

**STUDY OF GOODS AND SERVICES TAX WITH EMPHASIS ON CORPORATE  
SECTOR IN INDIA**

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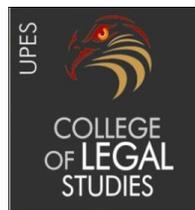
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B.A., L.L.B. (Hons.)**



**College of Legal Studies**  
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**2016**

## CERTIFICATE

This is to certify that the research work entitled “**Study of Goods and Services Tax with emphasis on Corporate Sector in India**” is the work done by **Mr. Dhruv Tripathi** under my guidance and supervision for the partial fulfillment of the requirement of B.A., L.L.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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## DECLARATION

I declare that the dissertation entitled “**Study of Goods and Services Tax with emphasis on Corporate Sector in India**” is the outcome of my own work conducted under the supervision of Prof. **Mr. Sujith Surendran**, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

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## Abbreviations

Art.	Article
B to B	Business to Business
Cent. Govt.	Central Government
Cent. Excise	Central Excise
CST	Central Sales Tax
CENVAT	Central Value Added Tax
CGST	Central Goods and Services Tax
EC	Empowered Committee
GST	Goods and Services Tax
GST Council	Goods and Services Tax Council
GoI	Government of India
GDP	Gross Domestic Product
GSTN	Goods and Services Tax Network
IGST	Integrated Goods and Services Tax
ITC	Input Tax Credit
JWG	Joint Working Group
MODVAT	Modified Value Added Tax
PM	Prime Minister
RNR	Revenue Neutral Rate
SEZ	Special Economic Zone
State Govt.	State Government
SGST	State Goods and Services Tax
VAT	Value Added Tax

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Dhruv Tripathi

# **1. Introduction**

## **1.1. Introduction**

Introduction of Goods and Services Tax (GST) – is an important breakthrough- is the biggest comprehensive reform proposed in the sphere of tax regime in our country after the independence. It is proposed to merge customs duty, central excise duty and service tax into one single tax system i.e., Goods and Services Tax (GST). Thus, GST is a comprehensive indirect tax levy on sale, supply, manufacture and supply of goods and services. Through the introduction of GST at the Central level which not only include comprehensively more indirect Central taxes but will also integrate goods and services taxes for the purpose of set-off relief and may also lead to increase in revenue for the Centre. Thus the Goods and Services Tax at the Central as well as State level will provide more relief to agriculture, trade, industry and consumers through the comprehensive and broad coverage of set-off and service tax set-off, subsuming various taxes in the GST and setting out Central Sales Tax. If the GST is properly drafted by the appropriate calibration of the rates and fair compensation wherever necessary, there may be also resource/revenue increase both for the Centre and the States, mainly through increase in the tax base which will result in a possibility of a significant improvement in tax-compliance. Thus, GST will lead the possibility of cumulative gain for industry, agriculture, trade and common consumers as well as for the Centre and the State Governments. This dissertation traces the significant administrative issues which are involved in designing an effective Goods and Services Tax (GST) model with the objective of having an overall balanced structure of tax rates. There is also need for promoting the powers of Central Government as well as State Government in their taxation matters. Moreover, there is also very significant need to introduce a model that would easily instrument, while being generally acceptable to stakeholders. Thus, Goods and Services Tax (GST) is something about which each of us must understand because it is very soon going to affect our lives in a very significant manner.

**Keywords:** GST, Indirect Tax, Customs, Excise, Set-off, Stakeholder, Consumer, Industry etc.

## **1.2.Rationale**

In India, taxes are broadly classified as Direct Taxes and Indirect Taxes and as the name suggests, direct taxes paid directly and indirect taxes paid indirectly. Indirect taxes levied on the goods and services. In the case of Indirect taxes, they are paid by one person, but he recovers the same from another person. Thus, the person who actually bears the burden of tax is the ultimate consumer who pays it indirectly through some other person, who practically, merely acts as a tax collecting agent. Some of the important indirect taxes include Value Added Tax, Central Sales Tax, Central Excise (Duty on Manufacture), Customs (Duty on Imports and Exports), Stamp Duty, Entry Tax, Octroi, Service Tax, Expenditure Tax etc. So there are endless taxes in the present system from which few of them levied by the Central Government and others by the State Government.

The Central Government and State Governments draw the power to levy tax from the Constitution of India. Article 265 of the Indian Constitution provides that “*No tax shall be levied or collected except by authority of law.*” There are so many shortcomings in this system of taxation. Presently, the Constitution of India vests the power with the Central Government to levy service tax on the supply of goods/services and excise duty on the manufacturing. Further, it vests power with State Government to levy Value Added Tax (VAT) or Sales Tax on the sale of goods. This division of financial powers led to a multiplicity of indirect taxes in the country. Further, Central Sales Tax (CST) is levied on inter-state sale of goods by the Centre, but collected and retained by the exporting states. In addition, may states also levy entry tax on the entry of goods in local areas?

This multistage taxation system at the Central and State level has resulted in conglomerate indirect tax structure in the country which is ridden with hidden costs for industry and trade. Thus, it clear from the discussion that there is no uniform tax structure

and rates for the indirect taxation across states. There is an overflowing of taxes due to the reason of 'tax on tax'. No credit is available to the traders of service tax and excise duty paid at the stage of manufacturing while paying the State level Value Added Tax (VAT) or Sales Tax, and vice versa. In addition, there is no credit of State taxes paid in one can be availed in another states. Thus, the prices of goods and services get artificially inflated to the extent of this 'tax on tax'.

All these shortcomings of the present taxation system guide us to develop a new system of Taxation for the serenity of doing business and for the consistent flow of credit across the whole supply chain. Thus, the introduction of Goods and Services Tax would mark a clear departure from the scheme of dissemination of financial powers envisaged in the Constitution.

### **1.3. Research Questions**

The researcher has identified the following preliminary research questions:

1. What is GST? How does it work?
2. How can the burden of tax, in general, fall under GST?
3. How will GST benefit industry, trade and agriculture?
4. How will GST benefit the exporters?
5. How will GST benefit the common consumers?
6. How will GST benefit the small entrepreneurs and small traders?
7. What are the salient features of the proposed GST model?
8. Why is Dual GST required?
9. How would a particular transaction of goods and services be taxed simultaneously under Central GST (CGST) and State GST (SGST)?
10. What is the rate structure proposed under GST?
11. Why does introduction of GST require a Constitutional Amendment?

## **1.4. Literature Review**

### **1. The Constitution (One Hundred And Twenty-Second Amendment) Bill, 2014, Bill No. 192 of 2014**

This amendment bill was proposed in the Lok Sabha so that Goods and Services Tax (GST) should be implemented in India. The amendment bill provides the changes in the Constitution through which the Goods and Services Tax can be implemented easily and it also provides the mechanism and regulation and GST Council which will be recommending body of Central as well as State Government. It also provides other changes in the various articles of the Constitution. This amendment bill was passed by the Lok Sabha and it becomes 122<sup>nd</sup> Amendment of the Constitution of India.

### **2. Report of the Select Committee on The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014, Presented to The Rajya Sabha on 22<sup>nd</sup> July, 2015**

After passing of the 122<sup>nd</sup> Amendment Bill by the Lok Sabha the bill was proposed to the Rajya Sabha which referred it to the empowered committee for some changes or modifications in the bill and after that it is proposed in the Rajya Sabha. The Empowered Committee suggested that government should insure that local bodies' standards should be maintained and they don't feel to be deserted and the State Governments should take adequate measures to ensure that adequate revenues flow to the local governance bodies and their resources not get affected adversely. Thus, the committee proposed change in the definition of "Band" in the proposed article defined in the GST laws. In this bill the committee also proposed that each state be it a small or large state must be represented by their Revenue/Finance/Taxation Minister. The committee prays the Goods and Services Tax Network (GSTN) and has a feeling that it will play a crucial role in implementation of GST. The committee also discussed about the GST Rate and Revenue Neutral Rate (RNR) and it proposes that the GST rate should not be more which erode the confidence of the consumers and may lead to inflation.

### **3. Samarth Jain, Goods and Services Tax (GST), Concept and Impact, 2015**

In this article the author emphasizes that GST will help in doing business and for a seamless flow of credit across the whole supply chain. It also emphasizes that though GST is not perfect as of now but it would become better in few years.

### **4. First Discussion Paper on Goods and Services Tax in India, The Empowered Committee of State Finance Ministers, 2009**

The former Union Finance Minister P Chidambaram in the Central Budget (2007-08) proposed the idea of GST and planned to introduce from April 1<sup>st</sup>, 2010 and the Empowered Committee of State Finance Ministers on his request started to prepare a roadmap with the Central Government for introduction of GST in India. The Empowered Committee after so many discussions and modifications finally submitted its report on November 10<sup>th</sup>, 2009. This discussion paper covers 4 areas; firstly, the discussion paper begins with a brief reference to the process of VAT at the Central and State level; secondly, this paper provides the process for preparation of GST Model; thirdly, in this part the paper discuss the detail comprehensive structure of GST Model and its implementation and fourthly, for the better illustration and understanding there is a annexure attached related to Questions and Answers.

### **5. Satya Poddar and Ehtisham Ahmad, GST Reforms and Intergovernmental Considerations in India, Working Paper March 2009**

This working paper was written by Satya Poddar and Ehtisham Ahmad, the Economic Division in the Department of Economic Affairs on GST Reforms and Intergovernmental Considerations in India which discusses the contractual issue of carrying forward the national tax reform agenda and throws light on the principles and procedures relating to goods and services market in the country.

**6. Adi Godrej and Michael Keen, India Tax Insights, Ernst and Young, Issue 3 October-December 2014**

This issue of Ernst and Young is focuses on Goods and Services reform-the most awaited by the business industry. It emphasizes on the positive changes that would bring the GST like; it will pave the way for higher economic growth as compared to current tax regime. This issue also emphasizes into various dimensions of GST that are currently under the discussions and how the new reform would be beneficial for the business industry.

**7. Harsimrat Brar, Superintendent, Central Excise, GST – An awareness campaign needed, 2015**

This article focuses on the successful implementation of proposed GST. This article emphasizes on that the GST model will be complete harmony in the new taxing regime and it will provide the one national market for all the business industries and will also ensure financial independence in the market.

**8. Dr. Milind Antani and Ashish Sodhani, GST and Its Impact on Pharma, Nishith Desai Associates, February 2015**

This article emphasizes that proposed GST law is also beneficial for the Pharms Sector because it will discontinue the Central Sales Tax which result on a heavy burden for the pharms industry when they have to procure raw materials from other state.

**9. Mahesh C. Purohit and Vishnu Kanta Purohit, Goods and Services Tax in India- Estimating Revenue Implications of the Proposed GST, Foundation for Public Economics and Policy Research, Final Report 2010**

This final report by Foundation for Public Economics and Policy Research focuses on the evolution of tax reforms, contribution of taxes on commodities and services, VAT era and step towards GST. It also focuses on the Central and State level taxes on commodities and services. This report focuses on the detailed structure of taxing statute relevant to commodities and services and also discussed

the loopholes and problems in the existing taxation regime. By discussing the problems in the existing taxation regime it proposed the step towards the Goods and Services Tax, evolution of GST, what efforts are being taken towards introduction of GST, and revenue implications of the GST and the structure of GST etc.

**10. National Council for Applied Economic Research, Moving to Goods and Services Tax in India: Impact on India's Growth and International Trade, Prepared for the Thirteenth Finance Commission Government of India, December 2009**

This working paper focuses on the study of proposed Goods and Services Tax in India. The major objective of this study is to analyze the comprehensive impact of proposed Goods and Services Tax on the international trade and economic growth of the country. This paper also emphasizes that from present tax reform moving to new proposed Goods and Services Tax law would impact the consumers, firms, national and international trade. This paper also provides the due to the implementation of proposed GST the GDP growth will be increased by 0.9% to 1.7%.

**11. Empowered Committee of State Finance Ministers (2015), Report of The Joint Committee on Business Processes for GST on Refund Process**

This report was prepared by the Empowered Committee of State Finance Ministers which deals with the one of the very important aspect of the impact of proposed GST law that what about the tax that is paid in excess. So, the committee in this report deals with the various situations or conditions in which any amount can be due to the tax payer from the tax administration. So, to establish an effective and efficient tax administration system it is very important that issues on which refund arises ought to be minimum and clearly defined in the law.

## **12. Empowered Committee of State Finance Ministers (2015), Report of the Joint Committee on Business Processes for GST on GST Payment Process**

Empowered Committee of State Finance Ministers by this report highlighted the payment process for GST. It emphasizes on key issues of tax collection, remittance, and collation, reporting of tax collection and proper bank account and bank reconciliation of taxes derived from basic data of payments. It also emphasizes on the need of uniform system of banking arrangements and designing the format for consumers paying GST. They also focus that under the new proposed GST regime the payment process of taxation should be easy and convenient for the consumers.

## **13. Empowered Committee of State Finance Ministers (2015), Report of the Joint Committee on Business Processes for GST on GST Return**

In this report the Empowered Committee of State Finance Ministers focuses on – who are eligible to file GST return. This report comprehensively deals with and explains that every registered person is competitive to file GST return for the prescribed tax period and it also provides the procedure in detail that how to file a GST return. This report also provides that those companies which are not indulge in GST supplies or persons who are dealing in exempted list/ nil-rated or non-GST products are also not obliged to file GST return.

## **14. Empowered Committee of State Finance Ministers (2015), Report of the Joint Committee on Business Processes for GST on GST Registration**

This report deals with the process of GST registration where every entity or business needs to register with the tax authorities and obtain a unique identification code from the concerned tax authorities so that all the data and operations related to business entity can be agglomerated and correlated. This report provides that it is very important method to identify the structure and business for the purpose of taxation. This registration also provides legality to the business entity.

## 1.5. Hypothesis

Hypothesis is a proposition, condition or principle which is assumed, perhaps without belief, in order to draw out its logical consequences and by this method to test its accord with facts which are known or may be defined.<sup>1</sup>

Hypothesis provides direction to research. It directs a researcher to identify the procedure and methods to be followed in solving the problem. The hypothesis is forward looking. It may either be a statement of relationship or specification of functions.<sup>2</sup> The formulation of the hypothesis requires a prior knowledge of the phenomenon. Hence, in connection with the research questions and propositions stated in the earlier sub-section, the hypothesis of the study is formulated as,

*“Destination Based Tax as proposed by Goods and Services Tax Bill is going to bring uniformity in the laws of Indirect Taxation system and efficiency in tax regime of the country through implementing uniform code of tax system which will help in achieving economic growth of the country as well as corporate sector.*

## 1.6. Research Methodology

Epistemology is a theory of knowledge, without considering which, a researcher can theorize about what he thinks he has established but would have difficulty in demonstrating the validity of his claims.

A research can be defined as a set of activities for an advancement of knowledge. In order to justify the truth to be believed as knowledge, a sound research should be designed in such a way through constant reasoning. While setting up a research it is quite essential to determine the research paradigm, i.e. the researchers' view to examine the

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<sup>1</sup> Webster's New International Dictionary.

<sup>2</sup> Padma, T and Rao, K.P.C., *Legal Research Methodology*, Asia law House, Hyderabad. First edition, 011, p.388.

reality.<sup>3</sup> These epistemology and research paradigm assist in deciding the research methodology.

### **1.6.1. Research Approach**

The present research study is a blend of doctrinal and empirical in nature. Hence, mixed research method is adopted. The doctrinal preposition of the study is made by a systematic approach to examine the options developed in the selected research method. Due to the complex nature of the problem, a multiple approach was taken to address the problem from different angle. Each of the ancillary questions of research problem is approached separately through the appropriate research method. Doctrinal method of study is used literature survey and documentary analysis.

