Chapter 1

Introduction & Overview of GST

It is essential that you should practically bear in mind that towards the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant.

— George Washington

'There is no art which one government sooner learns of another than that of draining money from the pocket of people' **— Adam Smith.**

When the devil grows poor he becomes a tax collector **— Greek Proverbs**

Taxation is robbery based on monopoly of weapons **— Robert Anton Wilson**

1.1 Tax – Meaning and Historical background

Tax – meaning and definitions

The term 'tax' as per Cambridge Dictionary means an amount of money paid to the Government that is based on your income or the cost of goods or services you have bought.

Further, Merriam Webster Dictionary defines 'tax' as a charge usually of money imposed by authority on persons or property for public purposes.

The Oxford Dictionary – Lexico defines the term 'tax' to mean a compulsory contribution to State revenue, levied by the Government on workers' income and business profits, or added to the cost of some goods, services, and transactions.

The term 'tax' connotes a compulsory charge collected by the Government of a country from its citizens for the purpose of meeting its expenditure and providing various facilities and amenities to the population.

[1]Etymologically we can trace the origin of the word 'Tax' appearing in Middle English during 14th century. It derives from the Latin *taxare* which means 'to assess'. It may have also traced to the related word 'task', derived from Old French 'taxer' which originated from Latin word taxare 'to censure, charge, compute'.

Historical background

The earliest known instance of taxation is said to be in Ancient Egypt around 3000–2800 BC wherein poor peasants, who could not afford to pay

1 Source: www.lexico.com/en/definition/tax

taxes, were made to provide forced labour to the State. There were also certain taxes on consumption levied in Greece and Rome.

However, we must admit that probably India had a system of taxation which was much earlier to this. There is enough reference to the concept of Bali which literally meant an offering to the gods. However, this bali could also be interpreted to mean offerings to the kings as one hymn in Rig Veda, translated literally, would mean "that Indra can make his subjects pay bali to the king". This hymn may mean something else altogether but that is beyond the scope of this book. There are references to bali, shulka, etc. in Brahmanas and other texts.

The first economist known to the world was Kautilya also called Chanakya. According to Chanakya:

> *"Taxation should not be a painful process for the people. There should be leniency and caution while deciding the tax structure. Ideally, governments should collect taxes like a honeybee, which sucks just the right amount of honey from the flower so that both can survive. Taxes should be collected in small and not in large proportions".*

It has also been said that "Unnecessary taxation is unjust taxation".

Chanakya in his treatise on economics named "Arthashastra", has dealt with taxation in general and 'indirect taxation' in particular.[1] It is stated that a tax was levied on all manufactured articles and the date was stamped on them so that consumers could distinguish between old goods and new. The sale of merchandise was strictly supervised. Various factors such as the current price, supply and demand, and the expenses of production were considered by the superintendent of commerce, before assessing the goods. A toll was fixed at one-fifth of the value of the commodity and in addition there was a trade tax of one-fifth of the toll.

Modern system of taxation in India is a British legacy.[2] The formal taxation system by way of Income Tax was introduced for the first time in India by Sir James Wilson on 24th July, 1860 that to compensate for the losses incurred by the British regime during the first war of independence in 1857 against British Rule. Hence, 24th July is observed as the Income Tax Day in India. In 1918, a new Income-tax Act was passed and again it was replaced by another new Act which was passed in 1922. This Income Tax Act of 1922 had become extremely complicated on account of innumerable amendments. Consequently, in the year 1961, in consultation with the Ministry of Law, the Income Tax Act, 1961 was enacted which had been brought into force with effect from 1st April, 1962. Now this enactment has been replaced with the Income Tax Act, 2025 which has been enforced with effect from 1.4.2026.

Similarly, Central Excises and Salt Act, 1944 was enacted prior to India becoming independent in 1947. Historical background of indirect taxes is discussed below.

1 Romila Thapar, A History of India(1), Pelican books,1984, p 78
2 Press Information Bureau Release Dated 23.07.2019

Consequent to India becoming independent, the Constitution of India was adopted by the Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950. The authority to levy a tax is derived from the Constitution of India which allocates the power to levy various taxes between the Central and the States. However, it should be remembered that the power to levy tax is incidental to sovereign power and needs no separate mention anywhere. See *Jindal Stainless Steel Ltd v State of Haryana* (2017) 12 SCC 1 which has this instructive paragraph extracted:

> *14. Power to levy taxes has been universally acknowledged as an essential attribute of sovereignty. Cooley in his Book on Taxation – Volume-1 (4th Edn.) in Chapter-2 recognises the power of taxation to be inherent in a sovereign State. The power, says the author, is inherent in the people and is meant to recover a contribution of money or other property in accordance with some reasonable rule or apportionment for the purpose of defraying public expenses. The following passage from the book is apposite:*
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> > ***"57. Power to tax as an inherent attribute of sovereignty.***
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> > *The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government. It is possessed by the government without being expressly conferred by the people. The power is inherent in the people because the sustenance of the government requires contributions from them. In fact, the power of taxation may be defined as "the power inherent in the sovereign state to recover a contribution of money or other property, in accordance with some reasonable rule or apportionment, from the property or occupations within its jurisdiction for the purpose of defraying the public expenses." Constitutional provisions relating to the power of taxation do not operate as grants of the power of taxation to the government but instead merely constitute limitations upon a power which would otherwise be practically without limit. This inherent power to tax extends to everything over which the sovereign power extends, but not to anything beyond its sovereign power. Even the federal government's power of taxation does not include things beyond its sovereign power. But where exclusive jurisdiction over land is granted to another state or country, the land remains subject to the taxing power of the state within whose boundaries it is located."*

An important restriction of this power is Article 265 of the Constitution which states that "No tax shall be levied or collected except by the authority of law".[1] Therefore, each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature. The term "taxation" is defined in our Constitution under Section 366(28) as "includes the imposition of any tax or impost, whether general or local or special, and tax shall be construed accordingly.

