

# Taxation principles of GST and experience of present law as relevant to GST

# Outline of discussion

- General Taxation principles
- Indian indirect Tax system – Road to GST
- Introduction of GST
- Benefits of GST
- Salient features of GST vis-a-vis the provisions of present law
- Conclusion

# 1. General Taxation principles

Chanakya:

1. convenient to pay,
2. easy to calculate,
3. inexpensive to administer,
4. equitable and non-distortive,
5. not inhibiting growth.

Adam Smith: cannons of taxation are

1. equality or ability,
2. certainty,
3. convenience and economy.

# 1.2 General Taxation Principles

Other principles formulated over the years are:

1. efficiency,
2. elasticity,
3. simple, plain and intelligible to the tax payer,
4. wide tax base
5. no double taxation.

## 2.Indian indirect Tax system

Why reform in indirect tax system

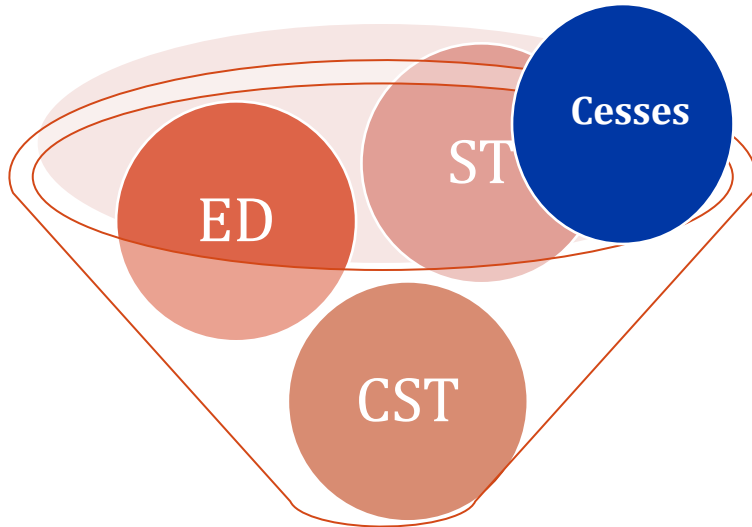
- Multiple taxes and multiple statutes, multiple rates of taxes,
- cascading effect of taxes and increase in costs because of non availability of seamless input tax credit between different taxes,
- one country but multiple markets with different rules of the game
- Inadequate use of technology
- problems of interpretation of different provisions
- the discretionary powers available to the tax implementation and enforcement agencies made the life difficult for the tax payers and at the same time increased corruption and evasion of taxes.

