Chapter-1

INTRODUCTION & GST OVERVIEW

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1.1 Introduction

In a federal constitutional set up, coordination rather than subordination is the guiding spirit. The States and the Centre have demarcated spheres of legislation and governance. The division of powers is zealously guarded as far as independence, especially economic independence. Taxation is the backbone of a welfare nation like India. The legislative fields are as distinct, yet interconnected, as the spine is connected to the whole body. Goods and Services Tax (GST) formulated on the said principle is a unique law borrowed from old VAT laws, Central Excise and Service Tax.

The Chapter is structured in a way to give the readers a brief and critical understanding of the fundamental structure of Goods and Services Tax (GST) and the issues that have cropped up within the 7 years the law has been functioning. The Chapter also brings out a substantial analysis on the judicial understanding on the said issues dealt with by various High Courts to settle down the ambiguities and strike a balance with the spirit of law.

1.2 Tax and Levy

1.2.1 *Terms "Tax" and "Taxes"*

(a) The term 'Tax' and 'Taxes' are defined in the case of ***Tata Iron & Steel Co. Ltd. v. State of Bihar,*** **AIR 1991 (Patna) 75, 81,** as burdens or charges imposed by the legislative power upon person or property to raise money for public purposes. Therefore, tax is a compulsory extraction of money by public authority for public purpose which cannot be equated with payment of service rendered as held by Hon'ble Supreme Court in **Southern** ***Pharmaceuticals and Chemicals v. State of Kerala*** **(1981) 4 SCC 391, at para 24.** In the widest sense possible, tax shall include within it cess, fine, toll or other impost leviable. Taxes are imposed by Centre and State legislatures at specified 'rates' notified in the statutes legislated by exercising the statutory powers as held in ***D.G. Gouse & Co. v. State of Kerala,*** **AIR (SC) 271, 275.**

(b) Supreme Court in the case of ***All India Federation of Tax Practitioners and Others v. Union of India and Others,*** **(2007) 7 SCC 527 = 2007 (7) S.T.R. 625 (S.C.)** observed that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer. Thus, just as excise duty is a tax on value addition on goods, service tax is on value addition by rendition of services. Further in **Association of Leasing and Financial Service Companies [2010 (20) S.T.R. 417 (S.C.),** Hon'ble Supreme Court has explained the nature and characteristics of Service Tax as an economic concept based on the principle of equivalence in a sense that there is no difference between production or manufacture of saleable goods and production of marketable/saleable services in the form of an activity undertaken by the service provider for consideration, which correspondingly stands consumed by the service receiver i.e. service tax is a tax on the activity.

(c) Hon'ble Supreme Court in the case of ***Mineral Area Development Authority v. Steel Authority of India*** **[TS-318-SC-2024-NT]** held that the expression "tax" under Article 265 includes every kind of impost in the form of a compulsory exaction. An impost is a compulsory exaction. The power to levy an impost is an incident of sovereignty. A liability arising out of contract cannot be termed as an impost or tax. A consideration paid under a contract to the State Government for acquiring exclusive privileges and rights with respect to a particular activity cannot be termed as an "impost" or "tax" under Article 366(28). A tax has the following essential characteristics:

(i) it is a compulsory exaction of money by a public authority;

(ii) it is imposed under statutory power without the consent of the tax payer;

(iii) the demand is enforceable by law;

(iv) it is an imposition made for public purposes to meet the general expenses of the State

Hon'ble Supreme Court in the above case has explained the difference between the Service consideration and 'tax'. The Hon'ble Supreme Court said that the fact that the service consideration is fixed by the legislature, prescription of provisions for recovery as arrears does not make the service consideration as a tax.

1.2.2 *Tax and Fees*

The concept of tax and fee have both similarities and differences in abundance. Tax for a layman is a simple imposition of financial charge on a taxpayer by the State. Fee as per a layman is the remuneration paid for specific rights and services.

Legal Principles governing concepts of tax and fee

Legal principle of *Quid Pro Quo* - A tax is a non-*quid pro quo* payment by the people to the Government. It is a non-quid pro quo transfer of private income to public coffers. It becomes so because the Government, even after levying the tax is not obliged to spend it in a certain way or provide a specific service in return of the tax. Therefore, tax is devoid of *quid pro quo*, wherein any benefit accrued to individuals is incidental and not primary. Fees, however, are charged for a special service provided to individuals ideally by a Government agency. This highlights the *quid pro quo* component in the concept of fees. A fee is either regulatory or compensatory in nature.

As per the judgment of High Court of *Australia in* ***Matthews v. Chicory Marketing board(I)*** a tax is, "Compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered." Through this definition, the Supreme Court successfully articulated a few fundamental characteristics of tax, some of them directly and some of them implicitly through ancillary findings. These include a binding compulsion enforced by law, charged without taxpayer's consent and imposition for public purpose explicitly articulated or not. Considering the definition of tax, the court also throws light on the definition of fees. It explicitly lays down that fee is a charge collected almost proportionate to expenditure incurred by the Government in provision of a certain service. The nature of fees is said to be voluntary, and people can choose to opt out of it.

(a) Hon'ble Supreme Court in the case of ***Central GST, Delhi-III v. Delhi International Airport Ltd.,*** **2023 [TS-238-SC-2023-ST]** dealing with the applicability of Service Tax on User Development Fee collected by airport developer observed that the airport developers are authorized on behalf of the Airports Authority of India (AAI) to levy and collect 'development fee' under section 22A of the AAI Act on behalf of the AAI for utilization of the same for the specific purpose provided under sub-clauses (a), (b) and (c) of section 22(A) of the AAI Act. The UDF is in the form of 'tax or cess' collected for financing the cost of future projects and there was no consideration for services provided by the airport developer to the customer, visitors, passengers, vendors, etc. The aggregate of collections in the bank accounts do not form part of profit and loss account. The Hon'ble Supreme Court has considered various parameters for holding that Service tax was not leviable on UDF collected by airport developers—

(i) UDF is a statutory levy;

(ii) The collection is not premised on rendering of any service;

(iii) The amounts are deposited in an escrow account not within the control of the assessee;

(iv) The utilization of funds is monitored and regulated by law.

