Constitutional amendment on GST

**ATTEMPT TO DECODE THE 122ND CONSTITUTIONAL AMENDMENT BILL (GOODS AND SERVICE TAX)**

**BACKGROUND**

Before going into the depth of Constitution of India and its amendments we have to first understand why it needs to be amended to bring the GST Law. The GST Law is seen as one of the biggest tax reform in our country since Independence. The man who is behind this concept of GST in India is Mr. Atal Bihari Vajpayee who was the prime minister of India from 1998-2004. The Domestic and Foreign Industry Players are always having concerns with our present Indirect Tax System and its administration. India is Federal Country where Centre and Union has its own taxation powers inbuilt in our constitution. The Union is levying Excise duty, Service Tax, Custom duty and States are levying and collecting VAT, CST, entry Tax, entertainment Tax. The Constitution is required to be amended because the Power of State and Centre shall be restructured in the Constitution itself and the Seventh Schedule which contains Union and State List shall be amended.
DEVELOPMENT IN GOODS AND SERVICE TAX FROM 2006 TILL DATE

In this phase of my write up I am trying to explain the step by step events from the date when the concept of GST was first introduced by Union Finance Minister in his Budget Speech of 2006-2007. In his Budget Speech of 2007-2008 Mr. P. Chidambaram requested the Empowered Committee of State Finance Ministers (EC) headed by Dr. Asim Dasgupta to work with central Government to prepare the road map for introduction of GST from 01-04-2010. After this delegation by Union FM to EC the EC then formed a Joint working Group to study the International Models of GST across the world. In November 2007 the Joint Working Group submitted its report to EC which contains the Dual GST structure for Indian Economy.

After due discussion between Central Government and Empowered Committee of State Finance Ministers the First Discussion Paper was prepared to make the GST Law a reality in India. The First attempt to introduce GST was made by then Finance Minister Shri Pranab Mukherjee on 16-03-2011 by introducing the Constitutional 115th Amendment Bill 2011 and the bill contains the amendments which were necessary to make the GST Law. The Bill was then sent to Parliamentary Standing Committee on Finance headed by Yashwant Sinha former Union Finance Minister and after due discussion with stakeholders and States the Committee submitted its Report with recommendation in August 2013 to both the Houses of Parliament. As usual the Centre Revised the Draft Constitutional Amendment Bill by accepting most of the recommendations made by Standing Committee and after this the Centre discussed the revised bill with States to reach on some conclusions. Unfortunately the helpless, unwilling and scam driven UPA Government could not convince the States on revised bill soon after the election were declared and the regime of UPA was demolished by Modi wave.

Now the BJP led NDA Government which people voted for development, growth and employment again started discussion with the states under leadership of Shri Arun Jaitley (Union Finance Minister) and finally reached on conclusion by drafting a fresh bill on Constitutional Amendment. The above said bill was drafted by keeping in mind the earlier developments and suggestion made by Standing Committee on Finance and pending suggestions to solve them to give relief to Trade and Industry

Demand for interest payable on delayed GST payment on the Gross amount of tax payable

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demands of State Finance Ministers. The Constitutional (122nd) Amendment Bill, 2014 was introduced in Loksabha on 19-12-2014.

Now I have made a small attempt to decode this Amendment Bill and give you clarity on each and every aspect of the Bill. Before that it’s worthwhile to understand the process of amendment of Constitution.

**Article 368: Power of Parliament to amend the Constitution and procedure thereof:** Amendment in Constitution can be made by introducing a bill in either house of the Parliament and Bill has to be passed by 2/3 members of each house Present and voting, After this bill shall be sent to the president for its assent But if the bill need amendment in any of the list in 7th schedule (Other articles also given) then it has to be ratified by at least half of the state assemblies After ratification by half of the state assembly it shall be sent to President of India for its assent. From above discussion you can understand that it is impossible for the Union Government to Introduce GST without support of States Assemblies and opposition in both the Houses of Parliament.

Now the provisions of this Bill have been analyzed one by one, and wherever possible comparison has been made with the Bill drafted by the UPA Government.

**STEP BY STEP ANALYSIS OF 122ND CONSTITUTIONAL AMENDMENT BILL**

**Insertion of Article 246A:** This Article was inserted in the main body of Indian Constitution after Article 246 to empower both the Centre and State to legislate on a common matter i.e. GST. Earlier the power of both the Governments were separate under Union list and State list, Without inserting 246A it is not possible for parliament to make Law on a matter which is neither mentioned in Union List and State List. The power to make laws on interstate transactions has been kept exclusively with Central Government.

**Amendment in Article 248:** The article 248 has been amended to avoid contradiction between this Article and Article 246A. The article 248 gives exclusive powers to parliament to make laws on matters not mentioned in State and Concurrent list. The amendment has
added word “subject to 246A” Parliament has exclusive power to make laws on matters not mentioned in State and Concurrent list.