# 3. Road to GST

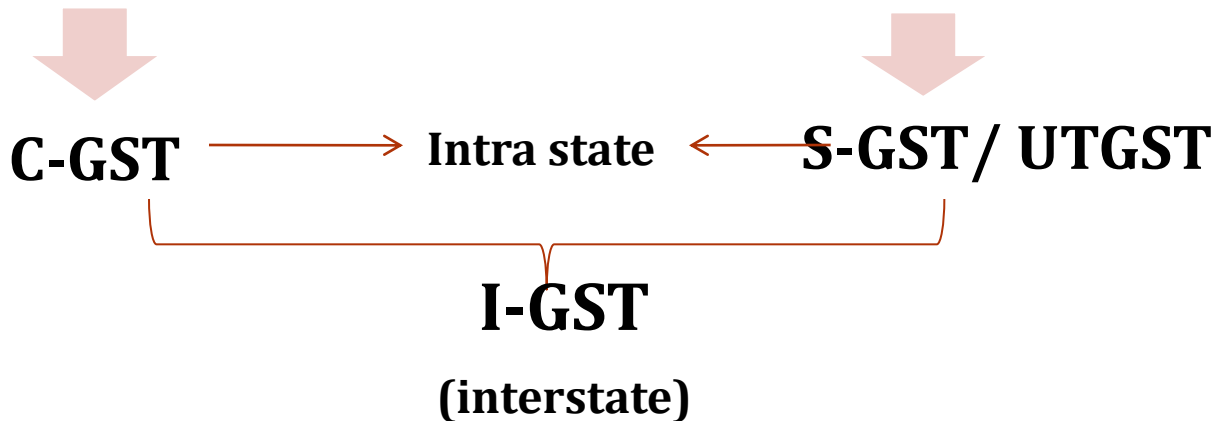
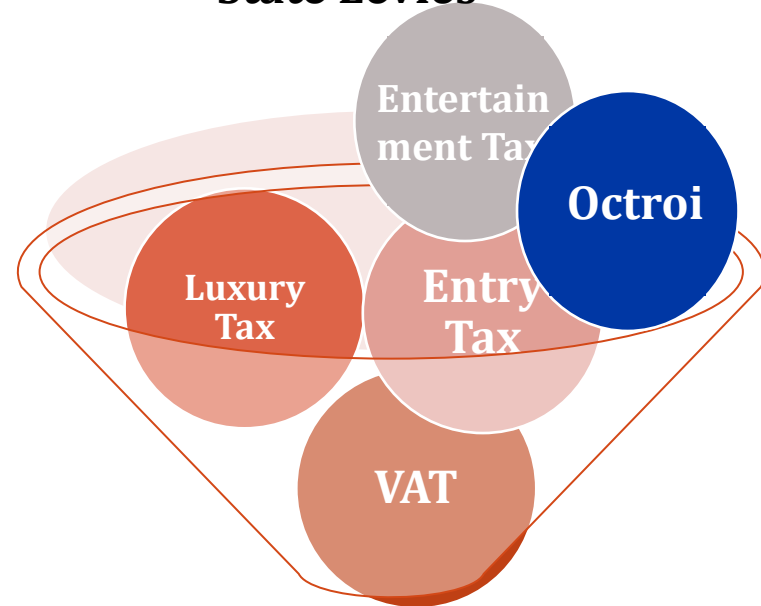
- Effort towards major indirect taxes reforms started in 2007 with setting up of an empowered committee of State Finance Ministers
- Finally resulted in 122<sup>nd</sup> Constitutional amendment and enactment of GST Laws by the Parliament and State legislatures
- the present deadline is 1 July, 2017 for introduction of GST nationwide.
- A constitutional body, GST Council considers and gives recommendations on any issue relating to GST bringing in a truly federal system for decision making.
- In the GST council, Union Government has 1/3<sup>rd</sup> voting power and states have 2/3<sup>rd</sup> voting power.
- It consists of Union Finance Minister as the chairman, MOS (Finance) as a member and all State Finance Ministers as members.
- Even though it is dual GST and the States enjoy powers to make any changes, by bringing in the concept of recommendation of GST Council as a pre-requisite for any changes, uniformity in law, rates, exemptions, list of goods and services to be taxed is proposed to be achieved.

# 4.1 Taxes to be subsumed under GST

## Central Levies



## State Levies



## 4.2 Taxes not to be subsumed under GST

### Central Levies

- Basic Customs Duty
- Customs Cess
- Research & Development Cess

### State Levies

- State Excise Duty
- Stamp Duty
- Profession Tax
- Motor Vehicle Tax
- Electricity Duty
- Property Tax



## 5. Some benefits expected from GST

GST will lower the cost of goods and services and make India globally competitive

GST will make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.

GST would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.

GST shifts the tax incidence near to the consumer and benefits the industry through better cash flows and better working capital management.

# 6.1.1 Salient features of GST vis-a-vis Present laws - Concepts

## GST

- Supply
- Destination based
- Consumption
- Dual
- Accrual to consuming state
- Advalorem basis
- Self assessment including place of supply to determine to whom tax should go.
- Distribution of assesses between centre and states

Receipt of supplies from unregistered buyers and treatment of employee and employer as related persons

## Present law

- Central Excise
- On manufacture
- different bases
- consumption not relevant
- Portion paid to state on Financial commission recommendations.
- Self assessment

- Service Tax
- Provision of service
- Gross consideration
- advalorem
- paid after consideration is received
- Place of supply for domestic supply not important.
- Self assessment

# 6.1.2 Salient features of GST vis-a-vis Present laws - Concepts

## GST

- Supply
- Destination based
- Consumption
- Dual
- Accrual to consuming state
- Advalorem basis
- Self assessment including place of supply to determine to whom tax should go.
- Distribution of assessee between centre and states

## Present law

- VAT
- From 2005
- Sale of goods
- Different provisions in different states
- inter state sales
- Deemed sale concept
- Assessment by assessing officer

# 6.2 Salient features of GST vis-a-vis Present laws – True VAT

GST -Levied on every stage on value addition preventing cascading effect of tax. Seamless flow of credit is claimed but to get it meticulous accounting would be needed. Government can verify the correctness of taxes paid.

Central Excise : restricted credit of duty paid on capital goods. Cross credit not available. Service tax credit available. Disputes and litigation because of issue of nexus. Refund process in case of exports has ended up in disputes. Input credit available even in offence cases .

Service tax: restricted credit of duty paid on capital goods. Cross credit not available. Service tax credit available. Disputes and litigation because of issue of nexus. Refund process in case of exports has ended up in disputes. Input credit available even in offence cases .

VAT – No credit of central excise duty and service tax was available. No credit in case of inter state sales also. Restriction on credits were applicable. No relief from input vat in case of exports.

