



GST IN INDIA – AN INTRODUCTION






LEARNING OUTCOMES

After studying this Chapter, you will be able to:

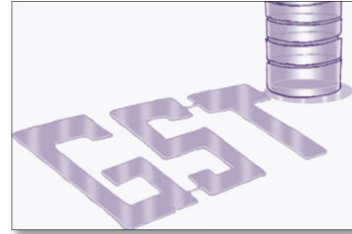
- ❑ explain the concept of GST and the need for GST in India.
- ❑ discuss the framework of GST as introduced in India and understand the various benefits to be accrued from implementation of GST.
- ❑ explain the constitutional provisions pertaining to levy of various taxes
- ❑ appreciate the need for constitutional amendment paving way for GST.
- ❑ discuss the significant amendments made by Constitution (101st Amendment) Act, 2016.



1. GENESIS OF GST IN INDIA

- ❖ It has now been more than a decade since the idea of national Goods and Services Tax (GST) was mooted by Kelkar Task Force in 2004. The Task Force strongly recommended fully integrated 'GST' on national basis.
 
- ❖ Subsequently, the then Union Finance Minister, Shri P. Chidambaram, while presenting the Central Budget (2007-2008), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty.
- ❖ The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became **Constitution (101st Amendment) Act, 2016**, which paved the way for introduction of GST in India.
 
- ❖ In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted. The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws.
 

- ❖ GST is a path breaking indirect tax reform which will create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.
- ❖ France was the first country to implement GST in the year 1954. Within 62 years of its advent, about 160 countries across the world have adopted GST because this tax has the capacity to raise revenue in the most transparent and neutral manner.



2. CONCEPT OF GST



Before we proceed with the finer nuances of Indian GST, let us first understand the basic concept of GST.

- 👤 GST is a value added tax levied on manufacture, sale and consumption of goods and services. **VALUE ADDED TAX**
- 👤 GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain. **CONTINUOUS CHAIN OF TAX CREDITS**
- 👤 The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages. **BURDEN BORNE BY FINAL CONSUMER**



Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

NO CASCADING OF TAXES



3. NEED FOR GST IN INDIA

Deficiencies in the existing value added taxation

has led to

GST

A cure for ills of existing indirect tax regime



Deficiencies in the value added taxation system

In the earlier indirect tax regime, a manufacturer of excisable goods charged excise duty and value added tax (VAT) on intra-State sale of goods. However, the VAT dealer on his subsequent intra-State sale of goods charged VAT (as per prevalent VAT rate as applicable in the respective State) on value comprising of (basic value + excise duty charged by manufacturer + profit by dealer). Further, in respect of tax on services, service tax was payable on all 'services' other than the Negative list of services or otherwise exempted.

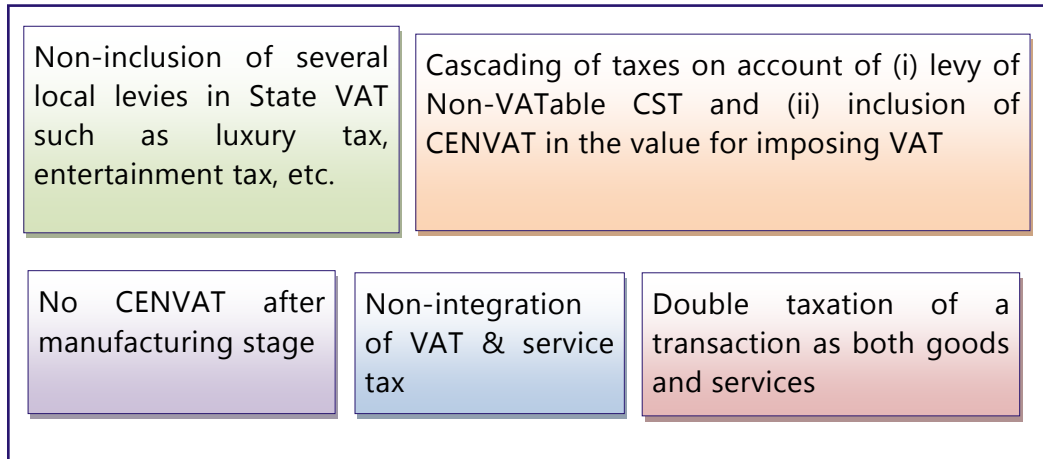
The earlier indirect tax framework in India suffered from various shortcomings. Under the earlier indirect tax structure, the various indirect taxes being levied were not necessarily mutually exclusive.

