AN OVERVIEW OF GST

By Pranshu Sehgal[366], Murrari Vikranth[367] & Akshay.V[368]

Introduction:

The concept of Taxation, dates back to the days of 'Arthashastra', where the author Kautilya mentions that Taxation system shall be liberal is assessment and the same system shall be ruthless in collection of taxes. The power to tax is an incident of sovereignty[369]. Constitution of India is the Supreme Grundnorm of the land and thus, all the other laws are subordinate to the Grundnorm as all the other laws derive their validity and the sanctity to sustain itself from the Constitution. "For the same reason all the laws shall also be interpreted in the light of the Constitutional Provisions.[370] In *India Cements Ltd. v. State of Tamil Nadu*[371] a seven-judge bench of the Supreme Court observed that the Constitution is 'the mechanism under which the laws are to be made and not merely an Act which declare what the law is to be.' One of the most important provisions of the Constitution relating to taxation is Article 265, which provides: 'No tax shall be levied or collected except by authority of law.'[372] Therefore, not only the levy but also the collection of a tax must be under the authority of some law.[373] And 'Law' over here means only the law enacted by a competent legislation and cannot include executive order.[374]"[375] There are two kinds of taxes i.e. Direct tax and Indirect tax. Direct Taxes are those taxes which are covered under the Income Tax Act, under Capital Gains, Income from Salary, Income from House Property, profits and gains of Business or Profession or from other sources. Direct taxes is only based upon the salary and the tax slabs. Whereas Indirect taxes is not at all based on the income of the person it is the sort of the tax which can be passed on the consumers. A tax that increases the price of a good so that consumers are actually paying the tax by paying more for the products. An indirect tax is most often thought of as a tax that is shifting from one taxpayer to another, by way of an increase in the price of the good. Fuel, liquor, entertainment tax, service tax and cigarette taxes are all considered examples of indirect taxes, as many argue that the tax is actually paid by the end consumers, by way of a higher retail price. Some economists argue that indirect taxes lead to an inefficient market

[366] 3rd Year BBA LLB (Hons.) Student, School of Law, Christ University, Bangalore.
[367] 3rd Year BBA LLB (Hons.) Student, School of Law, Christ University, Bangalore.
[368] 3rd Year BBA LLB (Hons.) Student, School of Law, Christ University, Bangalore.
[369] For full text, see 326 ITR (St.) 421.
[370] New Delhi Municipal Comm. V. State of Punjab AIR 1997 SC 2847, (1997) 7 SCC 339.
[371] 188 ITR 690, 699(SC).
[372] Article 265, Constitution of India, 1950.
[373] Chhotabhai v. Union of India AIR 1952 Nag 139.
[374] Ghulam Hussain v. State of Rajasthan AIR 1963 SC 379.
[375] Kanga & Palkhivala's 'The Law and Practice of Income Tax' Tenth Edition Volume 1, pg. 3-4.

place and alter market place that don't match equilibrium price.[376]

Article 246 of the Constitution of India invests Union List, State List and Concurrent List. Under List I-Union List Entry 82 to Entry 92C[377] states about the kinds of taxes such as Taxes on Income[378], Corporation Tax[379], Taxes on Services[380]etc. are some of the taxes that can be levied or imposed by the Centre. Most of these taxes are indirect taxes. Under List II-State List Entry 45 to Entry 62[381] states about the kinds of taxes such as agricultural income[382], Taxes on Land and Buildings[383], Taxes on sale or consumption of Electricity[384], Taxes on advertisements other than the advertisements published in Newspapers[385] [and advertisements broadcast by radio or television][386], Capitation Taxes[387] etc. are some of the taxes that can be levied by a State government and majorly all these taxes are classified under Indirect Taxes. Thus, both Centre and the State have the power to impose taxes. But many a times there is double taxation like in the case of DTH. According to the Federation of Indian Chambers of Commerce and Industry (FICCI) the programmes transmitted by the Cable TV and DTH provider are taxed as 'service tax' by the Central Government, while the same programmes are considered as 'entertainment services' by the state governments and are being taxed as 'entertainment tax'. Thus, these services suffer 'double taxation' [388]

History of GST:

India being the largest democracy in the world should possess a uniform and an efficient system of taxation and thus the introduction of the GST will be a boon to the Indian economy in terms of revenue collection. GST will subsume several of the current taxes which include, VAT, Central Sales Tax, Entertainment Tax, Gambling and Betting Tax, Lottery Tax, Entry Tax and Luxury Tax.[389] GST would also replace the Central Sales Tax act and the VAT acts of the respective states and the provisions of GST will be para materia to the laws of indirect taxation such as the VAT act and Central sales tax act.

