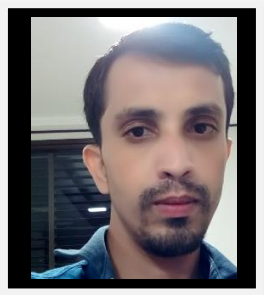


CONSTITUTIONAL PROVISIONS WITH RESPECT TO THE GOODS AND SERVICES TAX



Raju Balodi (M.Com, A.C.S.)

BRIEF SYNOPSIS OF THE ARTICLE

The much awaited fiscal reform in the form of Goods and Services tax came into existence after the necessary amendment in the Constitution of India. In order to know the law relating to Goods and Services tax, it is expedient to know the constitutional provisions of Goods and Services tax in India including the Goods and Services Tax Constitutional (101st Amendment) Act, 2016.

The introduction of Goods and Services Tax is a matter of great reform in Indian taxation system covering the various types of laws relating to indirect taxations in India like Value Added Tax, Central Sales Tax, Service Tax, Entry Tax & Octroi, Excise duty, Additional Custom Duty (CVD) etc. in a single roof.

This article covers the constitutional aspect of Goods and Services tax in India by amending the existing articles and introducing some new articles alongwith the changes in seventh schedule of the Indian constitution. Since the constitution is the grundnorm i.e. supreme law which cannot be contravened by any law, thus in order to make the law relating to Goods and Services Tax in line with the Indian Constitution, the legislature felt the need to make necessary amendments in Indian Constitution relating to Goods and Services tax. The Article also covers in brief the law making powers of the legislatures, definition of goods and services tax and the need of that tax in India.

WHAT IS GST?

Goods & Services Tax is a comprehensive, multi-stage, destination-based tax that will be levied on every value addition. Goods and Services Tax will be levied on each of these stages, which make it a multi-stage tax. Goods and Services Tax will be levied on all transactions happening during the entire manufacturing-supply chain.

As per new clause 12A to Article 366 of the Constitution, “**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. Further the clause 366(26A) of the Bill defines “**Services**” means anything other than Goods. Thus it can be said that GST is a comprehensive tax levy on manufacture, sale and

consumption of goods and services at a national level. The proposed tax will be levied on all transactions involving supply of goods and services, except those which are kept out of its purview.

WHY GST IS NEEDED?

In Indian Taxation System, Taxes are divided into two, Direct Taxes and Indirect Taxes.

The Direct Taxes are levies where the liability cannot be passed on to someone else and in Indirect Taxes, the liability of the tax can be passed on to someone else.

The current indirect tax system is plagued with multiplicity of taxes, at different rates, at multiple points. Further, absence of any setting off mechanism results in cascading effect of these taxes. This is accentuated by a huge compliance cost that is incurred in respect of each of the taxes.

Further, the Non recoverable taxes built into the costs made the Indian products more expensive than their global competitors and therefore affecting competitiveness. Therefore GST is expected to provide boost to exports by mitigating costs

In VAT, VAT rates and regulations differ from state to state. And it has been observed that states often resort to slashing these rates for attracting investors. This results in loss of revenue for both the Central as well as State government. On the other hand, GST brings in uniform tax laws across all the states spanning across diverse industries. Here, the taxes would be divided between the Central and State government based on a predefined and pre-approved formula. In addition, it would become much easier to offer services and goods uniformly across the nation, since there would not be any additional state-levied tax.

One of the biggest advantages of GST Law is that it would remove cascading effect by facilitating seamless flow of credit. This would be given effect by providing for the availment of Input Tax Credit i.e. GST Input Tax Credit (GST-ITC) to the purchasing dealer in respect of the GST paid by the supplying dealer and thus by removing the restrictions placed in the present Cenvat credit rules on availment of credit which lead to break in the credit chain and consequent cascading effect which further leads to increase in cost of goods and services. Thus linking of invoice to invoice would eliminate any ambit for revenue leakage.

The existing complex indirect taxation system has been simplified by introduction of the Goods & Services Tax. GST is more transparent than the existing indirect taxes i.e. Excise, VAT, CST and Service tax as all are now put under one roof.

LAW MAKING POWERS OF LEGISLATURES IN INDIAN CONSTITUTION

Indian Constitution being federal in nature defines the law making powers of both, the Union and the States. Part XI of the Indian constitution defines the power distribution between the federal government (the Centre or union) and the States in India. This part is divided between legislative, administrative and executive powers.