To illustrate, when the goods were manufactured and sold, both central excise duty (CENVAT) and State-Level VAT were levied. Though CENVAT and State-Level VAT were essentially value added taxes, set off of one against the credit of another was not possible as CENVAT was a central levy and State-Level VAT was a State levy.

Moreover, CENVAT was applicable only at manufacturing level and not at distribution levels. The erstwhile sales tax regime in India was a combination of origin based (Central Sales Tax) and destination based multipoint system of taxation (State-Level VAT).

Service tax was also a value added tax and credit across the service tax and the central excise duty was integrated at the central level.

- Despite the introduction of the principle of taxation of value added in India - at the Central level in the form of CENVAT and at the State level in the form of State VAT - its application remained piecemeal and fragmented on account of the following reasons:



GST - A cure for ills of existing indirect tax regime



- A comprehensive tax structure covering both goods and services viz. Goods and Service Tax (GST) addresses these problems. Simultaneous introduction of GST at both Centre and State levels has integrated taxes on goods and services for the



purpose of set-off relief and ensures that both the cascading effects of CENVAT and service tax are removed and a continuous chain of set-off from the original producer's point/ service provider's point upto the retailer's level/ consumer's level is established.

- In the GST regime, the major indirect taxes have been subsumed in the ambit of GST. The erstwhile concepts of manufacture or sale of goods or rendering of services are no longer applicable since the tax is now levied on "Supply of Goods and/or services".

4. FRAMEWORK OF GST AS INTRODUCED IN INDIA



I. Dual GST:

- India has adopted a **Dual GST model** in view of the federal structure of the country. Centre and States will simultaneously levy GST on taxable supply of goods or services or both which, takes place within a State or Union Territory. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the State of Jammu and Kashmir.

Dual GST




II. CGST/SGST/UTGST/IGST


-  GST is a destination based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Service Tax (CGST) - levied and collected by Central Government, State Goods and Service Tax (SGST) - levied and collected by State Governments/Union Territories with State Legislatures and Union Territory Goods and Service Tax (UTGST) - levied and collected by Union Territories without State Legislatures, on intra-State supplies of taxable goods and/or services. **CGST/SGST/UTGST/IGST**
-  Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Service Tax (IGST). IGST is approximately the sum total of CGST and SGST/UTGST and is levied by Centre on all inter-State supplies.

III. Legislative Framework



-  There is single legislation – CGST Act, 2017 - for levying CGST. Similarly, Union Territories without State legislatures [Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh] are governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [Delhi and Puducherry] have their own GST legislation for levying SGST. **Legislative Framework**
-  Though there are multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification and valuation of goods and services, procedure for collection and levy of tax and the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

IV. Classification of goods and services



-  HSN (Harmonised System of Nomenclature) code is used for classifying the goods under the GST. **Classification of goods and services**

-  A new **Scheme of Classification of Services** has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff). Chapters referred are the Chapters of the First Schedule to the Customs Tariff Act, 1975.


V. Registration

-  Every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds ₹ 20 lakh during a FY. **Registration**
-  However, the limit of ₹ 20 lakh will be reduced to ₹ 10 lakh if the person is carrying out business in the Special Category States – [11 Special Category States are specified in Article 279A(4)(g) of the Constitution] - States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.


VI. Composition Scheme

-  In GST regime, tax (i.e. CGST and SGST/UTGST for intra-State supplies and IGST for inter-State supplies) is payable by every taxable person and in this regard provisions have been prescribed in the law. **Composition Scheme**
-  However, for providing relief to small businesses making intra-State supplies, a simpler method of paying taxes and accounting thereof is also prescribed, known as Composition Levy.

VII. Exemptions

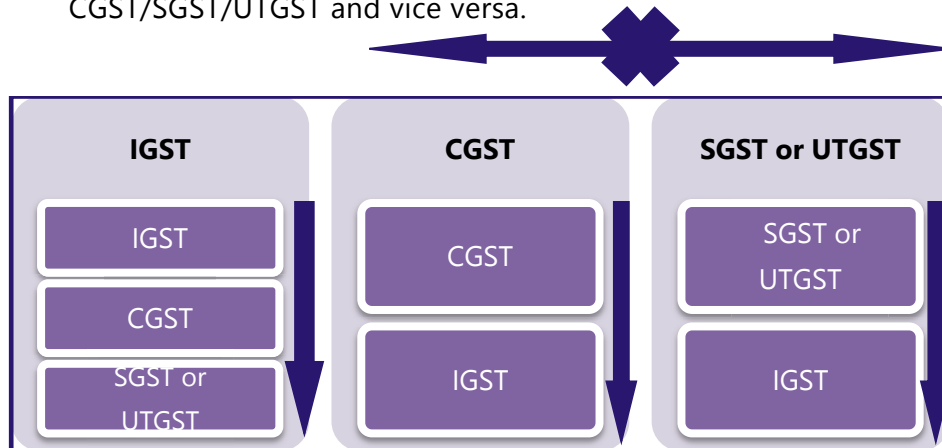
-  Apart from providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on essential goods and/or services. **Exemptions**