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376 http://www.investopedia.com/terms/i/indirecttax.asp
377 Schedule 7, List I- Union List, Constitution of India, 1950.
378 Schedule 7, List I-Union List, Entry 82, Constitution of India, 1950.
379 Schedule 7, List I-Union List, Entry 85, Constitution of India, 1950.
380 Schedule 7, List I-Union List, Entry 92C, Constitution of India, 1950.
381 Schedule 7, List II-State List, Constitution of India, 1950.
382 Schedule 7, List II-State List, Entry 46, Constitution of India, 1950.
383 Schedule 7, List II-State List, Entry 49, Constitution of India, 1950.
384 Schedule 7, List II-State List, Entry 53, Constitution of India, 1950.
385 Ins. By the Constitution (Forty-second Amendment) Act, 1976, sec. 57 (w.e.f. 3-1-1977).
386 Schedule 7, List II-State List, Entry 55, Constitution of India, 1950.
387 Schedule 7, List II-State List, Entry 61, Constitution of India, 1950.
388 http://www.gstindia.com/history-of-gst/ ; http://www.cablequest.org/articles/item/7107-gst-goods-and-service-tax.html
389 'GST and autonomy of States': Economic and Political Weekly, Volume Number 45, No. 4, January 2010.

GST Bill was first introduced under the Vajpayee government in the year 2000. A committee was appointed headed by Mr. Asim DasGupta (Finance Minister, Government of West Bengal) but due to the oppression of the opposition and that the assent was not got as in accordance with Article 107 of the Constitution of India, the same could not be passed.

In 1994, the Central Government introduced taxation of services through the Finance Act, 2002, all the commodities were included in CENVAT. CENVAT as popularly known as Central Excise Duty is a duty on the manufacture/production of goods in India.[390]Taxation of services was introduced by virtue of the Finance Act, 1994. Upon its introduction, the Finance Act, service tax was limited only to three services and by 2011, 115 services were brought under the periphery of service tax. In the budget session of 2012, a drastic change was made wherein a list of negative services was introduced and the services were exempted from being taxed. As for CENVAT credit, the credit of service tax paid on input services was allowed only for the payment of service tax on output services, just as the excise duty paid on inputs and capital goods was allowed only for payment of excise duty on final products. Things took a turn in the budget session of 2004-05, when the then Finance Minister, P. Chidambaram, announced that the credit of input tax will be extended to several goods and services meaning that tax paid on input services can be utilised as credit and utilised for payment of Central Excise duty on goods.

The proposal was given effect by notifying CENVAT credit rules, 2004.[391]
In 2005, VAT came into force and the states began implementing it. The pivotal reason behind the introduction of VAT was the failure on the previous system of service tax which was irrational and flawed.[392] States enacted their own legislations for VAT and the same was collected accordingly. Over the years, VAT had prevailed though bureaucrats had voiced their opinion for a uniform tax rate throughout the country. By the year 2011, the 115th amendment act was presented before the parliament by the then finance minister Mr. Pranab Mukherjee.

The Highlights of the 2011 bill were:

(i) Parliament will have the exclusive power to levy a slab of tax on general sales

(ii) The bill makes provision to constitute a Goods and services tax council comprising of the Union Finance minister aided the Union minister of state for revenue

[390] http://www.arxadvisors.com/index2.php?id1=202&id=11&Title=Indirect-Taxes&id2=202&Title2=Excise-Duty-%28CENVAT%29
[391] GST IN INDIA, CENTAX PUBLICATIONS, 2014 EDITION by Sumit Dutt Majumder
[392] Taxguru.in

(iii) The bill provided for the establishment of a dispute settlement authority to settle disputes between states and the union or between states.