In this dissertation empirical study is also made. The empirical research relies on observations, with due regard for system and theory. It is a data based research, coming up with conclusions which are capable of being verified by observations and experiments. In such a research, it is very necessary to get facts at firsthand, at their source and actively to go about doing certain things to stimulate the production of desired information. Further, the approach for this empirical research may either be quantitative and qualitative. Quantitative research is based on the quantitative measurements of some characteristics, which can be expressed in terms of quantities. On the other hand a qualitative research is concerned with the qualitative phenomenon that relates or involves quality or the kind of variables of the study. These approaches differ in analysis and reporting also.

A qualitative data are explained in a descriptive manner, which include the results of surveys or the fact-finding enquiries of various kinds. The purpose of this approach is to provide merely the description of the state of affairs as it exists at the time investigation. While quantitative data are reported through the statistical analysis for the critical evaluation of the fact prevailing in the universe. The researcher, first provide

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<sup>3</sup> Jonker, J and Pennink, B, *The Essence of Research Methodology : A concise guide for Master and PhD Students in Management Science*, London, Springer, 2010. : as observed by Fredy Kurniawan, “*An integrated project evaluation tool for public private partnership projects*” PhD Thesis, Heriot-Watt University, Unpublished.

himself with a working hypothesis or guess as to the problem results and then works to get enough data (facts) to accept or reject his hypothesis.

The researchers' approach adopted in preparing this dissertation is also in nature of economic analysis of law. The main objective of economic research methodology is to find out the truth about the economic questions which are bothering the communities, individual households, and policy makers of the state governments, national governments and international community as a whole. In the economic methodology some questions can be quantitative in nature such as, prices and costs of commodities, demand and supply of various goods and services in the economy, distribution of income, international trade, employment level by sectors, investments, rate of returns on financial assets and primary, secondary or the university level education and other questions can be qualitative in nature which ranges from philosophical questions related to behavior or psychological analysis of decision making process of individual or firms or about the welfare of society which involves abstract reasoning.

In this dissertation an attempt has been made to answer the proposition of law related to the phenomenon of proposed Goods and Services Tax and its subsequent effect on taxing system of the country, which again plays a significant role considering the various changes effecting the taxing regime of the country such as Indirect Taxation etc. by using the economic research methodology.

## **1.7. Objective**

This dissertation has the following objectives:

- To analyze the Goods and Services Tax (GST) Model as proposed by the Central Government.
- To analyze the justification of GST.
- To examine the background against which the scheme of Goods and Services Tax (GST) is proposed.
- To discuss, how the burden of tax, in general, will fall under GST.

- To analyze, how the GST will benefit industry, agriculture and trade.
- To discuss the requirement of GST.

## **1.8. Citation Methodology**

The researcher shall be referring to the Bluebook<sup>4</sup> mode of Citation of Legal authorities in order to maintain uniformity.

## **1.9. Structure of the Dissertation**

This dissertation is structured into seven chapters . The first and second chapter provides an introduction of taxing system in India and the indirect taxation evolve through time. Third, fourth and fifth chapters discussed the Goods and Services Tax model, its implementation etc. In the last two chapters I have discussed the international experience of Goods and Services Tax and its impact on various industries and consumers group. The crux of each chapter is as follows,

### **Chapter 1: Tax System in India**

In this chapter I have discussed the definition and history of the Tax. I have discussed that how the taxation system evolve through long period of time. It is also discussed in this chapter that how in the ancient time taxes were levied on the people and on what services or products it was levied and how it evolve and what now comes under the purview of taxation in present tax system.

### **Chapter 2: Indirect Tax System in India**

The framework of Indirect Taxation is discussed in this chapter. This chapter explains what comprises indirect taxation and how it is levied on various goods and services at different level. Focus is mainly on the Indian Indirect Taxation System.

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<sup>4</sup>THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, 19<sup>TH</sup> EDITION (2011)

### **Chapter 3: Introduction of GST**

This chapter discussed the taxing framework of the country and the need to implement the Goods and Services Tax (GST). In this chapter I have discussed why the GST is important for India and why the present Value Added Tax (VAT) system is no longer beneficial for the Indian Taxing System.

### **Chapter 4: GST Model**

In this chapter I have discussed the Goods and Services Tax Model. Till now, it is yet not decided which model will be followed in India if GST bill is passed and implemented, therefore, I have discussed in this chapter all the three prospective models which are implemented in various countries and also discussed which model will be beneficial for the Indian Taxing System.

### **Chapter 5: Inter-State GST (IGST)**

This chapter explains the method of implementation of Goods and Services Tax on the goods and services which involve inter-state transactions. In this chapter, it is explained that how the GST will be levy on any particular service or product under inter-state transaction and how the taxes will be distributed among the Central and State as well as manufacturer and distributor.

### **Chapter 6: International Experience**

This chapter explains the international experience of Goods and Services Tax. Goods and Services Tax is till now implemented in more than 150 countries so with the help of this chapter I am trying to explain how the GST is implemented in various countries and what is the impact of GST in these countries.

### **Chapter 7: Impact on Industry**

This chapter is most important chapter of this dissertation because in this chapter I have discussed the impact of Goods and Services Tax on Corporate Sector and Industries. This chapter will explain how the GST will effect the various important sectors of the

corporate world in India and we will also get to know whether it is going to affect the industries or corporate sectors positively or negatively.

### **Conclusion and Suggestions**

All the shortcomings in the existing taxing model lead us to the new taxing system which is proposed as Goods and Services Tax in place of various Indirect Taxes. Though there are certain uncertainties and few drawbacks in the proposed GST Model but it is going to affect the financial condition of the country in a very significant way due to its principle of destination based tax which will result in that the ultimate consumer have to pay the taxes directly to the taxing authority which will decrease the cascading of tax dues.

In this, once I will gone through all the aspects of Goods and Services Tax especially with respect to Corporate Sector I will make suggestions that need to be taken care by the Government before implementing the Goods and Services Tax.

As of now, my suggestions in this regard is to; fix the tax rate for GST, establish the GST Council, implement the GST law before new financial year to curb the cascading of due taxes etc.

## 2. Tax System in India

### 2.1. Definition and History of Tax

The term tax is originated from the Latin word “**taxare**” which means “**appraisal**”.<sup>5</sup>If we see the dictionary meaning, the “**Black’s Law Dictionary**” defines ‘Tax’ as-

*“A tax is not a voluntary payment or donation, but an enforced contribution, levy pursuant to legislative authority” and is any contribution imposed by government whether under the name of toll, tribute, impost, charge, custom, excise, subsidy, aid, supply, or other name.”*<sup>6</sup>

The definition by Black's Law Dictionary in common parlance specifies that it is a contribution or involuntary payment and statutory payment to the Government by the people of the country which not derive any direct benefits to taxpayer or his family members. Tax is a contribution by the individuals or customers and big entities like; corporations or companies which are charged either by Central Government or by the State Government or its equivalent functionalities. Local bodies of the state government also levied taxes for some particular services. There are various types of taxes which presently exist in the world and in most of the nation’s taxation system evolve through a long-period of time and seen various phases of development.<sup>7</sup>

From the inception of the taxing system, it is always based on the economic development of the state and with shift in the sustainable economy from agriculture to industrialization, the societies facing a very huge development due to the globalization,

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<sup>5</sup>GirishGarg, *Basic Concepts and Features of GST in India*, International Journal of Scientific Research and Management (IJSRM), Vol.2, Issue 2, 542-549, (2014 )

<sup>6</sup>Black’s Law Dictionary

<sup>7</sup>MathijsAlink, Victor van Kommer, *Handbook on Tax Administration*, Tax and Customs Administration of the Netherlands, International Bureau of Fiscal Documentation, 2011. ISBN 978-90-8722-102-7

international relations, computerization, demographic and geographic changes in the living standards of the people and therefore the taxing system becomes very complex.<sup>8</sup>

In the past, funds which were collected through taxation had been utilized to bolster the costs during war time, for the foundation and requirement of law and public order, to provide better infrastructure to the people of the state, to provide security to the life and property and for the working of the government and to carry out other functions by the state and their counterparts.<sup>9</sup>

The first known arrangement for collection of tax was done in the “Ancient Egypt” approximately “3000 BC – 2800 BC” during the time of 1<sup>st</sup> rulers of the Egyptian dominion.<sup>10</sup> Under the reign of Egyptian Pharaohs it was the duty of the "counselors" to raise the funds of the state in any way practicable, be it by imposing a tax on cooking oil used by the households. Customary reviews were directed to guarantee that oil was not reused – maybe the main authentic record of avoidance.<sup>11</sup> The 'Book of Genesis' in The Bible proposes that a fifth of all harvests ought to be given to the Pharaoh. The Ancient Greece collected eishpora to pay for the wars, and once a war was over they refunded the surplus if any.<sup>12</sup> In Athens aliens were forced to pay poll taxes every month. Romans exacted taxes for the protection of colonized people groups to increase the funds of the empire and Julius Caesar levied a 1% extra charge on the goods; Augustus initiated a duty to give retirement benefits to the military personnel.<sup>13</sup> We can find references of tax system in many ancient books like; “Artshashtra and Manu Smriti” which specifies that tax system has been in force from ancient times in India.<sup>14</sup>

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<sup>8</sup>Supra note 3.

<sup>9</sup>G. Balachandran, *Methodology and Perspective of Business Studies*, Ane Books Pvt. Ltd., First Edition 2010, Pg. No. 143

<sup>10</sup> Supra note 1.

<sup>11</sup>Supra note 1.

<sup>12</sup>New Internationalist Magazine, *A Short History of Taxation*, Issue 416, Published on 1 October 2008, [<http://newint.org/features/2008/10/01/tax-history/>]

<sup>13</sup> The roots of Taxation System, India Notes, Published on 11 March, 2015 [<http://m.indianotes.com/new/Finance-How-to/The-roots-of-taxation-system/193470/4/PF>]

<sup>14</sup>Supra note 1.

## 2.2. Genesis of Tax System in India

In India, the custom of collecting tax is coming from the ancient period. We can find the authorities in various early works of; “Chanakya and Manu”. The tax system during that time was an ideal mixture of “Direct Tax” and “Indirect Tax” and it varies with the prevailing conditions of the country. The history of tax collection recommends presence of a substantial and composite assessable population in India.<sup>15</sup>

The mughuls, with their arrival in India brought in the country a sea of progresses in the tax assessment arrangement of India. Despite the fact that, they additionally rehearsed the same standard of tax assessment yet it was further similar in anatomy and accumulation. The Islamic monarchs forced ‘jaziya kar’ but it was abrogated by emperor “Akbar”. “Aurangzeb” once again in his reign imposed the jaziya kar on the Hindu people in 1679. Purpose behind this is referred to be a monetary stringency and inclination with respect to the sovereignty of the monarch, and a request by “ulema” and the Muslims taxed according to what property was claimed by them.<sup>16</sup>The Govt. absolved several category of people from tax like; government workers, similarly visually impaired, paralyzed, and the destitute. Its presentation experienced very large resistance by the people which was later annulled. “Jaziya Kar” was per head imposed on per head avg. income in an area of an Islamic state's non-Muslim subjects, who meets certain criteria. The perspective of the Muslim monarch for imposing jaziya kar a substantial evidence of the “non-Muslims” acknowledgment of persecution to the monarchist, "pretty much with respect to the occupants it was a solid continuation of the assessments paid to before administrations" and consequently, non-Muslims were allowed to practice their faith, to appreciate a measure of public self-governance, to be qualified for Muslim state's insurance from outside animosity, to be exempted from military administration and the Zakat as compulsory upon Muslim subjects.<sup>17</sup>

The British rule period saw some noteworthy changes in the entire tax assessment arrangement in India. In spite of the fact that, it was exceptionally for the British

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<sup>15</sup>A Study on Proposed GST Framework in India, [<http://www.caaa.in/Image/23ugsthb.pdf>]

<sup>16</sup>Supra

<sup>17</sup>Supra

government and its exchequer yet it brought reforms which have scientific as well as modern approach for the arrangement and assessment of tax collection. In 1922, the nation saw an outlook change in the general Indian tax collection framework. Setting up of regulatory framework as well as tax collection framework was first done by the Britishers.<sup>18</sup>

And in the present day time, a large portion of the collected tax is used by the administrations with the goal that it can work for better governance and welfare of the general public on the large scale. The government with the help of the administration is incorporating education frameworks, social insurance frameworks, providing annuities to the elder persons, unemployment advantages, and transportation to the public. Water and waste administration frameworks, Energy regulations and management systems are additional basic utilities for the common people.<sup>19</sup>

The taxes are exacted by “Central and State Governments” in India. Likewise slight taxes collected by local administrations such as; “the Municipality or the Local Council”. The “Central and State Governments” are authorized by the Constitution of India to levy and collect the taxes.<sup>20</sup>“Article 265<sup>21</sup> of the Constitution of India states that **“No tax shall be levied or collected except by the authority of law”** is an important restriction on the power of Centre and State. Consequently every tax collected or exacted must be levied under a law; either it to be sanctioned by the “both the houses of Parliament or the State Legislation.”<sup>22</sup>

*“Article 246<sup>23</sup> of the Constitution of India distributes power between the Parliament and State legislature to frame the law on various subjects including tax.”*

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<sup>18</sup>Supra

<sup>19</sup>Supra note 5.

<sup>20</sup>The Institute of Chartered Accountants of India, *Background Material on GST (Popularly known as VAT globally)*, Published by The Publication Department on behalf of the Institute of Chartered Accountants of India, June 2015 [<http://www.idtc.icai.org/download/BGM-on-GST-march-15.pdf>]

<sup>21</sup>Constitution of India, 1950

<sup>22</sup>Supra note 11.

<sup>23</sup>Supra note 17.

***“Article 246 - Subject-matter of laws made by Parliament and by the Legislatures of States-***

*“(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).*

*(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List).*

*(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the State List).*

*(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State] notwithstanding that such matter is a matter enumerated in the State List.”*

“Article 246 of the Constitution of India under Schedule VII provides these three lists<sup>24</sup> –

- ***List I (Union List)*** – deals with the subject matters on which only Parliament is competent to make laws.
- ***List II (State List)*** – deals with the subject matters on which only the State legislatures are competent to make laws.
- ***List III (Concurrent List)*** – deals with the subject matters on which Parliament and State legislature both can make laws.”

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<sup>24</sup> Supra note 17.

### 2.3. Classification of Indian Tax System

Since the economic development the tax system of the country evolve very thoroughly and at present most of the nations including India follows a tax system which not only includes the elements of modernization in taxing system but also includes the elements of traditional taxing system.<sup>25</sup> The latest developments due to the globalization and technology, the society has remarkably changed and with this there are various attributes of taxation also emerged because the traditional taxation system was designed with the view of domestic purpose but with the changing circumstances and developments it lost its purpose.<sup>26</sup>

*“Presently, India is following dual system of taxation for levying taxes on individuals or goods and services which are:”*

1. *Direct Tax*
2. *Indirect Tax*

#### 2.3.1. Direct Tax

As the name itself suggests, direct taxes paid directly. It is that system of tax where immediate and ultimate burden lies on the same person. This type of taxes are imposed on the income or wealth of a person and cannot be shifted on others i.e., the person who is liable to pay has to pay the taxes. Therefore any tax which is directly imposed on the person’s income or wealth is known as direct taxes. This type of tax is paid by the person on whom it is imposed to the Government. Examples of direct taxes are; Income tax, Wealth tax, Professional tax etc. It is also known as personal taxes because the person on whom tax is charges is personally liable to pay the taxes due and on his behalf no one can pay his taxes or he cannot shift his liability on others.<sup>27</sup>

*The direct taxes which is levied on income and wealth of an individual includes:*<sup>28</sup>

- i. *Income tax on personal income*

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<sup>25</sup>Supra note 3.

