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- M. G. Kodandaram

Mar Gregorios College of Law

Mar Ivanios Vidyanagar, Nalanchira,
Thiruvananthapuram, Kerala - 695015

Phone & Fax : 0471 2541120,

Email. info@mgcl.ac.in Web. www.mgcl.ac.in



CONSTITUTIONAL VALIDITY OF UNIFIED GOODS AND SERVICE TAX

M. G. Kodandaram, IRS.¹

Abstract

India, after prolonged debates and deliberations on the federal structure of taxing powers enshrined in the Constitution of India, through the Constitution (One Hundred and First Amendment) Act, 2016, opened up a new legislative framework for establishment of a unified goods and service tax regime. The powers to tax by the States and the Union were brought together to serve the interests of the Citizens, Trade and Commerce, and the Economic Development of the Country. The Goods and Service Tax that has come into force in India from 1st of July 2017, is stated to be against the Basic structure doctrine embedded in the Indian Constitution. The author examines the Constitutional validity of the unified Goods and Service Tax in the light of recent judicial pronouncement of the Supreme Court of India.

I. INTRODUCTION

A. Trust based Goods and Service Tax

India, the largest democracy in the world, implemented the much-awaited indirect tax system, in the form of Comprehensive Goods and Services Tax (hereinafter GST) from first day of July, 2017. The primary purpose of the new system is to develop India into unified vibrant economy through redeeming the creation of ‘one nation, one tax, one market,’ with no barriers in free movement of goods and services across the country. The trust based voluntary compliance system in place across the country helped in bringing in the much desirable transparency into the whole tax levy and collection realm. The entire system were hosted and rolled out on an exclusive new e-governance digital platform, by which the interference by the executives in day to day activities of the trade and commerce has been reduced. The registered taxable person has

¹ Assistant Director (Retd), NACIN, ADVOCATE and CONSULTANT, Bangalore



been facilitated to fulfill the legally prescribed compliance mechanism online without any necessity to visit the Authorities. This further helped the Government in curbing the growing corruption in the administration to a larger extent.

B. Legacy tax system

‘Tax’ has been defined and understood to be the charge by the Nation on the citizens to run all the affairs of the Country. It is the primary duty of every citizen to pay the taxes as prescribed under law to the Government so that legislators elected by the citizens and the executives appointed utilize the public funds as stipulated under the Constitution for building a stronger Nation, by providing welfare, safety and security etc., to all.

Even after seventy years of freeing ourselves from the clutches of external aggressors, India did not initiate the necessary proactive steps to form a holistic tax system by eliminating the existing impediments and barriers in the domestic trade. The British adopted the ‘divide and rule ploy’ in tax system, well suited for exploitation, to meet their greed to loot the resources of the Country. It is unfortunate that the country continued to bear and live with these inherited flawed Policies, Laws and systems, without giving a serious thought to form a united market. In this period, each state had their own taxation legal framework, rates and procedures, together with Centre’s separate set of tax laws and practices. Due to the multitudes of tax laws and procedures, it became easier for a fraudster to flourish at the cost and sufferings of the honest tax payer. This had a negative impact on the progress and growth of the Economy of the Nation. The traders and investors feared to operate in the domestic tariff area as tax environment and procedures were distorted, confusing and litigation prone. There was neither clarity nor transparency in the past Indirect tax laws and procedures.

C. Indirect tax system prior to GST

The Constitution of India is the source of power to make the laws in India. The Authority to levy a tax is derived from the same, wherein the Article 246 allocates the legislative powers including



the taxing powers, between the Parliament and the State Legislatures. As per the said provisions, the Parliament has exclusive powers to make laws in respect of matters given in Union List² and State Governments enjoy such exclusive jurisdiction on the matters contained in State List³. Before the advent of GST, the important sources of indirect tax revenue for the Union were Customs duty⁴, central Excise duty⁵, and Service tax⁶. The Union also levied tax called Central Sales Tax⁷ (CST) on inter-State sale and purchase of goods which was assigned to the State of origin, as per Central Sales Tax Act, 1956. On the State side, the sources of tax revenue, among others, were the tax on sale and purchase of goods⁸, Taxes on luxuries, entertainments, amusements, betting and gambling⁹, Octroi or entry tax¹⁰.

