

## The Constitution (122nd Amendment) Bill, 2014

Pure Theory of Law by Hans Kelsen<sup>1</sup> propounds that a system of law is based on a Grundnorm from which flows the validity of other statements of law in the system. The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 which has been passed by the Lok Sabha and has been referred to Select Committee of the Rajya Sabha, which if passed in the upcoming monsoon session, will become the Grundnorm for Goods and Services Tax (GST) laws in India and shall lay down the foundation stone for the Union and the States to enact laws enforcing the GST.

After the Constitutional Amendment Bill is passed, both the Union and the States would be enacting laws to enforce GST, and in this process the Union or the States may exceed the domain as laid down by the Constitution in relation to their legislative powers. Neither Parliament nor a State Legislature can enact a law on the subject which is not in its domain according to the Constitution. Therefore, any law passed either by the Parliament or the State Legislature can be challenged to be ultra vires, if the same is not in

### Do you Know:

It is not unusual for economies to implement GST in the middle of the Financial Year. Australia and Canada have already done so.

accordance with the legislative jurisdiction as per the Constitution. With this background and to make the readers aware of constitutional boundaries of Union and the States in relation to the GST, we will go through the GST Bill and the proposed important amendments.

### Proposed Amendments:

The Bill proposes to introduce following new amendments in the Constitution bringing change in legislative powers of the Union and the States in relation to GST:

- Clause 2 of the Bill proposes insertion of new Article 246A after Article 246. As per proposed Article 246A Clause (1), the

Parliament and the State Legislatures shall have power to make laws with respect to GST to be imposed by the Union and the State, respectively. Clause (1) of Article 246A of the Constitution is being made subjective to Clause (2) of Article 246A which enunciates that the Parliament shall have exclusive power to make laws with regard to GST where supply of goods or services or both take place in the course of inter-state trade or commerce.

- Amendment to Article 268 has been proposed wherein the power of the Union to levy duties of excise on medicinal and toilet preparations

<sup>1</sup> Hans Kelsen (1881-1973) Austrian jurist and philosopher of law. Kelsen is known for positive theory of law, i.e. one that excludes from its analysis any ethical, political, or historical considerations, and finds the essence of the legal order in the 'black letter' or laid-down law.

(collected by States) is being annulled. Corresponding change is being made in Entry 84 of List I of the Seventh Schedule (Union List) which provides power to the Union to impose duties of excises on tobacco and other goods manufactured or produced in India to restrict such power only in relation to petroleum, petroleum products, tobacco and tobacco products.

- Taxation of petroleum products which currently is being negotiated by States to be excluded in the GST will later be included within GST regime from the date to be recommended by the GST Council [Proposed Article 279A Clause (5)]. While Petroleum and Petroleum Products have been proposed to be kept within the ambit of GST, the States and the Union would be at liberty to levy State VAT and Central Excise Duty respectively on these items till such time as the GST Council decides to levy the GST rate on these items. [Entry 84 of the Union List and Entry 54 of the State List is accordingly proposed to be amended.]
- Clause 7 of the Bill proposes deletion of Article 268A which conferred power on the Union to levy Service tax. Since, Service tax would be subsumed in GST, the Article conferring power to levy Service tax is proposed to be deleted. Accordingly, Entry 92C of the Union List is proposed to be deleted.
- Clause 9 of the Bill proposes insertion of Article 269A wherein it mentions that the GST on supplies in the course of inter-state trade or commerce shall be levied and collected by the Government of India. Explanation to Article 269A mentions that for the purpose of clause 269A, supply of goods, or of services, both shall in the course of import in the territory of India shall be deemed to be supply of goods or of services, or both in the course of inter-

state trade or commerce.

- Article 269A Clause (2) mentions that the Parliament shall have the power to formulate the principles for determining place of supply of goods or services or both in the course of inter-state trade or commerce, and the point of taxation of supply of goods, or of services or both takes place in the course of inter-state trade or commerce.
- Clause 11 of the Bill proposes amendment to Article 271 wherein the power of the Parliament to increase the rate of GST by a surcharge has been restricted. Any increase in the rate of GST shall be decided by Goods and Services Tax Council (GST Council).
- Clause 12 of the Bill proposes insertion of Article 279A which enunciates the constitution of GST Council. The Council shall consist of Union Finance Minister, Union Minister of State in charge of Revenue or Finance and the Minister in Charge of Finance or Revenue of State Governments shall be the members of this GST Council. This GST Council will give recommendations to the Union and the States on GST.
- Clause 13 of the Bill suggests amendment to Article 286 of the Constitution to make it clear that the States shall not have any power to levy tax on inter-state supply, export or import of goods or services or both.
- Article 366 of the Constitution has been proposed to be amended to provide inter-alia for the following definitions:
  - o “Goods and Service Tax” means any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption.

Liquor has been kept out of the radar of GST and shall be subject to taxation in hands of the States.

- o Services will be defined as anything other than goods.

Such wide definition will largely resolve the issue of classification and widen the tax base for the Government. Everything which is not classified as goods, by default will be classified as 'services'.

- As for 'Entry Tax including Octroi', though some States like Maharashtra are reluctant, the Centre has stood its ground and it may be subsumed in GST. Hence, Entry 52 of List II of the Seventh Schedule (State List) which conferred power on States to levy Entry tax is proposed to be omitted.
- Entry 92 of the Union List is proposed to be deleted. Hence, taxes from sale or purchase of newspapers

and advertisements from all forms of media will be covered under GST.

- Entertainment Tax being levied by the local bodies will not be subsumed in GST.

### Way Ahead

Since, the Bill has been referred to the Select Committee of the Rajya Sabha which is expected to submit its report by the end of first week of the monsoon session of the Parliament scheduled to commence in the third week of July, 2015, the proposed implementation date of April 1, 2016 is unlikely to be met. The Bill thereafter will be needed to be ratified by at least 15 States in their respective assemblies before the President can give its assent for its enactment and it becomes Grundnorm for GST.

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