<sup>26</sup>Supra note 3.

<sup>27</sup>Supra note 16.

<sup>28</sup>Supra note 3.

- ii. *Wage tax*
- iii. *Corporate body income tax*
- iv. *Wealth or property tax*
- v. *Real estate tax*
- vi. *Tax on lottery, gaming etc.*
- vii. *Gift tax*
- viii. *Inheritance tax*
- ix. *Taxes on dividend withholding*
- x. *Taxes on interest withholding*

### **2.3.2. Indirect Tax**

The taxes which are levied on any type of “goods and services” are called Indirect Taxes and it includes; “Excise duty, Service Tax, Sales Tax/VAT, Customs Duty and Securities Transactional Taxes” etc. There are number of tax laws and regulations in India which are promulgated by the “Centre and State” legislature to levy and control the indirect taxes. Indirect taxes which are levied by the Central Government are; sales tax, customs duty and excise duty etc. whereas state governments and local or municipal bodies levied taxes on electricity, goods and octroi etc. From manufacturing, producing or those goods which required in end most use all are concern to indirect taxes.<sup>29</sup>

Indirect taxation is that system of tax which is collected by the 3<sup>rd</sup> person or middle men unlike the direct tax system where the assessee directly paid the taxes. Here, indirect taxes are paid by the middle men to the Government who collects it for the “goods and services” provided to the customers. For example; indirect taxes are charged from the businessman. Firstly, business pays the indirect taxes and then he shifts the onus onto the customers with extra cost on the “goods and services”. The value or cost which the customers paid for a particular goods or services, that include the manufacturing or production cost, profit as well as the tax which was paid by the businessman. So here we can see that indirect tax is a hidden cost or tax about which the customers are not aware.<sup>30</sup>

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<sup>29</sup>Supra note 11.

<sup>30</sup>Supra note 16.

*There are various types of indirect taxes which is charged or levied on the “goods and services” at different level and collected by the ultimate customers some of which are:<sup>31</sup>*

- A. Customs Duty*
- B. Central Excise Duty*
- C. Sales Tax*
- D. Service Tax*
- E. Stamp Duty*
- F. “Value Added Tax” (VAT/GST)*

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<sup>31</sup>Supra note 3.

### 3. Indirect Tax System in India

#### 3.1. Indirect Taxation

Indirect tax is a tax which is levied on consumption of “goods and services”. Indirect tax is collected by the third person or intermediary from the customers who deposited it to the government. In indirect taxation, burden of paying tax is always shifted from one person to another. For example; a producer or manufacturer pays tax during the production or manufacturing of the goods and later on it raise the cost of goods which include the tax which he paid and therefore, the producer or manufacturer recovers its tax by raising the goods price and shifts the burden on the customer.<sup>32</sup>

There are various types of indirect taxes which are levied by the Centre and State Government on the consumption of “goods and services” through various laws and regulations. Central Board of Excise and Customs (CBEC), which is apex indirect tax authority implement and administers customs duty, excise duty and service tax laws. CBEC under the power given to it issued various circulars, notification, and clarifications to implement or supplement the indirect tax laws.<sup>33</sup> Few important types of indirect tax are:<sup>34</sup>

##### 3.1.1. Customs Duty

India’s population is more than 1.25 billion<sup>35</sup>and it is in terms of population second<sup>36</sup> most populated country of the world. Due to the large population of the country there are various goods which are imported by the foreign nations and there are sectors where because of India’s self-sufficiency mostly in agricultural field, India also exports the

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<sup>32</sup> See supra 3.

<sup>33</sup> *Doing Business with India*, GMB Publishing Ltd., 1.10.2006

<sup>34</sup> See supra 16

<sup>35</sup> Report by Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html>

<sup>36</sup> See supra note 30.

goods. So, the tax which is levied on the imported goods in India or exported goods from India is called Customs Duty.<sup>37</sup>

Customs duty which is one of the forms of indirect taxation is levied on the import of goods from foreign countries and export of goods from India in foreign countries and the power is derived by the Customs Act, 1962 and Customs Tariff Act, 1975. Customs Act provides the power to levy and collect the customs duty on import and export of goods whereas Customs Tariff Act provides power to fix the rates.<sup>38</sup>

“Customs duties, additional duties or countervailing duties, special countervailing duties (Special Additional Duty) and education cess” all these are charged on the imported goods. The tax rates which are charged or imposed as a customs duty on imported goods or exported goods are vary from case to case basis i.e.; time to time Government of India issued concession notification under which certain goods are exempted from the imposition of customs duty or the tax rate charged on them reduced to lower tax rate or sometimes it also happens that tax rate on certain imported goods are increased by the Government.<sup>39</sup>

#### **3.1.1.1. Basic Custom Duty (BCD)**

Basic Customs Duty is charged under the Customs Act, 1962 on the goods which are imported into India. I Schedule (Imports) of the Customs Tariff Act, 1975 provides the tax rate chargeable as a basic custom duty.<sup>40</sup>

#### **3.1.1.2. Additional Duty or Countervailing Duty (CVD)**

As per the sub-section (1) of section 3 of the Customs Tariff Act, 1975, any goods or products which are imported into India, shall be in addition to basic customs duty is liable to duty or tax rate which will be equal to the excise duty for the time being applicable on

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<sup>37</sup>“DezanShiraand Associates, Chris Devonshire-Ellis, *Doing Business in India*, Springer Science and Business Media, 13.04.2012”

<sup>38</sup>See supra 29.

<sup>39</sup>See supra note 29.

<sup>40</sup> “PoornimaMadhava, *Types of Duties under Customs*, Published by TaxGuru Complete Tax Solution, 15.06.2015” [<http://taxguru.in/custom-duty/types-duties-customs.html>]

like products if it is produced or manufactured or could be produced or manufactured in India.<sup>41</sup>

***“Section 3. Levy of additional duty equal to excise duty, sales tax, local tax and other charges.***

*(1). Any article which is imported into India shall, in addition, be liable to a duty (hereinafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:*

*Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.*

*Explanation---- In this sub-section, the expression “the excise duty for the time being leviable on a like article if produced or manufactured in India” means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article not so produced or manufactured, which would be leviable on the class or description of articles to which the imported articles belongs, and where such duty is leviable at different rates, the highest duty.”*

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<sup>41</sup>“Sub-section (1) of the Section 3 of Customs Tariff Act”.

### **3.1.1.3. Special Additional Customs Duty or Special Countervailing Duty (Special CVD)**

“Sub-section (5) of section 3 of the Customs Tariff Act, 1975, imposes an additional special countervailing duty (Special CVD) also on the imported goods into India as per the rates notified by the Central Government in addition to basic customs duty (BCD) and countervailing duty (CVD)”.<sup>42</sup>

***“Section 3. Levy of additional duty equal to excise duty, sales tax, local tax and other charges.***

*(5). If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, “Value Added Tax”, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four percent of the value of the imported article as specified in that notification.*

*Explanations.----- In this sub-section, the expression “the sales tax, “Value Added Tax”, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India” means the sales tax, “Value Added Tax”, local tax or any other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported, which would be leviable on a class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge.*

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<sup>42</sup>Sub-section (5) of Section 3 of Customs Tariff Act.

#### **3.1.1.4. Education Cess and Secondary and Higher Education Cess (SHEC)**

“Education cess at the rate two percent (2%) and secondary higher education cess at the rate one percent (1%) is also imposed on the imported goods into India other than basic customs duty (BCD)”.<sup>43</sup>

#### **3.1.2. Central Excise Duty**

The “Central Excise Duty” is imposed under the “Central Excise Act, 1944” and the tax rates are specified under the schedules of “Central Excise Tariff Act, 1985”. The Central Excise Duty is also an example of indirect taxation which is imposed on that product which is manufactured or produced in India and will be used in India. There is no fixed Excise duty rate; it is different for different products.<sup>44</sup>

Central Excise Duty is imposed on those products which are fabricated in India and are implied for domestic household obligations. The tax liability is on ‘production’ and obligation of duty arises only after the merchandise are prepared or made.<sup>45</sup>

*“There are three types of Central Excise Duties are in India which is discussed below:”*

##### **3.1.2.1. Basic Excise Duty**

*“Section 3<sup>46</sup> of the Central Excise and Salt Act, 1944 levied excise duty on all the products which are mentioned in Schedule I and Schedule 2 of the Central Excise Tariff Act, 1985 and falls under the Basic Excise Duty.”<sup>47</sup>*

***“Section 3. Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied.”***

*“(1). There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced and manufactured in India and a duty on salt manufactured in, or imported by land*

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<sup>43</sup>See supra note 36.

<sup>44</sup>Central Board of Excise and Customs, <http://www.cbec.gov.in/index>

<sup>45</sup>Central Excise Manual, Published by Central Board of Excise and Customs (CBEC) on 17.05.2005 [<http://www.cbec.gov.in/resources/htdocs-cbec/cx-manual.pdf>]

<sup>46</sup>Section 3 Central Excise and Salt Act.

<sup>47</sup>See supra 11.

*into, any part of India as, and the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985;*

*Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured—*

- (i) In a free trade zone and brought to any other place in India; or*
- (ii) By a hundred percent; export-oriented undertaking and allowed to be sold in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962 ) on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 .*

*Explanation 1- Where in respect of any such like goods, any duty of customs leviable under the said section 12 is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable under the said section 12 at the highest of those rates.*

*Explanation 2- In this proviso,-*

*(i) " free trade zone" means the Kandla Free Trade Zone and the Santa Cruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify in this behalf;*

*(ii) " hundred per cent. export- oriented undertaking" means an undertaking which has been approved as a hundred percent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 ,and the rules made under that Act.]*

*(1A) the provisions of sub- section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.]*

*(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the 3 Schedule to the Central Excise Tariff Act, 1985] as chargeable with duty ad valorem and may alter any tariff values for the time being in force.*

*(3) Different tariff values may be fixed-*

- a) for different classes or descriptions of the same excisable goods; or*
- b) for excisable goods of the same class or description-*
  - i. produced or manufactured by different classes of producers or manufacturers; or*
  - ii. sold to different classes of buyers:*

*Provided that in fixing different tariff values in respect of excisable goods falling under sub- clause (i) or sub- clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.]”*

### **3.1.2.2. Additional Duty of Excise**

*“Section 3<sup>48</sup> of Additional Duties of Excise Act, 1957 provides imposition and collection of additional duty with respect to the products mentioned in the Schedule of the Act. Additional Duty of Excise Tax is charged against the Sales Tax and shared by the Centre and State Government.”<sup>49</sup>*

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<sup>48</sup>“Section 3 of Additional Duties of Excise Act.”

***“Section 3. Levy and collection of Additional Duties.***

*(1) There shall be levied and collected in respect of the goods described in column (3) of the First Schedule produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto duties of excise at the rate or rates specified in column (4) of the said Schedule.*

*(2) The duties of excise referred to in sub-section (1) in respect of the goods specified therein shall be in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944, or any other law for the time being in force.*

*(3) The provisions of the Central Excise Act, 1944, and the rules made there under, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1).”*

**3.1.2.3. Special Excise Duty**

Special Excise Duty is leviable under the Finance Act and therefore whether the Special Excise Duty is to be levy or not depends upon each year’s Finance Act and if it is to levy than it collected in the relevant financial year only in which it is provided to collect. Section 37<sup>50</sup> of the Finance Act, 1978 provides power to impose Special Excise Duty, in furtherance of Basic Excise Duty provided under Central Excise and Salt Act, 1944.<sup>51</sup>

***“Section 37. Special Excise Duty.***

*(1) In the case of goods chargeable with a duty of excise under the central Excises Act, as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable,*

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<sup>50</sup>Section 37 of Central Excise and Salt Act.

<sup>51</sup> See supra note 43.

*there shall be levied and collected a special duty of excise equal to five per cent. of the amount so chargeable on such goods.*

*(2) Sub-section (1) shall cease to have effect after the 31st day of March, 1979, except as respects things done or omitted to be done before such cesser, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser as if the said sub-section had then been repealed by a Central Act.*

*(3) The special duties of excise referred to in sub-section (1) shall be in addition to any duties of excise chargeable on such goods under the Central Excises Act or any other law for the time being in force.*

*(4) The provisions of the Central Excises Act and the rules made there under, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the special duties of excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be.”*

### **3.1.3. Sales Tax**

Sales Tax is that set of tax which is levied by the govt. on selling or purchasing of any set of distinctive artifact within the nation. Sales Tax is levied under the Union Govt. legislation i.e., Central Sales Tax as well as by the State Govt. legislation which is Sales Tax and due to this phenomenon each state of the country trails specific sales tax act and imposes charges and because of which there is discrepancy in the rates. Some states charge less and some more. Apart from the Sales Tax, State Government also levied certain additional taxes like; work contract tax, purchasing tax and turnover tax on goods which helps the states to generate large revenue.<sup>52</sup>

Sales Tax is the form of an indirect tax, where the responsibility lies on the seller of the products to accumulate and retrieve the taxes from purchasers. Exception to this is

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<sup>52</sup>Biswadeb Chatterjee, *Tax Performance in India States: A Comparative Study*, Mittal Publications, 1997 page no. 105.

that sales tax is not imposed on the selling of foreign items and or sale of exported products but high charges are levied on the luxury commodities.<sup>53</sup>

After 1<sup>st</sup>April, 2005, most of states of India instead of sales tax started levying “Value Added Tax” in place of sales tax.

#### **3.1.4. Service Tax**

“Article 265<sup>54</sup> of the Indian Constitution states that taxes can only be collected or recover or imposed if it is imposed by any authority of law.”

*“Article 265. Taxes not to be imposed save by authority of law. - “No tax shall be levied or collected except by authority of law.”*

*“Article 246<sup>55</sup> of the Constitution of India under Schedule VII provides three lists:<sup>56</sup>*

- *List I (Union List) – deals with the subject matters on which only Parliament is competent to make laws.*
- *List II (State List) – deals with the subject matters on which only the State legislatures are competent to make laws.*
- *List III (Concurrent List) – deals with the subject matters on which Parliament and State legislature both can make laws.”*

Therefore, on the perusal of above provision of the Constitution of India<sup>57</sup>, it is clear that no tax (service tax) can be levied or recovers except by the authority which has power to do so.<sup>58</sup>

Ninety-Fifth Amendment (95<sup>th</sup> Amendment) in the Indian Constitution<sup>59</sup> in the year 2003 was done so that it can made responsible to the Central Government which can

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<sup>53</sup>G. Ramesh Babu, *Financial Services in India*, Concept Publishing Co., 2005 page no. 276.

<sup>54</sup>Constitution of India, 1950.

<sup>55</sup>See Infra note 19 in the Chapter 1.

<sup>56</sup>See Infra note 20 in the Chapter 1.

<sup>57</sup>See supra note 50.

<sup>58</sup>See supra note 43.

