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An Analytical Study of Goods and Services Tax (GST) Bill in India

R. P. Singh*
Department of Commerce & Business Administration
Samrat Prithviraj Chauhan Degree College, Baghpat, U.P. India
Email Id: spcdcollege@gmail.com

Abstract

This Bill replaces an earlier one introduced in 2011 by the erstwhile government which had since lapsed. In a positive development towards India's progress into a nationwide unified market and removing trade barriers in the form of cascading effects of taxation, the Central Government tabled the 122nd Constitution Amendment Bill, 2014 on the introduction of Goods and Services Tax ('GST') before the lower house of Parliament on December 19, 2014. This Bill replaces an earlier bill introduced in 2011 by the erstwhile government which had since lapsed.
In this study, we have summarized the key structural features of the proposals contained in this Bill, and how it differs from erstwhile bill introduced in 2011 along with our macro-level analysis. We have also provided a reference to the key next steps which this Bill would need to navigate through to reach fruition and our thoughts on how the industry should view this.
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*Corresponding Author

1. INTRODUCTION

The **Goods and Services Tax Bill** or **GST Bill**, officially known as **The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014**, proposes a national Value added Tax to be implemented in India from April 2016. "Goods and Services Tax" would be a comprehensive indirect tax on manufacture, sale and consumption of goods and services throughout India, to replace taxes levied by the Central and State governments. GST would be levied and collected at each stage of sale or purchase of goods or services based on the input tax credit method. This method allows GST-registered businesses to claim tax credit to the value of GST they paid on purchase of goods or services as part of their normal commercial activity. Taxable goods and services are not distinguished from one another and are taxed at a single rate in a supply chain till the goods or services reach the consumer. Administrative responsibility would generally rest with a single authority to levy tax on goods and services. Exports would be zero-rated and imports would be levied the same taxes as domestic goods and services adhering to the destination principle.

The introduction of Goods and Services Tax (GST) would be a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax would mitigate cascading or double taxation, facilitating a common national market. The simplicity of the tax should lead to easier administration and enforcement. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%.

As India is a federal republic GST would be implemented concurrently by the central government and by state governments. The Bill has also been introduced on the back of hectic negotiations and parlaying between the Centre and States on various contentious issues such as taxing powers and revenue sharing, after the current government had come into power in May 2014; it is, therefore, significant that it has been subjected to a level of debate and concessions by the Centre and States over the past 6 months, which is key to achieving success in amending the taxing powers of the Centre and States, which is a fundamental aspect of a federal democracy like India.

The Bill proposes to replace the current Indian tax regime which is multi-tiered. Currently, the Centre imposes excise duty on manufacture of goods, and service tax on provision of services (other than customs duty on imports). The States separately impose Value Added Tax (VAT) on the supply of goods and a portfolio of specific taxes such as entertainment tax, excise duties on alcohol for human consumption and medicinal and toilet preparations (MTP), entry tax and octroi. For mixed supply of services and goods (e.g. construction, restaurants), both service tax and VAT apply on the respective components. This results in a multiplicity of taxes with limited cross credits, conceptual difficulties, differential tax regimes between States and undue litigation.

2. HISTORY IN PARLIAMENT AND EMPOWERED COMMITTEE

In 2000, the Vajpayee Government set up a committee headed by Asim Dasgupta, the (Finance Minister of the Government of West Bengal) to design a model for GST and oversee IT preparations.

An announcement was made by Palaniappan Chidambaram, the Union Finance Minister, during the central budget of 2006-07 dated 28th February 2006, that GST would be introduced from April

1, 2010 and that the Empowered Committee of State Finance Ministers, on his request, would work with the Central Government to prepare a road map for introduction of GST in India.

After this announcement, the Empowered Committee of State Finance Ministers decided to set up a Joint Working Group on May 10, 2007, with the Adviser to the Union Finance Minister and the Member-Secretary of Empowered Committee as co-convenors and the concerned Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the states as its members The Joint Working Group, after intensive internal discussions as well as interaction with experts and representatives of Chambers of Commerce and Industry, submitted its report to the Empowered Committee on November 19, 2007.

This report was then discussed in detail in the meeting of Empowered Committee on November 28, 2007. On the basis of this discussion and the written observations of the states, certain modifications were made, and a final version of the views of Empowered Committee at that stage was prepared and was sent to the Government of India (April 30, 2008). The comments of the Government of India were received on December 12, 2008 and were duly considered by the Empowered Committee (December 16, 2008).