(iv) Certain commodities were exempted from the bill and thereby they formed a part of the negative list.[393]

Key Issues and Analysis of 2011 bill:

(i) Reduced double-taxation:

Prior to the introduction of VAT, producers always faced the monstrous evil of 'tax on tax'. Producers had to pay taxation after every level of production and when the same product would have been a final product again a certain amount of tax had to be paid on the same. The concept of VAT eradicated this cascading effect to an extent by providing for an input tax "set-off". Though VAT had only a certain amount of taxes included in the same but GST would cover and imbibe all such taxes thus the entire concept of 'tax on tax' could have been eradicated.

(ii) Simplification in taxation:

States under the provisions of the Constitution do not have the power to charge services and if a State does the same it would be ultra vires of their powers vested with the State by the Constitution. A bifurcation was always required for goods and services in order for taxation to be imposed by the State. Due to increase in technology it was a difficult task to adhere to the same and the States sometimes might exceed their jurisdiction. Under GST, no such bifurcation is required and that all the taxes would come under one aspect. Such distortion of distinction between the two would completely be eradicated after the implementation of GST.

(iii) Redistribution of tax revenues across different States:

The scenario as of today (before the introduction of GST), both the State Government and the Central Government have the power to impose taxes. If GST is got into force in such a case no such taxation would be there and all the taxes then collected can be distributed accordingly amongst different States and the Centre.

(iv) Conflict may arise between the three wings:

Under the provisions of Constitution of India, the power to impose taxes is vested with Parliament and State legislatures.[394] As in accordance with the 2011 bill, the bill would create a structure through which an executive body (the GST Council) will recommend tax rates. Judicial bodies (GST Dispute

393 www.prsindia.org

394 S.R. Bommai v. Union of India AIR 1994 SC 1918:(1994)3 SCC 1, Kuldip Nayar v. Union of India (2006) 7 SCC 1.

Settlement Authority and the Supreme Court) would resolve or would rather act as a body which would check the same. This would have infringed upon the right of the legislators to decide the tax rates. Though the Apex Court has clearly held that the Judiciary cannot or does not have the power to advise the executive or adjudicate on the wisdom of the executive but can only look into the legality of the policy. The judiciary can only check the validity of a policy.[395]

Exclusion of certain goods from GST bill 2011:

Many goods which were excluded in 115th Amendment Bill are also excluded in 122nd Amendment Bill. A few products which were excluded in 115th Amendment Bill were as follows-

a. Petrol
b. Petroleum Crude
c. High speed diesel
d. Natural gas
e. Alcohol
f. Aviation fuel.

Though both the 13th Finance Commission and Department of Revenue have recommended that petroleum products shall be included under the ambit of GST as petroleum products are inputs for a lot of goods or later converted into products and services and exempting these petroleum products might have a devastating effect of tax cascading.[396]

International Scenario:

1. **Australia:**

GST was enacted in Australia on 1 July 2000 and GST rate is 10%. GST applies to the following transactions:

a. Taxable supplies of goods and services which is connected with Australia and consideration made in the due course of business is by an entity that is registered for GST.
b. Taxable importance of goods in Australia[397]

2. **Canada:**

GST was enacted in Canada on 1 January 1991 and GST rate is 5%. GST applies to the following

[395] Directorate of Film Festivals & Ors. V. Gaurav Ashwin Jain & Ors. (2007) AIR 2007 SC 1640, PRS.org.
[396] Comments on First Discussion Paper on Goods and Service Tax (2009). Department of Revenue, Ministry of Finance.
[397] Pg. 26, Worldwide GST, VAT and Sales Tax, EYGM, March 2014.

transactions:

a. The supply of real property, other than exempt supply.

b. Any business, except to the business other than exempt supply.

The same can be carried out by:

a. Any "small supplier".

b. The person who's only commercial activity is sale of real property.[398]

3. **Malaysia:**

GST was enacted in Malaysia on 1 March 1975 and GST rate is 6%. GST applies to all the people who are liable to pay Sales Tax or on any good or service made in furtherance of any business by any GST-registered person or any importer.[399]

4. **New Zealand:**

GST was enacted in New Zealand on 1 October 1986 and GST rate is 15%. GST applies to:

a. The transaction of goods and services in New Zealand by a registered person.

b. Goods imported in New Zealand regardless of the importer.[400]

5. **Singapore:**

GST was enacted in Singapore on 1 April 1994 and GST rate is 7%. Any transaction made by a taxable person would attract the provisions of GST. GST applies to the following transactions:

a. Import of goods in Singapore.

b. Taxable supplies of services and goods made in the business transaction by a taxable person.[401]

6. **UK:**

GST was enacted in United Kingdom on 1 April 1973 and GST standard rate 20% and the reduced id 5%. It is known as VAT. VAT applies to:

a. Supply of goods and services by a taxable person.

b. Goods imported outside EU.