**Amendment in Article 249:** Earlier the above article was giving power to Parliament to make laws on the matters in State list if the same is necessary in the national interest. The above law can be made if the council of the states support this law by 2/3 majority. The amendment has inserted word Goods and Service tax also in this article so that Parliament can make law of GST.

**Amendment in Article 250:** This amendment is similar to that in 249, only difference is that this article comes into operation at the time of emergency and Article 249 comes when law is necessary in national interest.

**Amendment in Article 268:** Before amendment this article was giving power to Central Govt. to levy Stamp duties and Excise on Medicinal Toilet Preparations and collection powers were given to respective States. Now the amendment has deleted word Excise on Medicinal Toilet Preparations which means no more excise duty by states on Excise on Medicinal Toilet Preparations. This is a welcome move in GST to reduce the burden of multiplicity of taxes levied presently by State Govt.

**Omission of Article 268A:** This Article was giving power to Centre to levy Service tax and such tax shall be collected and appropriated by Centre and States together. Now under GST Regime no service tax exist hence the importance of this Article was no more required in the Constitution of India accordingly the same has abrogated from Constitution.

**Amendment in Article 269 and Insertion of Article 269A:** Before understanding the amendment made in Article 269 we have to understand the new Article 269A which grants exclusive power to Centre to levy integrated goods and Service Tax (IGST) on interstate transactions. This Article categorically says that Import of goods and Services into Indian Territory shall attract IGST. Now we can discuss 269 which was giving power to Central Govt. to levy taxes on Interstate sales i.e. CST and taxes on consignment of good and now the amendment has restricted the applicability of above article only on those taxes which are not mentioned in Article 269A i.e. IGST.
Amendment in Article 270 and 271: The Article 270 prescribe that the taxes levied by Union shall be distributed with the states and 271 has restricted the power of Parliament to increase the rate of GST by a surcharge for the purpose of Union. Under the GST Regime the increase of taxes shall be decided by the GST Council under Article 279A.

Insertion of Article 279A: In India the GST has been introduced in Dual structure i.e. Centre shall levy Central Goods and Service Tax (CSGT) and State shall levy State Goods and Service Tax (SGST) and in addition Centre shall levy Integrated goods and Service Tax (IGST). The above concept can only work on the basis of cooperative federalism between the Centre and State and this give rise to a platform where Centre and State can discuss various issues related to GST. Under 279A a council shall be constituted which shall be called GST Council consisting representation of Centre and States respectively.

Salient Features of GST Council:

A. The GST Council shall consist Union Finance Minister as a Chairperson, Union Minister of State in charge of Finance as a member, the State Finance Minister or State Revenue Minister as a member of the Council and the State FM shall select one of them as Vice Chairperson of Council.

B. The quorum of GST Council shall be ½ of its members.

C. Every Decision of the Council shall be taken at a meeting by a majority of at least ¾ of the weighted votes of the members present and voting. The vote of Centre shall have a weightage of 1/3 of total vote cast and vote of States taken together shall have weightage of 2/3 of total vote cast. From this mathematics we can conclude that Centre has VETO Power in the GST Council for decision making.

D. One of the contentious Clause of Article 279A is recommendation made by GST Council to the Union and the States on various critical matters. After so many meeting and deliberations this clause has been finalized and produced as under:

**The Council shall make recommendation to the Union and States on following matters:**
1. Which taxes, surcharge, Cesses levied by Union, States and Local bodies shall be subsumed in GST. The taxes levied at present by Centre i.e. Excise Duty, Additional Excise duty, Service Tax, Additional Custom Duty, Special additional duty, Excise on Medicinal Toilet Preparations and Central Cesses and surcharge shall be subsumed in GST and taxes levied by States i.e. VAT, Entertainment Taxes, Luxury tax, lottery tax, CST and Entry taxes or Octrio shall be subsumed in GST. Basic Custom duty will remain alive and shall be collected by Custom Authorities as usual.

After taking several rounds of meeting by Union Finance Minister with State FM the above issue of items to be subsumed into GST has been resolved and still the alcohol is outside the ambit of GST and Petrol products has been included in the GST but they shall enjoy their present status unless recommended by GST Council as taxable under GST.

2. Second recommendation by GST Council shall be with regard to Goods and Services which shall be exempt under GST regime, threshold under GST Law, Model GST Law i.e. GST Act GST Rules, Principal which shall govern place of supply rules etc.

Third recommendation by GST Council shall be with regard to floor rate with band of goods and services; this recommendation was not included in 115th constitutional amendment bill drafted by UPA Government in 2011. Though states were adamant on this issue but in my personal opinion the power to change the rate of GST shall bring down the harmonization of GST Law. But any how the Union Finance Minister has VETO in the GST Council and we assume he shall not allow any such adverse decisions except under special circumstances.

3. In this part I am merging rest of the recommendations and they are special provisions to some states including Jammu and Kashmir, special rates for specified period to meet natural calamity and disaster and last are the residuary power i.e. any other matter relating to GST as the Council may decide.