(b) Supreme Court in the case of ***Hingir-Rampur Coal Co., Ltd. v. State of Orissa*** **AIR 1961 (SC) 459 : 1961 SCR (2) 537** observed that although there can be no generic difference between a tax and a fee since both are compulsory exactions of money by public authorities, there is this distinction between them that whereas a tax is imposed for public purposes and requires no consideration to support it, a fee is levied essentially for services rendered and there must be an element of *quid pro quo* between the person who pays it and the public authority that imposes it. While a tax invariably goes into the consolidated fund, a fee is earmarked for the specified services in a fund created for the purpose. Whereas, if in the guise of a fee, the Legislature imposes a tax, it is for the Court on a scrutiny of the scheme of the levy, to determine its real character. The distinction is recognised by the Constitution which while empowering the appropriate Legislatures to levy taxes under the Entries in the three lists refers to their power to levy fees in respect of any such matters, except the fees taken in court, and tests have been laid down by the Courts for determining the character of an impugned levy.

(c) The Hon'ble Supreme Court in the case of ***CIT v. McDowell and Co. Ltd.,*** **(2009) 10 SCC 755 [22]** that bottling fees are a payment made by the assessee to the State Government "as consideration for acquiring the exclusive privilege. The payment was held to be neither a fee nor a tax but consideration for the grant of approval by the Government to contract on the exclusive right to deal in bottling liquor. Therefore, bottling fees were held not to fall within the purview of Section 43-B(a) of the Income Tax Act, 1961.

(d) Hon'ble Bombay High Court in the case of ***Sesa Sterlite Ltd. v. State of Goa*** **(2024) 15 Centax 13 (Bom.)** has held that the cess levied under Goa Rural Improvement and Welfare Cess Act, 2000 with an object to augment revenue for improvement of infrastructure and health, to promote welfare of people residing in rural areas, being affected by dumping of garbage, spillage of materials and use of plastics is in the nature of fees. It was further held that Goa Cess Act is *intra vires* Articles 14, 301, 303 read with Article 304 of Constitution of India in no manner was subsumed by GST Laws.

e. In the 55th GST Council Meeting, the Finance Minister of Andhra Pradesh has requested for the imposition of a 1% calamity cess on certain luxury goods consumed in the State. The idea was to use the revenue generated from cess to fund relief work in the State following the floods. The GST Council has set up a seven-member Group of Ministers (GoM) to examine uniform policies for levying a cess in case of natural disaster in a particular State. Previously, in January 2019, the GST Council approved a

1% calamity cess in Kerala for two years to fund the rehabilitation efforts in the State hit by floods.

In order to determine whether a levy is a tax or a fee, what has to be considered is the pith and substance of the levy. Where the levy in pith and substance is not essentially different from a tax, it cannot be converted into a fee by crediting it to a special fund and attaching certain services to it.

(a) In ***Ratilal Panachand Gandhi v. The State of Bombay*** **[1954] S.C.R. 1046,** it was held that it cannot be laid down that 'What is in pith and substance a tax can become a fee merely because a fund is created in which collections are credited and some services may be rendered to the persons from whom collections are made. If that were so, it will be possible to convert many taxes not otherwise leviable into fees by the device of creating a special fund.

(b) In the case of ***The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*** **[1954] S.C.R. 1005,** it was pointed out that - "if, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision be co-related to the expenses incurred by Government in rendering the services.... If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax."

Thus, the extent of the rate allowed to be imposed cannot by itself alter the character of the levy from a fee into that of a duty of excise. If the co-relation between the levy and the services was not genuine or real, or if the levy was disproportionately higher than the requirements of the services intended to be rendered it would have been another matter.

(c) Hon'ble Rajasthan High Court in ***Imarti Lakdi Vyapari Sansthan Jodhpur v. State of Rajasthan*** **[2019-TIOL-1082-HC-RAJ-GST]** held Levy governed by only those enactments, which have been enlisted in section 174 are abolished, market fee is leviable as it is not mentioned in that section. Market fee leviable under the Act of 1961 neither finds mention in any of the repeal and saving provisions nor can it be so done as the market fee is leviable under a separate enactment under the State's power to legislate under Entry 66 of the List-II of the VII Schedule.

1.2.3 *Power* to *levy tax*

(a) Constitution of India gives the Government express power to levy taxes on individuals and business organization to conclude that no person has the right to levy tax except with the authority of law as rightly held by Hon'ble Supreme Court in ***Mafatlal Industries Ltd. v. Union of India,*** **1997 (89) ELT 247 SC.** The Hon'ble Supreme Court said that the "law" mentioned under Article 265 refers to a valid law whose validity has to be determined with reference to other provisions in the Constitution. Therefore, with respect to taxation laws particularly, there is a constitutional requirement that the law imposing tax must be in conformity with the provisions of the

Constitution, particularly Part III dealing with the fundamental rights. This is also a constitutional limitation because the appropriate legislature has to ensure that the law is in accordance with the principles of equality and non-discrimination. Any legislation enacted by the legislature in excess of its constitutional powers is void. Article 246A, inserted through Section 2 of the Constitution (One hundred and first Amendment) Act, 2016 is a marvel of the federal fiscal mechanism. By which the State Legislatures have the power to make laws regarding GST imposed by the Union or by that State and to implement them in intra-State trade. Whereas, the Centre continues to have exclusive power to make GST laws regarding inter-State trade and apportionment between the States therein. Similarly, the power to levy and collect GST flows through Article 269A, inserted through Section 9 ibid.

(b) Hon'ble Supreme Court in *Hoechst Pharmaceuticals Ltd. & Others v. State of Bihar & Others* **(1983) 4 SCC 45** and *M.P.V. Sundararamier & Co. v. State of A.P. & Others,* **AIR 1958 SC 468** held that taxation is a distinct matter for purposes of legislative competence and the power to tax cannot be deduced from a general legislative entry as an ancillary power. In line with this Hon'ble Supreme Court in *Chhotabhai Jethabhai Patel & Co.* ***v.*** *Union of India,* **2002-TIOL-1602-SC-CX-CB**, held that by virtue of Article 265, if every tax has to be imposed by "law' it is to follow that it could only be imposed by a law which is valid. Therefore, any tax levied by the Government which is not backed by law or is beyond the powers of the legislating authority may be struck down as unconstitutional or invalid.