As discussed above, the Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States had the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre had the power to levy a tax the CST, but the tax was collected and retained entirely by the States. As for services, it was the Centre alone that was empowered to levy Service tax. For the Central Government, Central Excise, Customs and Service tax were the three main components of indirect taxes. While for State Government, Value Added Tax (VAT) and CST were major taxes along with Octroi, Entertainment Tax.

There was also a narrower, limited version of Input Tax Credit (ITC) facility, separately by Central and State Authorities. The previous forms of central VAT and State VAT had remained inefficient in fully removing the cascading effect of taxes. Besides, there were several other taxes, which both the Central Government and the State Government levied on production, manufacture and distributive trade, where no set-off was available in the form of ITC. These

² List I of the Seventh Schedule

³ List II of the Seventh Schedule

⁴ entry 83 of Union List

⁵ entry 84 of Union List

⁶ entry 97 of Union List

⁷ entry 92A and 92B of union list

⁸ entry 54 of the State List

⁹ entry 62 of the State List

¹⁰ entry 52 of the State List



taxes added to the cost of goods and services through "tax on tax"¹¹, which the final consumer had to bear.

II. LEGISLATIVE STEPS TO STEER GST REGIME

It was a challenging affair to bring all the State Governments and the Union together to evolve a common system for effective collection and equitable distribution of taxes in respect of all transactions involving supply of goods and services. As both the States and Centre had / have taxing powers, they needed to agree upon to pool their sovereignty to collect such taxes together so as to have one Indirect tax system for the country. India being a federal Nation, the exclusive powers to tax vested with each of the Authority and to move towards a workable common GST, required an amendment to the Constitution.

To bring together, the levy on goods and services under one umbrella, the Constitution (one hundred twenty second Amendment)¹² Bill was introduced in the Lok Sabha on 19.12.2014. The Statement of objects and reasons made before the parliament while presenting the amendment bill, points out the intention behind the amendment. It was stated that GST is intended, (i) to replace a number of indirect taxes being levied by the Union and the State; (ii) to remove cascading effect of taxes; (iii) to provide for a common national market; (iv) to levy on all transactions involving supply of goods and services, except those which are kept out of the purview of the GST; (v) to amend the Constitution, to provides for subsuming of various Central and state; (vi) to levy of Integrated GST on inter-state transactions of goods and services; (vii) to Confer concurrent power upon Parliament and the State Legislatures to make laws governing GST; and (viii) to provide Compensation to the States for loss of revenue arising on account of implementation of the GST.

The Bill provided for the levy of GST, separately but concurrently, by the Union and the States (including Union Territories) on 'supply of all goods or services' except for Alcohol for human

¹¹ See Cascading effect of tax

¹² See The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 (Bill No. 192 Of 2014).



consumption¹³. The Parliament would have exclusive power to levy Integrated GST on inter State trade or commerce (including imports) in goods or services. A Goods and Services Tax Council (GSTC) was to be constituted comprising the Union Finance Minister, the Minister of State (Revenue) and all the State Finance Ministers to recommend on the GST rate, exemption and thresholds, taxes to be subsumed and other features to ensure harmonization on different aspects of GST between the Centre and the States as well as across States. The said Bill with certain amendments was finally passed by the parliament in August, 2016 and later ratified by the required number of States. After prolonged deliberations and debates, the Constitution (one hundred and first Amendment) Act, 2016¹⁴ received the assent of the President on 8th September, 2016. A Goods and Services Tax Council (GSTC)¹⁵ was constituted with effect from 12th September, 2016 as a mechanism to ensure harmonization on different aspects of GST Law and implementation.