In terms of Article 246 of the Indian constitution, there is a threefold distribution of legislative powers between Union and the State Governments. The VIIth Schedule of the constitution contains 3 lists.

- a) The Union List gives exclusive legislative powers on 99 items of all India character such as defence, foreign affairs, currency and coinage etc.
- b) The State list similarly gives exclusive legislative powers to the states on 61 items, now expanded to 65 items. Such subjects are essentially subjects of local interest.
- c) The concurrent list empowers both the union and the states to legislate on 52 items. The subjects in this list are such that both national government and the governments of the states are interested in them. Education, Civil and Criminal procedure code, marriage and divorce, bankruptcy and insolvency etc. are some prominent items in this list.

Both the union and the state governments are competent to legislate on subjects in the concurrent list. In case of conflict between a central law and a state law on a subject in this list; normally, the union law should prevail. If however a state law reserved for the President's assent receives his assent, it will prevail over the union law. The power to legislate on a matter not enumerated in any of the 3 lists is vested in the union Parliament by Art. 248. Thus in India residuary powers belong to the union government.

Thus the distribution of legislative powers by the constitution is heavily tilted towards the centre. Over and above this, the constitution visualizes 5 extraordinary situations, when the Union Parliament will be competent to legislate on matters in the state list.

- a) Firstly, under Art 249, the Parliament may legislate on any subject in the state list, if the Rajya Sabha passes a resolution by not less than a 2/3 majority that it is necessary to do so in the national interest.
- b) Secondly, under Art 250, the Union Parliament may legislate on state subjects when a Proclamation of National emergency is in operation under Art. 352.
- c) Thirdly, under Art 252, the Parliament may legislate on state subjects on request by the legislatures of two or more states.
- d) Fourthly, under Art 253, the Parliament is competent to legislate on subjects in the state list for the implementation of international treaties, a agreements or convention with foreign states.
- e) Finally, when a breakdown of constitutional machinery in a state occurs and there is a consequent President's rule in state under Art. 356, the powers of the State Legislature are exercised by the Parliament.

PROVISIONS OF INDIAN CONSTITUTION WITH RESPECT TO GOODS AND SERVICES TAX

There are several articles in the constitution of India which establish the financial relations between Union and States. Since GST bills involve a huge interest of the state governments, therefore the great reform in the form of GST cannot take place without making suitable changes into the constitution.

For this purpose, GST Constitutional (101st Amendment) Act, 2016 was passed. This act received the assent of the President of India on 8th September, 2016. The important changes made in constitution (new articles / amended articles) via this law are as follows:

1. Article 246 (A)
2. Article 269A
3. Article 279-A
4. Changes in the 7th Schedule
5. Changes in other existing Articles

The amended provisions of Indian Constitution with respect to the Goods and Services Tax are summarized as below:

1.	Insertion of Article 246 (A) with regard to the Special Provisions with respect to Goods and Services Tax.	The new article 246(A) inserted in the constitution with the following text: <i>“(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.</i> <i>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.”</i> Now both Union and States have concurrent powers to make law with respect to goods & services. The intra-state trade now comes under the jurisdiction of both centre and state; while inter-state trade and commerce is “exclusively” under central government jurisdiction.
2.	Amendment of Article 248 relating to Residuary powers of legislation.	Amendment of Article 248(1) i.e. with respect to the residuary Power of legislation was made. Under Article 248(1) Parliament has exclusive power in to make any law in respect of any item not covered under State List and Concurrent List subject to provision Article 246A.
3.	Amendment of Article 249 (1) i.e. Power of Parliament to legislate with respect to a matter in the State List in the national interest	Under article 249(1), Parliament is empowered to make the law with respect to any item specified in the state list in the national interest, if the Council of States has declared by resolution and supported by 2/3rd of member present and vote. Now this also includes goods and service tax under article 246A i.e. Parliament of India can make the GST law for the whole or any part of India subject to approval 2/3rd members of each state.