(c) Hon'ble Supreme Court in ***Raja Jagannath Baksh Singh*** *v.* ***Sate of U.P,*** **2002-TIOL-1213-SC-MISC-CB** held that - *If a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the Courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax which in the absence of prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening Article 19(1) (f)."*

(d) In ***Somaiya Organics (India) Ltd. and Ors. v. State of UP,*** **2002-TIOL-651-SC-STATE-CX-CB** , the case concerns U.P. Excise Act, 1910. The question to be considered was this: the vending fee, though levied under an appropriate State enactment, was not collected when that enactment was in force. It was prospectively declared ultra vires. Once the source of power disappeared, can the authorities collect the vend fee levied when the act was in force? The Supreme Court has held that the vend fee levied but not collected previously cannot be collected then.

e. In ***Pankaj Advertising Properties v. State of UP,*** **[TS(DB)-GST-HC(ALL)-2019-945]** it was held that *after the* omission *of Entry-55 of the List-II of the Seventh Schedule to the Constitution of India having been omitted by the 101st Amendment Act, 2016 with effect from 16-9-2016, even the State*

Government did not have the legislative competence to levy or collect taxes on advertisement which was earlier available under Entry-55, this coupled with the fact that the power of taxation earlier vested with the municipalities under Section 128(2)(vii) of the U.P. Municipalities Act, 1916 having been omitted by virtue of Section 173 of the U.P. Goods and Services Tax Act, 2017, the municipality did not even have the statutory competence to levy, impose or collect Advertisement Tax. the levy and collection of the Advertisement Tax under the provisions of Nagar Palika Parishad, Hathras (Vigyapan Kar Ka Nirdharan Aur Wasuli Viniyaman) Upvidhi, 2015 is clearly without legislative or statutory competence and is ultra vires *under Article 265 of the Constitution of India, U.P. Municipalities Act, 1916 and U.P. Goods and Services Tax Act, 2017.*

f. In ***DEN Networks Ltd. v. State of Bihar*** **[TS-233-HC-2023(PAT)-VAT]**, it was held that the Bihar Entertainment Tax Act, 1948, in the State of Bihar, by which the State, through its Commercial Tax Officers collected entertainment tax *inter alia* from the proprietors of cable television networks cannot survive the 101st Amendment, since the field of taxation available to the State under the amended Entry 62 of List II is confined to those levied and collected by the local self-Government institutions. The tax for the period prior to the amendment, though levied on the taxable event occurring, cannot also be collected since there is no transition provision available under the 101st Amendment making such collection of entertainment tax permissible for one year or by way of a repeal; by an enactment, consistent with the amendment, with a saving clause for continuance of the levy and collection under the old Act as it was never repealed. The State also is denuded of the power to make an enactment in the nature of the Bihar Entertainment Tax Act, 1948 after the 101st Amendment. The repeal and the saving clause provided under the BGST Act does not inure to the benefit of the State since the enactment and the levy made by it cannot be sustained after the 101st amendment.

Therefore, for any tax to be imposed, it requires a taxable event triggering the levy and a taxable person to discharge it.

Taxes vis-à-vis Judiciary - The statutory notifications issued are from first to last legislative in character. The author of the Notification's is the Central Government, no doubt, but the power that it wields is legislative in character. Notifications issued are an exercise of "sovereignty" i.e. of authority to legislate. The judiciary cannot restrain the taxes, however, great the hardship may appear to be to the judicial mind. All that it can enquire into is the legislative competence in a federal written Constitution. ***Bombay Conductors & Electricals Ltd. v. Government of India & Ors.,*** **1986 (23) ELT 87 (Del.)**

1.3 Concept & Legal Framework of GST

GST was studied by the Jha Committee as far back as in 1978. Slowly implemented as pro forma credit (1986), modvat (1987), cenvat credit (2000), Local VAT (2003-2007) in all States. In the present form as a revolutionary indirect tax regime, Goods and Services Tax (GST) had been on the parliamentary anvil for more than a decade. The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 on 19.12.2014 proposed constitutional amendments with the objective to give concurrent taxing powers to the Union and the States to levy tax on every transaction of supply of goods or services or both except those kept outside the purview of GST with an intent to remove the cascading effect of taxes.

The Task Force on Implementation of the Fiscal Responsibility & Budget Management Act, 2003 in its report in the year 2004 recommended the need for the introduction of the GST. The First Discussion Paper on GST in India was released by the Empowered Committee of State Finance Ministers in November 2009. Later the Constitution (One Hundred and Fifteenth Amendment) Bill, 2011 was drafted, introduced in both the Houses, this Bill was referred to Parliament Standing Committee on Finance, Committee submitted its report. However, the Constitution Amendment Bill, 2011 was never taken up again due to change in the Government in the year 2014. The new Government introduced the Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 with substantial differences.

Consequently, the Constitution (One Hundred and First Amendment) Act, 2016 was enacted by the Parliament with the intent to consolidate number of indirect taxes which were levied erstwhile and give effect to the objective laid down. This came in the form of GST which was made effective from 01.07.2017.

> To put the concept in perspective, GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer where credits of input taxes paid at each stage will be available in the later stage of value addition. The consumer will thus bear only the GST charged by the last dealer in the supply chain and can claim the benefit of tax set-off of GST paid on purchase in the previous through the credit mechanism. Ultimately, the burden of GST is borne by the end-user (i.e. final consumer) of the commodity/service.
>
> In other words, the focus is shifted from taxable event to destination-based taxation to avoid the evil of cascading taxation or tax on tax trouble. Therefore, GST is based on the concept of Value Added Tax (VAT) whereby the cascading effect is extinguished completely.

1.3.1 *Key Features of the Model*

(a) GST applies on supply of goods or services as against the present concept on the manufacture of goods, or on the sale of goods, or on the provision of services.

(b) Dual GST - A Central and a State GST to be applied on the same base operating on the principles of input tax credit.

(c) GST is based on the principle of destination-based consumption taxation as against the present principle of origin-based taxation.

(d) Levy of Integrated Goods and Services Tax on inter-State transactions of goods and services & on import of goods as well services.

(e) Levy of Compensation Cess on certain goods to provide the compensation to the States for loss of revenue arising on account of implementation of GST for a period which may extend to five years.

(f) Threshold limit for opting registration is reduced for the special category States to Rs. 20 Lakhs and Rs. 40 Lakhs for the normal States which is separate for goods and services, wherein such threshold is not applicable for inter-State supplies.

