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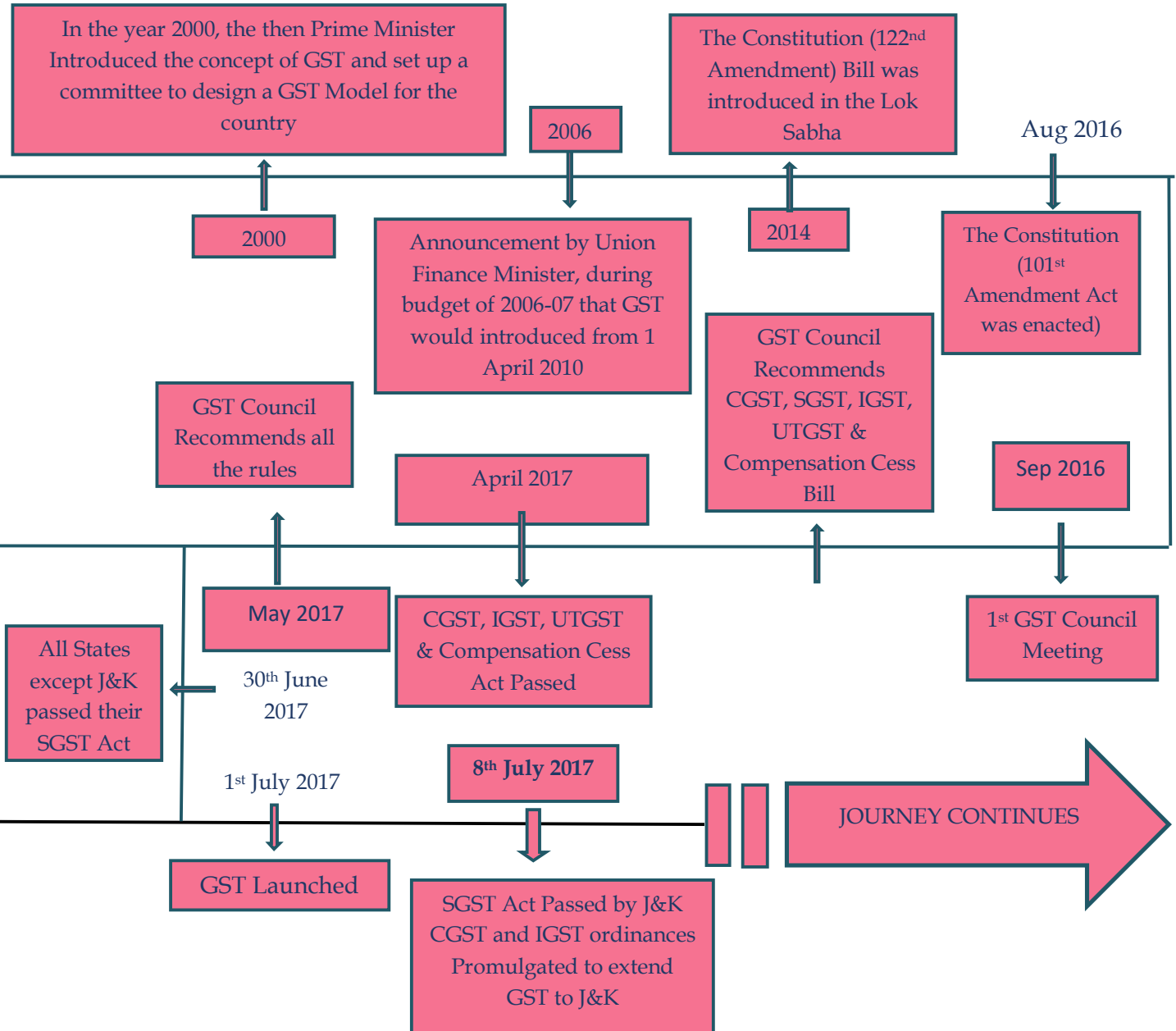


# Chapter

# 1

# GST in India : An Introduction

## Genesis of GST in India



## 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 and takes only the value added at each stage of supply chain.
- **Burden Borne by Final Consumer:** Only the final consumer bears the GST charged by the last supplier in the supply chain, as all previous suppliers are provided 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.