<sup>59</sup>See supra note 50.

prescribe the procedure of imposing service tax and also the method by which Central as well as state government can collect the service tax. Therefore, Article 268 A<sup>60</sup> has been inserted in the Constitution of India, 1950 to impose service tax by the Central Government by the 95<sup>th</sup> Amendment.<sup>61</sup>

***“Section 268 A. Service tax levied by Union and collected and appropriated by the Union and the States.<sup>62</sup>***

*(1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2).*

*(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—*

*(a) collected by the Government of India and the States;*

*(b) appropriated by the Government of India and the States, in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.]”*

### **3.1.5. Stamp Duty**

Stamp duty is also a type of indirect tax, which is accumulated by State Governments and is imposed by the state governments on various files or devices. It has to be remitted fully and on failure of this it allures the sanction. The documents or instruments which are properly stamped and duty is paid fully is regarded as a rightful legal mechanism or file and will also be professed as a confirmation in the court of law. Stamp duty is governed by the Indian Stamp Act, 1899.<sup>63</sup>

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<sup>60</sup>Article 268 A of COI, 1950.

<sup>61</sup>See supra note 43.

<sup>62</sup>Article 268A of the COI, 1950.

<sup>63</sup>See supra note 43.

### 3.1.6. “Value Added Tax” (VAT)

VAT is also a form of an indirect taxation which is levied on the use of “goods and services”, paid via its customary producers upon the trade in items or upon the change of the items to its best purchasers. It is centered on the goods value, delivered through making use of the transfer. It is that tax when it comes to the dissimilarity of the worth delivered through the transferor and no longer the revenue.<sup>64</sup>

Throughout the globe, VAT is due on the product and service, which may also be a part of the country’s GDP. It means that charge is relevant at each and every step of the valued at introduced of the products.<sup>65</sup>

“Value Added Tax” is very important improvements in tax structure during the period of post liberalization. “Value Added Tax” may also be often called as multi factor destination founded process of taxation, as such that it is imposed on each and every step of the transaction inside the available supply chain mechanism. “Value Added Tax” is a state subject and charged by the State Governments on Intra-State sale of products within India and therefore VAT rate is always varies from state to state on the basis of their legislations and the nature of the products. Entry 54<sup>66</sup> of the List II (State List) of Schedule VII provides power to the state to make laws w.r.t. “Value Added Tax”.<sup>67</sup> Department of Tax helps the state government to ensure levy of “Value Added Tax” in the respective state. The Central Government here only guides the state government in levying the “Value Added Tax” in the states.<sup>68</sup> The main motive for which “Value Added Tax” was introduced is to avoid the double taxation problem in India because the taxation policy of India levies the taxes first before manufacturing the goods and after the manufacturing of the goods. With the help of “Value Added Tax” this problem can be eradicate.<sup>69</sup>

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<sup>64</sup>Mahesh C. Purohit, *“Value Added Tax”: Experiences of India and Other Countries*, Gayatri Publications, 2001 page no. 273

<sup>65</sup>B. S. Srikantaradhya, *Structure and Reform of Taxation in India, Chapter 5: Towards a “Value Added Tax”*, Deep and Deep Publications, 200 page no. 143

<sup>66</sup>Article 246 of Constitution of India, 1950, Schedule VII List II (State List)

<sup>67</sup>See supra note 60.

<sup>68</sup>See supra note 61.

<sup>69</sup>See supra note 43.

## 4. Introduction of GST

*“The debate whether to introduce a GST must now come to an end. We have discussed the issue for the past many years. Some States have been apprehensive about surrendering their taxation jurisdiction; others want to be adequately compensated. I have discussed the matter with the States both individually and collectively. I do hope we are able to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST. This will streamline the tax administration, avoid harassment of the business and result in higher revenue collection both for the Centre and the States. I assure all States that government will be more than fair in dealing with them.”*

*During Budget 2014-2015, Speech  
of Shri Arun Jaitley Minister of Finance,  
July 10, 2014*

### 4.1. From VAT to towards GST

“Value Added Tax” (VAT) is which is levied by the Central and State level is one of the most significant steps in reforming the indirect taxation in India. “Value Added Tax” comes as a major reform in the pre-existing taxation system for the sales of goods which was levied by the Central Government as well as State Government i.e., Central Excise Duty and Sales Tax respectively, then we can say that GST will take one step more forward in achieving a important breakthrough in the reform of indirect tax system.<sup>70</sup>

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<sup>70</sup> First Discussion Paper on GST in India, The Empowered Committee of State Finance Ministers, New Delhi, November 10, 2009

#### **4.1.1. Defects in Indirect Tax Structure and need for GST<sup>71</sup>**

**i. Imposition of excise duty at production point**

The Central “Value Added Tax” is levied on the goods or products produced or fabricated in India. The CenVAT is imposed by govt. on production point only due to which arises the problem of inefficient tax application.

For example: suppose any goods consumer price is Rs. 10/- but as per excise rule it is only Rs. 7/-. So in this case government is imposing tax on Rs. 7/- only and not on Rs. 10/-.

**ii. Nature of Transaction; Goods/Service**

It is very difficult to differentiate between what constitutes goods and what constitutes services which again results in inefficient tax application.

**iii. Imposition of Service Tax by Centre only**

The State Governments are unable to impose taxes on the services to the customers because the power is only with the Central Government to levy service taxes.

**iv. No Uniformity**

The “Value Added Tax” in most of the states is different and even the provisions are also very differ. There are few states which imposed charges on certain goods which are exempted in and some states charged more tax on the goods on which other states charge less.

For example: Tax on Petrol Products, Tax on Liquor etc.

**v. Legislative Intent**

Sometimes it is very hard to interpret the provisions and come to any conclusion while reading the provisions which gives ambiguity and creates confusion in the mind whether to tax the goods or service or not.

**vi. Poor Administration**

Poor Administration at the Central and State level is also a very important factor which creates defects in present taxation system.

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<sup>71</sup>See supra note 16.

**vii. Cascading of Tax**

All the above defects results in cascading of tax in some manner or other. In addition, a very important factor which contributes most in tax cascading is on some goods or services only central “Value Added Tax” is imposed and on other only state “Value Added Tax” is imposed and therefore Centre and the States not take the benefits wholly.

The then Finance Minister of Union of India ‘Mr. P. Chidambaram’, keeping the above analogy in mind, while announcing the ‘Central Budget (2007-08)’ talks to implement the GST w.e.f. 1<sup>st</sup>April, 2010 and wished the “Empowered Committee of State Finance Ministers” to work with Central Govt. and formulate a roadmap to implement the GST in India in the place of indirect taxation. The main idea behind proposing the GST was to furthering the progress and to replace the present Central “Value Added Tax” and Service Tax at the Central level and State VAT at the State level respectively levied by Central and State Government.<sup>72</sup>

There will likely be most important changes in the constitution or establishment of all these taxes in the GST regime. These changes are very important considering the fact that the prevailing system of CenVAT (Central “Value Added Tax”) and State “Value Added Tax” is filled with certain defects. Because of the separate taxation on products or items and services there is the need of cutting the worth of transactions into the worth of products and the value of services for the intent of taxation. This leads to bigger complexities, and larger administrative and compliance expenses. During the recent past few years India has signed with so many countries “**Free Trade Agreements**” due to increase in industry sector and which allows “duty free” or “low duty imports” into India. Therefore, it is very necessary for India to implement a simple, transparent and acceptable system of taxation so that the Indian marketers will compete with the international marketers into domestic market as well as they can compete with them in the international market. The present system of Central “Value Added Tax” and State “Value Added Tax” imposed up to the production level only which causes the problem of cascading of taxes and also there is a lacuna in the transparency of the tax system in the

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<sup>72</sup> See supra note 66.

market. Therefore, it is very important to establish the system of “goods and service” Tax so that those kinds of defect can be eradicate. Thus, GST would be an important major step towards strengthening the tax reform in the country not only at national level but also at state level.<sup>73</sup>

The model of GST which was proposed by the “Empowered Committee” contains two components – Central level GST imposed by the Central Government and State level GST imposed by the State Government. The tax rate will be based on keeping in mind the gross tax burden and the revenue considerations. However, it will be in practicality would be dual in nature i.e., charged by the Central and State Government simultaneously. But the good thing is that the tax which will be collected at both levels will be a single tax. For example; suppose a manufacture presently giving 20 Rs. as a tax for all the taxes under indirect taxation so after imposing GST (dual) also he will give 20 Rs. only as a tax which will be divided by Central and State Government 10 Rs. each or as the case may. Central GST as well as State GST will be exacted on all the transactions related to “goods and services”.<sup>74</sup>

#### **4.2. GST – What it is**

GST which is formulated so that all-inclusive indirect taxation can be exact on production, selling and use of “goods and services” at national as well as state level. The main motive behind formulating GST is to combine all the “indirect tax” laws together except customs duty and levy a single tax system while replacing the multifold tax system and subjugate the defects in present tax structure while making the tax system more efficient.<sup>75</sup>

It is very important to pave the way for GST so that it can facilitate the present indirect tax structure and provide a single tax base in all the States. The presently

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<sup>73</sup>“Mahesh C Purohit, Vishnu KantaPurohit, *Final Report, GST in India, Estimating Revenue Implications of the Proposed GST*, Foundation for Public Economics and Policy Research, New Delhi, January, 18, 2010”.

<sup>74</sup> See supra note 68.

<sup>75</sup> See supra note 16.

available tax structure allowed partial levy of “Central VAT and service tax” on the products and services. GST will re-form the taxes on the basis of goods price and will increase the ability of industries, to compete internationally, and in all likelihood trickle down to improve the customer’s condition.<sup>76</sup>

For example: suppose any products base price is Rs. 1000/-. So after imposing the excise central excise duty @12% value of the goods will be Rs. 1120/-. When the goods will be sell “Value Added Tax” will be impose @12.5% and because of which the value of the product to the ultimate customer will cost Rs. 1260/-. But now if we talk about the proposed GST structure, suppose Cent. GST and State GST both will be exacted @10% each, then value of product will be cost the ultimate customer Rs. 1200/- only. Thus, in these circumstances the business entities of India can compete with the international marketers globally.<sup>77</sup>

Thus, GST is a widely established and a single tax is charged on products and services devoured in a monetary system. GST is imposed at each stage of the construction - distribution linkage with critical depart in admiration of the tax suspended @ precursory phases. It is that tax which is exacted on ultimate use. To position @ single area GST is also outlined as the tax which is exacted on items and offerings at each spot of sale or allocation of carrier, where on the spot of sale of items or delivering the offerings which vendor/service supplier just affirm the enter credit score of tax which was paid at the same time purchasing the items or purchasing the service.<sup>78</sup>

GST, at international level, imposed at single level for all the transactions of “goods and services”. The Constitution of India, in India, segregates the power<sup>79</sup> to impose and collect the taxes between Central Government and State Government.<sup>80</sup>

GST Council should be setup for resolving the disputes with reference to GST etc. Thus, because of the above reasons, it is not appropriate to carry out the learning’s of the other international countries and follow them in India for the implementation of GST.<sup>81</sup>

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<sup>76</sup>See supra note 16.

<sup>77</sup> See supra note 66.

<sup>78</sup> See supra note 65.

<sup>79</sup>Article 246 of the Constitution of India.

<sup>80</sup> See supra note 66.

**“4.3. Illustration: Understanding GST [where all the parties are from same state]”<sup>82</sup>**

**Assumptions: (1) Rate of Excise Duty – 8%; (2) VAT Rate – 12.5%; (3) Central GST Rate – 12%; (4) State GST Rate – 8%; (5) Profit Margin – Rs. 10,000/- fixed (before tax)**

<b>Particulars</b>	<b>Under Value Added Tax</b>	<b>Under GST</b>
<b>(I) Manufacturer (D1) to Wholesaler (D2)</b>		
Cost of Production	9,00,000	9,00,000
Input Tax Credit (Assume Nil)	-	-
Add: Profit Margin	1,00,000	1,00,000
Producers Basic Price	10,00,000	10,00,000
Central Excise Duty: 12%	1,20,000	-
VAT @12.5% on Rs. 11,20,000	1,40,000	-
Central GST @ 12%	-	1,20,000
State GST @8%	-	80,000
<b>Sale Price</b>	<b>12,60,000</b>	<b>12,00,000</b>
<b>(II) Wholesaler (D2) to Retailer (D3)</b>		
Cost of Goods to D2	11,20,000	10,00,000
Available Input Tax Credit for set-off	1,40,000	2,00,000
Profit Margin	1,00,000	1,00,000
<b>Total</b>	<b>12,20,000</b>	<b>11,00,000</b>
<b>Particulars</b>	<b>Under VAT</b>	<b>Under GST</b>
VAT @12.5%	1,52,500	-
Central GST @ 12%	-	1,32,000
State GST @8%	-	88,000

<sup>81</sup> See supra note 16.

<sup>82</sup>See supra note 16

<b>Total Price to the Retailer (D3)</b>	13,72,500	13,20,000
<b>(III) Retailer (D3) to Ultimate Consumer (C)</b>		
Cost of Goods to D3	12,20,000	11,00,000
Input Tax Credit	1,52,500	2,20,000
Profit Margin	1,00,000	1,00,000
<b>Total</b>	13,20,000	12,00,000
VAT @12.5%	1,65,000	-
Central GST @12%	-	1,44,000
State GST @8%	-	96,000
<b>Total Price to the Consumer</b>	14,85,000	14,40,000
<b>Total Tax payable in all Transactions</b>	2,85,000	2,40,000

*Note: GST is always imposed on basic price of the product and therefore it provides a large benefit to the ultimate customer in terms of tax saving.”*

*“It can be insignificant to establish who the gainer is in fiscal phrases – the Government or the customers, however no doubt; GST is away better procedure and is also very self-disciplined. Furthermore, the net impact will be very marginal in all the cases because the Revenue Neutral Rate will also be decided by the Government after taking financial impact on into consideration.”<sup>83</sup>*

#### **4.4. Features of Goods and Services Model**

The GST structure is formulated to be coherent with the federal structure of the nation, which has two components in it: at one stage it is charged by the Centre (Central GST) and at other stage it is charged by the State (“State GST”). Thus, GST will be applied through more than one statute (one statute for Central GST and State GST for each state). Nonetheless to say, the essential parts of law, for example, chargeability, meaning of assessable events and assessable persons, measure of toll together with valuation

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<sup>83</sup>See supra note 16.

procurements, foundation of arrangement etc. would be uniform all through these statutes to the extent it will be workable.<sup>84</sup>

The Central GST and State GST will be pertinent to all trades of “goods and services” however; the items and organizations which are free from any type of liability, stocks that are not covered under GST and the trade that is underneath the suggested limitation will not come. The Central GST and State GST will be exacted and stack separately in the accounts of Centre and State. Because the “Central GST and State GST both will be separately collected and treated thence the taxes which are paid against the Central GST could be given as “Input Tax Credit” under the Central GST and the same will be apply for State GST. The Central GST and State GST should not be allowed to cross utilize the “Input Tax Credit” and there should be a consistency in the procedure and uniform method should be adopted to levy the Central GST and State GST. Taxpayers need to submit their returns promptly to the Central GST administration and “State GST” administration. The taxpayers will be allotted an identification number of 13-15 digits which is called as “PAN” and which will be linked with their tax account. Though, as of now the exact design is not formed. It is in formation stage with and Income Tax Administrations are working on it. The main objective of this is to provide convenience to the taxpayers.<sup>85</sup>

The Central GST and State GST be collected at the same time on each exchange of supply of merchandise and services aside from the products and services free from any liability, merchandise those are not covered under the domain of GST and the exchanges which are beneath the recommended edge limits. In furtherance, both will be required on the same cost or esteem not at all like State “Value Added Tax” which is imposed on the estimation of the products comprehensive of CenVAT. The area of the supplier and the beneficiary inside of the nation is unimportant with the end goal of CGST; SGST would be chargeable just when the supplier and the beneficiary also are both situated inside of the one State.<sup>86</sup>

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<sup>84</sup>See supra note 11

<sup>85</sup> See supra note 79.