(g) Separate rate structure for different commodities bifurcated as standard rate, Limited tax rates, Special Tax rates, zero rate ranging from bare minimum 5% and extending to the maximum of 28% levied on the luxury items. Similarly, all exports to be treated as zero rated supplies and all imports to be subject to GST with credit being available in sub sequent transactions.

(h) Exports & supplies to SEZ's are treated as Zero Rated Supplies i.e. would not suffer the GST & with the refund of Input Tax Credit.

(i) Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits or any other matters on Goods & Service Tax.

1.3.2 *Overview of GST Law*

Parliament enacted three pieces of legislation, namely, (1) **The Central Goods and Services Tax Act, 2017** for levy on intra-State supplies of goods and services in all supplies within a State; (2) **The Integrated Goods and Services Tax Act, 2017** for levy on inter-State supplies of goods and services; and (3) **The Goods and Services Tax (Compensation to States) Act, 2017** (hereinafter referred to as "Compensation to States Act, 2017").

The GST law being borrowed from the erstwhile laws, which have also been relied on for drafting the provisions under GST. However, unfortunately there have been a lot of drafting lacunae in the erstwhile regime which has not been rectified in coding the GST law and has been carried forward with ease. The exercise of drafting was also against the fundamentals of the Constitutional pillars, the result being the 'simple law' is often brought before the test of judiciary to test the constitutional validity of the law.

An overview of the GST law is discussed below. Specific Chapter in the book to be referred for detailed understanding—

(a) **Levy and Collection** - Section 9 of the CGST Act gives the power to levy tax called CGST, SGST on intra-State supplies and IGST on inter-State supplies to be paid by the taxable person. The provision for levy also provides for list of services where tax must be paid on reverse charge basis by the recipient or payment of tax to be paid by E-commerce operator or composite dealer.

(For detailed analysis refer Chapter 6 of this book)

(b) **Supply (Taxable Event)** - The taxable event in GST is supply of goods or services or both. The term, "supply" has been inclusively defined in section 7 of the CGST Act, which can be understood in terms of five parameters i.e. (i) supply of goods or services, (ii) for a consideration, (iii) made in the course or furtherance of business, (iv) by a taxable person, (v) be a taxable supply. Whereas, other fundamentals of supply have been enumerated in Schedule I (activities to be treated as supply even if made without consideration), II (activities to be treated as supply of goods or supply of services) and III (activities or transactions which shall be treated neither as a supply of goods nor a supply of services) of the Act.

(For detailed analysis refer Chapter 7 of this book)

(c) **Classification, Composite and Mixed Supply -** GST provides for classification of supply (goods or services) and the rate of tax applicable on the same. Few supplies are a combination of goods or services with each individual component attracting different taxes and cannot be easily identified. For which, the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies vide Section 8 of the CGST Act. (For detailed analysis refer Chapter 8 of this book)

(d) **Exemptions -** Section 11 of the CGST Act gives the power to the Central and the State Governments to grant exemption on levy of tax on goods or services under fulfillment of conditions. Law also provides for retrospective clarification of the exemption along with the effective date for its enforcement. (For detailed analysis refer Chapter 9 of this book)

(e) **Time of Supply -** To calculate and discharge tax liability it is important to know the date when the tax liability arises, i.e., the date on which the charging event has occurred. In GST law, it is known as Time of Supply. Sections 12-14 of CGST Act provide for separate provisions applicable for determining time of supply and by virtue of section 20 of IGST Act these provisions are also applicable to inter-State supplies leviable to Integrated tax. (For detailed analysis refer Chapter 10 of this book)

(f) **Place of supply –** Whether a supply is an intra-State or inter-State supply and its leviability of CGST, SGST or IGST therein, it would be relevant to determine the place of supply. The place of supply may be determined under section 10 and 12 of the IGST Act, 2017 for supply of goods and services other than supply of goods imported into or exported from India. Sections 11 & 13 ibid Place of supply of goods and service imported into or exported from India. (For detailed analysis refer Chapter 11 of this book)

(g) **Valuation -** Like every fiscal statute, in GST also, tax is payable on *ad-valorem* basis i.e. percentage of value of the supply of goods or services. Section 15 of the CGST Act and Rule 27 to Rule 35 of CGST Rules contain provisions related to determination of value of supply of goods or services made in different circumstances and to different persons along with statutory inclusions and exclusions. (For detailed analysis refer Chapter 12 of this book)

(h) **Input Tax Credit -** Uninterrupted and seamless chain of input tax credit is key feature of GST. Wherein the entire supply chain would be subject to GST to be levied by Central and State Government concurrently and credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage. GST Law provides for the protocol to avail and utilise the credit of these taxes. Sections 16-21 of the CGST Act provides the provision with respect to Input Tax Credit. (For detailed analysis refer Chapter 13 of this book)

(i) **Registration, Payment, Returns and Records** - Registration is the most fundamental requirement for identification of tax-payers which implies obtaining a unique number for the purpose of collecting tax and availing Input tax credit. CGST Act provides for different threshold limit for obtaining registration for suppliers of goods and services and also avail the benefits of composition levy. Section 22-24 of the CGST Act, governs the provision relating to registration. (For detailed analysis refer Chapter 14 of this book)

(j) **Assessment -** Assessment in GST is mainly focused on self-assessment where every taxpayer is required to self-assess the taxes payable and furnish a monthly/quarterly return for specified tax periods as enumerated in section 37 and 39 of the Act. Along with furnishing returns monthly/quarterly, the assessee is also required to make payment of applicable taxes computed based on declaration made in the return. This compliance is verified through scrutiny of returns and record checks. For reason of which GST law u/s 35 casts obligation on the taxpayer for keeping and maintaining accounts and records. (For detailed analysis refer Chapter 18 of this book)

(k) **Refunds -** The provisions pertaining to refund contained in the GST law aim to streamline and standardize the refund procedures and refund claims. The process is decided to be online requiring time bound action to be taken within timeframe prescribed in the procedures. Section 54 read with section 77 of the CGST Act and Rule 89(2) is an indicator of the various situations that may necessitate a refund claim. (For detailed analysis refer Chapter 15 of this book)

(l) **Transitional Provisions -** Elaborate provisions have been made to carry forward the ITC earned under the existing law which should be permissible under GST law to be carried forward as Closing balance of the credit in the last returns, Un-availed credit on capital goods, Credit on duty paid stock, Credit relating to exempted goods under the existing law which are now taxable etc. Section 139-142 provides the provisions relating to Transitional provision. (For detailed analysis refer Chapter 16 of this book)

