve the essence of dual GST.
- In GST regime, tax (i.e. CGST and SGST/UTGST for intra-state supplies and IGST for inter-state supplies) shall be paid by every taxable person and in this regard provisions have been prescribed in the law. However, for providing relief to small businesses, a simpler method of paying taxes and accounting thereof is also prescribed, known as Composition Scheme. Along with providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on specified goods and/or services.
- Input Tax Credit (ITC) of CGST and SGST/UTGST will be available throughout the supply chain, but cross utilisation of credit of CGST and SGST/UTGST will not be possible, i.e. CGST credit cannot be utilised for payment of SGST/UTGST and SGST/UTGST credit cannot be utilised for payment of CGST. However, cross utilisation will be allowed between CGST/SGST/UTGST, i.e. credit of IGST can be utilised for the payment of CGST/SGST/UTGST and vice versa.
- Since, GST is a destination based consumption tax, revenue of SGST will ordinarily accrue to the consuming states. The inter-state supplier in the exporting state will be allowed to set off the available credit of IGST, CGST and SGST/UTGST (in that order) against the IGST payable on inter-state supply made by him. The buyer in the importing state will be allowed to avail the credit of IGST paid on inter-state purchase made by him. Thus, unlike the existing scenario where the credit chain breaks in case of inter-state sales on account of non-VATable CST under GST regime there is a seamless credit flow in case of inter-State supplies too. The revenue of inter-state sale will not accrue to the exporting state and the exporting state will be required to transfer to the centre the credit of SGST/UTGST used in payment of IGST. The centre will transfer to the importing state the credit of IGST used in payment of SGST/UTGST. Thus, the inter-state trade of goods and services (IGST) would need a robust settlement mechanism amongst the States and the Centre. A Central Agency is needed which can act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This is possible only with the help of a strong IT infrastructure.
- Resultantly, Common GST Electronic Portal - [www.gst.gov.in](http://www.gst.gov.in) - a website managed by Goods and Service Tax Network (GSTN) [a company incorporated under the provisions of section 8 of the Companies Act, 2013] is set up by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States. The functions of the GSTN, inter alia, include :
  - facilitating registration;
  - forwarding the returns to Central and State authorities;
  - computation and settlement of IGST;
  - matching of tax payment details with banking network;