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**GST: A REVOLUTIONARY REFORM &
OVERHAUL OF INDIRECT TAXES IN INDIA
ALONG WITH AN ANALYSIS OF THE 101ST
CONSTITUTIONAL ACT, 2016.**

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ABSTRACT:

The paper will focus on the 101st Constitutional Amendment which introduced GST (Goods and Service Tax) in India. There have been many indirect taxes which were prevalent in India and these taxes were subsumed into GST after its introduction. The paper shall also focus on the 101st Constitution Amendment Act and analyse the main changes and amendments brought in through this act.

This paper will further discuss the introduction of GST and its evolution, the paper shall consist of the importance of GST and its salient features which include Cascading effect, Input tax credit system, etc. The paper also consists of the structure of the GST and how it divided into separate forms for easy functioning (i.e. CGST, SGST, IGST, UTGST).

The next part of the paper consists of the GST Council, their compositions and functions. Along with this, I will be discussing Compensation Cess which is dealt with by the Compensation Cess Act which was brought into existence to compensate manufacturing states as GST is a highly consumption-based tax.

There have been few concerns related to GST, and as GST is very recent in India it's important to consider the concerns in regard to it. Hence the paper will be talking about the GST related concerns.

Finally, the conclusion will consist of my opinion on GST and why it's important to have such Indirect tax system in India.

INTRODUCTION:

In India taxes are levied by the Central Government and the State Governments. There are few taxes which are collected by the local authorities as well such as municipalities, etc. The power to levy taxes is derived from the Constitution of India, and it's the Constitution which allocates power to the Central and the State Governments to levy different types of taxes.

Article 265 of the Constitution lays down a restriction on the powers of tax levy provided to Centre and the States by stating that "*No tax shall be levied or collected except by the authority of law*". Hence, any tax levied has been backed up by a law passed by either the Parliament of India or the State Legislature. Article 246 of the Constitution is the one that distributes the

power with respect to taxation between the Union and the States. The subject matters are listed down as distinct tax entries under Schedule VII of the constitution.

- **List-I:** Union List (Entries 82 to 92B) – It lists down the areas on which the Union is exclusively competent to make laws.¹
E.g.: Custom duties and excise duties manufactured goods (except alcohol for human consumption, narcotics, etc), tax on income other than agricultural income, etc
- **List-II:** State List (Entries 45 to 63) – It lists down the areas on which the States have the exclusive right to make laws.²
E.g.: Excise duties on alcohol for human consumption, opium, etc, tax on land revenue, taxes on vehicles, tolls, etc.
- **List-III:** Concurrent List (Entries 43 and 44) – It lists down the areas on which both the Union and States have the power to make laws.³

Through these lists, it could be under that the fiscal powers were divided appropriately between the Centre and the States under Schedule VII of the Constitution without any overlap. There were few amendments made in the Constitution for the introduction of GST as the existing provisions have become outdated with time and are not fit for the implementation of GST.⁴

NEED FOR GST:

There was a need to bring in GST for the assimilation of the different taxes which are being levied by the Centre and the States into one inclusive tax. This amendment will empower the Centre and the States to levy GST and collect it on the supply of goods and services together.

GST is considered as one of the most necessary and important steps to bring a reform in the indirect tax system in India. In the erstwhile prevalent regime, there were multiple taxes like Sales tax, VAT (while differed from state to state, etc), which in turn led to a multiplicity of taxes and double taxation many times. Combining all the prevailing taxes from the Centre and State into a single uniform and common national tax would help in dealing and overcoming

¹ The Constitution of India, 1949, Schedule 7.

² Id.

³ The Constitution of India, 1949, Schedule 7.

⁴ *I. GST - An overview*, TAXMANN (July 2nd, 2020, 11:14 PM), <https://gst.taxmann.com/gst-ready-reckoner.aspx>.

problems like cascading effect, double taxation, the multiplicity of taxes, etc and now the taxes have been divided only between the Centre and the States.⁵ For all this to be done it was necessary to bring in the 101st Amendment in the Indian Constitution and introduce GST in India.