VIII. Manner of utilization of ITC

-  Input Tax Credit (ITC) of CGST and SGST/UTGST is available throughout the supply chain, but cross utilization of credit of CGST and SGST/UTGST is not possible, i.e. CGST credit **Manner of utilisation of ITC**

cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST.

- However, cross utilization is allowed between CGST/SGST/UTGST and IGST, i.e. credit of IGST can be utilized for the payment of CGST/SGST/UTGST and vice versa.



IX. Seamless flow of credit

- Since GST is a destination based consumption tax, revenue of SGST ordinarily accrues to the consuming States. **Seamless flow of credit**
The inter-State supplier in the exporting State is allowed to set off the available credit of IGST, CGST and SGST/UTGST (in that order) against the IGST payable on inter-State supply made by him.
- The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchase made by him. Thus, unlike the earlier scenario where the credit chain used to break in case of inter-State sales on account of non-VATable CST, under GST regime there is a seamless credit flow in case of inter-State supplies too.
- The revenue of inter-State sale does not accrue to the exporting State and the exporting State transfers to the Centre the credit of SGST/UTGST used in payment of IGST.
- The Centre transfers to the importing State the credit of IGST used in payment of SGST/UTGST. Thus, the inter- State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre.

- ✎ A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT Infrastructure.

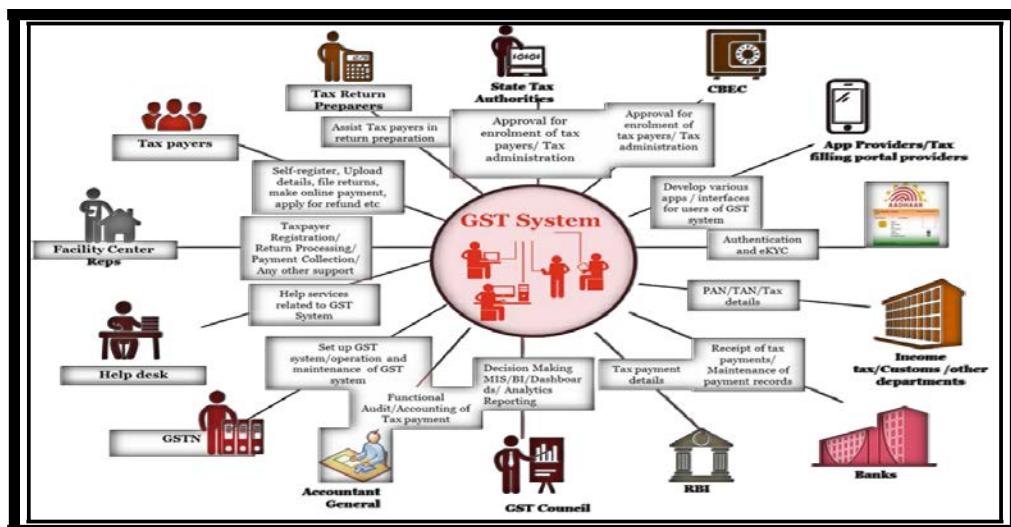
X. GST Common Portal

- ✎ Resultantly, Common GST Electronic Portal – www.gst.gov.in – a website managed by Goods and Services Network (GSTN) [a company incorporated under the provisions of section 8 of the Companies Act, 2013] has been set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.
- ✎ The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal is one single common portal for all GST related services.
- ✎ A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities. **GST Common Portal**
- ✎ Primarily, GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.
- ✎ The functions of the GSTN include:
 - ✔ facilitating registration;
 - ✔ forwarding the returns to Central and State authorities;
 - ✔ computation and settlement of IGST;
 - ✔ matching of tax payment details with banking network;
 - ✔ providing various MIS reports to the Central and the State Governments based on the taxpayer return information;
 - ✔ providing analysis of taxpayers' profile; and running the matching engine for matching, reversal and reclaim of input tax credit.