Thereafter based on the model GST Law recommended by the GST Council, four Laws namely *The Central Goods And Services Tax Act, 2017*¹⁶ (CGST Act), *The Union Territory Goods And Services Tax Act, 2017* (UTGST Act), *The Integrated Goods And Services Tax Act, 2017* (IGST Act) and *The Goods And Services Tax (Compensation to States) Act, 2017* (GST (CS) Act) were passed by the Parliament and notified on 12th April, 2017. All the States presented respective State GST Bills, and enacted the state GST laws (e.g., Kerala GST Act 2017¹⁷). Later with effect from 1.7.2017, the GST System of taxation was implemented all over India.

A. Highlights of Constitutional Amendment Act

As per Article 265 of Indian Constitution, no tax shall be collected without the authority of Law and therefore it is inevitable to have a Legal framework duly enacted under the Constitution. In

¹³ *Ibid.*

¹⁴ The Constitution (One Hundred and First Amendment) Act, 2016, CBIC-GST, (Nov 11, 2020, 3:31 PM), <https://cbic-gst.gov.in/constitution-amendment-act.html>

¹⁵ As per Article 279A (1) of the amended Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A. The notification for bringing into force Article 279A with effect from 12th September, 2016 was issued on 10th September, 2016.

¹⁶ See The Central Goods and Services Tax Act, 2017 (No. 12 Of 2017)

¹⁷ See The Kerala State Goods and Services Tax Act, 2017 (ACT 20 OF 2017).



the Constitution (one hundred and first Amendment) Act, 2016 (CAA) the necessary provisions are made to impose concurrent and simultaneous levy of GST by the Union as well as the State Governments. As per Article 246A, the Parliament and the Legislature of every State have powers to make laws with respect to goods and services tax imposed by the Union or by such State. The Parliament has exclusive power to make laws with respect to GST, where the supply of goods or of services or both (GSB) takes place in the course of inter-state trade or commerce. As per article 269A, the 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 GST Council. The supply in the course of imports into the territory of India shall be deemed to be supply of GSB, in the course of inter-State trade or commerce and are liable to duty under integrated GST (IGST). Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of GSB takes place in the course of inter-State trade or commerce. As per Article 366 (12A) “goods and services tax” has been defined as any tax on supply of GSB, except taxes on the supply of the alcoholic liquor for human consumption. The provisions in the Constitution define the “goods” (Article 366(12)) to include all materials, commodities, and articles (Existed from earlier period), and “Services” (Article 366 (26A)) as anything other than goods. There are Union Territories with a with Legislature¹⁸, existing in the Indian Union and these are deemed to be “States” with reference to articles 246A, 268, 269,269A and Article 279A, (Article 366 (26B)), for the purposes of levy and collection of GST.

B. The GST Council and the GST Network

As per article 279A, the President shall, within sixty days from the date of commencement of CAA Act, 2016 constitute a Council to be called the GST Council. The GSTC was constituted with effect from 12th September, 2016. The GSTC, among others, shall make recommendations to the Union and the States on the issues, namely “(a) *the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the GST; (b) the goods and*

¹⁸ Delhi, Puducherry and Jammu and Kashmir have an elected legislative assembly.



services that may be subjected to, or exempted from the GST; (c) model GST Laws, principles of levy, apportionment of GST 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 GST; (e) the rates including floor rates with bands of GST; (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster”. The GSTC shall be guided by the need for a harmonised structure of GST and for the development of a unified national market for goods and services.

Since then, 43 meetings¹⁹ of GST Council have taken place. The Council has played a vital role in smooth implementation of GST in the country, as it functioned in the spirit of Co-operative Federalism, so as to meet the needs of the Citizens for a Unified seamless Economic activity. The GST Council is proactively involved in bringing timely reforms to evolve the uniform system to be a successful tool for empowering India to accelerate towards stronger Economic Union.