(m) **Inspection, Search and Seizure -** Provision for Inspection, Search, Seizure and Arrest are provided to protect the interest of genuine tax-payers and safeguard Government's legitimate dues. Section 67 of the CGST Act provides for instances where power of inspection, search and seizure can be exercised by the proper officer on reasons to believe that assessee made some action of suppression, excess claim of ITC, etc. enumerated therein. (For detailed analysis refer Chapter 17 of this book)

(n) **Assessment, Demands and Appeals -** GST is payable on a self-assessment basis and voluntary payment of tax. Provisions and procedure for Assessment, demand and recovery are invoked in case of any short payment, wrong utilisation of input credit or refund wrongly made. (For detailed analysis refer Chapter 18 of this book)

(o) **Offences and Penalties -** Sections 122 to 138 of the CGST Act provide for a list of offences related to contravention of provisions of registration, invoicing, tax payment, ITC which are liable for penalty and prosecution. GST law also provides for disciplines to be adhered to for imposing penalty. (For detailed analysis refer Chapter 19 of this book)

(p) **Anti-Profiteering -** To ensure that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit is passed on to the recipient by way of commensurate reduction in prices, the provisions for anti-profiteering are brought in place. The Anti-Profiteering Authority ensures that the consumer is protected from arbitrary price increase in the name of GST. (For detailed analysis refer Chapter 20 of this book)

1.3.3 *Payment of Taxes under Respective Heads*

With all these Acts subsuming under GST, the model also provides for payment of taxes under their respective heads i.e. CGST, SGST and IGST respectively wherein the State's share of GST is settled and goes to the Consolidated funds to ensure revenue protection for the States. Recognition of revenue Article 269A of the Constitution, provides that GST on inter-State supplies and imports shall be levied and collected by the Union and apportioned between the Union and the States, does not create a new tax, but only provides a mechanism for collection of CGST and SGST in the case of inter-State trade and imports. Wherein, specifies that the State's share of the IGST together with the CGST paid set off against IGST payable shall not form part of the Consolidated Fund of India (CFI).

Based on collection analytics presented by the council, SGST collection including the settlement of IGST has indicated a major shortfall of collection under GST from the expected growth which has been declining every month and an average revenue gap of all States stood at 17% (FY 2018). Whereas, there are cumbersome procedures to be complied with by the compliant assessees. This has remained a problem and possibly points towards tax evasion. The collection always indicates in the spike in IGST compared to CGST and SGST which measures that inter-State trade is increasingly passing via the GST portal, but also creates a problem because much of the IGST so collected remain unallocated. To put it in perspective, IGST is not a new tax but any collections under IGST need to be allocated between CGST and SGST depending on the matching of details submitted by the buyer and the supplier of goods and services located in different States. If details cannot be matched, the amount remains unallocated. Whereas, the IGST Act does not envisage what needs to be done in such a situation.

Fundamentally it is not different from what used to happen earlier in relation to the Central Sales Tax, which has now been subsumed in the IGST. Accretion and apportionment of IGST would always be an ongoing process and this fact needs to be recognized in the Act itself. The GST Council has a Constitutional status, having been provided for in the Constitution itself. Section 25(1) of the IGST Act provides that the Government will act according to its recommendations in case of any difficulty during the next three years, of which one has already passed.

The remaining two years should be judiciously utilised to identify intractable problems like this, attempt the most pragmatic solution and make necessary amendments to the Acts.

Also relevant in this regard is section 19 of the COI 101st Amendment Act, 2016 *providing for Transitional provisions wherein Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier."*

In ***State of Telangana v. Tirumala Constructions*** **[TS-539-SC-2023-VAT]**, the Hon'ble Supreme Court held that Section 19 of the Constitution (101st Amendment) Act, 2016 and Article 246A enacted in exercise of constituent power, formed part of the transitional arrangement for the limited duration of its operation, and had the effect of continuing the operation of inconsistent laws for the period(s) specified by it and, by virtue of its operation, allowed State legislatures and Parliament to amend or repeal such existing laws. Since other provisions of the said Amendment Act, had the effect of deleting heads of legislation, from List I and List II (of the Seventh Schedule to the Constitution of India), both Section 19 and Article 246A reflected the constituent expression that existing laws would continue and could be amended. The source or fields of legislation, to the extent they were deleted from the two lists, for a brief while, were contained in Section 19. As a result, there were no limitations on the power to amend. The amendments made to the Telangana VAT Act, Gujarat VAT Act and the Maharashtra VAT Act after the repeal of the said Acts by the enactment of GST Act, 2017 are held to be void.

In *UOI v. Mohit Minerals Pvt. Ltd.,* 2018-TIOL-462-SC-GST deciding on the legislative competence of Parliament to implement Goods and Services Tax (Compensation to States) Act, 2017, the Hon'ble Supreme Court held that –

After Constitution (One Hundred and First Amendment) Act, 2016, as per Article 270, Parliament can levy cess for a specific purpose under a law made by it. Article 270, thus, specifically empowers Parliament to levy any cess by law. Lastly, Section 18 of the Constitution (One Hundred and First Amendment) Act, 2016 expressly empowers Parliament shall, "by law" on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax…." When Constitution provision empowers the Parliament to provide for Compensation to the States for loss of revenue by law, the expression "law" used therein is of wide import which includes levy of any cess for the above purpose. We, thus, do not find any merit in the submission of the learned counsel for the petitioner that Parliament has no legislative competence to enact the Compensation to States Act, 2017.

GST Council in its 43rd Council Meeting decided on collection of compensation cess beyond July 2022 and allowed Central Government to borrow Rs 1.58 lakh crore to meet States' compensation demand for the Fiscal year 2021-22.

Though the observations of the Court were with respect to the Compensation Cess, the reasoning behind the ruling could lead to conclusion that any cess can now be levied on supply of goods and services by exercising powers under Article 246A read with Article 270. However, such an interpretation of the judgment is likely to open the Pandora's Box to numerous similar levies in the future that may undermine the coherence and uniformity aimed through GST.

