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CONSTITUTION AND SCHEME OF GST

The framers of the Indian Constitution envisaged way back in 1950 that India should develop as a 'common economic market' and towards this end introduced specific provisions in the nature of Article 301 of the Indian Constitution which stipulates that trade, commerce and intercourse throughout the territory of India shall be free, subject to reasonable restrictions which may be imposed by the Parliament or the State Government. Article 19(1)(g) of the Constitution guarantees all citizens the right to practice any profession, or to carry on any occupation, trade or business subject to certain reasonable restrictions. The Apex Court has also recognized that the protection under the Constitution would extend against both tax and non-tax barriers. However the reality in the last sixty odd years since the birth of the Indian republic and the introduction of the Indian Constitution has been otherwise. Owing to the federal nature of the Indian polity and economic compulsions, several tax laws have been introduced in the past which have led to fragmentation of India into smaller markets. The existing complex and multi-layered indirect tax structure has fragmented the Indian market into state markets by tax barriers and greatly impeded the development of India as a 'common economic market'. There is therefore an urgent need to address this issue both from an economic perspective as well as from the perspective of ease of doing business in India.

The common theme which runs across the 122nd Constitution Amendment Bill, 2014 ('Amendment Bill') which was introduced in the Lok Sabha on December 19, 2014 and which seeks to amend the Constitution to facilitate introduction of the 'Goods and Services Tax' ('GST'), is the need to remove the 'cascading effect of taxes' and provide for a 'common national market for goods and services'.

The Amendment Bill as introduced in the Lok Sabha seeks to amend the Constitution to:

- Confer concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;
- Subsume various prescribed Central level taxes into a Central level GST and State level taxes into a State level GST;
- Levy an Integrated Goods and Services tax on inter-state transactions of goods and services;
- Levy an additional tax not exceeding 1% on inter-state transactions for a period of 2 years (*which is to be collected by the Centre but assigned to the originating State*);
- Cover all goods and services under GST except for alcoholic liquors for human consumption. Petroleum and petroleum products, though not excluded from the GST regime, will not be subject to or be covered under GST till a date to be notified on the recommendation of the GST Council;
- Create a GST Council, which council will then examine and make recommendations to the Union and States on issues like rates, exemption lists, threshold limits etc. under GST; and
- Provide for compensation to the States for loss of revenue arising on account of implementation of GST for a period which may extend to 5 years.

The introduction of GST will be a game-changer for industry, and, the introduction of GST can be expected to set right various inefficiencies/defects in the present Indirect tax regime in India. For instance:

- The subsuming of various indirect tax levies at a Central or State level into a Central GST or State GST will address the issue of multiple taxes levied across various stages of the supply chain;
- Full availability of tax credits across the supply chain will result in avoiding the cascading effect of taxes. Under the proposed GST system, there would be no separate excise duty, VAT etc., and, there would be a uniform levy across goods and services with an uninterrupted credit flow;
- The subsuming of taxes like entry tax into the fold of GST, will remove the need for the 'check-post raj' which in itself restricted the free movement of goods from one State to another. It is estimated that truckers in India waste 60% of their travel time waiting at check points and this not only causes time delays but also increases logistics costs; and
- The simplification of the tax regime will result in reduction in compliance costs/time spent on tax compliance, and, facilitate better planning and creation of more efficient supply chain systems.

The introduction of GST along with other government initiatives like the 'make in India' programme have the potential to drastically bring down costs, facilitate economies of scale, re-define and re-shape the logistics landscape of India, place India once again on a high growth trajectory, and, realise the vision of India becoming a single 'common economic market'. While the Amendment Bill still requires to be passed by both houses of Parliament and it is expected that the said Bill will be taken up in the budget session starting on February 23, 2015, GST is an idea, time for which has come, and, in the words of the well known author Victor Hugo – 'No one can resist an idea whose time has come'.