



Applicability of GST Law to Whole of India– An Analysis

CA Avinash Poddar

Research Scholar

Dr Mehul Desai

KEYWORDS

Goods and Services Tax is expected to be one of the largest tax reforms since Independence. It is also expected that it shall give positive results to GDP by providing addition in the same i.e. GDP will certainly increase once the GST gets implemented.

After long waiting period of almost 11 years, GST seems to be a reality now. The reason of feeling so is we have move few steps towards it i.e. the 122nd Constitution Amendment Bill got cleared on 8th August 2016, Ratification, by at least 50% of the states, process also completed. Now the further road map will be assent of president which I am sure will not take much time.

As we all are aware that on 14th June 2016 the Model GST Law was brought into the public domain. Lot of deliberations, suggestions, etc. are being made since then. Experts are made fully occupied by the Government and the hopes of implementation are raised amongst all. I am also making a small attempt towards the discussion and analysis of the said Model GST Law.

Let us try to understand and analyse Section 1 of the CGST/SGST Act 2016. The provisions are as under:

“1. Short title, extent and commencement

(1) *This Act may be called the Central/State Goods and Services Tax Act 2016*

(2) *It extends to the whole of India/States name.*

(3) It shall come into force on such date as the Central or a State Government may, by notification in the official gazette, appoint in this behalf:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.”

Analysis

Sub section (1) of Section 1 is simply mentioning the name of the Act i.e. Central Goods and Services Tax Act 2016 and State Goods and Services Tax Act 2016.

Sub section (2) of Section 1 is as per me *needs analysis*. By plain reading we understand that this ACT extends to whole of India. It means it also includes the state of Jammu and Kashmir. Term *India* is defined under clause (53) of Section 2 of the Model GST law as:

“India” means,-

- the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;
- its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);
- the seabed and the subsoil underlying the territorial waters;

- the air space above its territory and territorial waters; and
- the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

I would just like to draw your attention towards clause (a) of the definition of India. It provides that the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution. Now Article 1 of the Constitution provides as under:

1. Name and territory of the Union

(1) India, that is Bharat, shall be a Union of States

(2) The States and the territories thereof shall be as specified in the First Schedule

(3) The territory of India shall comprise

Now there are 29 states and 7 Union Territories. All states are being administered as per their own legislature according to the Part VI of the Constitution of India. But in case of Union Territories both situations are there, meaning thereby, there may be legislature or may not be the same.

Now let us try to understand what does the 122nd *Constitutional Amendment Bill 2014* provides. Under the said bill a clause is supposed to be entered under Article 366 of the Constitution as clause 26B which defines the term *State*.

(26B) “*State*” with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature.

Now here is the issue. The definition includes only those Union Territories which are with legislature. Then here the question arises what about those Union Territories which do not have legislature. How GST will be made applicable to those Union Territories?

The following can be the possibilities of transactions:

- Transactions between 2 Union Territories not having legislature.
- Transactions which are within a Union territory not having legislature.
- Transaction between one state and Union Territory having no legislature.

So far as first case is concerned i.e. transactions between 2 Union Territories not having legislature, it can be said that IGST shall not be made applicable because of the Explanation to the definition of *Appropriate State* under clause (a) of Section 2 of the IGST Act 2016. As per this explanation for the purpose of this Act, “*State*” includes *Union Territory with Legislature*. Therefore Union Territory without legislature is not covered under the term *state*. The same is applicable in third case i.e. where *transaction between one state and Union Territory having no legislature*.

Now in second case, where transactions which are within a Union territory not having legislature. In this situation also SGST is certainly not applicable but CGST being a tax levied all over India including Union Territories will be levied. Hence in this situation the Centre may use the powers conferred to it under Article 246 and make the SGST Act of any other state applicable in such Union Territory.

Conclusion

There is need to amend the provisions/definitions of term State in the IGST Act i.e. the words *Union Territory with or without legislature* shall be used in place of *Union Territory with legislature*. Else another option is to delete the definition of term *state* from the IGST Act 2016 because in that case the definition under the General Clauses Act can be borrowed.