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1 https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf

1.2 Direct Taxes and Indirect Taxes

Taxation is divided into 'direct taxes' and 'indirect taxes'. The 'direct taxes' are the taxes which are levied on taxable income earned by assessees viz., individuals and corporate entities, where the burden to pay the taxes is directly on the assessees themselves. However, the 'indirect taxes' are the taxes which are levied on the sale or supply or provision of goods and services, wherein the burden to collect and pay the taxes is on the producers/sellers of goods and providers of services and not directly on the customers or consumers of goods or services. It is passed on to the customers or consumers and therefore becomes an indirect tax.

Further, some commentators are of the opinion that the difference between a direct tax and an indirect tax is that while an indirect tax is one where the burden of it can be shifted by the taxpayer to someone else, a direct tax is one that cannot be.

1.3 Indirect tax – Meaning

As discussed above, indirect taxes are those where the taxes are levied and collected from the assessees (i.e., the producers/sellers of goods and providers of services) the ultimate impact of tax is on the customers from whom the assessees collect these taxes and pay to the Government. Hence, 'indirect tax' is a type of tax where the incidence and impact of taxation does not fall on the same entity.

[1]An indirect tax (such as sales tax, per unit tax, value added tax (VAT), or goods and services tax (GST), excise, tariff) is a tax collected by an intermediary (such as a retail store) from the person who bears the ultimate economic burden of the tax (such as the consumer).

Accordingly, the erstwhile taxes and duties viz., excise duties, customs duties, service tax, sales tax, and value added tax (VAT), and the present goods and services tax (GST) constitute indirect taxes. In addition, there were taxes such as luxury tax, entertainment taxes, etc. These levies have been named as 'indirect tax' owing to the fact that even though the levy is upon the assessee or the person liable to pay tax, the burden is usually passed on to his customer who thus *indirectly* pays the tax. Consequent to introduction of Goods and Services Tax (GST) regime of taxation w.e.f., 1st July, 2017, almost the entire gamut of indirect taxes got subsumed within GST. However, there are certain exceptions like State excise levy on alcoholic beverage for human consumption and central excise duty on petroleum products as also customs duties on imports which are kept outside the scope of GST. It must be noted that the assessee is liable to register himself, file a tax return and forward the tax proceeds to the Government with the prescribed statutory return. Therefore, an indirect tax is different from a direct tax which is collected directly by the Government from the persons (legal or natural) on whom it is imposed.

1 Source: Wikipedia

Babu Ram Jagdish Kumar & Co. v State of Punjab, (1979) 3 SCC 616

In this case, the Supreme Court held that, in case of purchase tax, the "taxable event" is the purchase of paddy, whereas the "taxable person" is the person liable to pay the tax, which is the purchaser. The tax payable under the Act being an indirect tax, the tax burden would ordinarily fall on the consumer of rice and not on any of the intermediaries including the appellants. It is relevant to note that this decision is in the context of levy of 'Purchase tax' under Section 5(2)(a)(ii) of Punjab Sales Tax Act, 1948.

British India Corporation Ltd. v Collector of Central Excise, 1978 (2) ELT J 307 (SC):AIR 1963 SC 104 (5)—The Supreme Court held that excise duty does not cease to be so if the manufacturer is unable to pass it on to his customers because of competition. An excise duty is a duty on production and though according to the economists, it is an indirect tax capable of being passed on to the consumer as part of the price, yet the mere passing on of the duty is not its essential characteristic. Even if borne by the producer or manufacturer, it does not cease to be a duty of excise. In *Chottabhai Jethabahai Patel v UOI,* AIR 1962 SC 1006, a Constitution Bench of the Supreme Court held that just because a retrospective tax cannot be passed on to the consumer, it does not mean that it is not an excise duty.

