

THE GOODS AND SERVICES TAX: AN EMBODIMENT OF CO-OPERATIVE FEDERALISM IN INDIA

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Introduction

India witnessed a significant fiscal reform on July 1 2017 when The Goods and Services Tax (hereinafter GST) came out. GST being a consumption-based tax is being heralded as an emissary of a more efficient and productive scheme of taxation. GST has subsumed a large number of central and state taxes into a single tax which will help mitigate ill effects of cascading or double taxation in a major way; thereby developing a common national market.¹ Passing of GST has taken India one step closer to realising the ambition of one economic India with 'One Market'. GST is exemplary as to how the states and Centre have ceded their power to tax, resulting in creation of a quintessential taxation model.²

Till now, fiscal powers between Centre and the States were clearly defined in the Constitution with almost no overlap between the respective domains³. With the enforcement of GST arose the need for complementary amendments in the Constitution to underline the power of Centre and States to impose and collect GST concurrently⁴. India follows a quasi-federal structure of governance which reconciles multiplicity, centralisation with decentralisation and nationalism with localism thus resulting in what is called co-operative federalism⁵. With co-operative federalism being the fountainhead of Indian democracy, it becomes imperative to analyse the interplay of GST with co-operative federalism.

Features of GST vis-a-vis Cooperative federalism

¹ Vishal Raheja, What is GST? Goods And Services Tax Explained With Benefits, available at <https://www.taxmann.com/blogpost/2000000048/what-is-gst-goods-and-services-tax-explained-with-benefits.aspx>, last accessed at 26 January 2018

² <http://www.iasscore.in/topical-analysis/gst-cooperative-federalism>

³ <http://letspedia.com/gst-threat-indian-federalism>

⁴ *Ibid.*

⁵ Dicey, Law Of The Constitution, Ch. 3, 138 et seq. (1952)

A. Concurrent jurisdiction to centre and states: Tax is levied as Dual GST separately, with Centre and the States simultaneously levying tax on a common base⁶. Centrally levied GST is called Central GST (CGST) while that to be levied by the States is called State GST (SGST). Integrated GST (IGST) levied on interstate supply is apportioned between the Union and the States in the manner as may be provided by the recommendation of the GST Council. All three taxes: CGST, SGST and IGST are levied at rates mutually agreed upon by Centre and the States through consensus or voting.⁷ Collections under IGST are distributed between the centre and consuming states on a mutually agreed formula epitomising the spirit of cooperative federalism.⁸

B. Harmonisation of GST Laws: The Model GST law drafted jointly by Centre and the States served as the basic template for Centre and states to build their GST Acts upon. Consequently, all the laws have virtually identical provisions. Harmonisation of the GST laws, regulations and procedures is also being promoted through their reconciliation to the maximum extent possible to bring uniformity⁹.

C. Cross empowerment of Officers of Centre as well as States: Though GST is jointly administered by Centre and states, each individual taxpayer deals with only one tax authority either Centre or State.¹⁰ In order to encourage cooperation and homogenise the decisions under both the Acts, the officers appointed under the SGST Act or the UGST Act shall be authorised to be the proper officer for the purposes of CGST Act and vice versa; again assimilating the essence of co-operative federalism in India¹¹.

D. Joint Implementation Committees: Both Centre and state officers find presence in the GST Implementation Committee, Standing Committees and Sectoral Groups¹² indicating a

⁶ Brief History of GST, available at <http://www.gstcouncil.gov.in/brief-history-gst>, last accessed on 26 January 2018

⁷ *Ibid.*

⁸ https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/03GS_120517578066848D9F4143AFF5FD9992150C0C.PDF

⁹ *Supra note 6*

¹⁰ Frequently asked questions on Goods and Services Tax, http://www.cbec.gov.in/resources/htdocs-cbec/deptt_offcr/faq-on-gst-second-edition-revised.pdf;jsessionid=F6B77F5BDB525A24BCC893604A23CA9F

¹¹ Mygov Team, GST and Cooperative Federalism, available at <https://blog.mygov.in/editorial/gst-and-cooperative-federalism/>, last accessed on 25 January 2018

¹² These bodies have been formed to facilitate smooth roll-out of GST.

manifestation of spirit of cooperative federalism to ensure quick administrative decisions and to ensure effective coordination for smooth implementation of GST¹³.

GST Council: A federal body?

As per Article 279A of the Constitution, GST Council consists of the Union finance minister, Union Minister of State in charge of Revenue/Finance, and the Minister in charge of Finance or Taxation or any other Minister¹⁴, nominated by each state government thus, emphasising the fact that states' say and opinions will be catered to and federal essence of the country will be duly preserved. Economy of states has strengthened because presence of state's representatives in council assures that needs of individual states will definitely be looked after.¹⁵

Fiscal Federalism

GST has brought in a total reordering of fiscal relations of India. While States have had to give up their taxation powers and cope with associated insecurities, union government has had to sacrifice its own share and its purview of revenues. But the fact that all this has been achieved with consensus in the council and minimum bickering is a tribute to spirit of co-operative federalism¹⁶.

Jammu and Kashmir draws taxation power from Section 5 of its own constitution. However, recently with the State Assembly adopting the 101st Constitutional Amendment and enacting State GST law, Section 5 of the Jammu and Kashmir Constitution has become ineffective for all practical purposes.¹⁷ This satisfactory denouement was possible only because the Centre had come down from its haughty pretensions to reaffirm its faith in the federal spirit and structure of our constitutional arrangement.¹⁸ It can be argued that Indian political system has not become totally dysfunctional. Perhaps equally significantly, it can also be suggested that the Indian political class has not become self-defeatingly self-centred. The parliamentary

¹³ Mygov team, GST and Cooperative Federalism, available at <https://blog.mygov.in/editorial/gst-and-cooperative-federalism/>, last accessed on 24 January 2018

¹⁴ Cabinet approves creation of GST Council and its Secretariat ; First Meeting of the GST Council to be held on 22nd and 23rd September, 2016 in national Capital, Press Information Bureau, Ministry of finance, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=149732>, last accessed on 26 January 2018

¹⁵ *Supra note 3*

¹⁶ <http://www.livemint.com/Opinion/QkouwUMhrIUKnJ5NnVnKPI/The-GST-Council-template-for-cooperative-federalism.html>

¹⁷ *Supra note 2*

¹⁸ *Ibid.*

democracy stands redeemed, even if the GST may turn out to be not quite the elixir everyone projected it to be¹⁹.

Conclusion

The pith and substance of fiscal federalism lies in cooperation, to coordinate with the policies of all levels of government.²⁰ For a fast developing economy like ours, need of a clear and transparent tax structure is more important which must redistribute its revenues so efficiently that demands of all the persons may be fulfilled at the micro-economic level because, it is We-the people of India and not the States, who have given to ourselves this Constitution. No doubt that political autonomy of States is being taken away partially as the States themselves will not be able to decide as to where to use their revenue but we can definitely not make an omelette without breaking a few eggs.²¹ Also, when a reform comes in, it is always opposed like the Liberalisation Reforms too were cried over but ultimately yielded the best results. Learning from past, we must give a chance to GST to function.²²

¹⁹ Harish Khare, GST Debates Witnessed a Much-Needed Reaffirmation of Federal Virtues, available at <https://thewire.in/56678/gst-federalism/>, last accessed on 24 January 2018

²⁰ *Supra note 3*

²¹ *Ibid.*

²² *Ibid.*