The GST System of taxation is totally technology driven as majority of the interface of the taxpayer with the tax authorities shall be through the common portal²⁰ GST Network. The GSTN special purpose digital vehicle has been set up by the Government on 28 March, 2013, as a private company under erstwhile Section 25 of the Companies²¹ Act, 1956. All the front end processes such as, applying for registration, filing of returns, payment of taxes, filing of refund claims etc., are to be carried out by the registered taxable person online through GSTN. The input tax credit (ITC) will also be verified online. Electronic matching of ITC across the supply chain will make the process more transparent and accountable and encourages a culture of voluntary compliance. There are GST Suvidha²² providers duly empanelled by GSTN as facilitators to provide the software assistance to the taxpayer for the purpose of GST compliance.

¹⁹ *GST Council Meetings*, GST Tax Council, (Nov 11, 2020, 3:31 PM), <http://www.gstcouncil.gov.in/meetings>.

²⁰ CGST Act 2017, sec. 146.

²¹ Companies Act, 2013, sec. 8.

²² *The consolidated list of GSPs empaneled with GSTN, after 3rd batch of selection*, GSTN, (Nov 11, 2020, 3:31 PM), <https://www.gstn.org.in/empanelled-gsps>.



There are registered GST tax practitioners²³ to assist the registered taxable person to comply with GST laws and procedures.

III. Constitutional validity of the GST regime

The Constitutional Amendment Act enacted to usher the new GST regime raised array of issues pertaining to the Constitutional validity of the stated legal framework. No doubt the laws are made with a purpose of having a simplified and harmonized tax regime with fundamental systemic reforms in indirect tax dispensation by integrating and harmonizing the tax structure across the Nation, but they appeared to be in violation of the essential federal structure of the Constitution.

In many cases the Apex court had observed²⁴ that democracy and federalism are essential features of the Indian Constitution and are part of its basic structure. The distribution of legislative powers between the Union and the States is the most important characteristic and basis of a federal Constitution. The Article 246A together with Article 269A, Article 279A and other related provisions, inserted into the Constitution with a purpose to create a new concurrent domain of law-making for Centre and states simultaneously in respect to the GST, excluding such law making from the present federal safeguard mechanism. This was questioned as a major Constitutional threat to the federal mechanism. The other areas of conflict are that whether the recommendation of the GST Council is binding on the Centre / State Legislature and whether it would affect the Indian Federalism in tax legislation processes.

A. Jurisdiction and powers to levy GST

The Section 9(1) of the CGST Act, which is the charging provision mandates, *“there shall be levied a tax called the CGST on all intra-State supplies of goods or services or both, ... at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”* The above provision has in fact has expanded the scope of levy by

²³ CGST rules 2017, Rule 83

²⁴ SR Bommai vs. Union of India (1994) 3 SCC.1



the Union from the point of origin, up to the point of final consumption, where it could benefit from higher tax collection due to value addition across the supply chain. Also as the scope of taxable event of the earlier regime i.e., the levy on goods manufactured, has been broadened to include all types of supply²⁵, the jurisdiction of the taxable event to levy taxes, increased.

Similarly the Section 9 (1) of the Kerala State GST Act, 2017, the provision relating to Levy and collection of GST mandates, *“there shall be levied a tax called the Kerala state GST on all intra-State supplies of GSB,... at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”* From the above extracts it is clear that the States have retained the law making powers and jurisdictions within their domains existed prior to GST, but have agreed to be levied at a common event in the interest of the citizen. Further the scope of levy earlier limited to sale of goods expanded to include all types of supply²⁶ of goods. The earlier mandate for levy taxes on Services that was limited to Union Government got expanded and extended to all the States, driving huge benefits to the State exchequers. From the above facts it is clear that the States and the Centre have not only retained the law making powers in the GST Regime. Further they have expanded their levying jurisdictions within their domains and have agreed to administer the levy the same at a common point and taxable event in the larger interest of the citizen and the National Economy.