3. LEGISLATIVE HISTORY

The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014 was introduced in the Lok Sabha by Finance Minister Arun Jaitley on 19 December 2014. The Bill was passed by the House on 6 May 2015, receiving 352 votes for and 37 against. All 37 no votes came from members of the AIADMK. The Indian National Congress party opposed the Bill and boycotted the vote, its members leaving the House before voting began. Although the BJD and the CPI (M) had previously opposed the Bill, they cast votes in favour. The Government attempted to move the Bill for consideration in the Rajya Sabha on 11 May 2015, however, members of the Opposition repeatedly stalled the proceedings of the House. In order to appease the Opposition's demand for further scrutiny of the Bill, Jaitely moved a motion to refer the Bill to a Select Committee. The 21 member Committee is expected to give its report by the end of the Monsoon session.

In 2000, the Vajpayee Government started discussion on GST by setting up an empowered committee. The committee was headed by Asim Dasgupta, (Finance Minister, Government of West Bengal). It was given the task of designing the GST model and overseeing the IT back-end preparedness for its rollout. It is considered to be a major improvement over the pre-existing central excise duty at the national level and the sales tax system at the state level, the new tax will be a further significant breakthrough and the next logical step towards a comprehensive indirect tax reform in the country. The Kelkar Task Force on implementation of the FRBM Act, 2003 had pointed out that although the indirect tax policy in India has been steadily progressing in the direction of VAT principle since 1986, the existing system of taxation of goods and services still suffers from many problems and had suggested a comprehensive Goods and Services Tax (GST) based on VAT principle. GST system is targeted to be a simple, transparent and efficient system of indirect taxation as has been adopted by over 130 countries around the world. This involves taxation of goods and services in an integrated manner as the blurring of line of demarcation between goods and services has made separate taxation of goods and services untenable. Introduction of an Goods and Services Tax (GST) to replace the existing multiple tax structures of Centre and State taxes is not only desirable but imperative in the emerging economic environment. Increasingly, services are used or consumed in production and distribution of goods and vice-versa. Separate taxation of goods and services often requires splitting of transactions value into value of goods and services for taxation, which leads to greater complexities, administration and compliances costs. Integration of various Central and State taxes into a GST system would make it possible to give full credit for inputs taxes collected. GST, being a destination-based consumption tax based on VAT principle, would also greatly help in removing economic distortions caused by present complex tax structure and will help in development of a common national market. A proposal to introduce a national level Goods and Services Tax (GST) by April 1, 2010 was first mooted in the Budget Speech for the financial year 2006-07. Since the proposal involved reform/ restructuring of not only indirect taxes levied by the Centre but also the States, the responsibility of preparing a Design and Road Map for the implementation of GST was assigned to the Empowered Committee of State Finance Ministers (EC). In April, 2008, the EC a report to the titled "A Model and Roadmap for Goods and Services Tax (GST) in India" containing broad recommendations about the structure and design of GST. In response to the report, the Department of Revenue made some suggestions to be incorporated in the design and structure of proposed GST. Based on inputs from GoI and States, The EC released its First Discussion Paper on Goods and Services Tax in India on the 10th of November, 2009 with the objective of generating a debate and obtaining inputs from all stakeholders. A dual GST module for the country has been proposed by the EC. This dual GST model has been accepted by centre. Under this model GST have two components viz. the Central GST to be levied and collected by the Centre and the State GST to be levied and collected by the respective States. Central Excise duty, additional excise duty, Service Tax, and additional duty of customs (equivalent to excise), State VAT, entertainment tax, taxes on lotteries, betting and gambling and entry tax (not levied by local bodies) would be subsumed within GST. In order to take the GST related work further, a Joint Working Group consisting of officers from Central as well as State Government was constituted. This was further trifurcated into three Sub-Working Groups to work separately on draft legislations required for GST, process/forms to be followed in GST regime and IT infrastructure development needed for smooth functioning of proposed GST. In addition, an Empowered Group for development of IT Systems required for Goods and Services Tax regime has been set up under the chairmanship of Dr. Nandan Nilekani. A draft of the Constitutional Amendment Bill has been prepared and has been sent to the EC for obtaining views of the States. The Goods and Service Tax Bill or GST Bill, officially known as The Constitution (122nd Amendment) Bill, 2014, would be a Value added Tax (VAT) to be implemented in India, from April 2016. GST stands for "Goods and Services Tax", and is proposed to be a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level. It will replace all indirect taxes levied on goods and services by the Indian Central and State governments. It is aimed at being comprehensive for most goods and services.

In this study, we have summarized the key structural features of the proposals contained in this Bill, and how it differs from erstwhile bill introduced in 2011 along with our macro-level analysis. We have also provided a reference to the key next steps which this Bill would need to navigate through to reach fruition and our thoughts on how the industry should view this.