Corresponding to which is the levy of Kerala Flood Cess (KFC) which was approved by the GST council in its 32nd Council meeting to mobilise the revenue through levy of additional cess on intra-State supplies within the State of Kerala made by a taxable person as provided under section 9 of Kerala State Goods and Services Tax Act, 2017 at a rate not exceeding 1% for a period not exceeding two years. Whereas, KFC would not be applicable in cases of supplies made by a person who has opted for composition levy, exempted supplies, supplies in relation to B2B transaction, supply of goods that are taxable @ 0.125% under KSGST and supply of goods and services that are taxable @2.5% as notified under KSGST. Though as a result of levy of KFC, intra-State services like transportation, accommodation, restaurant, construction etc. would become huge cash inflow segments for the State to collect KFC but the same cannot be debated much as the power to collect cess is flowing from Articles 246A and 270 as elaborated in the case of Mohit Minerals (Supra).

1.3.4 *Advantages of GST*

The advantages of simpler Goods and Services Tax are many however, for sake of convenience they are bifurcated amongst the stakeholders and bodies impacted by the same –

(a) Citizens

- (i) Simpler tax system with transparency
- (ii) Reduction in prices of goods and services due to elimination of cascading
- (iii) Uniform prices throughout the country
- (iv) Increase in employment opportunities

(b) **Trade/Industry**

- (i) Reduction in multiplicity of taxes
- (ii) Mitigation of cascading/double taxation
- (iii) Increased threshold for registering and single registration in one State with additional benefit under composition scheme
- (iv) More efficient neutralization of taxes especially for exports
- (v) Simpler tax regime with fewer rates and exemptions
- (vi) Wider coverage of input tax set-off and service tax set-off resulting in widened tax base

(c) **Central/State Government**

(i) A unified common national market to boost Foreign Investment and "Make in India" campaign as exports are zero rated supplies.

(ii) Uniform SGST and IGST rates to reduce the incentive for tax evasion

(iii) Reduction in compliance costs as no requirement of multiple record keeping

(iv) Improving the overall investment climate in the country which will benefit the development of State

(v) Boost to export/manufacturing activity, generation of more employment, leading to reduced poverty and increased GDP growth

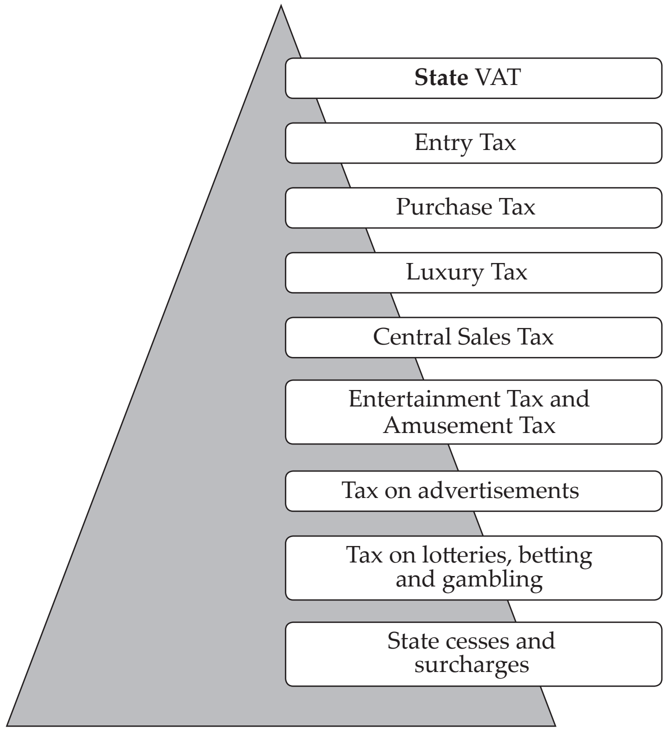
Note: All these benefits could accrue only if it is simple, fair, transparent and is implemented in the way it should be.

1.3.5 *Taxes Subsumed Under GST*

The States had the legislative competence to impose sales tax under Entry 54, List II, indiscriminate tax rates were applied by the respective States resulting in tax wars, tax holidays, deferrals, incentives, and concessions. Whereas the Central levies such as the Customs Duty and the Excise Duties remained the same throughout the Country, Sales Tax rates varied among States. Therefore, to avoid a lopsided or imbalanced growth and shortcoming, the model GST is brought in structure that has replaced the plethora of laws legislated erstwhile. Therefore, following are the taxes levied and collected by center that are subsumed under GST—

The Constitution does not provide any taxation powers to Local Government, however the States on their own may assign any of taxes in State list (List II) to the local bodies. The taxes generally assigned to local Government were Property

Taxes, octroi and taxes on vehicles. Following taxes and levies were imposed and collected by State Governments prior to the introduction of GST w.e.f. 01.07.2012 that has been subsumed under GST—



Following are the taxes levied by the Centre and State that are not subsumed under GST –

Taxes currently levied and collected by the Centre –

- ✓ Taxes on income, wealth or gifts
- ✓ Basic Customs Duty
- ✓ Terminal taxes on goods or passengers, carried by railway, sea or air
- ✓ Oil Industries Development Act Cess
- ✓ Duty of Excise on tobacco, tobacco products (levied over and above GST) and petroleum products

State Taxes not subsumed under GST

- ✓ Fees in respect of markets or fairs (Mandi Fees)
- ✓ Taxes on lands and buildings (property tax)
- ✓ State Stamp Duties
- ✓ Taxes on mineral rights
- ✓ Electricity Duties
- ✓ Taxes on goods and passengers carried by road or on inland waterways

- ✓ Taxes on Vehicles (Road Transport Authority)
- ✓ Taxes on professions, trades, callings and employments
- ✓ Entertainment Tax by local bodies

Effect of Repealed Acts

A statute that gets repealed ceases to exist by efflux of time and is referred to as a temporary statute. Merely because the statutory purpose is temporal, the very statute cannot be regarded as temporary unless the legislature has specified a fixed period for its duration. Indeed, unless it contains some special provision to the contrary; after a temporary Act has expired, no proceedings can be taken upon it, and it ceases to have any further effect.