XI. GSPs/ASPs

- ✎ GSTN has selected certain IT, ITes and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs develop applications to be used by taxpayers for interacting with the GSTN. **GSPs/ASPs**
- ✎ They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services.
- ✎ They customize products that address the needs of different segment of users. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.



XII. Compensation Cess

- ✎ A GST Compensation Cess at specified rate has been imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies.

Compensation Cess

XIII. GST – A tax on goods and services

GST is levied on all goods and services, except alcoholic liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas.

- ✎ **Alcoholic liquor for human consumption:** is outside the realm of GST. The

manufacture/production of alcoholic liquor continues to be subjected to **State excise duty** and inter-State/intra-State sale of the same is subject to **VAT/CST** respectively.


- ✎ **Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

Till such date, **central excise duty** continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to **VAT/CST** respectively.

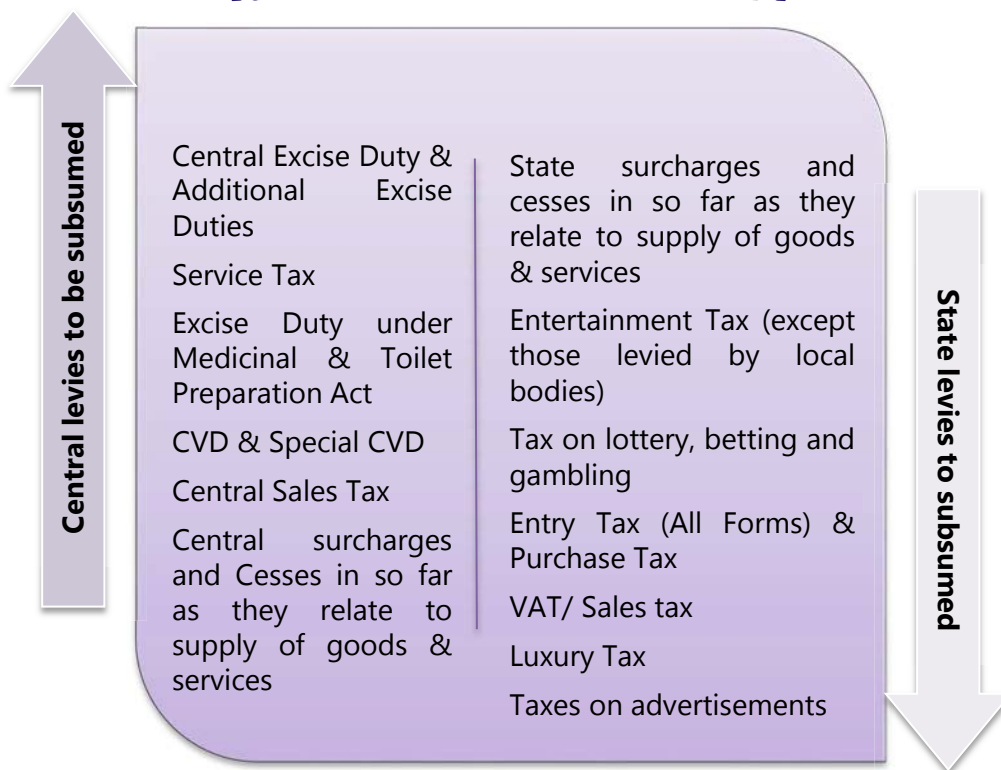
- ✎ **Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco



products manufactured in India. Resultantly, **tobacco is subject to GST as well as central excise duty.**

 Further, **real estate sector** has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

Taxes to be subsumed in GST



Intra-State Supply

ILLUSTRATION

In case of local supply of goods/ services, the supplier would charge dual GST i.e., CGST and SGST at specified rates on the supply.

I. Supply of goods/ services by A to B

	Amount (in ₹)
Value charged for supply of goods/ services	10,000

Add: CGST @ 9%	900
Add: SGST @ 9%	<u>900</u>
Total price charged by A from B for local supply of goods/ services	<u>11,800</u>

The CGST & SGST charged on B for supply of goods/services will be remitted by A to the appropriate account of the Central and State Government respectively.

A is the first stage supplier of goods/services and hence, does not have credit of CGST, SGST or IGST.