***Sutherland Global Services Pvt. Ltd. v Asstt. Commissioner of CGST and C. EX.,* Chennai, 2019 (30) GSTL 628 (Mad.)**

In this case, while dealing with issue of eligibility for 'transitional credit' on the items of credit such as Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess under GST regime, the Madras High Court observed that "Goods and Services Tax was introduced with much fanfare in 2017 with discussions preceding the enactment nearly from 2009 onwards. The scheme of Goods and Services Tax (GST) was to provide a comprehensive indirect tax levy subsuming various indirect tax enactments that had been in force prior thereto. Empowered committees were set up to deliberate extensively on the various details of the GST model to be implemented after taking into account the views of the States and Central Government. The first discussion paper on GST in India set out the salient features that were incorporated in the report of the Thirteenth Finance Commission issued in December, 2009". Further, it was held that the taxes that had been subsumed under GST were many and included among others, Central Excise, Additional Excise, Additional Customs Duty, all Central and State surcharges and cesses, Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax, Taxes on lottery, Entertainment Tax, Purchase Tax, State Excise Duties, Stamp Duty, Taxes on vehicles, Tax on goods and passengers, Taxes and duties on electricity as well as service tax. While integrating the taxes, the intention of the Government was evidently to provide a seamless model for transitioning of all credits hitherto availed of by an assessee under the erstwhile VAT and other indirect tax levies to the Goods and Services Tax regime as well. The benefits that had been made available and that had been permitted to continue in the erstwhile taxing regime were thus meant to be continued. Unfortunately, the Division Bench overturned this judgement as discussed in the later chapter on input tax credit in Chapter 15.

1.4 Whether service tax could be collected even if agreement does not provide so

***Bhagwati Security Services v UOI*, 2014 (31) STR 537 (All)**

An agreement between the service provider and receiver was entered into prior to the date of levy of service tax on the security services. The issue before the Allahabad High Court in this case was whether the service recipient is required to reimburse the service tax to the service provider in the background that the agreement does not provide so. The High Court observed that the service tax is a statutory liability and it is a tax which is required to be collected by the service provider from the person to whom service is provided. It was held that the service provider being a collecting agency, he could pass on the tax and the service receiver was compelled to pay the tax. An earlier decision on the same lines is found in *Peary Lal Bhawan Association v Satya Developers Pvt. Ltd,* 2011 (23) STR 213 of the Delhi High Court. It must be said that the judgements are more a practical application of law and may be subjected to challenge in the Supreme Court on the simple ground that parties should be held to their contract. This comment of ours finds mention in the Supreme Court's decision which follows.

***Union of India v Bengal Shrachi Housing Development Limited,* 2017 (6) GSTL 356 (SC):(2018) 1 SCC 311**

In this case Government of India was lessee of immovable property leased by the respondent. The stipulation in the deed was that the lessor would be liable for all taxes. However, the Government had issued a letter stating that they would bear the service tax. Considering the facts of the present case, Hon'ble Supreme Court referred to the expression "primarily leviable upon" in the Lease Agreement, it was held that it has reference to the "taxable person", i.e., the person who is liable to pay the tax. The tax that is levied on "service" may be collected either from the service provider or the recipient of the service. The person assessed to tax, who is primarily liable to pay the tax is, on the facts of this case, the lessor. In this context, Supreme Court also relied upon the judgment of Supreme Court in *Peekay Re-Rolling Mills (P) Ltd. v Assistant Commissioner and Another*, (2007) 4 SCC 30[1], for the well-known distinction between levy and collection of a tax. What is important to note from this judgment is that the expression "levy" would include "assessment", though it would not include "collection". This being the case, it is clear that the expression "primarily leviable upon the lessor" makes it clear that the lessor should be the person upon whom levy takes place - in the sense that "assessment" has to be of such person. "Levy", in all cases of indirect taxes, is never upon an individual - it is upon a specific aspect of what is sought to be

1 2007 (219) E.L.T. 3

taxed. In the case of a service tax, like the present, the activity of renting out immovable property is sought to be taxed. Therefore, when the expression "primarily leviable" is used in relation to a person and not an activity, it has reference to the assessee upon whom assessment is made under the Act. Thus construed, it is clear that, in the present case, the person liable to pay the tax, who is the assessee under the said Act, in all cases like the present, is only the service provider and not the recipient of the service. Therefore, while the lessor was actually liable to pay, in view of the letter written by the Government to bear the service tax, the Supreme Court refused to grant relief to the Government against the High Court's judgement.

1.5 Indirect taxes in India

The indirect tax basket consisted of central excise, customs, service tax and central sales tax levied by the Central Government and VAT, entry tax, luxury tax, entertainment tax, etc, levied by the States before the GST subsumed most of the levies.

1.5.1 *Excise Duty*

The first evidence of excise which has been reported was possibly during the times of the Mauryan Empire, sometime in the 4th Century BC. However, in British India, salt was the first commodity which suffered duty. More and more commodities were covered over a period of time with individual products having separate legislations. However, in 1944, all of them were consolidated into a single Act called the *Central Excises and Salt Act, 1944* which was made effective on 28th February, 1944. The Act extends to the whole of India.

At that time, the reason for introducing the consolidating Act was summarised in the following words as reproduced from Statement of Objects and Reasons (Vide Gazette of India, 1943, Part-V, page 243:

> *"The administration of internal commodity taxation in British India has grown up piecemeal over many years and has been considerably expanded during the last decade. Hitherto the introduction of a new central duty of excise has required the enactment of self-contained law and the preparation of a separate set of statutory rules. There are no less than 10 separate excise Acts (excise on kerosene being covered by a part of the Indian Finance Act, 1922) and 11 set of statutory rules; and there are also 5 Acts relating to salt, the duty on which is by a wide margin the oldest of our taxes on indigenous commodities. The taxes being closely akin to one another, the methods of collection follow the same general pattern, and many of the provisions of the various Acts are identical or closely similar; and this is the case also with many of the statutory rules. This agglomeration of statutes and regulations dealing with similar matters is neither convenient for the public nor conducive to well organized administration.*
>
> *It is accordingly proposed to consolidate in a single enactment all the laws relating to central duties of excise."*

The plural in "excises" clearly indicated that it was a consolidating Act. At that time around 11 products were in the excise net. Gradually, the levy grew to such an extent that in 1975, a residuary item number 68 was added to tax articles, not elsewhere included. In 1986, the *Central Excise Tariff Act, 1985* came into effect wherein the products were intelligibly classified into specific homogeneous chapters corresponding to the Harmonised System of Nomenclature, commonly called the HSN.