4.	Amendment of Article 250(1) which is relating to the Proclamation of Emergency.	In the event of announcement of emergency, Parliament of India has power to make the laws in respect of any item covered under state list for the whole India or part of the India under article 250(1). Goods and service tax under article 246A i.e. Parliament of India can make the GST law in case of emergency.
5.	Amendment of Article 268 (1) i.e. Duties levied by the union but collected by the States.	Article 268 (1) provides the provision of levy of stamp duty and excise duty on medicinal and toilet preparation by union government and collection by state (In case of State) or by union (In case of union territory). Now, the duties of excise on medicinal and toilet preparation has been omitted and same is been amalgamated in GST.
6.	Amendment of Article 268A i.e. Service tax levied by union government and collected and appropriated by Union & States	Article 268A provides power to government of India to levy the service tax and collected and apportioned by government of India and State. Now, this article has been omitted.
7.	Amendment of Article 269 i.e. levy and collection of tax on sale of goods or consignment of goods in the course of Interstate trade or Commerce	Article 269 (1) facilities the levy and collection of tax on sale of goods or consignment of goods in the course of Interstate trade or Commerce. Now, the provision of this clause is subject to new article 269A. As per Article 269A Goods and Service tax shall be levied and collected by Government of India and apportioned between States in the manner as provided in the law by parliament on the recommendation of GST council. Further, Parliament of India is empowered to formulate the law in respect of tax on interstate trade of goods and services. In addition to above, import of goods or Services or both will also be equally treated as Supply of the goods and services in the course of Inter-State trade or Commerce. This will give power to central government to levy IGST on the Import transaction instead of Countervailing Duty (CVD) levied under existing Act.
8.	Insertion of Article 269A relating to Levy and Collection of Goods and Services tax in course of inter-state trade or commerce.	This article states that in case of the inter-state trade, the tax will be levied and collected by the Government of India and shared between the Union and States as per recommendation of the GST Council. The article also makes it clear that the proceeds such collected will not be credited to the consolidated fund of India or state but respective share shall be assigned to that state or centre. The reason for the same is that under GST, where centre collects the tax, it assigns state's share to state, while where state collects tax, it assigns centre's share to centre. If that proceed is deposited in Consolidated Fund of India or state, then, every time there will be a need to pass an appropriation tax. Thus, under GST, the apportionment of the tax revenue will

		take place outside the Consolidated Funds. The Article also provides that 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.
9.	Amendment of Article 270(1) i.e. Levy and Distribution of certain taxes between union and state.	Article 270(1) is regarding distribution of certain taxes between union and states in accordance with clause (2) of Article 270. The Interstate GST has been kept outside from the provision of above article. Because the provision of distribution of revenue in case of Interstate GST is already incorporated under 269A. Hence the same is excluded from the purview of 270(1). Though, the revenue of GST other than Interstate GST will be distributed between Union and State according to Clause (2) of Article 270.
10.	Amendment of Article 271 i.e. Surcharge on taxes by union.	This Article enumerates that the Parliament has exclusive right to charge the surcharge on any tax and such surcharge will form the part of consolidated fund. But the GST is exception to above article. In other word parliament cannot charge any tax by way of surcharge on GST.
11.	Insertion of Article 279A with relation to the Constitution of Goods and Service tax Council.	Article 279A is about Good and Services Tax council which states about the constitution of GST Council to be established within sixty days from the date of commencement of the 101th Constitutional Amendment Act, 2016, by the order of president with the following members namely: (i) The Union Finance Minister being Chairperson. (ii) The Union Minister of the State in charge of revenue or finance as member. (iii) The Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as member. (iv) One Vice-Chairperson elected by members amongst themselves as are mentioned in above (iii). The GST Council shall make recommendation to the Union and 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 Integrated Goods and Services Tax 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; 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. 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. Quorum of GST Council's meetings: The quorum of GST Council's meetings shall be one half of the total members of the GST Council and the GST Council shall determine the procedure for performance of its functions. Voting at GST Council Meetings: Every decision of the GST Council shall be taken at a meeting, by a majority of not less than 3/4th 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.
--	--	--