Difficulties in input credit scheme- Matching of supply and receipt – payment of tax by supplier – valid return – RCM for unregistered buyers- break of credit chain because of composition scheme . Payment to supplier is also monitored by the GSTN and businesses are required to file returns in this regard.

## 6.3.1 Salient features of GST vis-a-vis Present laws -Threshold exemption

### GST

- Exemption is linked to registration – unusual
- In reality no exemption in BtoB transaction – additional documentation requirement
- RCM applicable even if no credit taken
- Puts small businesses to a great disadvantage

## 6.3.2 Salient features of GST vis-a-vis Present laws -Threshold exemption

Central Excise, Service Tax and VAT

- Registered units eligible for threshold exemption
- No link between registration and exemption.
- Credit eligibility linked to tax liability of final product and not registration. (Exlcuding VAT).
- No RCM for purchases from unregistered suppliers (Not in VAT).

## 6.4 Salient features of GST vis-a-vis Present laws – HSN,SAC

- Basis for levy of tax on goods would be HSN (No change)
- Basis for levy of tax on goods would be SAC – No change.
- There are six rates of taxes proposed.
- Major areas of dispute involve classification, exemption, eligibility for input credit and valuation in the present taxation system. None of this gets eliminated in the GST regime.

## Present laws -Exports and Imports

- Exports and Supplies to SEZ shall be treated as zero rated supplies. Import of goods and services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties. The IGST paid shall be available as ITC for further transactions.
- In the present regime, traders did not have the benefit of input credit. In GST regime, entire IGST would be available as input credit. The difficulties faced in claiming refund of SAD also will not be there. The only problem will be certain activities which are treated as exports will not be considered as exports in future and GST liability would arise.



## 6.6 Salient features of GST vis-a-vis Present laws – Interface

GST -Minimal interface between taxpayer and the taxman.

Registration and related actions on the part of the assessee as well as department, filing returns, recovery of wrongly availed input credit, refund claims, issue of notice, notice to defaulters, payment of arrears, determination of admissible input credits and recovery of wrongly availed credits etc. will be done online.

Present law: Registration, returns are online.

## 6.6.1. Salient features of GST vis-a-vis Present laws – Demands

- 4 ½ in normal cases and 6 ½ years in case of fraud etc. for completion of adjudication process. Time limit of 2 ½ years for service tax and 2 years for central excise to issue scn for normal period and 5 ½ and 5 years for ST and CE respectively. No time limit for adjudication process.
- Assessee to get scn at least 3 months or 6 months before adjudication – effectively reply to scn, ph and passing or order has to be done in 3/6 months.
- Even in non offence cases, if tax and interest are not paid, penalty of 10% can be imposed. Recently law amended to provide for penalty.
- Assessee gets 3 months to file appeal, department gets 6 months. In Central excise and ST, same time limits for filing appeal for the assessee and the department. Revision power of commissioner allows 3 years time to take up revision as in the case of VAT.

## 6.6.2. Salient features of GST vis-a-vis Present laws – Demands

- 10% tax deposit in first appeal and additional 20% tax deposit in second appeal in addition to deposit of admitted tax dues. Presently 7 ½ and 10% of tax has to be deposited. No compulsion to deposit admitted tax liability.

## 6.7.1. Salient features of GST vis-a-vis Present laws – Valuation

- transaction value would be the value for levy of tax.
- Inclusions and exclusions to the transaction value specified to avoid disputes.
- Reimbursements and free supplies includible.
- Related person defined. No mention of ‘mutuality of interest’.
- Sale at a loss to capture market can be risky.
- Concepts of open market value and like kind and quality can create disputes.
- Interest, late fee, penalty includible in value. Non governmental subsidies includible. Advances liable to tax.

## 6.7.2. Salient features of GST vis-a-vis Present laws – Valuation

- Present law
- Central Excise Time and place of removal, duty payable without removal, loss by theft taxable.
- Concept of mutuality of interest existed.
- Sale at a loss to capture market provided for.
- In ST, gross consideration cannot include free supplies and reimbursed expenses.

## 6.8. Salient features of GST – Provisions exclusive to GST

- New modes of payment of tax: Credit/debit card, NEFT/RTGS.
- Tax collection at Source
- Tax deduction at source
- Anti profiteering measure
- Compulsory audit
- Complete zero rating of exports
- Faster refunds to exporters.

# 7. Conclusion

1. convenient to pay,
2. easy to calculate,
3. inexpensive to administer,
4. equitable and non-distortive,
5. not inhibiting growth.
6. equality or ability,
7. certainty,
8. convenience and economy. efficiency,
9. elasticity,
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