For national reasons, salt was never in the tax net and the same was deleted from the title w.e.f. 28th September, 1996. The Act became known as the *Central Excise Act, 1944*.

Consequent to introduction of GST regime with effect from 1st July, 2017, Central Excise Act, 1944 is made applicable only to petroleum products and tobacco products as included in entry 84 of the Union List of the Seventh Schedule to the Constitution as amended by the *Constitution (One Hundred and First Amendment) Act, 2016*.

1.5.2 *Customs Duty*

The first instance of Customs Duty being levied in British India date as far back as 1786 when the first revenue Board was formed by the British in Calcutta. Subsequently, a Trade Board was established in 1808 for the purpose of importing into and exporting goods from India. The first legislation on Customs was the Customs Duties Act which was passed in 1859 by which the provincial import duties were replaced by a uniform Tariff Act that was applicable to all the Indian territories. In the subsequent years, several changes were brought about in the Customs policies and various Acts were enacted. These were:

Legislation	**Year**
Sea Customs Act	1878
Indian Tariff Act	1894
Air Customs under the Indian Aircrafts Act	1911
Land Customs Act	1924
Aircraft Act, 1934	1934

The aforesaid laws, which were British legacy, essentially designed to protect the British interests only, continued even after independence till the Customs Act, 1962, repealing all the earlier enactments, was passed. The enactment of the *Customs Act, 1962*, thereby consolidated and amended these laws to suit the requirements of the country. Similarly, the then existing Tariff was replaced with the *Customs Tariff Act, 1975*. Customs legislations continue even after the introduction of GST.

1.5.3 *Service Tax*

'Service tax' was introduced in 1994 vide Chapter V of the Finance Act, 1994 (hereinafter referred to as the 'Act') under the residuary entry 97 of the

Union list enumerated in the Seventh Schedule to the Constitution. However, a Constitutional amendment vide *Constitutional (Eighty-Eighth Amendment) Act, 2003* a new Article – 268A was inserted providing for taxing 'services' to be levied by Union and collected and appropriated by the Union and the States. Entry No.92C was inserted in Seventh Schedule to the Constitution of India to provide for 'Taxes on Services'. However, the said amendment Act was not brought into force and residuary entry 97 remained the constitutional basis for service tax.

Initially, only 3 services viz, Telephone, General Insurance and Stock broking were brought within the ambit of Service Tax in 1994. The then finance minister (Dr. Manmohan Singh) in his budget speech that year said:

> *"There is no sound reason for exempting services from taxation … Therefore, I propose to make a modest effort in this direction by imposing a tax on services of telephones, non-life insurance and stock brokers".*

This Act has been amended every year since 1994 and till 1.7.2012 more than 119 services were taxed. From 1.7.2012, a negative list regime sought to tax all services except those in the negative list. This made the levy very comprehensive.

***All-India Federation of Tax Practitioners & Ors. v Union of India & Ors.* (2007) 7 SCC 527 at 536, 542**

In this case , Supreme Court while discussing the "reason for imposition of service tax", held that service tax is an indirect tax levied on certain services provided by certain categories of persons including companies, associations, firms, body of individuals, etc. Service sector contributes about 64% to the GDP. "Services" constitute a heterogeneous spectrum of economic activities. Services cover a wide range of activities such as management, banking, insurance, hospitality, consultancy, communication, administration, entertainment, research and development activities forming part of retailing sector. Service sector is occupying the centre stage of the Indian economy. It has become an industry by itself. In the contemporary world, development of service sector has become synonymous with the advancement of the economy. Economists hold the view that there is no distinction between the consumption of goods and consumption of services as both satisfy the human needs.

In the aforesaid case, Supreme Court further explained the concept of service tax and held that service tax is a value added tax ("VAT", for short) which in turn is a destination based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but on the consumer. That, service tax is an economic concept based on the principle of equivalence in a sense that consumption of goods and consumption of services are similar as they both satisfy human needs. Today with the technological advancement there is a very thin line which divides a "sale" from "service". That, applying the principle of equivalence, 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. It is this principle of equivalence which is inbuilt into the concept of service tax under the Finance Act, 1994. That service tax is, therefore, a tax on an activity. That, service tax is a value added tax. The value addition is on account of the activity which provides value addition, for example, an activity undertaken by a chartered accountant or a broker is an activity undertaken by him based on his performance and skill. This is from the point of view of the professional. However, from the point of view of his client, the chartered accountant/broker is his service provider. The value addition comes in on account of the activity undertaken by the professional like tax planning, advising, consultation, etc. It gives value addition to the goods manufactured or produced or sold. Thus, service tax is imposed every time service is rendered to the customer/client. Thus, the taxable event is each exercise/activity undertaken by the service provider and each time service tax gets attracted.