We have not discussed one question which is coming into my mind about the disputes among various states or states with Centre; The earlier bill of UPA regime had provision of Dispute settlement Authority which was opposed by almost all of the states and also by
Standing Committee on Finance and therefore this bill contains one provision that Council shall decide about the modalities to resolve the disputes arising out of its recommendations.

**Amendment of Article 286:** This article imposed restriction on States to make law on Interstate transactions and also the Import into Indian Territory. The amendment has just replaced the word sale or purchase of goods with supply of goods or Services or both. This amendment has deleted the concept of declared goods from Constitution itself. In the GST regime there is no concept of declared goods or goods of special importance.

**Amendment of Article 366:** In this Article law makers has inserted clause 12A, Clause 26A and Clause 26B, Now Clause 12A has defined word “goods and service tax”, Clause 26A has defined word “service” and Clause 26B has defined meaning of “State”. “Goods and service tax” means any tax on supply of goods or services or both except taxes on supply of alcoholic liquor for human consumption. Definition is very simple and technically barred the alcoholic liquor for human consumption from GST through constitution, Earlier the states were demanding petrol products in the same category as alcoholic liquor for human consumption.

“Service has been defined as anything other than goods” and States has been defined as “States includes Union Territory with legislature”.

**Amendment of Article 368:** The procedure of amendment has been discussed earlier in this write up and there are certain matters where the amendment of Constitution is to be ratified by half of state assemblies and therefore by this amendment article 279A (GST Council) has been kept into that category also.

**Amendment of Sixth Schedule:** The sixth schedule contains the provisions as to administration of tribal areas of Assam, Meghalaya, Tripura and Mizoram, by amending this schedule law maker has empowered district council of these states to levy and collect taxes on entertainment and amusements.

**AMENDMENT OF SEVENTH SCHEDULE:** This schedule contains the union list, state list and concurrent list and the amendment of this list before introducing GST was very crucial for
law makers. The major amendments have been proposed in both union list and state list which are discussed hereunder.

**Changes proposed in union list:** Earlier entry 84 has empowered centre to levy excise on all products including tobacco products but excluding alcoholic liquor or human consumption, now the amendment will take away the power of centre to levy excise on manufacturing except tobacco and petrol products. In nutshell in place of excise centre shall levy CSGT and IGST. Entry 92 and 92C has been proposed to delete the concept of taxes on sale or purchase of newspaper and advertisement thereon and service tax as levied by centre at present on provision of service.

**Changes proposed in state list:** Entry tax has been subsumed in GST therefore entry 52 has been deleted from state list and entry 55 empowering states to levy the tax on advertisement has been deleted from constitution itself. By amending entry 54 states has been empowered to levy tax on petrol and its related products except the sale of these items in interstate business. Entry 62 has been proposed to subsume luxury tax in the GST and taxes on entertainment and amusement shall only be levied and collected by local bodies only.

**GST is destination based consumption tax:** GST is a destination based consumption tax hence revenue shall accrue to those states where goods or services are finally consumed, now the producer states shall be discouraged for such huge production and to compensate them an extra 1% tax on supply of goods shall be levied for 2 years.

Compensation for States for loss on account of GST implementation shall be adequately placed in constitution and the period of compensation may not go beyond 5 years.

The Indian Industry is waiting very desperately for GST because it will subsume major indirect taxes levied by Central Government and State Government which will remove the cascading effect of taxes on costing of the Industry. The GST if implemented shall make the tax structure simple and hassle free for trade and Industry.
Now as on date everyone including me is hopeful that this amendment bill get passed in budget session of the parliament and also ratified by the states concerned. If all goes well in next session specially Rajyasabha the GST become reality from 01-04-2016.

By Vinod Kaushik

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Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts have been made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules. The observations of the writer are his personal view and the writers do not take responsibility of the same and this cannot be quoted before any authority in the present form.

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Recommended Read

- Applicability of GST on Freelancers
- Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 notified w.e.f 25th July 2019
KAUSHIK VINOD

Yes Mr. Arun GSTN SPV has already has been formed in August 2012 and it has started working independently. This will be first time in Indian history that a common platform will be shared by both the center and state like common registration, common returns, common payments and access shall be given to both. Further department shall remain as and where they are like VAT office at ITO but the work shall be IT oriented as rare interaction between tax man and tax payer. Govt. is alone going to invest 315 (approx) on this project ie GSTN SPV, I am writing one more article on IT Infrastructure after GST and it shall come very soon.

JITENDRA SHARMA

thanks for GST Updet solution.

ARUN

Thanks. Congratulation on writing such a exhaustive article on GST Any idea how GST shall be administered and CGST, SGST, IGST shall be collected. What would be future role of CE and S. Tax Deptt and VAT Deptt in States

PANCHAM BEDRE

Thanks. It gave good insight on the status of GST.