(a) Supreme Court in ***State of Orissa v Bhupinder Kumar,*** **AIR 1962 (SC) 945** observed that *often the legislature itself enacts a saving provision in the temporary Act, on the lines of Section 6 of the General Clauses Act, 1897. The usual presumption is that if such a saving provision is not present, then the proceedings began under the repealed Act* ipso facto *terminate as soon as the statute expires. Indeed, the expiry does not make the statute dead for all purposes even in the absence of a saving clause. The nature of the right or obligation emanating from the temporary Act may determine whether that right or obligation is enduring.*

(b) Supreme Court in ***Udai Singh Dagar v. Union of India (*****2007) 10 SCC 306,** re-emphasizes that *the principal object of a repealing and amending Act is to 'excise dead matter, prune off superfluities, and reject clearly inconsistent enactments'*. If an Act gives a right to do anything, the thing to be done, if only commenced but not completed before the Act is repealed, must upon the repeal of the Act be left in status *quo*. So, under some statute, if a right becomes vested upon the completion of some certain transaction but not before, no right whatever will have been acquired if the statute in question is repealed before the transaction is completed. Therefore, if a right has once been acquired under some statute, that right will not be taken away by the repeal of the statute under which it was acquired.

(c) In ***Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co*** **(2001) 8 SCC 397,** the Hon'ble Supreme Court observed that as a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not *prima facie* affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not affect the pending cases which would be decided as if the enactment were not repealed. Therefore, the right so acquired or accrued on the date of repeal would get protection under Section 6 of the General Clauses Act.

(d) ***M/s Sheen Golden Jewels India Pvt. Ltd. v. State Tax Officer*** **[TS-67-HC-2019(KER)-NT]** on addressing the issue whether State has the legislative competence to enact section 174 of KSGST Act and save the past taxation events-comprising levy, assessment, and recovery when VAT has been subsumed, Hon'ble Court observed that – *Section 19 of the CA Act is-transitional as it may have been-a repealing clause simpliciter, not a saving clause.*

Nothing more. That job of saving is done by Section 174 of the KSGST Act. Well and truly. So, the repeal has not, as Section 174 elaborates, affected "the previous operation of the amended Acts or repealed Acts and orders or anything duly done or suffered thereunder." In other words, the repeal has not affected "any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Acts or repealed Acts or orders under such repealed or amended Acts." Nor has it affected "any tax, surcharge, penalty, fine, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Acts or repealed Acts".

(e) In ***Rohan Lobo v. State of Goa* (2023) 10 Centax 347 (Bom.)**, the Hon'ble Bombay High Court while dealing with the validity of Goa Value Added Tax (12th Amendment) Act, 2020 observed that the Amendment Act purports to amend the repealed GVAT Act, 2005 without any provision to revive the repealed Act. It was further observed that there could be no amendment of an enactment which is not in existence. From the fact that the Legislature purports to amend an Act, it could not be held as a matter of construction that the Legislature intended to renew a dead Act or make a new enactment on the same terms as the old with retrospective effect. To the same effect are the observations in *Kalyanam Veerabhadrayya v. The King*, 1949 SCC OnLine Mad 255. Accordingly, the Amendment Act of 2020 concerning goods other than those included in Entry 54 of the State List of Seventh Schedule to the Constitution was held to be *ultra vires*, unconstitutional and void.

Over time, there have been multiple amendments made in the law which has a never-ending course it seems. The fundamental structures for levy mainly the Notifications and the Circulars which though aim to clear air on the ambiguity are so fragile that they tend to change or take a contrary stand (sometimes against the very principles of GST) eventually resulting in opening the room of ambiguities, unintended levies open to any interpretation to act upon. This position of the unsettled law has caused a lot of tension for the business to rely on and comply therein.

However, on contrary there is an unprecedented proactivity and independent functioning on the part of GST Council. The Council has lately tried to bring in technological advancement in loop for efficient functioning and monitoring the taxing administration with reduced interaction. However, what certainly remains unanswered is to what extent is the technical infrastructure equipped to tackle such advancement for the benefit of the Assessee.

This book is an in-depth reckoner for analysing the issues that are possibly prevalent in the economy leading to possible litigation or may arise in future requiring attention of the judiciary to ponder upon. The issues mainly relating to the Constitutional validity, issues in levy, place of supply, classification and exemptions, Input Tax Credit, refunds, etc.

1.4 Judicial View on Critical Aspects of GST

(a) ***Bai Mamubai Trust v. Suchitra* [TS(DB)-GST-HC(BOM)-2019-616] -** The element of 'reciprocity' is essential to trigger the definition of 'supply' under the GST law. Therefore, in cases where, there is no 'reciprocity', there is no taxable supply. It was held that the damages payable by defendant do not partake the character of consideration for a 'supply', the question of applicability of clause 5(e) in Schedule II of the Act does not arise. Therefore, the services of the Court Receiver are to be considered as services provided by any Court. Accordingly, the fees or charges paid to the Court Receiver are not liable to GST.

(b) ***Mohit Minerals Private Limited v. UOI,*** **[TS-29-HC(GUJ)-2020-NT]–** The Hon'ble High Court dealt with the constitutional validity of the levy of IGST on ocean freight charges in case of CIF imports. The challenge was based on the premise that Section 5 of the IGST Act, 2017 makes only a supplier or a recipient liable to pay tax. Whereas, in CIF imports, the importer is neither the supplier nor the recipient. The Hon'ble Court was finding a specific mention of 'importer' as recipient of service in the IGST Act and just because a person is required to pay tax under reverse charge and requires registration cannot be called as recipient of service. The current provision of Section 5(3) delegates the power to notify the goods or services that are required to be paid under reverse charge but does not have the power to delegate and specify the person who would be recipient and the same has to be found in the IGST Act. Since, in the instant case, there is nothing in the IGST Act to make the importer as recipient, the arguments of Revenue would have to be struck down but for the provisions of Section 13(9) read with Section 2(93)(c). Subsequently Hon'ble Supreme Court upheld the above High Court's decision, which has been discussed in next chapters.

(c) ***Siddharth Enterprises v. The Nodal Officer*** **[TS(DB)-GST-HC(GUJ)-2019-591] -** The due date contemplated under Rule 117 of the CGST Rules to claim the transitional credit is procedural in nature and thus only directory. The right to carry forward credit is a right or privilege, acquired and accrued under the erstwhile Acts and therefore, it cannot be allowed to lapse under Rule 117 of the CGST Rules, 2017, for failure to file declaration form GST Tran-1 within the due date. Held, time limit u/r 117 is unreasonable and arbitrary and violative of Article 14 of the Constitution. Subsequently, Hon'ble Supreme Court in ***Union of India v. Filco Trade Centre Pvt. Ltd.*** **[TS-369-SC-2022-GST]** directed the GSTN to reopen the common portal for filing the transitional credit forms for a period of two months.

(d) ***Tirumala Balaji Marbles & Granites v. The Asst. Commissioner (ST)*** **- WP No. 1200 of 2025 – AP High Court –** When the State GST department has rejected the GST Registration application of the Petitioner on the ground that the Authorized Signatory & Authorized Representative do not belong to the State of Andhra Pradesh, the Hon'ble AP High Court held that the registration cannot be denied on the ground which is not available under the Act or the rules. Article 19 of the Constitution of India, grants every citizen of this Country, the right to set up and do business anywhere in the country. The GST department was directed to register the Petitioner under GST.

(e) ***N.V.K. Mohammed Sulthan Rawther And Sons and Willson v. Union of India* [TS(DB)-GST-HC(KER)-2018-473] -** On alleged misbranding of the product to evade payment of taxes, the court held in line with the ratio in the case of J.K. Synthetics Limited [1994 (5) TMI 233 – Supreme Court] that if the assessee pays the tax, which according to him is due based on the information supplied in his return, there would be no default on his part to meet his statutory obligation. Therefore, it would be difficult to hold that the 'tax payable' by him 'is not paid' and that he is liable for consequences.

(f) ***Pranit Hem Desai v. Additional Director General, DGGI* [TS-325-HC(GUJ)-2019-NT] -** The attachment of bank accounts u/s 83 of the CGST Act and trading assets should be resorted to only as a last resort, when assessee may default the ultimate collection of the demand, not to harass the assessee, only if assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand, the attachment of the bank accounts of the assessee would paralyse the functions and business of the assessee and this tool has to be used sparingly because no safeguards have been provided in Section 83.

(g) ***Chief Commissioner of Central Goods and Service Tax v. Safari Retreats Pvt. Ltd.* [TS(DB)-GST-SC-2024-1748] -** The Hon'ble Orissa High Court in its ruling held that the benefit of credit would be available to assessee on goods or services used in construction of immovable property if the assessee is required to pay GST on the rental income arising out of the investment on which he paid the GST. It was further held that the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the department, is not required to be accepted, inasmuch as keeping in mind the language used in *Eicher Motors Ltd.* - 2002-TIOL149-SC-CX-LB, the very purpose of the credit is to give benefit to the assessee. On an appeal by the Revenue, the Hon'ble Supreme Court has laid down the functionality test for determining whether an immovable property can be classified as a plant for the purpose of Section 17(5)(d) of the Act and remanded the case back to the High Court to determine whether the shopping mall is a plant. The decision was based on the specific finding that the definition of 'Plant and Machinery' provided in *Explanation* to Section 17 does not apply to 'Plant or Machinery' as referred to in Section 17(5)(c). However, this finding is proposed to be legislatively overruled in the Finance Bill, 2025 through a retrospective amendment to Section 17(5)(d).

(h) ***Amit Cotton Industries v. Principal Commissioner of Customs* (2019) (29) G.S.T.L. 200 -** Can refund be denied because of availment of duty drawback vide Circular No. 37/2018-Customs, dated 09-10-2018?

Shipping bill that exporter filed is deemed to be an application for refund of IGST on zero-rates supply u/r 96 of CGST Rules. Circular 37 explains the provisions of the drawback and it has nothing to do with the IGST refund and it is settled legal proposition that circulars cannot override legal provisions. Therefore, Circular 37 cannot be said to have any legal force, as it runs contrary to Rule 96 of the CGST Rules. The Hon'ble Supreme Court has dismissed the SLP filed by the revenue in *Principal Commissioner v. Amit Cotton Industries* – 2021 (50) G.S.T.L. J33 (S.C.) on the ground of delay.

(i) ***Radhika Agarwal v. Union of India,*** **[TS-96-SC-2025-GST]–** While upholding the Constitutional validity of the arrest provisions under GST, the Supreme Court observed that the Parliament, under Article 246-A of the Constitution, has the power to make laws regarding GST and, as a necessary corollary, enact provisions against tax evasion. Article 246-A of the Constitution is a comprehensive provision and the doctrine of pith and substance applies. Thus, a penalty or prosecution mechanism for the levy and collection of GST, and for checking its evasion, is a permissible exercise of legislative power. The GST Acts, in pith and substance, pertain to Article 246-A of the Constitution and the powers to summon, arrest and prosecute are ancillary and incidental to the power to levy and collect goods and services tax.

(j) ***Modern Advertising & Marketing v. State of UP,*** **2018 [TS(DB)-GST-HC(ALL)-2018-373] -** Power to levy advertisement tax whether vacated after implementation of GST?

Sections 192 and 193 of Uttar Pradesh Municipal Corporation Act, 1959 are omitted after GST regime and therefore, Municipal Corporation has no power to levy advertisement tax and it is only GST which shall be applicable. Held, the tender notice issued by Nagar Nigam is bad in law.

(k) ***Commercial Steel Engineering Corporation v. State of Bihar (Pat.)*** **– [TS(DB)-GST-HC(PAT)-2019-121] -** Whether credit reflected in Electronic Credit Ledger of assessee would amount to either availment or utilization of credit? Reflection of transitional credit in an electronic ledger is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable. Therefore, it is understood by the author that interest cannot be demanded for mere availment of credit without its utilization.

(l) ***M/s Cotton Corporation of India v. Assistant Commissioner*** **[TS-58-HC(AP)-2025-GST] –** In the context of time limit for passing the adjudication order under Section 73, it was held that when the period available for a certain action, is defined in terms of months, the cutoff date would be the corresponding date of the corresponding month. It was further emphasized that one of the primary protections provided by the GST Law is that orders cannot be passed against the taxpayers, beyond the periods stipulated in the Act and therefore the periods of limitations are mandatory.

(m) ***Shabnam Petrofils Pvt. Ltd. v. Union of India,*** **[TS-575-HC(GUJ)-2019-NT]** - when credit has been validly taken, its benefit is available to the manufacturer without any limitation in time. The credit is indefeasible. No inherent power can be inferred from the provision of Section 54(3) of the CGST Act empowering the Central Government to provide for the lapsing of the unutilised ITC under Inverted Duty Structure. Hence, Impugned