Consequent to the amendment of the Constitution vide Constitution (One Hundred and First Amendment) Act, 2016, Goods and Services Tax (GST) was introduced with effect from 1st July, 2017. Accordingly, GST laws were enacted viz., Central Goods and Services Tax Act, 2017 (CGST Act, 2017) along with State/Union Territory Goods and Services Tax Act, 2017, w.e.f. 1st July, 2017 wherein all erstwhile indirect taxes viz., Central Excise and Service Tax were subsumed alongwith the State value added taxes, entertainment taxes, luxury taxes, etc.

Accordingly, in terms of Section 173 of CGST Act, 2017, the provisions of Chapter V of the Finance Act, 1994 have been omitted with effect from 1st July, 2017.

1.6 Goods and Services Tax (GST) regime w.e.f. 1st July, 2017

Goods and Services Tax (GST) is a landmark tax reform which replaces various indirect taxes into one comprehensive tax levied on supply of goods and services in India.

With a view to streamline and consolidate the indirect tax regime in India, the Central Government proposed to introduce a comprehensive and a common indirect tax in the form of Goods and Services Tax (GST). With effect from 1st July, 2017, the entire scheme of indirect taxes in India has undergone transformation upon introduction of GST laws, i.e., Central Goods and Services Tax Act, 2017 along with State/Union Territory Goods and Services Tax Act, 2017.

The Constitution of India was amended vide 101st Constitutional Amendment Act, 2016, with effect from 16th September, 2016, in order to introduce levy of Goods and Services Tax (GST) on supply of goods and services. It is relevant to note that as regards introduction of GST, the objective of the Parliament was indicated in the "Statement of objects and reasons" enclosed to the Constitution (122nd Amendment) Bill, 2014 wherein *inter alia* the following objects and reasons were stated:

(a) In order to introduce the GST by conferring concurrent taxing powers to Union as well as the States/Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both.

(b) GST shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services.

(c) The proposed Central and State GST will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

Note: Please refer to discussion in Chapter 3 regarding the Constitutional Amendment made vide 101st Constitutional Amendment Act, 2016.

Accordingly, GST is levied with the concurrent or simultaneous jurisdiction of the Centre and the States and hence GST has been introduced as a dual tax, wherein both the Union (CGST) as well as States (SGST) levy and collect tax on the same transaction of supply within a State. It would be Union Territory GST (UTGST) instead of SGST where the supply is within a Union Territory. Inter-State supply as well as supplies in the course of import of goods and services would fall within the purview of Integrated GST (IGST), which would be levied and collected by the Union and be distributed amongst the States.

The Parliament passed the Central Goods and Services Tax Act, 2017 [referred to as 'CGST Act, 2017], Integrated Goods and Services Tax Act, 2017 [referred to as 'IGST Act, 2017], and Union Territory Goods and Services Tax Act, 2017 [referred to as 'UTGST Act, 2017], on 12th April, 2017. These statutes were also given presidential assent on the same day.

Notification No. 9/2017-C.T., dated 28.6.2017 appointed the 1st day of July, 2017 as the effective date for introduction of GST by the Central Government. Similarly, each of the State Legislatures have also enacted State GST laws and have become effective from 1st July, 2017.

The introduction of the Goods and Services Tax (GST) is a very significant step in the field of indirect tax reforms in India wherein a large number of Central and State indirect taxes have been subsumed under GST. GST will not only create 'One Tax' for the entire nation, but it will also mitigate ill effects of cascading or double taxation in a major way and pave the way for a common national market. It appears to us that the use of the words "concurrent powers of taxation" actually does not mean the Concurrent List as appearing in the Constitution as that would mean the Centre has precedence over the States in case of overlapping jurisdiction. The correct phrase would be "simultaneous powers of taxation" where both the Centre and the States have equal power and one is not subject to the other. This comment of ours in the previous edition has met with approval by the Supreme Court in *UOI v VKC Footsteps* (2022) 2 SCC 603, as under:

> *"52. Article 246-A has brought about several changes in the constitutional scheme:*
>
> *52.1 Firstly, Article 246-A defines the source of power as well as the field of legislation (with respect to goods and services tax) obviating the need to travel to the Seventh Schedule.*
>
> *52.2 Secondly, the provisions of Article 246-A are available both to Parliament and the State Legislatures, save and except for the exclusive power of Parliament to enact GST legislation where the supply of goods or services takes place in the course of inter-State trade or commerce.*
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> *52.3 Thirdly, Article 246-A embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence. Concurrence, which operated within the fold of the Concurrent List, was regulated by Article 254."*

1.7 GST - Historical background

[1]In India, the conceptual idea of GST was introduced in the year 2000 by the Government headed by the then Prime Minister, Mr. Atal Bihari Vajpayee. Accordingly, a Committee was set up to design a GST model for the country. In 2003, the Central Government formed a taskforce on Fiscal Responsibility and Budget Management, which in 2004 recommended GST to replace the existing tax regime by introducing a comprehensive tax on all goods and services replacing Central level VAT and State level VATs. It recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set off in all stages of the value chain.