4. KEY FEATURES OF GST BILL

- The Bill proposes that both the Centre and States would be entitled to concurrently impose GST on the supply of goods and services within a State. Effectively, every supply of goods and services would be subjected to a Central GST (CGST) and State GST (SGST) on such "intra-state" supply by the jurisdictional State.
- When the supply of goods and services is between States as an "inter-state" transaction, a levy called Integrated Goods and Services Tax (IGST) would be levied by the Centre.
- Imports is intended to be treated at par with inter-state transactions and, therefore, should attract IGST; it is currently unclear if such IGST would apply in complete exclusion to the current customs duty regime. Similarly, exports have not been given similar treatment. Therefore, the modus of imposing export duties on certain items is unclear.
- The Bill empowers the formulation of principles to determine when the supply of goods and services would constitute an inter-State transaction for IGST to apply; such principles would be incorporated in the GST legislation that would be introduced after this Bill becomes law.
- Though IGST on inter-state supply of goods and services would be imposed by the Central Government, IGST Revenues would be shared between the Centre and States as per the recommendations of the GST Council. It is expected that the methodology of this revenue share would be coded into the GST legislation that would be introduced by the Centre after completion of this constitutional amendment.
- As indicated above, revenue sharing between the Centre and States has been a historic stumbling block on progress on GST over the past few years. Effectively, this resulted in concern by the States on relinquishing the power to tax revenue leading items such as petroleum, tobacco, medicinal and toilet preparations (MTP) and alcohol. This Bill indicates a level of agreement on these elements, as it proposes to bring all items except alcohol within the ambit of GST. However, the Bill also provides that for certain items, this transition to GST would be immediate, while on a phased for other items. This has been illustrated below:
- Entry tax imposed by various States across India when goods enter for consumption or sale within its jurisdiction. This levy has been subjected to various legal challenges in almost all States and is currently pending resolution at various appellate fora. This also posed specific logistical difficulties for the supply chain. The Bill seeks to delete the imposition of entry tax across India and is a welcome development.
- Entertainment tax, which is currently imposed by States on a variety of activities (television, movie theatres etc.), would be now subjected to GST. This is a positive development for the entire entertainment sector which would not come within the folds of GST as it was hitherto subject to different taxes at the stages of content development, licensing and dissemination. However, taxes on entertainment at the Panchayat, Municipality or District level would continue.
- GST would be capable of being levied on the sale of newspapers and advertisements therein. This would give the governments the access to substantial incremental revenues since this industry has historically been tax free in its entirety.
- Stamp duties, typically imposed on legal agreements by the State, would continue to be levied by the States.

- The Bill has provided for a definition of services, covering "anything other than goods", which is modelled on the regulations prevalent under the VAT regimes in the European Union. An initial reading suggests that this could be intended to further widen the scope of GST to potentially tax other items such as lottery tickets which constitute actionable claims etc.
- The Bill provides that the administration of GST would be the responsibility of the GST Council which would then become the apex indirect tax policy making body of the country. This GST Council would be formed by the Central and State level ministers in charge of the finance portfolio. The Bill also lays down various elements of how the GST Council would operate and its powers, such as determining the rate and exemptions of tax, threshold limits, framing model laws and principles of levy and apportionment of IGST, and voting powers.

5. BMR ANALYSES

This Bill differs from the erstwhile bill introduced in 2011 in various ways (summarised below) which essentially indicates a level of progress having been made on various contentious issues so as to remove the impediments to this reform.

- This Bill has managed to cover petroleum products within its ambit, albeit in a phased manner. This is a welcome development since petroleum products are key industrial inputs, and, therefore, should be within the ambit of GST in the long-term.
- The GST Council, which was slated to be the apex body in the earlier bill as well, has been incrementally empowered to provide floor rates, with bands for rates of GST for different items. This grants States a degree of flexibility in determining the rate of SGST within such bands so as to pursue its policies vis-à-vis relevant products.
- There is a provision for imposing a temporary additional tax at 1 percent on the inter-state supply of goods and services which would directly accrue to the originating State (and, therefore, would not be shared). This provision seems to be geared to assuage the concerns of those States, which have high levels of outward trade, on revenue shortfalls immediately upon removal of CST.
- The Bill provides that compensation to States on revenue loss on account of introduction of GST would be based on the recommendations of the GST Council. Therefore, the GST Council, and not the Centre, would be decision making authority on the computation of compensation to States for any revenue loss, and, therefore, seeks the general concerns of States towards revenue shortfalls by allowing for determination of compensation by a body with "democratic" representation by all States.
- With the objective of augmenting this "democratic" element and further widening the powers of the GST Council, this Bill widens the powers of the GST Council, to allow it to address unique situations, on:

(a) Resolution of disputes arising out of its recommendations
(b) Imposition of additional taxes in times of calamities and disasters
(c) Introduction of special provisions with respect to all Himalayan states in India

6. TAX-RATE UNDER THE PROPOSED GST

The tax-rate under the proposed GST would come down, but the number of assesses would increase by 5-6 times. Although rates would come down, tax collection would go up due to increased buoyancy. The government is working on a special IT platform for smooth implementation of the proposed Goods and Services Tax (GST). The IT special purpose vehicle (SPV) christened as GST N (Network) will be owned by three stakeholders—the centre, the states and the technology partner NSDL, then Central Board of Excise and Customs (CBEC) Chairman S Dutt Majumdar said while addressing a "National Conference on GST". On the possibility of rolling out GST, he said, "There was no need for alarm if GST was not rolled out in April 1, 2012."

7. Renewed GST Concerns

With heterogeneous State laws on VAT, the debate on the necessity for a GST has been reignited. The best GST systems across the world use a single GST, while India has opted for a dual-GST model. Critics claim that CGST, SGST and IGST are nothing but new names for Central Excise/Service Tax, VAT and CST, and hence GST brings nothing new to the table. The concept of value-added has never been utilised in the levy of service, as the Delhi High Court is attempting to prove in the case of Home Solution Retail, while under Central Excise the focus is on defining and refining the definition of manufacture, instead of focusing on value additions. The Revenue can be very stubborn when it comes to refunds, as the Maharashtra Government proves, and software entities that applied for refunds on excess service tax paid on inputs discovered.

The all-new Cenvat Credit Rules, 2014 do little to clarify eligibility for input credits, by using general terms such as "any goods which have no relationship whatsoever with the manufacture of a final product" and "services used primarily for personal use or consumption of any employee"

8. Conclusions

This Bill, as with any new legislation, contains transitional provisions. Such provisions allows for implementation of different provisions of the Bill at different points in time. The Central and State Governments would need to closely guard against lack of clarity and difficulties that may arise out of this; since this particular element has been criticized by the industry during recent reforms of corporate laws.

As this Bill clearly has the potential to usher in monumental changes in the indirect tax regime in India, it is only a starting point. At this stage, the current Bill is an improved and more implementable version of the one introduced in 2011, mainly due to the focus on:

- An egalitarian approach to endow the representation by States in the GST Council with wider powers; and
- Various provisions for safeguards against revenue losses.

However, this Bill does leave certain questions unanswered. For example, the key taxing provision of Article 366(29A) which defines the various transactions of sale, lease, hire purchase, works contract etc. has been left unaltered. Since GST would be imposed on the supply of goods or services (or both), it appears that this provision could become superfluous.

It is also unclear whether the State of Jammu and Kashmir (J&K) would be brought within GST. Service tax does not currently apply to J&K, and it enjoys differential powers to tax transactions within it. There is no clear indication on how J&K would be integrated into GST and its interplay with Article 370 (which provides J&K with a special constitutional status on various matters including taxation), though it is worthwhile to note that the GST Council has been empowered to make particular rules with respect to J&K as well as other Himalayan States.

While this Bill is aimed at achieving constitutional empowerment for GST, clarity is urgently needed on expected rate regime for industry to prepare for the ultimate impact; the media had recently reported a relatively high median rate of 22-27 percent while earlier indications were a notch lower. Certain administrative clarity on this issue is the need of the hour.

As evident, many of the details would be a function of the model GST legislation and its features, from norms for logistics, credit mechanism, assessments, dispute resolution, to how existing tax holidays and incentive schemes would be transitioned. Separately, the herculean tasks of setting up the requisite information technology infrastructure for administering GST on a pan-India basis as well as gearing up and training the revenue authorities at the Centre and State needs to be addressed.

As next steps, this Bill needs to be debated and voted on by the Lower House of Parliament. Thereafter, it would need to be voted on by the Upper House of Parliament, before being ratified by at least half of the States.

The wider industry should take notice of this Bill in as much to set in motion the various institutional decision makers and contribution teams to address this conceptual shift in the indirect tax regime. This change would impact almost all business divisions of industries from procurement, to manufacturing, to sales and distribution. Service providers are also likely to be substantially impacted, as they have historically been subjected to a less exacting compliance regime. It will provide the industry to take a relook at how they are organized, since:

- Almost all manufacturing companies have warehousing on a State-wise basis on account of VAT laws
- Current incentive and exemptions would get impacted, as States would no longer directly receive inter-state revenues as CST but indirectly as a revenue share
- Service providers are likely to experience a tax regime with a substantially higher rate and compliance levels

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