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[398] Pg. 100, Worldwide GST, VAT and Sales Tax, EYGM, March 2014.
[399] Pg. 490, Worldwide GST, VAT and Sales Tax, EYGM, March 2014.
[400] Pg. 549, Worldwide GST, VAT and Sales Tax, EYGM, March 2014.
[401] Pg. 678, Worldwide GST, VAT and Sales Tax, EYGM, March 2014.

c. Reserve-charge service received by a taxable person.

d. Intra-Community transfer of goods in EU by a taxable person.[402]

The rates in other country versus our country.

As seen that the GST is applicable worldwide and the rates worldwide is somewhere around 10%. But in India the expected rate of GST might be 26-28%[403], which would be devastating as if a product would cost Rupees 100 and if GST is added it would be Rs. 127-129 on every product throughout India. Whereas the same would cost 107 in Singapore as the GST rate in Singapore is 7%.

ADVANTAGES AND DISADVANTAGES OF GST BILL 2014:

There are advantages and disadvantages of GST for both the government and the manufacturer if the GST comes into force. State Government will be the affected party in this scenario because of the standard slab of 26-28% (tentative)[404]. The advantages of the 122nd Amendment Bill are somewhat similar to the advantages of 115th Amendment Bill.

ADVANTAGES OF GST BILL 2014:

(i) Avoidance of double taxation-

As mentioned earlier there would be reduction in the scheme of 'tax on tax'. The cascading effect of double taxation would be eradicated.

(ii) Simplification in taxation.

(iii) Redistribution of tax revenues across different states.

(iv) On Country One Tax; signifies that the whole country would have a uniform rate of tax, thus reducing discrimination of taxing and establishing a stable slab rate.

(v) Increases GDP ; A study conducted by NCAER indicated that the GDP of our country will increase by a staggering 2% if GST is implemented, and as a consequence the exports of the country will increase by 10-14% . Thus the method of single taxation will prove to be effective due to the minimal compliance cost.[405]

(vi) Input tax credit would be reduced, thus the amount of money to be put in, in order to purchase raw materials would be comparatively much less for the manufacturer.

(vii) The government need not reimburse the money claim to the manufacturer by way of input tax credit.

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[402] Pg. 802, Worldwide GST, VAT and Sales Tax, EYGM, March 2014.
[403] http://pchidambaram.in/across-the-aisle-history-in-the-making-the-gst-bill/
[404] http://pchidambaram.in/across-the-aisle-history-in-the-making-the-gst-bill/
[405] http://www.businesstoday.in/expert-view/a-welldesigned-gst-can-boost-gdp-growth-by-2percent/story/8474.html

(viii) The Central government has the power to levy 1% tax in place of 2% for inter-state sale for a period of either 2 years or more than 2 years. This would be an advantage for manufacturer as well as for the consumers as the price will reduce.

DISADVANTAGES OF GST BILL 2014:

(i) The 122nd Amendment Bill does not include petroleum, alcohol and tobacco products are exempted from the list and are under the exemptions from GST, thus the government might end up not gaining a major chunk in taxes.[406]

(ii) Burden of the consumer increases heavily as the rate of GST might go up to 26-28%[407] and the current VAT is somewhere around 12.5%. Thus, if for a 100 Rupee product a consumer before the introduction of GST is paying Rs. 112.5 he might end up paying Rs.127.

(iii) The States do not have the right to fix the slabs for GST and thus, the entire concept of Federalism might fail which is an essence of the Constitution of India.

(iv) Manufacturing states would face revenue loss:

a. Certain states in India concentrate on manufacturing to a large extent and as the burden shifts to the consumer (mentioned under point (ii)).

b. In case of inter-State sale, the State Governments of manufacturing states lose a good chunk of revenue which is in turn gained by the State Government where the goods are consumed.

V. The Central government has the power to levy 1% tax in place of 2% for inter-state sale for a period of either 2 years or more than 2 years. This would be a disadvantage for the government as the government would end up losing 1% of tax on inter-state transactions.

VI. If any provision is added which was there in the 2011 Bill that the GST Council and GST Dispute Settlement Authority under the 2014 Bill in such a case again there might be a dispute.