Thereafter, the movement towards GST was taken forward by the then Finance Minister, by making an announcement during the Central budget of 2007–2008, that the GST would be introduced from April 1, 2010 and that the Empowered Committee (EC) of State Finance Ministers, on his request, would work with the Central Government to prepare a road map for introduction of GST in India. The detailed view of the Empowered Committee on the structure of GST was presented in terms of the First Discussion Paper, along with an Annexure on Frequently Asked Questions and Answers on GST, for discussions with industry, trade, agriculture and people at large. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spelt out features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.

The discussion paper makes references to the introduction of VAT at the Centre and States and indicates where this system needs to be improved and how the same can be brought about through GST. The paper then describes the process of preparation for GST and finally discusses the comprehensive structure of the GST model.

1 http://gstcouncil.gov.in/brief-history-gst

The 115th Constitutional Amendment Bill, 2011 was put before the Parliament by the Finance Minister on 22nd March, 2011. However, due to lack of political consensus, the Bill lapsed after the dissolution of 15th Lok Sabha in August 2013. This Constitutional Amendment Bill, 2011 did not provide any power to the States and Centre to levy taxes jointly. On the contrary, the Union and State Lists create a demarcation of the subjects that could be legislated upon by the Centre and the States. In such a scenario, the introduction of the dual GST would have been impossible.

With no head way made, on 19th December, 2014, The Constitution (122nd Amendment) Bill, 2014 was introduced in the Lok Sabha and was passed by Lok Sabha in May 2015. This Bill was taken up in Rajya Sabha and was referred to the Joint Committee of the Rajya Sabha and the Lok Sabha on 14th May, 2015. The Select Committee submitted its report on 22nd July, 2015. Thereafter, the Constitutional Amendment Bill was moved on 1st August, 2016 based on political consensus. The Bill was passed by the Rajya Sabha on 3rd August, 2016 and by the Lok Sabha on 8th August, 2016. After ratification by required number of State legislatures and assent of the President, the Constitutional amendment was notified as Constitution (101st Amendment) Act, 2016 on 8th September, 2016. The Constitutional amendment paved way for introduction of Goods and Services Tax in India.

It is relevant to note that the GST mechanism introduced in India is largely based upon the British VAT system. It is interesting to note that a common VAT system is compulsory for member States of the European Union. The EU's VAT system is imposed by a series of European Union directives. Member States have negotiated VAT exemption or variable rates for regions or territories.

Under the EU system of VAT, where a person carrying on an economic activity supplies goods and services to another person, and the value of the supplies passes financial limits, the supplier is required to register with the local taxation authorities and charge its customers, and account to the local taxation authority for VAT (although the price may be inclusive of VAT, so VAT is not paid in addition to the agreed price, or exclusive of VAT, so VAT is payable on top of the agreed price). In the UK, Customs and Excise is responsible for administering VAT.

1.7.1 *Levy of GST*

In the context of levy of GST, it is relevant to note that the erstwhile system of indirect tax which was prevalent for decades in India levied tax on the activities of manufacture (for levy of excise duty), sale of goods (for levy of VAT) and provision of service (for levy of service tax), under GST regime introduced w.e.f. 1st July, 2017, the levy of GST is on supply of goods or services.

Under CGST Act, 2017, Section 9 deals with the levy and collection of CGST. In terms of this provision, Central GST (CGST) will be levied on all intra-State supplies of goods or services or both at the rates prescribed by the Government. It is relevant to note that State GST laws are a replica of the CGST provisions (save for some provisions relating to savings, etc) and the discussion on provisions of CGST Act, 2017 would equally be applicable to the SGST provisions also.

Similarly, Section 5 of the IGST Act, 2017 deals with the levy and collection of taxes where the supply is in the course of inter-State supply of goods or services or both. The said provision also provides that integrated tax on goods imported into India will be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined thereunder at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.

The provisions relating to levy could be summarized as below :

Levy is on	Supply of goods and/or services or both, other than on the supply of alcoholic liquor for human consumption
Rate	To be notified - but shall not exceed 20% each of CGST and SGST
Value	Value determined in terms of Section 15 of CGST Act
Dual tax of CGST+SGST would apply	On intra-State supply of goods and/or Services
Integrated Tax (IGST) would apply	On inter-State supply of goods and/or Services at maximum rate of 40%.
How to determine place of supply	Refer to Sections 7 to 13 of IGST Act

1.7.2 *Meaning of phrases 'goods' and 'services'*

Goods: The term 'Goods' has been defined in Section 2(52) of CGST Act, 2017 as every kind of movable property but

Excludes	**Includes**
money and securities	actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

Service: The term 'Services' has been defined in Section 2(102) of CGST Act, 2017 to mean anything other than the following :

(a) goods,

(b) money and

(c) securities

but service includes the following :

(a) activities relating to the use of money or

(b) conversion of money by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination where a separate consideration is charged for the above.

1.7.3 *Concept of Supply under GST*

Section 7 of CGST Act, 2017 defines the term 'supply' as under:

Section 7: Scope of supply.

(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa*, for cash, deferred payment or other valuable consideration.*

Explanation: For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se *shall be deemed to take place from one such person to another;*

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration.

(d) omitted.

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1).—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

Note: As amended by CGST (Amendment) Act, 2018 with retrospective effect from 1st July, 2017. Notified to be effective from retrospective date vide Notification No. 2/2019-C.T., dated 29-1-2019 which came into effect from 1-2-2019.

The scope of the term "supply" as detailed in Section 7 of the CGST Act, 2017 could be summarized as below:

Nature of transaction	**Conditions to be fulfilled to qualify as supply**	
	Consideration	**In the course of or furtherance of business**
All forms of supply such as sale, transfer, barter exchange, license, rental lease and disposal	Yes	Yes
Import of services	Yes	Not necessary
Activities listed in Sch. I	Not required	Yes
Activities in Schedule II (lists out what is goods and what is service) Refer to insertion of sub-section (1A) to Section 7 by CGST (Amendment) Act, 2018, w.e.f. 1st July, 2017 (as notified w.e.f. 1.2.2019 vide Notification No. 2/2019-C.T., dated 29.1.2019.	To be used only for classification	Yes

Section 7(2) provides that the following activities shall be treated neither as a supply of goods nor a supply of services:

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

It is clear from the provision of Section 7(2) that the activities listed in Schedule III are not considered to be supplies for the purpose of levy of GST.

Sub-section (3) provides that subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

Accordingly, Schedule III lists out transactions or activities which are neither goods nor services.

1.7.4 *Intra-State supply vs Inter-State supplies*

Considering the nature of GST levy and federal structure of India, the question as to whether a supply would be inter-State or intra State would arise.

The provisions of Sections 7 & 8 of the IGST Act, 2017 provide for the manner of determining the same. It is interesting to note that the place of supply as detailed in the IGST provisions determine whether a supply would attract the levy of IGST or CGST plus SGST/UTGST

These provisions are summarised below:

Nature of transaction	Nature of supply	Provision under IGST Act
Import of goods		
Import of goods into India (till the goods cross customs frontiers) Customs frontiers means area of customs port or airport or land customs station where imported goods are assessed for levy and collection of customs duties	Supply in the course of Inter-State trade or commerce. There is no specific provision for exports.	Section 7(2)
Export of goods outside India		
Supply of goods within India		
Location of supplier and place of supply are in two different States or different Union Territories or one State and a Union territory	Inter-State supply	Section 7(3)
Location of supplier and place of supply are in same State or same Union territory	Intra-State supply	Section 8(1)
Supplier is located in India but place of supply is outside India	Inter-State supply	Section 7(5)(a)
Supply to or by an SEZ unit or SEZ developer	Inter-State supply	Section 7(5)(b)
Supply in the taxable territory, not being an intra-State supply and not covered elsewhere in this section	Inter-State supply	Section 7(5)(c)

1.7.5 *Composite Supply and Mixed Supply*

The terms 'composite supply' and 'mixed supply' have been defined in the CGST Act, 2017 as below:

1.7.5.1 *Composite Supply*

As per Section 2(30), when the supply made by a taxable person consists of two or more taxable supplies of goods, services or both, (or any combination thereof), that would be a composite supply. The goods or services must be naturally bundled and supplied in conjunction with each other in the ordinary course of business. It is also stated that one of the supplies so made would be the principal supply.

The illustration provided in the section would give clarity.

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

1.7.5.2 *Mixed Supply*

Section 2(74) defines "mixed supply" and states that where a taxable person supplies two or more individual goods or services, or any combination thereof, in conjunction with each other and for a single price, it would be a mixed supply where it does not constitute a composite supply.

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

1.7.5.3 *Manner of determination of tax liability*

Section 8 of CGST Act, 2017 provides the manner of determination of tax liability on composite supply and mixed supply.

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of the principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

1.8 Economic concepts of taxation

Adam Smith, 18th Century Economist and Philosopher, known as the 'father of modern economics' in his magnum opus 'The Wealth of Nations' has propounded certain canons of taxation[1] which are:

(1) The canon of equality or ability: Considered a very important canon of taxation, it proposes that people should pay taxes in proportion to their incomes. This principle points to progressive taxation. It states that the rate or percentage of taxation should increase and decrease in proportion with the income. To quote Adam Smith:

"The subject of every state ought to contribute towards the support of the government as early as possible in proportion to their respective abilities that is in proportion to the revenue which they respectively enjoy under the protection of the State".

(2) The canon of certainty: The principle of this canon is that the amount which a taxpayer is called upon to pay during a financial year must be certain. The advantage being that where the taxpayer is definite and certain about the amount of the tax and its time of payment,

1 Source: economicsconcepts.com

adjustments can be made in his income to his expenditure. The State also stands to benefit inasmuch as planning of finances is concerned. Smith also states that an element of arbitrariness in taxation would encourage the misuse of power and corruption. He says:

"The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid all ought to be clear and plain to the contributor and to every other person".

(3) Canon of convenience: This canon states that a tax should be levied at the time and in a manner which is most convenient for the assessee to pay it. For example, taxes should be collected at a time when the taxpayer is expected to receive income. The manner of payment of tax should also be convenient such as by cheques. In the Words of Adam Smith:

"Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it".

It appears, however, that the present day taxation system is based on the convenience of the collector and not the payer as is evident from the deeming fictions and deductions at sources.

(4) Canon of economy: The canon of economy implies that the expenses incurred by the Government for the collection of taxes should not be excessive and must be as low as possible, failing which the tax would be considered uneconomical. A tax would also be considered uneconomical where the growth of capital is hindered or the same is migrated to other countries. In the words of Adam Smith:

"Every tax is to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the State".

Some of the other Canons/Principles of Taxation formulated by various authors are:

A tax, when levied ought to produce sufficient revenue to the Government. The levy of only a few taxes producing sufficient revenue to the Government should be preferred over a large number of small taxes producing inadequate revenue.

(a) A tax system should be elastic enough so that the Government is able to increase its financial resources when needed without incurring any additional costs.

(b) A tax system should be fairly simple, plain and intelligible to the taxpayer. A complicated system would lead to oppression and corruption.

(d) A tax system should be diverse and should comprise of direct and indirect taxes. Variety in taxation is desirable from the point of view of equity, yield and stability.

Indirect taxes are essentially consumption based taxes that are levied on goods and services.

1.9 Avoidance of double taxation

The avoidance of imposing tax twice on the same article/service is a well -established principle in all tax laws.

***Union of India v Tata Iron and Steel Co. Ltd.,* 1977 (1) ELT J 61 (SC)**

The Supreme Court in the context of levy of excise duty under Section 3 of *Central Excises and Salt Act, 1944*, held that there cannot be double taxation on the same article. The counsel for the Revenue gave the example of excise duty on motor cars, in spite of the fact that there was duty on tyres and duty on metal sheets. However, Supreme Court held that the analogy is misplaced and in such cases the duty is on the end product of motor car as a whole. The duty on tyres and the duty on metal sheets do not enter the area of duty on motor car.

***Premier Tyres Ltd. v CCE, Cochin,* 1987 (28) ELT 58 (SC)**

It was held that there is no general principle that there can be no 'double taxation' in the levy of Excise Duty. The Court may lean in favour of a construction which will avoid double taxation.

***Union of India v J.G. Glass Industries Ltd.,* 1998 (97) ELT 5 (SC)**

In this case, it was held that the Revenue cannot be permitted to levy duty twice on the same item when there is no warrant thereof in the relevant provisions of the Act.

***M/s Jain Bros, and Others v The Union of India and Others,* AIR 1970 SC 778**

A Constitution Bench of Supreme Court in unmistakable terms declared the position to be as hereunder:

> *"It is not disputed that there can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted they cannot be so interpreted as to tax the subject twice over to the same tax (vide Channell, J., in Stevens v The Durban-Roddepoort Gold Mining Co. Ltd.)"*

***Sri Krishna Das v Town Area Committee, Chirgaon,* [1990] 3 SCC 645**

In this case, Supreme Court reiterated the same position to hold that the expression "double taxation" is often used in different senses, namely, in its strict legal sense of direct double taxation and in its popular sense of indirect double taxation. Double taxation in the strict legal sense means taxing the same property or subject matter twice, for the same purpose, for the same period and in the same territory. To constitute double taxation, the two or more taxes must have been

(1) levied on the same property or subject matter,

(2) by the same Government or authority,

(3) during the same taxing period, and

(4) for the same purpose.

Further, Supreme Court (quoting 'Cooley') held that "there is no double taxation, strictly speaking, "where (a) the taxes are imposed by different States, (b) one of the impositions is not a tax, (c) one tax is against property and the other is not a property tax, or (d) the double taxation is indirect rather than direct.

***Arvinder Singh etc. v State of Punjab and Another,* AIR 1979 SC 321**

The Supreme Court dealt with the issue of 'double taxation' and held as follows:

> *"A feeble plea that the tax is bad because of the vice of double taxation and is unreasonable because there are heavy prior levies was also voiced. Some of these contentions hardly merit consideration, but have been mentioned out of courtesy to counsel. The last one, for instance, deserves the least attention. There is nothing in Art.265 of the Constitution from which one can spin out the constitutional vice called double taxation. (Bad economics may be good law and* vice versa*). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in Western India Theatres, AIR 1954 Bom, 261. Some undeserving contentions die hard, rather survive alter death. The only epitaph we may inscribe is: Rest in peace and don't be re-born! If on the same subject-matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist."*

***Municipal Council Kota v Delhi Cloth & General Mills Co. Ltd.* (2001) 3 SCC 654**

Hon'ble Supreme Court held that the double taxation is not bad unless the Constitution forbids it expressly. In the absence of any impediment specifically created in the Constitution or the legislative enactment itself, the desirability or need otherwise to avoid such levies has been held to pertain to areas of political wisdom of policy making and adjusting of public finances of the State, and not for the law Courts, though Courts would, unless there is clear and specific mandate of law in favour of such multiple levies more than once, in construing general statutory provisions, lean in favour of an interpretation to avoid taxation.

Also, *the following passage of the speech of Lord Scott of Foscote in R. (Edison) v Central Valuation Officer* 4 [2003] 4 All ER 209, 243, HL *is instructive:*

> *"There are no doubt other rights whose fundamental importance may justify similar reverence but I need not try and identify them for it is surely clear that the so-called presumption against double taxation or double recovery does not derive from a fundamental right of that character. There is no fundamental right*