<sup>86</sup>See supra note 16.

**4.4.1. “Outline:** Let us speculate that the rate of Central GST and that of State GST, for both is 10%. At the point when a wholesale merchant of steel in Uttar Pradesh supplies steel bars and bars to a development organization which is additionally situated inside of the same State for, say Rs. 1000, the merchant would charge Central GST of Rs. 100 and State GST of Rs. 100 notwithstanding the essential cost of the products. He would be required to store the Central GST part into a Central Government account while the State GST segment into the record of the concerned State Government’s account. Obviously, he require not really to pay Rs. 200 (Rs. 100 + Rs. 100 ) in real money as he will be qualified for set-off this obligation against the Central GST or State GST paid on his buys (say, inputs). In any case, for paying CGST he will be permitted to utilize just the input tax credit of Central GST paid on his buys while for State GST he can use the input tax credit of State GST only. As such, CGST credit can't, by and large, be utilized for installment of SGST. Nor can SGST credit be utilized for installment of CGST.”<sup>87</sup>

The different “Central, State and Local taxes” were inspected to recognize their probability of being comprehend under GST. But, the accompanying standards were remembered:<sup>88</sup>

Charges or exacts should be comprehend ought to be basically in a way of indirect taxation, either on rendering of products / on rendering services. Tax Charges or collection to be comprehended ought to be a piece of the exchange linkage which initiates with import/fabricate/generation of merchandise/procurement of services towards one side and the utilization of products and services on other end.<sup>89</sup>

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<sup>87</sup> See supra note 66.

<sup>88</sup>See supra note 11.

<sup>89</sup>See supra note 11.

*“The Empowered Committee while applying the above principle recommended that following Central taxes and State levied taxes should be comprised together under the GST”.*<sup>90</sup>

**Central Taxes:**

- i. Central Excise Duty*
- ii. Additional Excise Duties*
- iii. The Excise Duty levied under the Medicinal and Toiletries Preparation Act*
- iv. Service Tax*
- v. Additional Customs Duty, commonly known as Countervailing Duty (CVD)*
- vi. Special Additional Duty of Customs - 4% (SAD)*
- vii. Surcharges, and*
- viii. Cesses.*

**State Taxes:**

- i. VAT / Sales tax*
- ii. Entertainment tax (unless it is levied by the local bodies).*
- iii. Luxury tax*
- iv. Taxes on lottery, betting and gambling*
- v. State Cesses and Surcharges in so far as they relate to supply of goods and services*
- vi. Entry tax not in lieu of Octroi.*<sup>91</sup>

**4.4.2. Purchase Tax:** A number of States feel that they are getting generous income from Purchase Charge and, along these lines; it ought not to be comprised under GST when most of the States’ perspective is that no exclusions ought to be given. Troubles faced by the food grains delivering States was acknowledged i.e. they earned considerable income by charging Purchase Tax and it was in this manner, felt in the event

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<sup>90</sup> Empowered Committee of State Finance Ministers, *First Discussion Paper on GST in India*, New Delhi, November, 2009.

<sup>91</sup> Supra note.

that Purchase Tax must be comprehend; sufficient and proceeding remuneration must be given to such States.<sup>92</sup>

**4.4.3. Tax on Alcoholic Goods:** Alcoholic drinks will not come under the domain of GST. After implementing the GST also, the sales tax/”Value Added Tax” will be continue to impose/charged on the alcohol contain drinks as per the current indirect tax structure. Excise duty will also be charged on the alcoholic drinks and not be influenced by the GST.<sup>93</sup>

**4.4.4. Tobacco Products:** GST will be levy on the tobacco products subject to Input Tax Credit. Even on the tobacco products excise duty shall also be imposed by the Central Government above the GST subject to Input Tax Credit.<sup>94</sup>

**4.4.5. Petroleum Products:** Petroleum products all together are exempted from of GST and it was decided that State Government will charge sales tax on the petroleum products as per the current procedure and rate. Central Government will also accordingly impose the charges on petroleum products. Whether Natural Gas will come under the purview of GST is under the discussion and no final verdict came till now in this regard.<sup>95</sup>

**4.4.6. Tax on Services:** As discussed prior, Central and State Government will be having simultaneous power to exact taxation on goods/products/ merchandise and services. Intra-state method of imposing taxation is already formulated by the Working Group and Inter-state innovative model for levy of “Integrated GST (IGST)” will be embraced by fittingly adjusting and co-ordinating CGST and IGST.<sup>96</sup>

The “Empowered Committee” has chosen to embrace a binary-rate structure –a lower rate for vital things and things of fundamental significance and a quality rate for merchandise by and large. There will likewise be an exceptional rate for valuable and a rundown of exempted things. For maintaining of uncommon wants of every State and

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<sup>92</sup> See supra note 11.

<sup>93</sup> See supra note 86.

<sup>94</sup> See supra note 86.

<sup>95</sup> See supra note 86.

<sup>96</sup> See supra note 11.

also an adjusted way to deal with government adaptability, it is being talked about whether the exempted list under “Value Added Tax” administration including Goods of little wants might be held in the list which is put out under State GST in the underlying years. Likewise, being talked about whether the GoI might embrace, in any case, a comparable methodology towards exempted list under the Central GST.<sup>97</sup>

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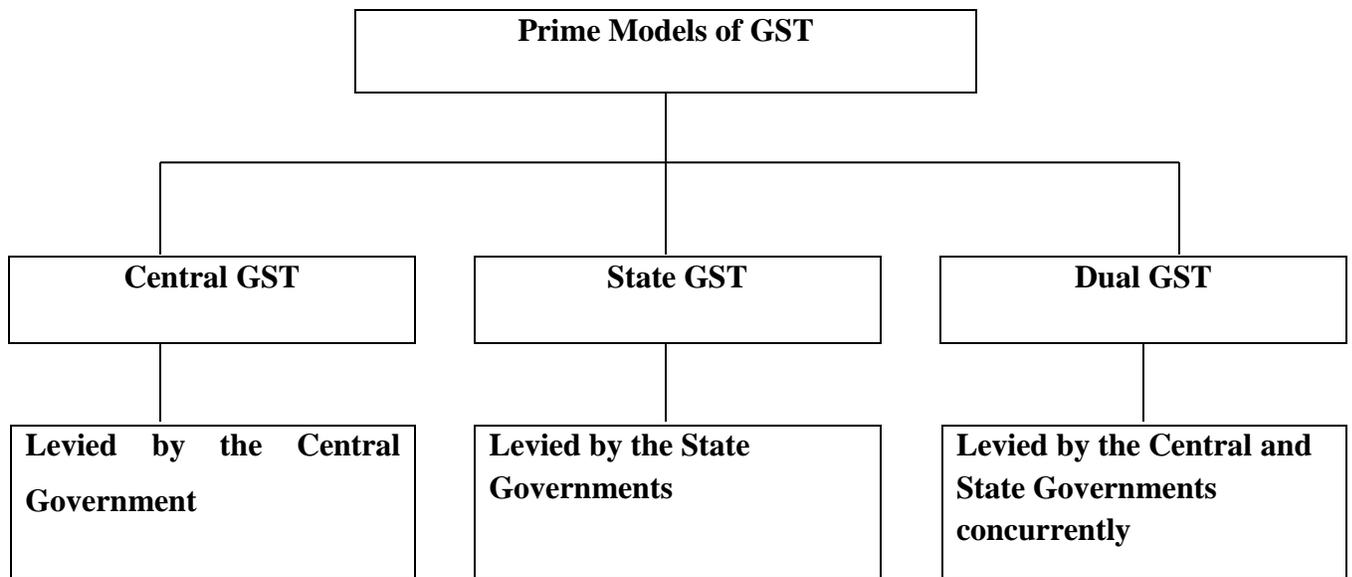
<sup>97</sup>See supra 86

## 5. GST Model

### 5.1. Three Prime Models of GST

There are three prime models of GST which are implemented in various countries as per their economic structure. Let us examine all these three models and figure out which model will be suitable for India.<sup>98</sup>

1. “GST levied at Central Level by the Central Government”
2. “GST levied at State Level by the State Governments”
3. “Dual GST, levied at both the level; Centre and State”



**Source:** “The Institute of Chartered Accountants of India, Report on Background Material on GST (Popularly known as VAT globally)”

“[The Republic of Canada has GST at Central level reaching out to all products and administrations covering all phases of quality expansion. Moreover, there is assessment at the provincial level in various shapes which incorporate Value Added Tax, Retail Sales expense et all. European Union (EU) Nations (everyone is autonomous Nation be that as

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<sup>98</sup>See supra note 16.

*it may, part of a Union and have consented to embrace normal standards for tax collection of merchandise and administrations) have received Value Added Tax.]*

*[If we talk about India, Constitution of India<sup>99</sup> particularly holds the ability to force charge on particular activities to particular level of Government, e.g., charge on import of merchandise can be forced by Union Government just though impose marked down of products including development of merchandise inside of the State can be forced by State Governments as it were.]”<sup>100</sup>*

### **5.1.1. GST levied at Central Level by the Central Government**

Under this version, two levels of govt. will join their exacts in the type of a solitary National GST, with the reasonable income sharing game plans among themselves. The expenses will be dominated and regulated by the Central Govt. There are countries which follow such a taxation system. For example; Australia is the latest example who imposed National level GST, which is demanded and gathered by the Center, however this continues are distributed altogether to the States.<sup>101</sup>

On account of a “Central level GST” (where all products and administrations are burdened by the Central government), the Center will gather a large portion of the nation's aggregate assessment income leaving next to nothing for the provincial Governments. Against this the present proposition is to have a double GST.<sup>102</sup>

A solitary national level imposition of “Value Added Tax” has very great point of view for foundation and advancement of a typical business industry in India. Though, the States might stress over the loss of the assessment outline and tax-rates. Without a doubt, control over assessment rates is a basic problem in accomplishing responsible sub-national administration and hard spending plan imperatives. The States might likewise be anxious that income sharing game plans would after some time get to be liable to social

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<sup>99</sup>See Supra note 19 on page no. 4.

<sup>100</sup>See supra note 93.

<sup>101</sup> See supra note 16.

<sup>102</sup>See supra note.

and political contemplations, going amiss from the benchmark circulation taking into account the spot of definite utilization.<sup>103</sup>

The “**Bagchi Report**”<sup>104</sup> likewise did not support this alternative for the apprehension that it would prompt a lot of centralization of tax assessment powers. The key worries about this alternative would in this way be political. Despite the monetary benefits of a National GST, it may damagingly affect the imperativeness of Indian federalism.<sup>105</sup>

### **5.1.2. GST levied at State Level by the State Governments**

The second model in which GST is levied by the State level where States alone are empowered to impose GST and the Central Government has no power given in this regard to charge GST or “Value Added Tax”. It can be an attractive choice given the incoherence in assets and obligations of the States. Under these circumstances, the State GST will function as distributing a new system. The misfortune to the Center from emptying this expense sector could be counterbalanced by an acceptable remunerating decrease in financial exchanges to the States. With the help of this method States would altogether upgrade the income limit and decrease their reliance on the Central Government. United States of America is the most suitable example of this method, where the common sales duties are consigned to the States. Be that as it may, there would be huge obstacles in embracing this choice in India, and it may not be suitable here.<sup>106</sup>

In this “goods and services” model the Central Government has completely withdraw from tax assessment of “Inter-State” supplies of merchandise and services and undermine the States' capacity to exact their duties on supplies in an orchestrated way. Specifically, it is unreasonable to bring “inter-State services” inside the influence of the State GST without a noteworthy organizing support from the Central Government.<sup>107</sup>

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<sup>103</sup> “AshthaAhuja, “*Value Added Tax*”: *Indian and Global Experiences*, New Centuary Publications, 2004, page no. 102”

<sup>104</sup>“Bagchi Report, National Institute of Public Finance and Policy, prepared by a team led by late Dr. AmareshBagchi, 1994”

<sup>105</sup> Supra note.

<sup>106</sup> “The Empowered Committee of State Finance Ministers, *First Discussion Paper on GST in India*, New Delhi, November 10, 2009”.

<sup>107</sup>See supra note.

### 5.1.3. Dual GST, levied at both the level; Centre and State

*“Dual “goods and services” Model is distinguished in two types which are:<sup>108</sup>*

- i. Non-Concurrent Model of Dual GST*
- ii. Concurrent Model of Dual GST”*

#### 5.1.3.1. Non-concurrent Model of Dual GST

Under the simultaneous dual “GST, the “Center and State” apply charges simultaneously to render all the products and services. Be that as it may, it postures two difficulties. In the first place, it necessitate as “constitutional amendment”. Secondly, a structure is required for characterizing the spot of impart of “Inter-State services” and for the utilization of State GST to them.<sup>109</sup>

Subsequently, as recommended in the “**Poddar-Ahmed Working Paper**”, to go around these obstacles, GST on merchandise can be required by States and on services by Central Govt. as it were. The States as of now have the ability to collect the expense on the selling and purchasing of merchandise (furthermore on immaterial property), and the Center for tax collection for services. No exceptional exertion would be required for imposing a unified Central charge on interstate services.<sup>110</sup>

This system provides that while collecting the “Value Added Tax” on the services, the Central Government would basically assume the role of organizing part required for the claim and observing of duty on “Inter-State services”. The Center will pull back the tax assessment of products. Indeed the incomes gathered from the tax assessment of the services could be exchanged to the States, mostly or completely.<sup>111</sup>

Inside of this structure, cascading can be totally disposed of by the States consenting to permit an “input credit” for the exact on the services imposed by Central Govt. In like

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<sup>108</sup>See supra note 16.

<sup>109</sup>See supra note 16.

<sup>110</sup> See supra note 16

<sup>111</sup> See supra note 16

manner, the Center will permit an “input credit” for the duty on merchandise demanded by States.<sup>112</sup>

There is possibility that in any case, the said model may not be satisfactory to the Center and also the States. In addition, constitutional amendment will in any case needed in this version following the States are not in a matter of seconds enabled to collect sales charges on products where development of such merchandise happen over the span of inter-State exchange or trade. In this way, the Government has officially declared its expectation to impose the Concurrent Dual GST.<sup>113</sup>

### **5.1.3.2. Concurrent Model of Dual GST**

In this version of GST the taxes will be demanded by both levels of Governments simultaneously. There will be a Central GST to be levied by the “Central Government” and there will be “State GST to be controlled by the “State Governments”. Accordingly, the GST will include a Central GST and State GST: a Central-level GST will subsume the duties which is charged at central level, for example, “excise duty, CVD, SAD and service charge”; and a “State-level GST will comprise “VAT, octroi, section charges, extravagance charge, and so forth”.<sup>114</sup>

Hence, under this version of GST “goods and services” will be liable to simultaneous tax collection by the Central and the State Governments. This variation is very much similar of the model prescribed by the “**Kelkar Committee**<sup>115</sup> in 2002”.<sup>116</sup>

**For Example:** The present framework Central Government can impose charge on products and in addition on the services, like; Excise Tax on assembling of merchandise and Service charge on Services, however, State Govt. has no power to exact tax on fabricated products, like, “Value Added Tax”, yet in, simultaneous double GST version

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<sup>112</sup> See supra note.

<sup>113</sup>See supra note 16.

<sup>114</sup>See supra note.

<sup>115</sup>Kelkar Committee Report, Consultation Paper, Task Force on Indirect Taxes, Constituted by Ministry of Finance and Corporate Affairs, headed by Vijay L. Kelkar, 2002.

<sup>116</sup>See supra note 104

Central and State Government will be having power to require charges on both “goods and services”.<sup>117</sup>

If we analyze the facts and while looking to the truths, this method of implementing GST is the most suitable, particularly thinking about the alterations wanted in the Constitution of India and achievability in the little span term. This Model expands present fabrication of tax assessment of merchandise/ “goods and services” and does not visualize extreme change in the wide instrument for toll and accumulation of expenses.<sup>118</sup>

## **5.2. Proposed GST Model for India**

*“Para 85: ..... The broad contour of the GST Model is that it will be a dual GST comprising of a Central GST and a State GST. The Centre and the States will each legislate, levy and administer the Central GST and State GST, respectively. I will reinforce the Central Government’s catalytic role to facilitate the introduction of GST by 1st April, 2010 after due consultations with all stakeholders.”*

*Budget Speech 2009-10 by Shri Pranab Mukherjee,*

*Union Finance Minister*

The “Empowered Committee of State Finance Ministers” has proposed the dual GST model for India, which will have the ingredients of; “Central Government GST” as well as “State Government GST” @ the same base level. Thus, in the GST regime all the products and services will come barring few products or services which are exempted. Therefore, under the GST model there will be no difference in the rates of the products and services because a common legislation will deal at both; Central level as well as State level.<sup>119</sup>

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<sup>117</sup>See supra note 108.

<sup>118</sup>See supra note 16.

<sup>119</sup> See supra note 102.

*“As per the recommendations made by the Joint Working Group, following are the features of GST applicable in India:<sup>120</sup>*

- i. Central level GST will impose taxes at Centre and State level GST will impose taxes on State.*
- ii. Central Value Added Tax and Service Tax will be replaced by the Central GST whereas Value Added Tax will be replaced by the State GST.*
- iii. Central GST may comprise the following indirect taxes on supplies of goods and services:*
  - a) Central Excise Duties (CENVAT)*
  - b) Additional excise duties including those levied under Additional Duties of Excise (Goods of Special Importance) Act, 1957.*
  - c) Additional customs duties in the nature of countervailing duties, i.e., CVD, SAD and other local level taxes imposed on imports to achieve a level playing field between domestic and imported products which are currently simplified as customs duties.*
  - d) Cesses levied by the Union viz., cess on rubber, tea, coffee etc.*
  - e) Service Tax*
  - f) Central Sales Tax – To be completely phased out*
  - g) Surcharges levied by the Union viz., National Calamity Contingent Duty,*
  - h) Education Charge, Special Additional Duties of Excise on Motor-Spirit and*
  - i) High Speed Diesel (HSD).”*
- iv. “State GST may comprise the following State taxes:*
  - a) Value Added Tax*
  - b) Purchase Tax*
  - c) State Excise Duty (except on liquor)*
  - d) Entertainment Tax (unless it is levied by the local bodies)*
  - e) Luxury Tax;*

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<sup>120</sup>See supra note 102.

- f) *Octroi*
- g) *Entry Tax in lieu of Octroi*
- h) *Taxes on Lottery, Betting and Gambling*
- v. *There will be two main components in the proposed GST – Central level GST and State level GST. The rates of both level GST will depend upon the total burden of the tax, admissibility of the tax and revenue and accordingly at both level rates will be prescribed by the concerned authority.*
- vi. *Earlier taxes were levied on the manufacturing level but under the GST regime it will be charged on sale of the products.*
- vii. *Exports products are exempted from the levy of GST.*
- viii. *Lifesaving drugs, fertilizers, agricultural products, books, and several other important products are also exempted from the GST.*
- ix. *Petroleum products, tobacco and alcoholic drinks are also kept outside the domain of GST.*
- x. *GST will not comprise the taxes which are imposed and collected by the local or municipal bodies.”<sup>121</sup>*

### **5.3. Working Procedure of GST**

The proposed GST system in which the merchants who incorporate, Suppliers, Manufacturers, Service Providers, Wholesalers, and Retailers and so on are required to acquire registration.<sup>122</sup> Thus, it is very different from the present framework where the individuals, will be not be allowed to get the advantages of input tax credit and won't have the capacity to charge the yield charge, if not inscribed.<sup>123</sup>

Let us examine how the input tax credit will be used in the GST system as per the following: Here I am assuming the GST rate @15% <sup>124</sup>

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<sup>121</sup>See supra note 102.

<sup>122</sup> ShilpaParkhi, *GST in India: The Changing Face of Economy*, Parkhi Associates, [<http://www.parkhiassociates.org/kb/GSTcfe.pdf>]

<sup>123</sup>See supra note 118.

<sup>124</sup> See supra note.

A producer of products needs the raw materials for the manufacturing of final product.<sup>125</sup>

<b>Description</b>	<b>Amount (Rs.)</b>	<b>Rate of Tax (%)</b>	<b>Tax Paid (Rs.)</b>
Raw Material	1,00,00	15	15000
Stores and Spares	50,000	15	7,500
Services	50,000	15	7,500
Total Input Tax of manufacturer			30,000
<b>Description</b>			
	<b>Amount (Rs.)</b>	<b>Rate of Tax (%)</b>	<b>Tax Paid (Rs.)</b>
Sale to Dealer	5,00,000	15	75,000
Out Tax of Manufacturer			
<b>Description</b>			
	<b>Amount (Rs.)</b>		
Total Output Tax	75,000		
Less: Total Input Tax	-30,000		
Net GST Payable	45,000		
<b>Description</b>			
	<b>Amount (Rs.)</b>	<b>Rate of Tax (%)</b>	<b>Tax Paid (Rs.)</b>
Sale to Retailer	7,00,000	15	1,05,000
Total Output Tax of the Dealer			1,05,000
<b>Description</b>			
	<b>Amount (Rs.)</b>		
Total Output Tax	1,05,000		
Less: Total Input Tax	-75,000		
Net GST Payable	30,000		

<sup>125</sup> See supra note.

<b>Description</b>	<b>Amount (Rs.)</b>	<b>Rate of Tax (%)</b>	<b>Tax Paid (Rs.)</b>
Sale to Consumer	8,00,000	15	1,20,000
Total Output Tax of the retailer			1,20,000
<b>Description</b>			
		<b>Amount (Rs.)</b>	
Total Output Tax	1,20,000		
Less: Total Input Tax	1,05,000		
Net GST Payable	15,000		
<b>Description</b>			
		<b>Amount (Rs.)</b>	
From Seller of Raw Material	15,000		
From Supplier of Stores and Spares	7,500		
From Service Provide	7,500		
From Manufacturer	45,000		
From Dealer	30,000		
From Retailer	15,000		
<b>Total GST Received</b>	<b>1,20,000</b>		

Source: “ShilpaParkhi, *GST in India: The Changing Face of Economy*, Parkhi Associates”, [http://www.parkhiassociates.org/kb/GSTcfe.pdf]

### **5.3.1. Place of supply for Inter-State sale of products**

GST is known as a “destination based tax” and as needs be the assessment gathered ought to go to the exchequer of the State where the merchandise is eventually expended. It is very sure that all the States will act as an origin State and a destination State both simultaneously. As a culmination, the awkward nature in assessment incomes might emerge contingent upon the amounts created and amounts devoured.<sup>126</sup>

<sup>126</sup>See supra 118.

Now if we are talk about the Indian taxation system, there are different models which can be aptly applied in the Indian scenario. and it is also very necessary to notice here that there may not be any best answer to tackle the assessment gathering component also, as needs be the errand turns into all the more troublesome.<sup>127</sup> It is sure that the Government will include industry before concluding the model for determining the issues of inter-state sales of products. Along these lines, it turns more essential to comprehend ahead of the time to understand the models which can be set down before the business industry. The most aptly applicable models which can fit in the Indian tax structure are examined beneath:<sup>128</sup>

#### **5.3.1.1. Model 1: Tax are paid by the Seller to the Administration**

Here in this model, vendor makes an inter-state disposal and imposed charges from the buyer. The buyer while purchasing the products also paid the charges levied on it. Thus taxes gathered by the vendors are kept with the branch of the assigned bank. The bank gives a proof to that installment of the charges are deposited with it. From that point, the bank which collected the taxes credited it to the destination States. The destination State branch of the bank suggests the points of interest of such credits to the State Government. The branch likewise readies the points of interest of credit accessible to the individual importers who can from there on avail the benefit of the credit of the qualified sum.<sup>129</sup>

The best thing about this model is that the credit is profited only when the expense is paid. As needs be, there will be no chance for any income spillages.<sup>130</sup>

#### **5.3.1.2. Model 2: Taxes which are paid by the buyer to the Administration**

An optional methodology can likewise be taken after, wherein, the expense will be paid by the products importer on an opposite charge instrument. Indeed, even under this model, the expenses would be charged by the dealer. Anyways, the distinction under this model is that the purchaser will pay imposed tax specifically to the bank in his State and pays just the consideration in the direction of the merchandise to the vender. The buyer

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<sup>127</sup> See supra note 118

<sup>128</sup> See supra note 118

<sup>129</sup> See supra 118.

<sup>130</sup> See supra note 118.

can benefit the “input tax credit” on the premise of the installment of duty which is by him reposed in his State.<sup>131</sup>

In furtherance of all, the purchaser will give the points of interest of the supplier and the acquirements made by him under this model. Importing Bank sends those points of interest to the exporting bank. Thus, it will provide encouragement and benefit and efficiency to the dealer to claim the exemption.<sup>132</sup>

Therefore, after considering all the features of this model we can figure it out that under this model there is no need to credit the taxes from one state’s bank to another.<sup>133</sup>

### **5.3.1.3. Model 3: Uniform Tax by Union Government**

This model is popularly known as revenue sharing model where the power is vested with the Central Government to levy all the taxes and after that accordingly on the basis of the subsisting tax rates divides the tax funds with the states. Suppose, in India, if Central GST and State GST both are 8%, than cumulatively it will be 16% and if we follow this model than this 16% tax rate will be charged and gathered by Central Govt. only and later on distributed between the States. This model is implemented in Australia.<sup>134</sup>

This model is not aptly appropriate for the Indian tax structure because the Indian Constitution under Article 246<sup>135</sup> separates the power between Central and State for imposing the taxes. Therefore, State has also power to levy the tax and it cannot be taken back. Furthermore, the fundamental shortcoming of this model is that Central GST for the purchaser will be twofold than his State GST obligation if the products acquired from outside the State are sold inside of the State, prompting amassing of credits. Likewise, this model can be effective just if there is a powerful discount component to discount the overabundance sum rapidly.<sup>136</sup>

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<sup>131</sup> See supra note.

<sup>132</sup> See supra note.

<sup>133</sup> See supra note.

<sup>134</sup> See supra note 118.

<sup>135</sup> See Supra note 19 on page no. 4.

<sup>136</sup> See Supra note 19 on page no. 4.

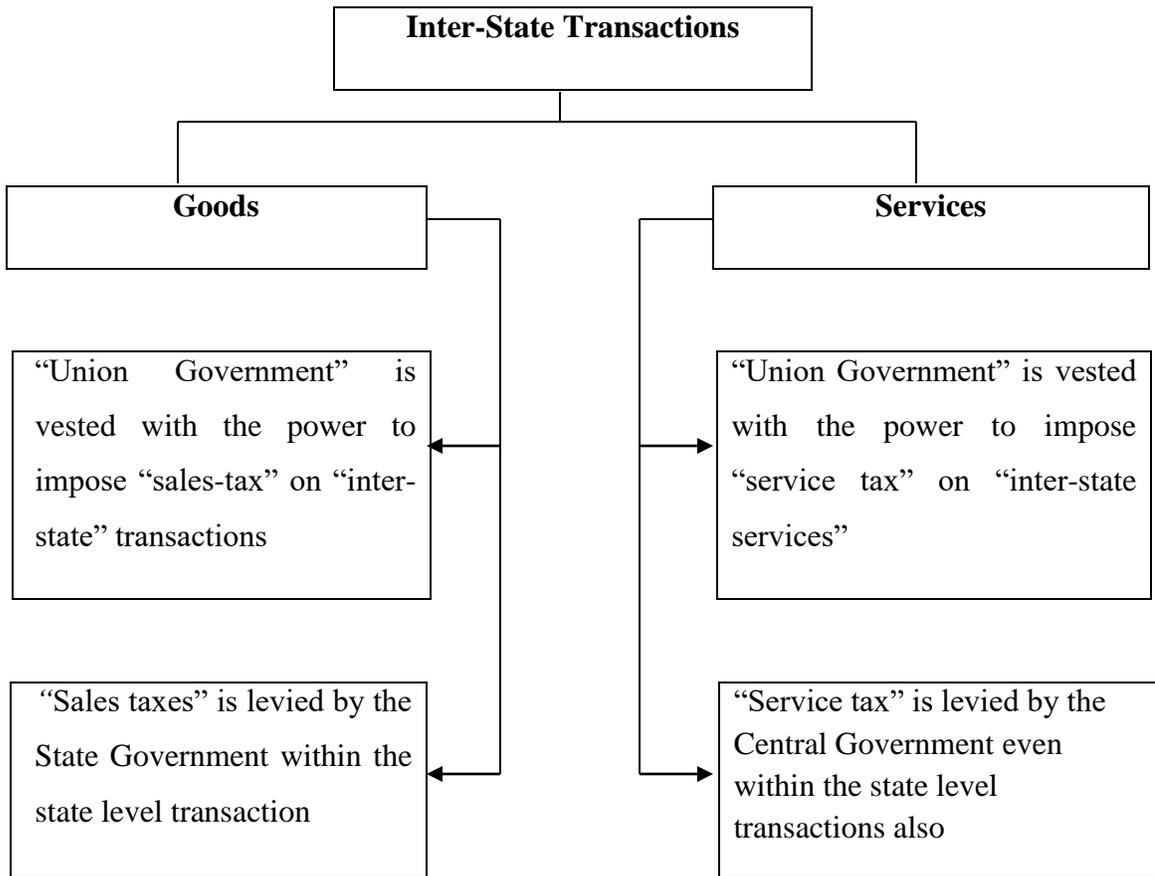
It is very likely that the business industry will consider Model II which is discussed above as the best “goods and services” model for the benefit of industry and consumers.<sup>137</sup>

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<sup>137</sup> Supra note 130.

## 6. Inter-State GST (IGST)

### 6.1. Present Inter-State Tax Structure



Source:

#### 6.1.1. Taxes on Sale of Products/Goods

The Constitution of India gives power to the Union under Seventh Schedule's Entry 92A<sup>138</sup> of Union List to legislate tax for inter-state dealings/transactions. "Article 246(4)<sup>139</sup> of the Constitution of India gives power to the Union territory to levy sales tax".<sup>140</sup>

<sup>138</sup>Entry 92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

<sup>139</sup>Article 246. Subject-matter of laws made by Parliament and by the Legislatures of States.

On the other hand, “*Constitution of India gives power to the States to levy tax under Entry 54<sup>141</sup> in List II of the State List of Seventh Schedule r.w. Article 246(3)*”<sup>142</sup>.  
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There are also certain restrictions to levy the taxes on sale or buy of any goods which is enumerated under Article 286, as-

**“Article 286. Restrictions as to imposition of tax on the sale or purchase of goods.**

*(1.) No law of a State shall impose a tax on the sale or purchase of goods where such sale or purchase takes place -*

*(a) outside the State; or*

*(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.*

*(2.) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).*

*(3.) Parliament may impose restrictions and conditions in regard to the system of levy, rates and other incidents of the tax on any law of a State in relation to the imposition of -*

*(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, (declared goods), or*

*(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of sub-clause (29A) of Article 366<sup>144</sup>.*

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(4). Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.”

<sup>140</sup>See supra 16.

<sup>141</sup>“**Entry 54.**Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.”

<sup>142</sup>“**Article 246.**Subject-matter of laws made by Parliament and by the Legislatures of States.

**(3).** Subject to clauses (1) and (2), the Legislature of any State 1 \*\*\* has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).”

<sup>143</sup>See supra note 135.

<sup>144</sup>“**Article 366.**Definitions.

*be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.]]”<sup>145</sup>*

*“Under the Article 269(1)<sup>146</sup> of the Constitution of India, power is given to the Union Government to levy the taxes on sale or buy of any products or services in the inter-state commerce and makes compulsory to the Union Government to provide the collected taxes to State.”<sup>147</sup>*

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**(29A). tax on the sale or purchase of goods” includes—**

- (a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (c) a tax on the delivery of goods on hire-purchase or any system of payment by installments;
- (d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;]”

<sup>145</sup>Article 286 of Constitution of India, 1950.

<sup>146</sup>**Article 269. Taxes levied and collected by the Union but assigned to the States.**

**(1).** Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

**Explanation.—**For the purpose of this clause,-

- (a) the expression “taxes on the sale or purchase of goods” shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;
- (b) the expression “taxes on the consignment of goods” shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.”

<sup>147</sup>See supra note.

Central Government is given power by the Customs Act<sup>148</sup> to levy the charges on the imports of the products. Whereas, State Governments are not empowered to levy the taxes on import products.<sup>149</sup>

Central Sales Tax Act<sup>150</sup> provides power to levy charges on inter-state sale of products. Goods are categorized into two categories: (a). products which have the very importance and; (b). other type of goods. Section 8<sup>151</sup> of the Central Sales Tax Act provides the rates of tax on products and which differed from state to state.<sup>152</sup>

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<sup>148</sup>1962

<sup>149</sup>See supra note 116.

<sup>150</sup>1956

<sup>151</sup>**Section 8. Rates of tax on sales in the course of inter-state trade or commerce.**

- (1.) Every dealer, who in the course of inter-State trade or commerce, sells to an inscribed dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be [two per cent.] of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower: Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.]
- (2.) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State. Explanation. —For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.]
- (3.) [The goods referred to in sub-section (1)]—
  - (a)
  - (b) [\*\*\*] are goods of the class or classes specified in the certificate of registration of the inscribed dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or 12 [in the telecommunications network or] in mining or in the generation or distribution of electricity or any other form of power;
  - (c) are containers or other materials specified in the certificate of registration of the inscribed dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;
  - (d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in 13 [\*\*\*] clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).
- (4.) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the inscribed dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority: Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.]”

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- (5.) “Notwithstanding anything contained in this section, the State Government may 16 [on the fulfilment of the requirements laid down in sub-section (4) by the dealer] if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,—
- (a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, 16 [to ainscribed dealer [\*\*\*]] from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) [\*\*\*] as may be mentioned in the notification;
  - (b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce 16 [to ainscribed dealer [\*\*\*]] by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) [\*\*\*] as may be mentioned in the notification.]
- (6.) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to ainscribed dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such inscribed dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.]
- (7.) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods as specified in the certificate of registration of the inscribed dealer referred to in that sub-section.
- (8.) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the 20 [prescribed authority referred to in sub-selling such goods furnishes to the 20 [prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6)] in sub-section (5), duly filled in and signed by the inscribed dealer to whom such goods are sold. Explanation.— For the purposes of sub-section (6), the expression “special economic zone” has the meaning assigned to it in clause (iii) to Explanation 2 to the proviso to section 3 of the Central Excise Act, 1944 (1 of 1944).]
- (a) sells to the Government any goods; or
  - (b) sells to ainscribed dealer other than the Government goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, with effect from such date as may be notified by the Central Government in the Official Gazette for the purpose, which shall be two per cent. of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, or, as the case may be, under any enactment of that State imposing “Value Added Tax”, whichever is lower: Provided that the rate of tax payable under this sub-section by a dealer shall continue to be four per cent. of his turnover, until the rate of two per cent. takes effect under this sub-section.”
    - a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State;”

### 6.1.2. Levy of Tax on Services

Constitution of India<sup>153</sup> gives the power to the Union Government under Entry 97<sup>154</sup> of List I of the Union List of Seventh Schedule to levy service tax. Therefore, the Union Government has complete sovereignty to levy the service tax on the services no matter what it provided in a one state or between one states to other.<sup>155</sup>

In the Indian tax structure, the service tax is levied on the products which are paid by the payee of the service when the import of the product arrived.<sup>156</sup>

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- b) “in the case of goods other than declared goods, shall be calculated at the rate of ten per cent. or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher; and
  - c) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil, and for the purpose of making any such calculation under clause (a) or clause (b), any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.
- (9.) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—
- (a) a declaration duly filled and signed by the inscribed dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or
  - (b) if the goods are sold to the Government, not being an inscribed dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government: Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.”

<sup>152</sup>See supra note 143.

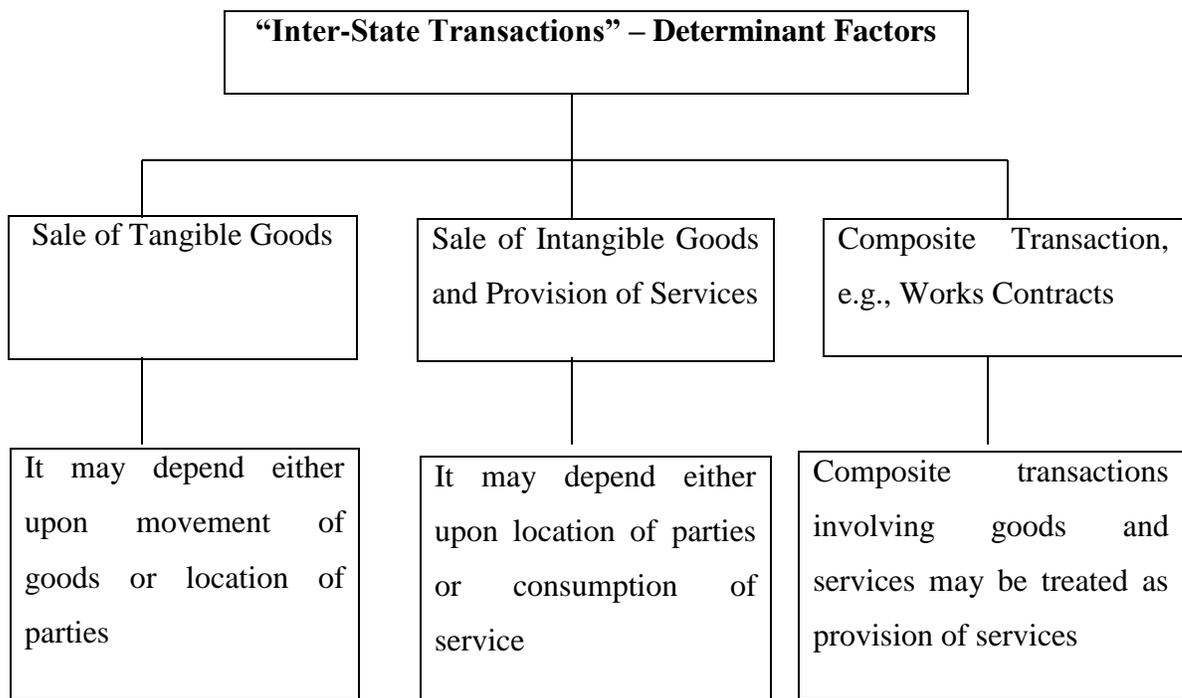
<sup>153</sup>1950

<sup>154</sup>**Entry 97.** Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

<sup>155</sup>See supra note 16.

<sup>156</sup>See supra note 16.

## 6.2. Transaction is Inter-State Supply or Not – Determination under GST<sup>157</sup>



Source: “The Institute of Chartered Accountants of India, *Background Material on GST (Popularly known as VAT globally)*, Published by The Institute of Chartered Accountants of India, October 2014”

## 6.3. Determination of Place of Taxation

To provide a service or immaterial property which may be assessable in a ward contingent on one or a greater amount of the accompanying variables:<sup>158</sup>

- The place where the services are performed
- The place where the services are enjoyed
- The place where the payee resides
- The place where the supplier resides

Though, there are services which have their own separate rules to fix the rates:

- Those services which is related to immaterial property
- Financial Institutions Services

<sup>157</sup>See supra note 16.

<sup>158</sup>Supra note 16.

- Business Management Services
- Goods which are transported by road
- Electronic or Print media advertisement

In furtherance, there might be some special rules are required for some products supplies which are not covered in the above list:<sup>159</sup>

- Travelling services
- Freight Transport Service
- Telecom Services
- Motor services
- E-commerce services
- Software services
- Products Supply Service

#### 6.4. Example – Determining Inter-State GST

*“Suppose:*

1. Central GST @12%
2. State GST @8%
3. Profit Margin Rs. 10,000 (already fixed)”

Particulars	GST A/C		Total
	CGST @12%	SGST @8	
<b>(I). Manufacturer (D1- Uttar Pradesh) to Wholeseller D2 (Uttrakhand)</b>			
Cost of Production			1,80,000
Input GST on Raw Materials	12,000	8,000	
<b>Add: Profit Margin</b>			20,000
Producers Basic Price			2,00,000
<b>Add:GST</b>	24,000	16,000	40,000
<b>Less: Input GST</b>	12,000	8,000	
GST Payable	12,000	8,000	
Sale Price			<b>2,40,000</b>

<sup>159</sup>Supra note.

<b>(II) Wholeseller (D2 Uttrakhand) to Retailer (D3 in Uttrakhand)</b>			
Cost of Goods to D2			2,00,000
Input GST	24,000	16,000	
<b>Add: Profit Margin</b>			20,000
Total			2,20,000
<b>Add:GST</b>	26, 400	17, 600	44,000
<b>Less: Input GST</b>	24,000	16,000	
GST Payable	2400	1600	
Total Price to the Retailer (D3)			<b>2,64,000</b>
<b>(III). Retailer (D3) to Final Consumer (C) in Uttrakhand</b>			
Cost of Goods to D3			2,20,000
Input GST	26, 400	17,600	
<b>Add: Profit Margin</b>			20,000
Total			1,40,000
<b>Add:GST</b>	28, 800	19, 200	48,000
<b>Less: Input GST</b>	26, 400	16, 600	
GST Payable	2400	1600	
<b>Total Price to the Consumer (C)</b>			2,88,000
<b>Total Tax Payable in All Transactions</b>	28, 800	19, 200	48,000
Verification: GST @20% on 2,40, 000 = 48,000			
D1 on inputs -	12,000	8,000	20,000
D1 on output-	12, 000	8,000	20,000
D2 -	2400	1600	4000
D3 -	2400	1600	4000

*Source: "The Institute of Chartered Accountants of India, Background Material on GST (Popularly known as VAT globally), Published by The Institute of Chartered Accountants of India, October 2014"*

## **7. GST – International Experience**

GST is known as “Value Added Tax” and it has been applicable in 150 nations. A large portion of the nations have brought together GST framework. The dual GST framework is followed in the Brazil and Canada where the charges are levied by the both Central Government as well as by the State Government. In 1954, for the first time GST was introduced by the France. In most of the countries GST is levied on the 15-20% rate. The majority of the divisions are saddled aside from few exclusions.<sup>160</sup>

### **7.1. Canada**

The GST model in Canada was introduced on 1 January, 1991 by the then PM and Finance Minister. The GST structure of the Canada is based on dual level structure where charges are levied by both the Centre and State level. The introduction of GST

Canada's Harmonised Sales Tax is a merger of two taxes i.e. Provincial Level Sales Tax and GST. The GST is charged at national level while Provincial Sales Tax charged at province level. Harmonised Sales Tax is dispensing by the Federal Government which distribute the revenues between participating parties.<sup>161</sup>

The Indian GST structure is taken by the “Canadian GST model”.<sup>162</sup>

### **7.2. Australia**

In Australia, GST is charged on rendering products and services which also includes the imported products and it is a “Value Added Tax” (VAT).<sup>163</sup> Just like most of the countries in Australia also GST is not applicable on the products which are exported outside the country.<sup>164</sup>

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<sup>160</sup>See supra note.

<sup>161</sup> See supra note.

<sup>162</sup> See supra note.

<sup>163</sup> See supra note 156.

<sup>164</sup> See supra note 156

In Australia, GST was proposed in the year 2000, and hence it substituted the union law on taxation as well as so many other tax laws at state/province level also. Before the GST, Australia followed “Wholesale Sales Tax” structure under which tax was charged on wholesale of the products. Over the years, the economies of the Australia changed and evolve and thus GST was proposed.<sup>165</sup>

In Australia, the GST is charged at the 10% rate on most of products and services.<sup>166</sup>

### **7.3. Brazil**

In the Brazil, taxes are charged on the circulation/distribution of the products and are known as “Circulation of the goods and services (ICMS)”. It is a noncumulative tax, which means, accordingly assessment due might be counterbalanced by credits emerging from the buy of crude substances, delegate items, and bundling substances which permits the citizen to record data charge “credits from the ICMS” paid on the buy of crude substances, middle person items, bundling materials. Charge credits for products bound to end up altered resources might be acknowledged, subject to specific confinements. Rates connected to interstate trade are 7% or 12%, contingent upon the destination. Exports merchandise are not come under the purview of ICMS.<sup>167</sup>

### **7.4. New Zealand**

The “Value Added Tax”, which is known as GST is “proposed in the year 1986” in the New Zealand and is charged on the products and services @12.5% tax rate. It is charged by the ultimate consumer who pays it directly which is already included in the cost of the products and services.<sup>168</sup>

In this tax structure, the organizations have to inscribe themselves and accordingly paid charges which is called as GST and it depends upon the difference of price between input

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<sup>165</sup> See supra note 157.

<sup>166</sup> See supra note 156.

<sup>167</sup> See supra note 157.

<sup>168</sup> The Institute of Chartered Accountants of India, *Background Material on GST (Popularly known as VAT globally)*, Published by The Institute of Chartered Accountants of India, October 2014

cost of the products and output cost of the product. Unlike the other nations where GST is followed, New Zealand charged taxes on food items as well. Though, it provides certain exceptions as well like; financial services and donations.<sup>169</sup>

## 7.5. Singapore

Singapore also charges GST after 1994 and the tax rate in Singapore is 7% which is charged on the expenditure of merchandise and services. Singapore charges GST on almost all of the merchandise and services except financial services and real estate services.<sup>170</sup>

### GST Rate

Country Name	GST Rate
Australia	10%
Brazil	17%
Canada	5%
China	17%
France	20%
Germany	19%
India	18%-20% (expected)
Japan	8%
Malaysia	6%
Myanmar	On Goods: 5%-100%, On Services: 5%
Nepal	13%
New Zealand	15%
Pakistan	16%
Russia	18%
Singapore	7%

<sup>169</sup> See supra note 156

<sup>170</sup> See supra note.