### 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.

### Central / State Levies to be Levied after introduction of GST

Goods	(Supply)	(Manufacture)	(Sale)	
	GST	ED	VAT	CST
Alcoholic Liquor for human consumption	×	✓	✓	✓
Petroleum crude, High speed diesel, Motor spirit (Petrol), Natural gas, Aviation Turbine fuel	×	✓	✓	✓
Tobacco & Tobacco products	✓	✓	×	×



Opium, Indian Hemp and other Narcotic Drugs	✓	✓	✗	✗
All other Goods & Service	✓	✗	✗	✗

### Benefits of GST

GST is a win-win situation for the entire country. It brings benefits to all the stakeholders of industry, Government and the consumer. It will lower the cost of goods and services, give a boost to the economy and make the products and services globally competitive. The significant benefits of GST are discussed hereunder:

#### Benefits to economy

- Creation of unified national market
- Boost to 'Make in India' initiative
- Enhanced investment and employment

#### Simplified tax structure

- Ease of doing business
- Certainty in tax administration

#### Easy tax compliance

- Automated procedures with greater use of IT
- Reduction in compliance costs

#### Advantages for trade and industry

- Benefits to industry
- Mitigation of ill effects of cascading
- Elimination of multiple taxes and double taxation
- Benefits to small traders and entrepreneurs

**Buoyancy to the Government Revenue:** GST is expected to bring buoyancy to the Government Revenue by widening the tax base and improving the tax-payer compliance.

### Constitutional Provisions

Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called ultra vires the Constitution and is illegal and void.

The significant provisions of the Constitution relating to taxation are:

**I. Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “no tax shall be levied or collected except by authority of law”. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

**II. Article 246:** It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.

**III. 7<sup>th</sup> Schedule to Article 246:** It contains 3 lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

List - I	Union List	It contains the matters in respect of which the parliament (Central Government) has the exclusive right to make laws.
List - II	State List	It contains the matters in respect of which the State Government has the exclusive right

# Chapter

# 2

# Levy of GST

## 1. Extent of CGST Act / SGST Act / UTGST Act/ IGST Act (Section 1)

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
All States of India	✓	✓		✓
Union Territories with Legislature (Delhi, Puducherry and Jammu & Kashmir)	✓	✓		✓
Union Territories without Legislature (UT) (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli and Daman and Diu; (d) Ladakh; (e) Chandigarh; and (f) Other territory.	✓		✓	✓

## 2. Commencement - 01.07.2017 (J & K - 08.07.2017)

## 3. Levy and collection of CGST / IGST

Particulars	CGST [SEC. 9(1)] of CGST Act,2017	IGST [SEC. 5(1)] of IGST Act,2017
Levied on	Intra State supplies of goods/services/both	Inter State supplies of goods/services/both
Supply outside purview of GST	Alcoholic liquor for human consumption	
Value for levy	value under section 15 of the CGST Act	
Rates	Rates as notified by Government <b>Maximum rate of CGST can be 20%</b>	IGST rate= CGST rate + SGST rate <b>Maximum rate of IGST can be 40%</b>
Collected and paid by	Taxable person	
Supplies on which tax would be levied w.e.f. a notified date [Sec. 9(2)/5(2)]	<ul style="list-style-type: none"> <li>➤ petroleum crude</li> <li>➤ high speed diesel</li> <li>➤ motor spirit (commonly known as petrol)</li> <li>➤ natural gas and</li> <li>➤ aviation turbine fuel</li> </ul>	
Tax payable under reverse charge mechanism by recipient of supply	<ul style="list-style-type: none"> <li>➤ Supply of goods or services or both, notified by the Government. [Sec. 9(3)/5(3)]</li> <li>➤ Supply of specified categories of goods or services or both by an unregistered supplier to specified class of registered persons. [Sec. 9(4)/5(4)]</li> <li>➤ All the provisions of the act shall apply to such recipient as if he is the</li> </ul>	

	person liable for paying the tax.
Tax payable by the electronic commerce operator [Sec. 9(5)/5(5)]	The Government may notify categories of services the tax on supplies of which shall be paid by electronic commerce operator (ECO) if such services are supplied through it and all the provisions of the act shall apply to such ECO as if ECO is the supplier liable for paying the tax.