II. Supply of goods/services by B to C – Value addition @ 20%

B will avail credit of CGST and SGST paid by him on the purchase of goods/ services and will utilise such credit for being set off against the CGST and SGST payable on the supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 10,000 x 120%)	12,000
Add: CGST @ 9%	1080
Add: SGST @ 9%	<u>1080</u>
Total price charged by B from C for local supply of goods/ services	<u>14160</u>

Computation of CGST, SGST payable by B to Government

	Amount (in ₹)
CGST payable	1080
Less: Credit of CGST	<u>900</u>
CGST payable to Central Government	<u>180</u>

SGST payable	1080
Less: Credit of SGST	<u>900</u>
SGST payable to State Government	<u>180</u>

Note: Rates of CGST and SGST have been assumed to be 9% each for the sake of simplicity.

Statement of revenue earned by Central and State Government

Transaction	Revenue to Central Government (₹)	Revenue to State Government (₹)
Supply of goods/services by A to B	900	900
Supply of goods/services by B to C	180	180
Total	1080	1080

Inter-State Supply

ILLUSTRATION

In case of inter-State supply of goods/ services, the supplier would charge IGST at specified rates on the supply.

I. Supply of goods/services by X of State 1 to A of State 1

	Amount (in ₹)
Value charged for supply of goods/services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	<u>900</u>
Total price charged by X from A for intra-State supply of goods/services	<u>11,800</u>

X is the first stage supplier of goods/services and hence, does not have any credit of CGST, SGST or IGST.

II. Supply of goods/services by A of State 1 to B of State 2 – Value addition @ 20%

	Amount (in ₹)
Value charged for supply of goods/services (₹ 10,000 x 120%)	12,000
Add: IGST @ 18%	<u>2,160</u>
Total price charged by A from B for inter-State supply of goods/services	<u>14,160</u>

Computation of IGST payable to Government

	Amount (in ₹)
IGST payable	2,160
Less: Credit of CGST	900
Less: Credit of SGST	<u>900</u>
IGST payable to Central Government	<u>360</u>

The IGST charged on B of State 2 for supply of goods/services will be remitted by A of State 1 to the appropriate account of the Central Government. State 1 (Exporting State) will transfer SGST credit of ₹ 900 utilised in the payment of IGST to the Central Government.

III. Supply of goods/services by B of State 2 to C of State 2 – Value addition @ 20%

B will avail credit of IGST paid by him on the purchase of goods/services and will utilise such credit for being set off against the CGST and SGST payable on the local supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 12,000 x 120%)	14,400

Add: CGST @ 9%	1,296
Add: SGST @ 9%	<u>1,296</u>
Total price charged by B from C for local supply of goods/services	<u>16,992</u>

Computation of CGST, SGST payable to Government

	Amount (in ₹)
CGST payable	1,296
Less: Credit of IGST	<u>1,296</u>
CGST payable to Central Government	<u>Nil</u>
SGST payable	1,296
Less: Credit of IGST (₹ 2,160 - ₹ 1,296)	<u>864</u>
SGST payable to State Government	<u>432</u>

Central Government will transfer IGST credit of ₹ 864 utilised in the payment of SGST to State 2 (Importing State).

Note: Rates of CGST, SGST and IGST have been assumed to be 9%, 9% and 18% respectively for the sake of simplicity.

Statement of revenue earned by Central and State Governments

Transaction	Revenue to Central Government (₹)	Revenue to Government of State 1 (₹)	Revenue to Government of State 2 (₹)
Supply of goods/services by X to A	900	900	
Supply of goods/services by A to	360		

B			
Transfer by State 1 to Centre	900	(900)	
Supply of goods/services by B to C			432
Transfer by Centre to State 2	(864)		864
Total	1,296	Nil	1,296



5. BENEFITS OF GST

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

The significant benefits of GST are discussed hereunder:



Creation of unified national market:

GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.



Mitigation of ill effects of cascading: By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.



Elimination of multiple taxes and double taxation: GST has subsumed majority of existing indirect tax levies both at Central and State level into one tax i.e., GST which is leviable uniformly on goods and services. This will make



doing business easier and will also tackle the highly disputed issues relating to double taxation of a transaction as both goods and services.

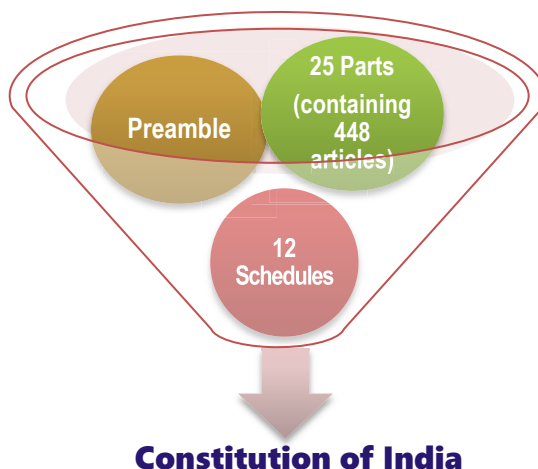
- Boost to 'Make in India' initiative:** GST will give a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market.
- Buoyancy to the Government Revenue:** GST is expected to bring buoyancy to the Government Revenue by widening the tax base and improving the taxpayer compliance.



6. CONSTITUTIONAL PROVISIONS

India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.

The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules.



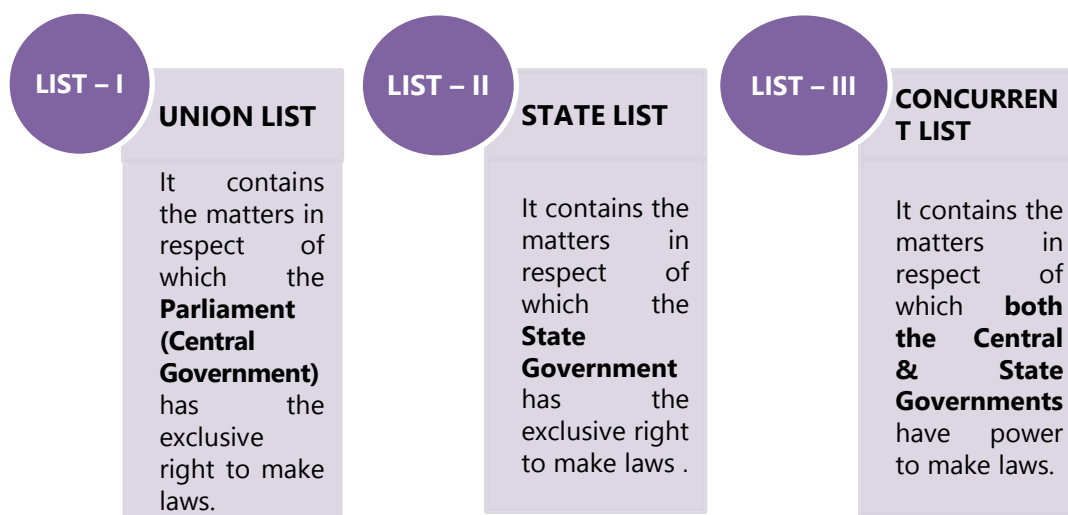
Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called *ultra vires* the Constitution and is illegal and void.

Thus, a study of the basic provisions of the Constitution is essential for understanding the genesis of the various taxes being imposed in India. The significant provisions of the Constitution relating to taxation are:

- I. **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that **“no tax shall be levied or collected except by authority of law”**. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.
- II. **Article 245:** Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution. The said Article provides as under:
 - ✍ Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.
 - ✍ No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

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

IV. Seventh Schedule to Article 246: It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.



Entries 82 to 91 of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in the State List.

Income tax is levied by virtue of Entry 82 - Taxes on income other than agricultural income and customs duty vide Entry 83 - Duties of customs including export duties of the Union List.

Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016. Before discussing the significant provisions of the Constitution (101st Amendment) Act, 2016, let us first understand why there arose a need for such constitutional amendment.

Need for constitutional amendment

The Constitutional provisions hitherto had delineated separate powers for the Centre and the States to impose various taxes. Whereas the Centre levied excise duty on all goods produced or manufactured in India, the States levied Value Added Tax once the goods entered the stream of trade upon completion of manufacture.

In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax), but the tax was collected and retained entirely by the States. Services were exclusively taxed by the Centre together with applicable cesses, if any. Besides, there were State specific levies like entry tax, Octroi, luxury tax, entertainment tax, lottery and betting tax, local taxes levied by Panchayats etc.

With respect to goods imported from outside the country into India, Centre levied basic customs duty and additional duties of customs together with applicable cesses, if any.

Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty including additional duties of customs, State VAT and certain State specific taxes and service tax levied by the Centre into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it.



Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as CAA) was passed. It has 20 sections. Newly inserted Article 279A empowering President to constitute GST Council was notified on 12.09.2016. Remaining provisions were notified with effect from 16.09.2016.

CAA also provides for compensation to States for loss of revenue on account of introduction of goods and services tax. 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 for a period of five years.

Significant provisions of Constitution (101st Amendment) Act, 2016**Key changes in brief**

- Concurrent powers on Parliament and State Legislatures to make laws governing taxes on goods and services.
- Levy of integrated goods and services tax on inter-State transactions of goods and services to be levied and collected by the Central Government and apportioned between the Union and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.
- Principles for determining the place of supply and when a supply takes place in the course of inter-State trade or commerce shall be formulated by the Parliament, by law.
- GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- On the following products GST shall not be levied, till a date to be notified on the recommendations of the GST Council:
 - Petroleum Crude
 - High Speed Diesel
 - Motor Spirit (commonly known as Petrol)
 - Natural Gas
 - Aviation Turbine Fuel
- The Union Government shall retain the power to levy duties of excise on the aforesaid products besides tobacco and tobacco products manufactured or produced in India.
- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (**GST Council**).
- The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.
- The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union Minister of State in charge of Revenue or Finance is also its member. The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.

- ❑ The concept of 'declared goods of special importance' under the Constitution is done away with. Presently, certain restrictions are placed on the powers of States in regard to tax on such goods.
- ❑ Transitional provisions to take care of any inconsistency with respect to any law relating to tax on goods or services or both, in force in any State. Such tax to continue to be in force until amended or repealed or until expiration of one year from commencement of GST, whichever is earlier

Key changes in detail




Significant amendments made by Constitution Amendment Act are discussed below in detail:

V. Article 246A: Power to make laws with respect to Goods and Services Tax:

Newly inserted Article 246A

- (1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.**
- (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.**

Explanation—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

-  This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State.
-  Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.
-  However, in respect to the following goods, the aforesaid provisions shall apply from the date recommended by the GST Council:

Article 246A



- 👉 The provisions of Article 246A are notwithstanding anything contained in Articles 246 and 254. Article 254 deals with the supremacy of the laws made by Parliament.

VI. Article 248 amended: Residuary powers of legislation amended

- 👉 Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List. Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists. **Article 248**
- 👉 This article has been amended. Now, this power has been subjected to Article 246A, namely the power to make laws with respect to goods and service tax to be imposed by the Centre and States.

VII. Power of Parliament to legislate with respect to a matter in the State List, in the national interest/in case of emergency, extended to GST provided under Article 246A

- 👉 Article 249 grants the Parliament the power to make laws with respect to a matter in the State list in national interest in a case where the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting on any matter enumerated in the State List. **Article 249**
- 👉 Similarly, Article 250 grants the Parliament the power to make laws with respect to any of the matters enumerated in the State List if a proclamation of Emergency is in operation. **Article 250**
- 👉 Articles 249 and 250 have been amended to grant power to Parliament to make laws with respect to the Goods and Services Tax provided under

Article 246A also alongwith the matters in the State list, in the national interest/in case of emergency.

VIII. Article 268: Duties levied by the Centre but collected and appropriated by the States

- 👉 Article 268 pertains to the duties levied by the Centre but collected and appropriated by the States. It stipulates that such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected in the case where such duties are leviable within any Union territory, by the Government of India, and in other cases, by the States within which such duties are respectively leviable.
- 👉 The CAA omits “and such duties of excise on medicinal and toilet preparations” from Article 268.
- 👉 Duties of excise on medicinal and toilet preparations have been subsumed into the goods and service tax to be levied by the Centre and States.

Article 268

IX. Article 268A: Article 268A empowering Union to levy service tax omitted

- 👉 Service tax was levied in 1994 under the residual Entry 97 of the Union list. Article 268A was inserted by the Constitution (88th) Amendment Act, 2003 to usher in service tax under a separate entry 92C in the Union List. However, it was not notified ever since. This article has been omitted by the CAA.

Article 268A

VI. Article 269A: Levy and collection of GST on inter-State supply

Newly inserted article 269A.


Levy and collection of goods and services tax in course of inter-State trade or commerce

- (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the**


States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.


Explanation — For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

- (2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.**
- (3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.**
- (4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.**
- (5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.**

 Article 269A stipulates that GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Article 269A

 Further, import of goods or services or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce. This will give power to Central Government to levy IGST on the import transactions which were earlier subject to Countervailing duties under the Customs Tariff Act, 1975.

 Where an amount collected as IGST has been used for payment of SGST or vice versa, such amount shall not form part of the Consolidated Fund of India. This is to facilitate transfer of funds between the Centre and the States.

- Parliament is empowered to formulate the principles regarding place of supply and when supply of goods, or of services, or both occurs in inter-State trade or commerce.

VII. Article 270: Distribution of the goods and services tax (GST) between the Centre and the States

- Article 270 is amended to provide for distribution of the goods and services tax between the Centre and the States, by order of the President after considering recommendations of the Finance Commission.

Article 270

- This applies for those tax amounts apportioned or payable to the Central Government for taxes levied by it under articles 246A(1) and (2) and Clause (1) of 269A.

VIII. Article 271 amended

Article 271 empowers Parliament to increase any of the duties, or taxes referred to in articles 269 or 270. It further provides that such surcharge is not shareable and remains with the Centre. Now this article is amended to exclude GST from its purview.

Article 271

IX. Definitions of 'Goods and Services Tax', 'Services' and 'State' incorporated under Article 366

- The terms **Goods and Services Tax**, **services** and **State** have been defined under respective clauses of Article 366 as follows:

- Goods and services tax** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption.

Article 366(12A)

- Services** means anything other than goods.

Article 366(26A)

👉 **State**, with reference to articles 246A, 268, 269, 269A and article 279A, includes a Union territory with Legislature.

Article 366(26B)

👉 **Definition of “goods”**: The term goods has already been defined under clause (12) of Article 366 in an inclusive manner to provide that *“goods includes all materials, commodities, and articles”*.

X. **Article 286: Article 286 imposing restrictions as to imposition of tax on the sale or purchase of goods amended**

👉 Article 286 which restrains the States from framing laws for imposition of any tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in course of the import of the goods into, or export of the goods out of, the territory of India.

Article 286

👉 This article has been amended to incorporate the changes arising out of GST by substituting the words “sale or purchase” with “supply” and words “goods” with “goods or services or both”.

👉 Consequently, States have no right to impose GST on inter-State supply of goods or services or both. It will be levied by Union Government under Article 269A as mentioned earlier.




👉 Further, clause (3) of Article 286 which stipulates that any law of a State shall, in so far as it imposes, or authorises the imposition, of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subjected to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax, as Parliament may, by law, specify, has been omitted.

XI. **GST Council: Article 279A**

👉 Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (**GST Council**).



👉 The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.

-  The GST Council shall consist of the following members, namely:—
 - (a) the Union Finance Minister is the Chairperson;
 - (b) the Union Minister of State in charge of Revenue or Finance is the Member;
 - (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government are the Members.
-  The Members of the GST Council referred to clause (c) above shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.
-  The GST Council shall make recommendations to the Union and the States on—
 - (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
 - (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
 - (c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
 - (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
 - (e) the rates including floor rates with bands of goods and services tax;
 - (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
 - (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand [*Such States are referred as Special Category States*]; and
 - (h) any other matter relating to the goods and services tax, as the Council may decide.

- 👉 The GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- 👉 While discharging the functions conferred by this article, the GST Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.
- 👉 One-half of the total number of Members of the GST Council shall constitute the quorum at its meetings.
- 👉 The GST Council shall determine the procedure in the performance of its functions.
- 👉 Every decision of the GST Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:
 - (a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
 - (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.
- 👉 No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—
 - (a) any vacancy in, or any defect in, the constitution of the Council; or
 - (b) any defect in the appointment of a person as a Member of the Council; or
 - (c) any procedural irregularity of the Council not affecting the merits of the case.
- 👉 The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —
 - (a) between the Government of India and one or more States; or
 - (b) between the Government of India and any State or States on one side and one or more other States on the other side; or



- (c) between two or more States, arising out of the recommendations of the Council or implementation thereof.

XII. Article 368 amended

Article 368 has been amended to include Article 279A also within its purview. Consequently, at least two-thirds of the majority in each House of the Parliament and ratification by at least half of the States is specifically required to make any amendment in Article 279A relating to GST Council.

Article 368

TEST YOUR KNOWLEDGE

1. Differentiate between direct and indirect taxes.
2. Enumerate different types of direct and indirect taxes.
3. Explain the salient features of indirect taxes.
4. Write a short note on various Lists provided under Seventh Schedule to the Constitution of India.
5. Discuss how GST resolved the double taxation dichotomy under previous indirect tax laws.
6. Enumerate the deficiencies of the existing indirect taxes which led to the need for ushering into GST regime.
7. Discuss the dual GST model introduced in India.
8. List the Central and State levies which will be subsumed in GST in India.

ANSWERS/HINTS

1. Refer Para 2.
2. Refer Para 2.
3. Refer Para 3.
4. Refer Para 9.
5. Refer Para 6.
6. Refer Para 6.
7. Refer Para 7.
8. Refer Para 7.