South Africa	14%
Sri Lanka	12%
Sweden	25%
Switzerland	8%
Thailand	7%
United Kingdom	20%
United States of America	0-7%

Source: Ernst and Young- 2015 Worldwide VAT, GST and Sales Tax Guide- VAT, GST and Sales Tax Rates [<http://www.ey.com/GL/en/Services/Tax/Worldwide-VAT--GST-and-Sales-Tax-Guide---Rates>]

## 8. GST – Impact on Industry

Proposed GST will incredibly enhance nature of the indirect taxation framework and, in this manner, will make it conceivable to have favorable assets on a supportable premise, which make financial circumstances more supportable. This change will fathom numerous basic issues over the long haul.<sup>171</sup>

As indicated by a study on the effect of GST, India could pick up as much as \$15 billion every year once the GST is set up. Marking down these streams at a humble 3 for each penny for every annum, the present estimation of the GST will work out almost a half of the trillion dollars.<sup>172</sup>

GST will easier the “tax structure” of industry, exchange and farming through a more extensive and more comprehensive scope of data assessment set-off and benefit charge set-off, which includes of a few “Central and State” charges in the GST and eliminating of “Central Sales Tax”. The straightforward and complete chain of set-offs which will bring about broadening of assessment base and better duty consistence might likewise prompt bringing down of taxation rate on a normal merchant in industry, exchange and horticulture.<sup>173</sup>

The inclusion of significant Central and State duties in GST, complete and far reaching setoff of data merchandise and benefits and eliminating of Central Sales Tax would lessen the expense of privately fabricated products and administrations. This will expand the aggressiveness of Indian products what's more, an administration in the global market and offer help to Indian sends out.<sup>174</sup>

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<sup>171</sup>See supra note 11.

<sup>172</sup>See supra note 16.

<sup>173</sup> See supra note 16.

<sup>174</sup> See supra note 16.

The effect of GST on specific areas are talked about hereunder.<sup>175</sup>

### **8.1. Agriculture/Food Product Industry**

The use of GST to sustenance things will significantly affect those living under subsistence levels. It would majorly affect poor people. In any case, in the meantime, a complete exclusion for nourishment things would radically recoil the duty base. Nourishment incorporates an assortment of things, including “grains and oats, meat, fish, and poultry, milk and dairy items, leafy foods vegetables, treat and confectionary, snacks, arranged suppers for home utilization, eatery suppers, and refreshments”.<sup>176</sup>

In India, while “nourishment” things considered is absolved from the “Central Value Added Tax”, a large portion of the nourishment things including nourishment grains and oats pull in the state “Value Added Tax” @4%. Exception under the state “Value Added Tax” is confined to natural sustenance, e.g., new foods grown from the ground, meat and eggs, and coarse grains. Refreshments are by and large assessable, except for milk. Regardless of the fact that sustenance is inside of the extent of GST, such deals would to a great extent stay excluded because of little business enlistment edge. Given the exclusion of sustenance from Central “Value Added Tax”and@4% “Value Added Tax” on nourishment things, the GST under a solitary rate would prompt a multiplying of taxation rate on nourishment. Subsequently certain measures should be taken with this respect.<sup>177</sup>

### **8.2. Real Estate Industry**

In a few nations of Europe, providing land area and real estate property are prohibited from the extent of expenses/taxes though in “Australia, New Zealand, Canada and South Africa”, real estate and construction administrations are dealt with like some other thing. At the point when a builder made and offers a home, it will be charged “Value Added

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<sup>175</sup> See supra note 16.

<sup>176</sup>“Earnstand Young- 2015 Worldwide VAT, GSTand Sales Tax Guide- VAT, GSTand Sales Tax Rates [http://www.ey.com/GL/en/Services/Tax/Worldwide-VAT--GST-and-Sales-Tax-Guide---Rates”

<sup>177</sup> See supra note.

Tax” on the full offering value, which would incorporate the expense of area, building materials, furthermore, development administrations. Business structures and manufacturing plant deals are additionally assessable in the same route, as are charges for renting of modern and business structures. “There are just two exemptions: (1) resale of utilized homes and private residences, and (2) rental of abodes”. An offer of utilized homes and homes is exempted on the grounds that the duty is as of now gathered at the season of their to start with buy. Private rentals are additionally exempted for the same reason. If leases somehow happened to be made assessable, then credit should be permitted on the buy of the home and on repairs and upkeep.<sup>178</sup>

“According to “**Poddar-Ahmad working paper**”, thoughtfully, it is fitting to incorporate area and genuine property in the GST base. To avoid them would, actually, prompt monetary contortions and welcome superfluous arrangement debate in the matter of what constitutes supply of genuine property. On account of business and modern area and structures, their avoidance from the base would prompt duty falling through blockage of info assessments on development materials and administrations. It is hence that even under the European framework, a choice is permitted to “Value Added Tax” registrants to choose to regard such supplies as assessable”.<sup>179</sup>

Further, “State Value Added Tax” and the “Service Tax” as of now apply to development materials and administrations individually, however in an intricate way. For instance, there is huge instability regardless of whether a pre-development consent to offer another building is a works contract and subject to “Value Added Tax”. Where the “Value Added Tax” applies, question emerges about the allotment of the deal cost to land, merchandise, and administrations. While area is the main real component that does not draw in expense, the assessment rates pertinent to merchandise and administrations vary, requiring an exact depiction of the two. Extending the GST to all genuine property supplies, including development materials and administrations, would convey a

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<sup>178</sup> See supra note 173.

<sup>179</sup> See supra note 165.

conclusion to such question, rearrange the structure, and upgrade the general financial productivity of the expense.<sup>180</sup>

One potential contention against the toll of GST to land and genuine property would be that they as of now pull in stamp obligation. According to the said Working Paper, this contention can be immediately tossed, as the reason and structure of the stamp obligation is very not the same as that of the GST. Stamp obligation is a falling duty on every transport of title to genuine property, while the GST is an expense on definite shopper uses. In this way, the two duties can't be seen as substitutes. In any case, the use of GST to genuine property exchanges warrants an audit of the structure and rates of stamp obligations and enrollment expenses. The rates ought to be brought down and the structure legitimized when the GST is presented.<sup>181</sup>

In India the development and lodging part should be incorporated into the GST charge base on the grounds that development part is a critical patron to the national economy.<sup>182</sup>

### **8.3. Consumer Goods**

In spite of the monetary log jam, Fast Moving Consumer Goods of India segment has become reliably amid the previous three to four years, achieving a size of dollar 25 billion (Rs 1,20,000 crore) at retail deals in 2008. Usage of the proposed GST and opening of Foreign Direct Investment are required to fuel development further and raise the industry's size to “dollar 47 billion (Rs 2,25,000 crore)” by 2013 and “dollar 95 billion (Rs 4,56,000 crore)” by 2018, as indicated by another “FICCI-Technopak report”. The “FMCG” part is additionally one of the important supporters to the exchequer with “dollar 6.5 billion (Rs 31,000 crore)” paid through immediate and circuitous charges. Usage of GST will have a few advantages for the FMCG segment including uniform, disentangled and single point tax assessment and in this manner lessened costs.<sup>183</sup>

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<sup>180</sup> See supra note 173.

<sup>181</sup> See supra note 169.

<sup>182</sup> See supra note 16.

<sup>183</sup> See supra note 168.

#### **8.4. Railways Sector**

There have been recommendations for considering the rail segment under the GST umbrella to achieve huge duty picks up and enlarge the expense net to keep the general GST charges low. The incorporation of the rail area in the assessment administration which will get rid of the greater part of the circuitous charges ought to be done if the administration needs to give “a level playing field to street and air transportation area”. This will have the additional advantage of guaranteeing that all between state transportation of merchandise can be followed through the proposed “information innovation (IT) system”.<sup>184</sup>

#### **8.5. Finance Institutional Services**

In the greater part of the nations GST is not charged on money related administrations. For sample in New Zealand, all products and administrations are secured under the GST aside from that of budgetary administrations. The purpose for this is the charge for administrations gave by budgetary delegates like banks and insurance agencies is for the most part not exact, i.e. the charge is taken as an edge that is covered up in interest, profits, annuity installments or such other money related streams from the exchanges. In the event that the expense was not a shrouded one, then it is anything but difficult to charge the administration to impose.<sup>185</sup>

In China, money related administrations are assessable under the business charge, which is a duty on income with no duty “credits permitted on inputs”. Since it is an income charge, it can be connected to the aggregate spread for edge administrations, with no compelling reason to dispense the spread in the middle of borrowers and contributors. Israel furthermore, Korea additionally apply charge in such option frames.<sup>186</sup>

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<sup>184</sup> See supra note 180

<sup>185</sup> See supra note 178

<sup>186</sup> See supra note 179

In the “Service Tax”, India has taken after the methodology of bringing for all intents and purposes every single money related administration inside of the ambit of duty where the thought for them is as an express charge.<sup>187</sup>

It has gone past this by bringing chose edge administrations (“where the thought is spread between two monetary inflows and surges”) inside of the “Service Tax” net. The accompanying are key cases of such assessable edge administrations:<sup>188</sup>

Trader rebates on layaway/platinum card exchanges are assessable as a thought for Visa administrations, similar to any express expenses or late installment charges gathered from the card part.<sup>189</sup>

In outside money transformation exchanges without an express expense, charge applies to an esteemed measure of thought equivalent to 2% of the sum changed over.<sup>190</sup>

The assessment applies to that divide of extra security premiums that speaks to a spread for dangers.<sup>191</sup>

In a few nations, exchanges in gold, silver and different valuable metals are additionally regarded as a component of the money related segment, given that these metals are frequently purchased as ventures, and not for utilization and subsequently they are exempted from assessment.<sup>192</sup>

As there are no convincing motivations to excluded monetary administrations from the domain of GST, it would be prudent to proceed with the same methodology as took after under the Service Tax procurements.<sup>193</sup>

## **8.6. IT Services**

With the end goal of saddling e-trade or programming, it’s crucial to characterize the class of property. Properties which can’t felt or seen but are movable is called non-

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<sup>187</sup>See supra note 169

<sup>188</sup>See supra note 179.

<sup>189</sup>See supra note 168

<sup>190</sup> See supra note 168

<sup>191</sup> See supra note 168

<sup>192</sup> See supra note 168

<sup>193</sup> See supra note 168

physical property. It is furthermore partitioned in “IPR and Others like Goodwill, Interest, and Receivables”. The medium through which the product is transmitted decides the way of merchandise. On the off chance that it is through electronic structure, and then it is considered as impalpable property, however in the event that it is some other kind of medium, then it would be substantial property. Contingent upon the sort of products and their place of supply, the assessment suggestions shift in the nations that as of now have GST. E-trade and other such exchanges are the hardest to assessment and need the most astounding likelihood of expense arranging.<sup>194</sup>

India has been battling with the tax assessment of e-business. Regardless of different legal proclamations and laws, the duty suggestions are still not clear. Right away, the bundled and tweaked programming is burdened on the premise of the plan of the gatherings. To be in a state of harmony with the best global practices, local supply of programming ought to additionally draw in GST on the premise of method of exchange. Thus, if the product is exchanged however electronic structure, it ought to be considered as Intellectual Property and viewed as an administration. On the off chance that the product is exchanged on media or some other unmistakable property, then it ought to be dealt with as merchandise and subject to GST.<sup>195</sup>

### **8.7. Small Scale Industry**

The effect of GST on little endeavors is of extraordinary concern. There will be three classifications of little endeavors in the GST administration. Those underneath the edge need not enlist for the GST.<sup>196</sup>

Those at the edge and throughput will be having the choice to pay income based expense or select to pair the GST administration. Given the potential outcomes of information duty credit, not all little endeavor might look for the turnover charge alternative. The third classification of little ventures over the turnover edge should be inside of the GST

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<sup>194</sup>See supra note 168

<sup>195</sup> See supra note 168

<sup>196</sup> See supra note 168

system. Conceivable descending changes in the edge in a few States subsequent to the presentation of GST might bring about commitments being made for a few merchants. In such satisfactory suitable procurements can made to give absolute help to influenced little endeavors if esteem attractive. In admiration of Central GST, the position is marginally more perplexing. Little scale units fabricating determined merchandise are permitted exclusion of extract upto an income of Rs 1.5/- crores. Thus, units which might be needed to inscribe for installment of GST, might see this as an extra cost.<sup>197</sup>

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<sup>197</sup>See supra note 179.

## Conclusion and Suggestion

The methodology of presenting the GST, a standout amongst the most urgent roundabout assessment changes in India, has been lengthy and difficult one. The then-Finance Minister had proposed in his Union Budget that India will follow GST by April 1, 2010.

Since this declaration, the take off of GST wasn't so simple, given the govt. and state formation in the nation that needed all the sides to be in agreement on different petulant concerns and the class of twist included in comprehending the predominant Central and State expenses and obligations unto new GST administration.

The whole practice of starting the change included colossal appraisal of preparation by "Finance Commission", "Joint Working Group" composed by "Empowered Committee of State Finance Ministers", "Standing Committee", "Sub-Committees and Study Groups", "IT groups" and every other including "India Inc." The change in the Constitution for executing GST ahead of enacting related procurements will be a major test for the Government.

Absence of accord at Center and States and couple of variant functional troubles brought halts and postponement in the execution task.

Implementing GST, will liberate our country from the constraints of aberrant "indirect tax laws" and guide us in another time of development and flourishing. The present day "tax system" carries numerous twists whose outcome in considerable assessment "cascading" and wasteful generation and utilization fabrication, which thwart financial development. GST will uproot these mutilations, and will prepare for a higher GDP.

GST will likewise acquire a "modern tax system" to guarantee productive and powerful organization for "taxation". This framework will encourage consistency for "taxpayers" who want to pay their "taxes" and guarantees strict requirement for those that don't. GST acquires more noteworthy straightforwardness and reinforces observing, subsequently making "tax" avoidance troublesome.

GST symbolizes beginning of “cooperative federalism”, where the “Center and States” formulate the tax “structure” in blended and agreeable way, instead of taking a shot in a segregated way.

### **Suggestions**

In my opinion following are the subjects which need to be determined before implementing the “Goods and Services Tax (GST)”:

- “122<sup>nd</sup> Amendment” of the “Constitution of India” is proposed and it was passed by the “Lok Sabha” and sent to the “Rajya Sabha” which yet not passed it and referred it back for some changes. As per recent reports and discussions, I find that the delay which is happening in passing the “GST bill” is “political motivated” rather than benefit of the nation. Therefore, it is a very high time that we should come together and work for the nation but not to achieve “political agenda”.
- The second hurdle which is going to come in passing “GST bill” is that it also needs consent of all the “state legislation” which is again going to be a very tough task before implementing the GST. The reason is again “political agenda” because there is a lot of discrepancy between the “Centre and State” and their “ideological views” and thus it will be more challenging for the “Union Government” to agree the states.
- GST rates are still not finalised and there are so many discrepancy about it. Where at one side, “Union Government” wants it should be more than 20%, the opposition wants it to be below 18%. But if we see the “indirect tax structure which includes excise duty, service tax, sales tax, VAT, education cess, secondary higher education cess and Swachh Bharat Cess” so all this collectively costs around 28%-30%, so in my opinion it should be around 22%-23% so that it will not be the same for industrial sector and also it will benefit the consumers as after GST the consumers will be the ultimate source of exacting “taxes”.
- “Goods and Services Tax Council” is proposed but yet not finalised who all will be in this council and how it will work etc. So, the Government should as soon as possible establish the “GSTC”.

- There are also various discrepancy about some “goods and services” that whether they will be included or not. It is my suggestion to the Government that, before passing the “GST bill” the govt. should clear all the doubts regarding this issue so that later on there will be no discrepancy otherwise it will burden the tribunal and courts with cases.
- With the economic development of India, presently “foreign direct investment” is coming in the all sectors of India and therefore it is very necessary that government should pass this GST as soon as possible so that “international investor” can freely invest in India.

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