KEY FEATURES OF 2014 BILL:

(i) A new Article in the Constitution may be accommodated by virtue of this Bill which may vest both Centre and the States with concurrent power to levy taxes.

(ii) Through the provision of the Bill, a GST Council can be established, the task of which would be to optimise tax collection for goods and services by the Central and the State government. The Council may include of the following-

a. Union Finance Minister (as the Chairman of the Council)

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[406] Section 17(a), Section 17(b), The Constitution (122nd Amendment) Bill, 2014 (Bill No. 192 0f 2014).

[407] *Supra* 36.

b. Union Minister of State incharge of Revenue or Finance

c. The Minister incharge of Finance or Taxation and

d. Any other member, nominated by each State Government.[408]

(iii) The council which may be set up through the provision of the Bill of 2014, will have the following tasks to carry out-

a. Which taxes may be levied by the Centre, States and local bodies may be a part of GST.

b. Which goods and services would come under the purview of GST.

c. The basis and at what rate would GST may be applied.[409]

(iv) The additional tax of 1% may be levied and the same will be credited to the States if an inter-State transaction is of 2 years or any other period which the Council may decide.[410]

(v) As the Finance Minister Arun Jaitley stated that if any State incurs any kind of loss for a period of 5 years after the introduction of GST, the Parliament can decide whether or not they will indemnify the respective State.[411]

EXCEPTIONS UNDER 2014 BILL:

The exceptions of 2014 bill are similar and somewhat a replica of 2011 bill. The following products are exempted from the 2014 bill or rather the 122nd Amendment Bill:

1. Petroleum[412]
2. Tobacco[413]
3. Alcohol[414]

DIFFERENCE BETWEEN 2011 AND 2014 BILL (115th AND 122nd AMENDMENT BILL)-

1. Shri Arun Jaitley (Finance Minister) has clearly stated that the 2014 bill will include provisions for compensation if any State incurs a loss for a consecutive period of 5 years because of the introduction of GST. The same would be upon the discretion of the Parliament.[415]

   No such provision was stated in the 2011 bill.

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408 Article 279A. (2), The Constitution (122nd Amendment) Bill, 2014 (Bill No. 192 0f 2014).
409 Article 279A. (4), The Constitution (122nd Amendment) Bill, 2014 (Bill No. 192 0f 2014).
410 Section 18(a), The Constitution (122nd Amendment) Bill, 2014 (Bill No. 192 0f 2014).
Bengal Immunity Company v. State of Bihar AIR 1955 SC 661
411 Section 21(2)(h), The Constitution (122nd Amendment) Bill, 2014 (Bill No. 192 0f 2014): http://articles.economictimes.indiatimes.com/2015-05-05/news/61833125_1_gst-council-services-tax-entertainment-tax
412 Section 17(a), The Constitution (122nd Amendment) Bill, 2014 (Bill No. 192 0f 2014).
413 *Ibid.*
414 Section 17(b), The Constitution (122nd Amendment) Bill, 2014 (Bill No. 192 0f 2014).
415 *Supra* 7.

2. 2011 Bill included a Dispute Settlement Authority. The same was set up in order to settle any dispute between the Centre and the State and for resolving the same.

   But the 2014 Bill has not included any provision of the same kind and has attached all the powers to the GST Council for any such dispute arising.[416]

3. 1% additional tax for inter-State transactions for more than a period of 2 years can be levied by the State. The same has been authorised under the 2014 bill.[417]

   There was no mention of such additional tax under the 2011 bill.

However, prior to the introduction of GST an additional tax of 2%.

Thus, the GST bill even though has its own pro and cons which is but obvious, would be effective for India as the overall economy would prosper from the same. Except USA, all the countries which are a part of OECD[418] have given their ratification for GST.

It is only because of politics that the bill is not being passed by both the houses as the current ruling party does not have majority in both the houses and cannot give assent to the bill as in accordance with Article 107 of the Constitution of India. If such politics is kept aside and all the parties strive towards a better GST bill reducing the GST rate, it would be progressive for Indian economy.

416 http://www.prsindia.org/billtrack/the-constitution-122nd-amendment-gst-bill-2014-3505/
417 Distinction between the 2011 and 2014 bill, Legislative Research, www.prsindia.org
418 http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm