

THE ONE GST PORTAL

GSTINATION

SIMPLIFYING GST FOR THE NATION



INTRODUCTION TO GST & CONSTITUTIONAL PROVISIONS

Discussing the concept of GST and the basis of its
levy

- By Prakhar Jain

HISTORY OF GST IN INDIA



- Idea of a national GST was first brought about by “Kelkar Task Force” in 2004.
- The major deficiencies in the old indirect tax regime were – multiplicity of taxes, cascading effect, difficult compliance.
- There was a plan and announcement too, of implementing GST from 1st April 2010, but no concrete steps were taken and it kept on being postponed and ignored.
- The new NDA govt. showed a strong resolve and, after widespread consultation and consensus building, brought the Constitutional Amendment Bill, which was to scrap the old indirect tax system and to bring about the powers to levy GST.
- The minimum criteria of passing of the bill in Lok Sabha, Rajya Sabha, and at least 50% of state legislatures was fulfilled in step by step manner, and by September 2016, it became the Constitution (101st Amendment) Act, 2016.
- After that, in March 2017, the central government passed the GST bills in the Parliament, which became Acts in April.
 - The Central Goods and Services Tax Act, 2017
 - The Integrated Goods and Services Tax Act, 2017
 - The Union Territory Goods and Services Tax Act, 2017
 - Goods and Services Tax (Compensation to States) Act, 2017
- Then many states passed their respective “State Goods and Services Tax Act”.

CONCEPT OF GST



- It is a Destination Based Consumption Tax, levied on value additions, and burden borne by Final Consumer.
- Destination Based = GST Tax Revenue to that state, where goods/ services 'destined' to. (means where consumed)
- It is achieved by maintaining the flow of Input Tax Credit, while preventing the cascading effect.
- Dual GST model has made the implementation of GST possible and practical in India, as per our federal structure.
- Federal structure means that there is one central government, then there different state governments. (There are also Union Territories, which are like a state, but controlled by the central government).
- CGST act gives power to CG levy CGST, UTGST act gives power to CG to levy UTGST, respective SGST acts give the states the power to levy SGST, and IGST act gives power to CG to levy IGST. There is also a Compensation Cess that is levied by the government, on certain 'luxury' or 'demerit' goods, to get money for compensating state losses.
- So, in case of supplies within state, both Center and State/ UT charge CGST & SGST/ UTGST respectively, at half rates each, and in case of outside state supplies, the center charges IGST at full rate, and distributed half of it to the consumption state (in case of union territory, the whole is of central govt only).
- Main Act is the CGST Act, IGST Act is an important and small supplement to it; while the SGST Acts are just a copy paste of the CGST Act, and the UTGST act also does not have anything original.
- Consumption alcoholic liquor, oil and fuel, tobacco, and the real estate sector have been currently kept out of GST ambit.

BILL: A sells to B within same state (Madhya Pradesh)

Example Of Intra State Sales and Intra State Purchase

PAY: A will pay whole GST amount collected by him to the govts

PAY: But B also has input tax credit, so he will pay as follows-

Govt A/c	
Central	MP
$60 + 6 = \underline{66}$	$60 + 6 = \underline{66}$

Particulars	Amount
Output CGST	66
Less: Input CGST	(60)
Net to be paid	6
Output MPGST	66
Less: Input MPGST	(60)
Net to be paid	6

Particulars	Amount
Value	1000
Add: CGST @ 6%	60
Add: MPGST @ 6%	60
Total	1120



BILL: B adds 10% profit and sells to C (MP only)

Particulars	Amount
Value	1100
Add: CGST @ 6%	66
Add: MPGST @ 6%	66
Total	1232

BILL: C adds Rs. 100 profit and sells to D in Andhra Pradesh

Example Of Inter State Sales and Intra State Purchase

Particulars	Amount
Value	1200
Add: IGST @ 12%	144
Total	1344

PAY: C will pay as follows -

Particulars	Amount
Output IGST	144
Less: Input CGST	(66)
Less: Input MPGST	(66)
Net to be paid	12

	Govt A/c	
	Central	MP
<u>Old</u>	66	66
<u>Transaction</u>	Got IGST 12, & received 66 from MP Govt	Transfer 66 to CG because MPGST used to pay IGST
<u>Now</u>	$66+12+66 = \underline{144}$	$66-66 = 0$

BILL: D adds Rs. 200 profit and sells to E (consumer) within same state (Andhra Pradesh)

Example Of Intra State Sales and Inter State Purchase

Particulars	Amount
Value	1400
Add: CGST @ 6%	84
Add: APGST @ 6%	84
Total	1568

PAY: D will pay as follows -

Particulars	Amount
Output CGST	84
Less: Input IGST	(84)
Net to be paid	0
Output APGST	84
Less: Input IGST	(60)
Net to be paid	24

Govt A/c			
	Central	MP	AP
<u>Old</u>	144	-	-
<u>Transaction</u>	IGST used to pay CGST & APGST, so pay to AP govt to extent used for APGST = 60	-	Received 24 cash, and 60 from central govt
<u>Now</u>	144-60 = 84	-	24+60 = 84

Thus, we see the working of the input tax credit chain, and how the consumption state gets all the revenue!

BASIC FEATURES

- Goods are classified on the basis of HSN, while a new classification scheme for services has been brought.
- Registration threshold is Rs. 20 lakhs for most states, and Rs. 10 lakhs for special category states. There are many goods and services which have been exempted from levy of GST.
- Normal system is to levy GST over and above sales price, and charge it from customer, while one can take the input tax credit of the GST paid on purchases, thus nullifying the tax effect, and passing on the burden to the consumer.
- Note that MRP includes all taxes, and GST can't be levied over and above it.
- There is an option to opt for composition scheme, where you can just pay a specified % of your sales as tax, without charging it from customer, and also not taking the input tax credit. It is available for small businessmen, with a turnover of upto Rs. 1 crore (normal states), and Rs. 75 lakhs (special category states), subject to other conditions.
- Everything is online. From registration, to return filing, tax payment to refund claim, all are done through a "GST Common Portal" – "www.gst.gov.in".
- There are also companies designated as "GST Suvidha Providers (GSPs)", who develop user-friendly applications that can be used to do all activities on the common portal. There are "Application Service Providers (ASPs)" who may serve as a link between the GSPs and the taxpayers.

CONSTITUTIONAL PROVISIONS & AMENDMENT



BACKGROUND

- The constitution of India is the supreme law that gives the power to make any other law. Taxation powers are also vested by it only. **Article 265** says that “no tax shall be levied or collected except by authority of law”. Thus, it is necessary to formulate and pass a law before even government can collect any form of tax.
- Additionally, as part of the federal power structure, powers of taxation had been distributed between the center and the state. **Article 245** says that center can make a law applicable to whole or part of India, while state legislature make laws for whole or part of any state.
- Article 246 specifies the Union List, State List, and the Concurrent List. These lists specify that which government can make laws on which matter. (Union = Center, State = State, Concurrent = Both)
- So before the amendment, the powers of taxation on different things were distributed unevenly in the Union and State List. For example, excise duty on manufacture, tax on services, basic and additional customs duties could be collected only by the central government, while tax on sale of goods, entertainment tax, luxury tax, and various other local taxes could be collected only by the state government.
- The concept of GST, a unified national tax, with seamless credit flow, could not fit in with these restrictions in the constitution. So there was a need for an amendment.

THE AMENDMENT IN BRIEF

- In order to meet out this need, the Constitution (101st Amendment) Act, 2016 was passed. It has 20 sections.
- If we wish to take a bird's eye view of the enabling provisions in the constitutional amendment act, it would be-
 - Power to center and state both, to levy tax on goods and services concurrently.
 - Power for the forming of a GST council.
 - Provision for providing compensation to the states for loss of revenue to them, if any, for 5 years, on account of introduction of GST
 - Power to levy a GST on all goods and services, except alcoholic liquor for human consumption.
 - Also, separate notification date for applicability of GST on oil and fuel.
 - Power to levy IGST on inter-state supplies, and that the revenue shall be apportioned between the center & state.
 - The GST Council will have most powers, like deciding rates, exemptions, threshold limits, etc.

THE AMENDMENT IN DETAIL



NEWLY INSERTED ARTICLE 246A

- NWA in Articles 246 & 254, the Parliament and State both can make laws with respect to goods and services tax in general.
- But only Center can make law for goods and services tax on inter-state supplies.
- With respect to following, the above provisions (power to levy tax) shall apply from a date recommended by GST Council-
 - Petroleum Crude, High speed Diesel, Motor Spirit (petrol), natural gas, aviation turbine fuel.

ARTICLE 248 AMENDED

- It says that center can collect tax on anything not covered in any of the 3 lists. It's a residuary power. After amendment, it has just been made 'subject to' Article 246A.

ARTICLE 249 AND 250 AMENDED

- They say that center can make law for any matter in State List, when-
- The State Council agrees by at least a two-thirds majority, or
- If 'emergency' has been proclaimed.
- They have been amended now, to extend this provision to Article 246A also.

THE AMENDMENT IN DETAIL (CONTD...)



ARTICLE 268 AMENDED (EXCISE)

- It has been so amended as to remove the power to levy excise duty on medicinal and toilet preparations. It was earlier levied by the central government, but collected and appropriated by the state governments.

ARTICLE 268A OMITTED (SERVICE TAX)

- It was inserted in 2003 to give center power to levy service tax, by introducing a separate entry 92C in Union List (But it was not notified, and service tax was collected as per Residual Entry 97). It has been completely removed now.

NEW ARTICLE 269A (INTER-STATE)

- Power to levy IGST on inter-state supplies. Import into India to be deemed inter-state supply.
- IGST shall be levied and collected by center, and thus shall initially be a part of the 'consolidated fund of India'.
- Then the amount shall be divided between the center and state. (State's portion will go to that state, where the place of supply of goods is there)
- The Parliament has powers to formulate principles for Determining - Place of Supply & when any supply is inter-state
- The State's portion of IGST shall not be a part of the 'consolidated fund of India'.
- When IGST input credit is used to pay SGST, the whole IGST amount will be given to state, and shall not be a part of the 'consolidated fund of India'.
- When SGST input credit is used to pay IGST, the SGST amount will be given to center, and shall not be a part of the 'consolidated fund of STATE'.

THE AMENDMENT IN DETAIL (CONTD...)



ARTICLE 270 AMENDED (DISTRIBUTION)

- It has been amended to provide that GST shall be distributed between center and the states, as per orders of President, on recommendation of Finance Commission.

ARTICLE 271 AMENDED (POWER TO INCREASE)

- It provided that center has power to increase any taxes referred to in Article 269 or 270, and that surcharge belongs to center only. It has been amended to remove GST from its ambit.

ARTICLE 366 AMENDED (DEFINITIONS)

- It provides for definition of various words. Definitions of “Goods and Services Tax” – 366(12A), “Services” – 366(26A), and “State” – 366(26B) have been inserted. [Definition of goods was already there in 366(12)]

ARTICLE 286 AMENDED (INTER-STATE)

- It prevented the state from imposing any tax on inter-state sale of goods. It has been amended to prevent state from imposing any tax on inter-state **supply** of goods **or services or both**.
- The power of center to declare “Goods of Special Importance” (and thus control the system of levy, rates and other incidents of **state** taxes on them) has been removed.

- The council shall meet, quorum = one half of the members, and it will have the power to decide –
 - The taxes to be subsumed in GST, the goods/ services to be exempted from GST
 - Model Laws, rules for determining place of supply, and for determining inter-state supplies.
 - Threshold exemption limit, rate of GST, special provisions with respect to the states – Arunachal Pradesh, Assam, Jammu & Kashmir, Meghalaya, Mizoram, Manipur, Nagaland, Sikkim, Tripura, Himachal Pradesh & Uttarakhand (Special Category States)
 - Any other matter
- It shall keep in mind the need for a harmonized system of GST and the development of a harmonized national market for goods and services.
- Decision shall be taken by at least three-fourth majority.
 - Vote of Center = Weight of One-Third
 - Vote of all States combined = Weight of remaining Two-Thirds
- It shall establish a mechanism to adjudicate any dispute between the center and the states, or between the states.
- Article 368 has been amended to include this Article 279A within its purview, so now, to amend this, ratification by two-thirds majority in both houses of parliament and half of state legislatures would be required.

NEW ARTICLE 279A (THE GST COUNCIL)

Empowers the President to constitute a joint forum of the Center, and all the States, known as the “Goods and Services Tax Council”, which shall have as its members –

- The Union finance Minister as Chairperson.
- The State Finance Ministers/ any other Minister nominated by the state as members.
- The Union Minister of State in charge of revenue or finance as a member.
- The representatives of the states, shall choose one amongst themselves to be the “Vice president”.



- History of GST in India
- Concept of GST
- Basic Features
- Constitutional Provisions & Amendment
- Background
- The Amendment in Brief
- The Amendment in Detail
- Newly Inserted Article 246A
- Article 248 amended
- Article 249 and 250 Amended
- Article 268 Amended (Excise)
- Article 268A Omitted (Service Tax)
- New Article 269A (Inter-state)
- Article 270 amended (Distribution)
- Article 271 amended (power to increase)
- Article 366 Amended (Definitions)
- Article 286 Amended (Inter-state)
- New Article 279A (The GST Council)

END OF PRESENTATION!

← What we learned



Visit Here!

Subscribe to our

You  **Channel**



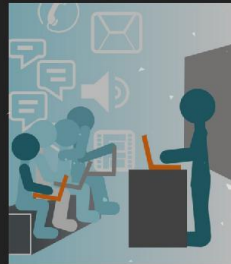
THE ONE GST PORTAL
GSTINATION
SIMPLIFYING GST FOR THE NATION

presents

THE GST ACADEMY

WITH ULTRA SIMPLIFIED SECTION
AND TOPIC WISE PRESENTATIONS

COMPLETE GST LAW IN LESS THAN
18 HOURS OF VIDEO



 #GSTINATION

GSTINATION.COM/THE-GST-ACADEMY

 Find us on
Facebook



LIKE US ON 

facebook[®]

THE ONE GST PORTAL

GSTINATION

SIMPLIFYING GST FOR THE NATION