**Goods Imported in India:** Import of goods or services are treated as inter-state supplies. As per proviso to Sec. 5(1) of IGST Act, on the goods imported into India (other than the goods as may be notified by the Government on the recommendations of the Council), the IGST shall be levied and collected as per sec. 3 of Customs Tariff Act, 1975 (as additional duty of Customs) and the value shall also be determined as per the said act. In other words, IGST shall be levied as additional duty of customs in addition to basic customs duty under the Customs Tariff Act, 1975. [As amended by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

**Analysis:** W.e.f. 01.10.2023, the Government has notified the supply of “online money gaming” as the goods on import of which the proviso to sec. 5(1) of the said Act shall not apply, but on which IGST shall be levied and collected u/s 5(1) of the said Act. It means Customs duties shall not be levied on import of “online money gaming”, but, IGST will be levied on import of “online money gaming” as per provisions of Sec. 5(1) of the IGST Act, 2017. [As amended by IGST (Amendment) Act, 2023 and NN 03/2023 – IT, w.e.f. 01.10.2023]

### Taxable event under GST = Supply [Section 7]

Statutory Provisions	
Sec. 7	Meaning and Scope of Supply
	Particulars
(1)	<b>Supply includes -</b>
(a)	all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
(aa)	the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.  Explanation.--For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;  [Clause (aa) inserted retrospectively by Finance Act, 2021, w.e.f. 01.07.2017, vide Notification No. 39/2021 – Central Tax, dated 21.12.2021]
(b)	importation of services, for a consideration whether or not in the course or furtherance of business and
(c)	the activities specified in Schedule I, made or agreed to be made without a consideration.
(d)	<del>the activities to be treated as supply of goods or supply of services as referred to in schedule II</del> [omitted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(1A)	where certain activities or transactions constitute a supply in accordance with the provisions of sub section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. [sub-section (1A) inserted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(2)	Notwithstanding anything contained in sub-section (1),
(a)	activities or transactions specified in Schedule III; or

(b)	such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council
shall be treated neither as a supply of goods nor a supply of services.	
(3)	Subject to sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -
(a)	a supply of goods and not as a supply of services; or
(b)	a supply of services and not as a supply of goods.

### Supply in Brief

#### Supply should be of goods or services or both

Includes			Excludes
1	Supply for consideration in course or furtherance of business [Section 7(1)(a)]	Activities to be treated as supply of goods or supply of services [Section 7(1A)+ Schedule II]	Negative list of services [Section 7(2) + Schedule III]
2	Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa [Section 7(1)(aa)]		
3	Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]		
4	Supply without consideration [Section 7(1)(c) + Schedule I]		

#### ANALYTICAL DISCUSSIONS

Supply includes all forms of supply of goods or services or both. Supply of anything other than goods or services does not attract GST. Let us analyse the terms "Goods" and "Services" as defined under the Act

Definitions		
	Goods	Services
<b>Means</b>	Every kind of movable property	Anything other than goods
<b>Excludes</b>	Money and securities	Money and securities
<b>Includes</b>	(i) actionable claim (ii) growing crops, grass and things attached to/ forming part of the land which are agreed to be severed before supply or under a contract of supply.	Activities relating to : (i) Use of money or (ii) Conversion of money by cash/by any other mode, from one form/currency/ denomination, to another, for which a separate consideration is charged. (iii) facilitating or arranging transactions in securities

#### Analysis of Sec. 7(1)(a)

All forms of supply of goods or services or both such as



<b>Sale</b>	A laptop dealer sells laptop to XYZ
<b>Transfer</b>	A branch transfers goods to another branch
<b>Barter</b>	Mr. XYZ exchanges his laptop with Mr. PQR's camera without cash exchange between the two parties
<b>Exchange</b>	A laptop dealer sells new laptop for Rs. 40,000 along with an exchange of old laptop [Price of new laptop without exchange is Rs. 50,000]