		Illustration on Voting at GST Council Meetings: The “weighted votes of the members present and voting” in favour of a proposal in the Goods and Services Tax Council (GSTC) can be determined by an illustration as mentioned hereunder:— $WT = WC + WS$ Where, $WT = WC + WS = (WST/SP) \times SF$ Wherein – WT = Total weighted votes of all members in favour of a proposal. WC = Weighted vote of the Union = $1/3$ i.e., 33.33% if the Union is in favour of the proposal and be taken as “0” if, Union is not in favour of a proposal. WS = Weighted votes of the States in favour of a proposal. SP = Number of States present and voting. WST = Weighted votes of all States present and voting i.e. $2/3$, i.e. 66.67% SF = Number of States voting in favour of a proposal Validity of the proceedings of GST Council: The act or proceedings of GST Council shall not be invalid by only reason of any vacancy in, or any defect in, the constitution of the GST Council or by reason of defect in appointment of any person as member of GST Council or by reason of irregularity in procedures which does not affect the merit of the case. Establishment of the mechanism to adjudicate the disputes: The responsibility to establish mechanism to adjudicate the disputes between Govt. of India and one or more states or; between Govt. of India and State or States on one side and one or more other States; or between two or more States arising out of the recommendations of the Council or implementation there, has been imposed on the GST Council itself.
12.	Amendment of Article 286 i.e. Restriction on Imposition of tax.	Article 286 restricts the state laws from imposition of any tax on sale or purchase of goods outside the state or in the course of the import of the goods into, or export of the goods out of, the territory of India. Now, Supply of goods or service or both will be covered by this clause. This clause will restrict the states from imposition of Interstate GST and same will be levied by union government under Article 269A as mentioned

		earlier.
13.	Amendment of Article 366 which is related to the Definitions part.	Article 366 covers various definitions. As per new clause 12A to Article 366 “Goods & Service tax” means any tax on supply of Goods or Services or both except taxes on supply of the alcoholic liquor for human consumption. The term service is also defined by inserting new clause 26A as, anything other than goods. The definition of service is much broader now as compared to the earlier one which is defined in finance act 1994.
14.	Amendment of Article 368 i.e. Power to parliament to amend the constitution.	Article 368 gives power to Parliament to amend any provision of constitution of India by introducing such change into the each house of parliament and get sanctioned from 2/3rd majority of the membership of the house present. It shall then present to president for his assent and then it becomes an act. However if the amendment is related with any matters of state, such amendment should be ratified legislature of states by 50% resolution before presentation of the same for presidents assent. <i>“Now Article 279A is also covered under provision of Article 368. It means any change in Article 279A shall also be ratified by state legislator beside the Sanction of each house of parliament and before the assent of President.”</i>
15.	Amendment in Seventh Schedule (Union List, State List and Concurrent List).	Seventh schedule to the constitution covers the basic Structure of Indian taxation. The rights of taxation are given to both i.e. Central government under List I (Popularly known as Union List) and to the State under List II (Popularly known as State List). Due to insertion of Article 246A it is imperative to amend union list and state list to make the proper arrangement of GST. The amendments are as follow: Amendment in Entry No 84, 92, 92C to Union List: As per Entry No 84 Duties of excise shall be levied on tobacco and other goods manufactured or produces in India except alcoholic liquor for human consumption, opium, Indian hemp and narcotics. Now the excise duty is been subsumed by Article no 246A. Hence now new Entry no 84 will cover Excise duty on petroleum crude, high speed, petrol, natural gas and aviation turbine fuel, tobacco and tobacco products. It means even after introduction of GST, Central Excise duty on above product shall remain in force till the time as GST council thinks fit. Further Entry no 92 and 92 C covering tax on sale or

		purchase of newspaper and Service tax respectively have been omitted as already they are merged Into GST. Amendment in Entry No 52, 54, 55 and 62 to State List: Entry no 52 gives power to levy the entry tax. Now, the entry has been omitted. It means now local bodies can't levy and collect the entry taxes like Octrio, LBT etc. Under Entry No 54 state government can collect tax on sale or purchase of goods other than newspaper. Now, the state government can only collect the taxes on sale of petroleum crude, high speed, petrol, natural gas and aviation turbine fuel and alcoholic liquor for human consumption. Further Now State government can't levy the tax on advertisement under Entry No 55. In addition to above now Panchayat, Municipalities, Regional or District council can levy and collect taxes on entrainment and amusement under entry 62.
16.	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.
17.	Translation Provision.	<i>"Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier."</i> Therefore, if the provision of state Law is inconsistent with constitution after commencement of these act shall be valid till the amendment by competent legislator or authority or one from commencement of these act whichever is earlier.
18.	Power of President to remove difficulties.	If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or

	modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty. Provided that no such order shall be made after the expiry of three years from the date of such assent. Every such order made, shall, as soon as may be after it is made, be laid before each House of Parliament.
--	--

Raju Balodi
Company Secretary
M. No. A-31550
Address: B-1380, Sonia Vihar, Delhi-110094
Mobile No.: +91-9871552114
E-mail id: raju.balodi@gmail.com / [yahoo.com](mailto:raju.balodi@yahoo.com)