The Section 5 (1) of the IGST Act, being the legislation passed by the parliament, in the charging part, mandates that, *“there shall be levied a tax called the IGST on all inter-State supplies of GSB,... at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person: Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.”* From the above legal

²⁵ See such as sale, transfer, barter, exchange, licence, rental, lease or disposal, CGST Act, 2017, sec. 7(1).

²⁶ See such as sale, transfer, barter, exchange, licence, rental, lease or disposal, Kerala SGST Act, 2017, sec. 7(1).



stipulations it is evident that the Centre has retained the law making jurisdiction and powers in respect of interstate supplies and international supplies within their domains as existed prior to GST. They have also agreed to the proposal that such taxes are to be shared on the basis of the recommendations of the GST council, in the interest of having a unified GST.

The UTGST Act 2017 passed by the parliament empowering the Union territories without a legislature, brought fresh resources to the development of such Union regions. In the earlier regime, the administrator had to depend on the Union Government for grants to run the administration. Now these regions have become free to augment their own economic activities as the UTGST, being a destination based tax, gets collected and accrued to the region.

C. Decision making process at GST council

The other important question raised is with regard to functioning of the GST council in case of conflicts among members of the GSTC. As per Article 279A the GST council is formed with the composition, the Union Finance Minister as Chairperson; the Union Minister of State in charge of Revenue or Finance as member; the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as members. The Vice Chairperson shall be chosen from one of the state members for such period as the council feels. The Quorum fixed at the meetings is half of the total number of members. The composition of GST Council is appreciable as there is equal representation and sharing from the Centre and the States to make policy decisions on tax. However every decision of the GST Council shall be taken by a majority of not less than three fourths of the weighted votes of the members present and voting. The weightage is fixed as one-third of the total votes cast for the Central Government, and as two-thirds of the total votes cast in respect of all the State Governments and this results in power totally tilted towards the Centre.

Federalism does not consist of a set of fixed set of principles. They are applied depending upon the requirements of the historical situations of a particular Country. It is pertinent to note that the Indian federalism was not a result of a contract between several sovereign units but as a result of



conversion of a unitary system into a federal system for ease of Administration. The Indian Constitution has laid down a political system which is federal in nature, but has structurally retained the Union government more powerful than the States. In *Shamsher Singh v. State of Punjab*²⁷, the honourable Supreme Court of India observed that the Indian Constitution is ‘more unitary than federal.’ In the case of *State of Rajasthan v UOI*²⁸, the Supreme Court called the Constitution as an ‘amphibian’, in the sense that it can move either on the federal or on the unitary plane, according to the needs of the situation and circumstances of a case. In *S.R. Bommai v Union of India*²⁹, the term “pragmatic federalism” was used as the Constitution while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strong unitary features. However to prevent conflicts between the Centre and the States in India, there exists an independent judiciary to settle disputes. The judiciary has the powers to resolve disputes between the Central government and the States on legal matters about the division of power. In view of the stronger unitary powers embedded in the Indian Constitution, the GST decision making process cannot be called as violative of Indian Federalism.

D. Imposition of Composition Cess

As GST is charged on consumption basis, the tax naturally accrues to the destination place in a State or Union Territory, where the goods or services are consumed. The earlier state VAT regime was based on origin principle where the CST was assigned to the State of origin where production or sale happened and not to the State where Consumption happens. Many developed States expressed their concerns over the loss of revenue on account of this shift in the tax policy. But to provide a barrier free movement and seamless ITC for the entire Country in the GST realm, such a change is an essential requirement. Further there were uncertainties about the gains in revenue generation after implementation of the GST. It was difficult to estimate accurately about the gains or losses from tax on services and on account of removal of cascading effect by phasing out the CST. In view of this situation of fiscal uncertainty, the States asked for

²⁷ 1974 AIR 2192

²⁸ (1977) 3 SCC 592

²⁹ AIR 1994 SC 191



compensation during the first five years of implementation of GST. Therefore a provision³⁰ has been made to compensate the States for loss of revenue arising on account of implementation of the GST.

The GST (Compensation to States) Act, 2017, with two underlying objectives viz., providing for compensation by Union to the States for any loss of revenue on account of implementation of GST and to levy and collection of a cess for the purpose of carrying out this compensation obligation of the Union, was enacted by the Central Government. For the purpose of calculating the revenue to determine the compensation amount to be met in any financial year, the year 2015-16 has been assumed as the base year and to this the growth rate of revenue for a State at 14 percent per annum is added. The GST Compensation Cess³¹ is levied on the supply of certain GSB, (i) on intra-State supplies of, as provided for in section 9 of the CGST Act, and (ii) on inter State supplies as provided for in section 5 of the IGST Act, and collected as recommended by the GST Council, for the said purposes. The cess so collected is used for providing compensation to the States for loss of revenue arising on account of implementation of the GST, with effect from the date from which the provisions of the CGST Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council. There is shortfall in revenue collection during the current year due to prevailing COVID-19 pandemic situation which has impacted the development and progress of the entire country and the Globe, which has resulted in reduction in economic activities across the world. In the forty second GST Council meeting held on 5th October 2020, it has been agreed to levy the compensation cess beyond the 5-year period as earlier stipulated, i.e., beyond June, 2022, as revenue gaps are to be made good. Further notifications in these regards are yet to be issued.

IV. Constitutional validity of GST questioned

The concept of dual levy by following the Cooperative Federalism in GST regime and the Levy of Cess under GST (Compensation to States) Act, 2017(‘Compensation cess’ for brevity) and the imposition different levies on single taxable event viz., ‘supply of goods or services or both’

³⁰ The Constitution (One Hundred and First Amendment) Act, 2016, sec. 18

³¹ The GST (Compensation to States) Act, 2017, sec. 8(1).



(GSB) were questioned in *Union of India v. Mohit Minerals (P) Ltd*³², before the honourable Supreme Court (SC) of India details of which are as follows.

M/s Mohit Minerals (P) Ltd (the petitioners) filed a writ petition before Delhi High Court challenging the validity of the ‘Compensation cess’, in the context of similar levy of ‘clean energy cess’ paid earlier to GST on import of coal. The High Court (HC) passed an interim order in favour of the petitioner prima facie doubting the legislative competence of Parliament in enacting the Compensation cess Act. An appeal was filed by the Union Government, before the SC challenging the order of the HC. An application to transfer the petition pending before the HC to SC was also filed. Accepting the request, the SC ordered for the transfer and took upon itself the hearing of the petition concerning the validity of the impositions cess under Compensation Act.

The petitioner pointed out that the imported coal had already suffered “clean energy cess” levied under the erstwhile indirect tax laws at the time of its import. It was argued before the SC that in the event the levy of compensation cess is sustained then the credit on account of clean energy cess may be permitted for set-off against the compensation cess obligation. Further arguments made before the Supreme Court (the Court) included the aspects, (i) that the purported premise of GST is to ensure sub-summation of all taxes, cesses, and surcharges levied on goods and services and therefore the levy of compensation cess is contrary to this declared objective underlying the introduction of GST; (ii) that the Compensation cess is a colourable legislation as it cannot be traced to Section 18 of the Amendment Act which is silent on the levy of a cess for purpose of meeting the compensation obligation of the Union and argued that the Parliament does not have any power to levy compensation cess in terms of the said provisions; (iii) that the levy of compensation cess amounts to double taxation as there is GST as well as the Compensation cess being levied on the same transaction, resulting in “overlapping” in law, which does not have the Constitutional sanction.

³² *Union of India v. Mohit Minerals (P) Ltd*: (2018) SCC Online SC 1727.



These contentions were resisted by the union Government as compensation cess is essentially a “special kind of tax” for a limited duration. It was contended that once the Parliament was competent to enact GST, the competence to enact the levy of compensation cess was a logical concomitant.

V. Observations of the Supreme Court

The honorable Supreme Court examined the Constitutional provisions pertaining to GST Law making process and made the following key observations before deciding the case in favour of the Union Government.

- (i) the Court relying upon the statement of objects and reasons of the amendment Act³³, viz., “concurrent taxing powers on the Union as well as the States including Union Territory with legislature to make laws for levying GST on every transaction of supply of GSB” observed that it is a pin-pointed acknowledgement of the change of Constitutional design by the stated Act to enact the GST regime;
- (ii) that Article 248 read with Articles 246 and 246A clearly indicate that residuary power of legislation is with the Parliament, which empowers the Parliament to provide for Compensation to the States for loss of revenue by law;
- (iii) that the expression ‘law’ used is of wide import which includes levy of any cess;
- (iv) that there is no dilution of the “residuary” legislative powers of Parliament in terms of Entry 97 of the List I of the Seventh Schedule and the same can be gainfully pressed upon by Parliament to inter alia impose a “special GST” such as the compensation cess;
- (v) that cess, “means a tax levied for some special purpose, which may be levied as an increment to an existing tax” and thus the power of the legislature to impose GST inherently carries the power to impose cess. It observed that there is nothing in the language of the Amendment Act emphatically declaring using words like “that henceforth no surcharge or cess shall be levied”;

³³ The Constitution (One Hundred and First Amendment) Act, 2016.



(vi) that “two taxes/imposts which are separate and distinct imposts and on two different aspects of a transaction are permissible” and as GST and compensation cess operate in their distinct spheres, the validity of both has been sustained;

(vii) that the contention of “double taxation” is a non-starter and it is already settled that “if on the same subject-matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure unless there are some other prohibitions”;

(viii) that the GST and compensation cess being “two separate imposts in law” are not prohibited and in fact compensation cess must be viewed as “an increment” to GST;

(ix) that “giving credit or set-off in the payment is legislative policy which had to be reflected in the legislative scheme”. Since there is no such indication in law, accordingly the claim that credit of tax paid on account of clean energy cess be made available to discharge the liability of compensation cess cannot be entertained the SC held.

The above decision of Hon. SC is a timely endorsement of the large-scale amendments brought about to usher a new era of indirect taxes. By upholding the validity of the Compensation Act the Supreme Court has thus also sustained the key element for fair fiscal Centre-State relations and furthered the cause of the reform represented by GST. This decision by the Hon. SC sets tone for judicial appreciation of changes effected in GST regime. It endorses the Constitutional and legislative changes brought about on account of GST. Further in specific context of Compensation Act which in itself has a special position in the grand design of GST, as it enlivens an invisible trust factor between the Union and the States required calibrating GST as a “dual levy”. By upholding the Constitutional validity of the GST, the SC has affirmed the Constitutional changes, brought on account of GST. Thus, the Supreme Court has upheld the Constitutional validity of the GST law permitting collection of a cess to compensate the states.

VI. The way forward

The Indian Constitution is a dynamic and living document embodying a way of life towards the progress of the Nation, the Society and the Individual. Therefore, to cater to the needs and interests of the Nation, there is scope for amending provisions of the Constitution, keeping intact the basic structure of the Constitution. The States have agreed to share their Sovereignty to the



taxing powers in the National interest and the society as a common goal in a democratic set up. From the process and time taken up for amendment to start GST regime, it can be concluded that it has been well conceived and implemented without damaging the federal structure of the Constitution. One should remember that the Indian Constitution is a vehicle of Life and its spirit should always match with the spirit of the Citizens and the Society. As the Nation and the individual in the society develop and progress there is need of similar evolution in the Constitutions so as to meet the aspirations and interest of the Citizens.