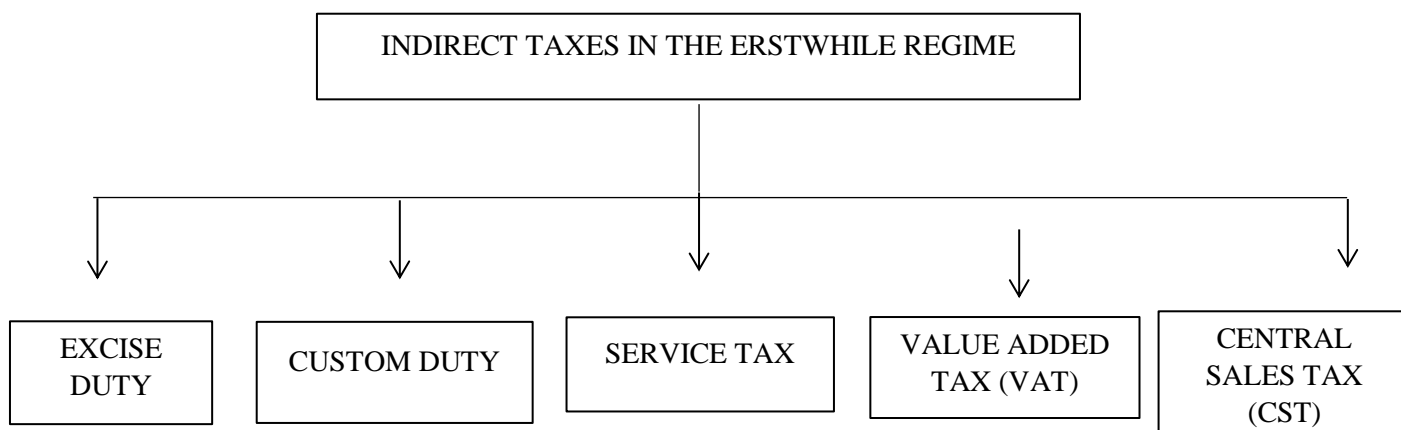
THE HISTORY AND EVOLUTION OF GST:

In 2005, the Kelkar Task Force on Fiscal Responsibility and Budget Management Act recommended for one comprehensive national tax on all goods and services which should be replacing all the then prevailing indirect taxes, they suggested GST model on the basis of the VAT principle. Mr P. Chidambaram, the then Union Finance Minister has announced in the 2005-06 budget that GST will be introduced from July 10th, 2010 but that did not happen. In the year 2014, the 122nd Constitution Amendment Bill was introduced in the Lok Sabha and was passed by Lok Sabha in the year 2015. After making few amendments, the bill was finally passed by the Rajya Sabha in the year 2016 post which the Lok Sabha also passed a few amendments were made to the bill. The bill was ratified by the sufficient amount of states and it got its assent from the President of India on 8th September 2016, after which the 101st Constitutional Amendment Act, 2016 was enacted which came into effect from 16th September 2016.⁶

In the erstwhile prevalent Indirect tax regime in India, there were many taxes prevailing. The following table will demonstrate the taxes which were prevalent.

⁵ Vishal Raheja, *What is GST? Goods and Service Tax explained with benefits*, TAXMANN (July 2nd, 2020, 11:17 PM), <https://www.taxmann.com/blogpost/2000000048/what-is-gst-goods-and-services-tax-explained-with-benefits.aspx>.

⁶ Niti Bhasin, *Chapter 2 - Intorduction to Goods and Service Tax (GST)*, TAXMANN (July 2nd, 2020, 11:20 PM), <https://www.taxmann.com/bookstore/bookshop/bookfiles/nitibhasinchapter2.pdf>.



GST subsumed into itself many of the prevailing indirect taxes (it subsumed 17 Central and State taxes) which were being collected by the Centre and the respective State Governments, which led to a huge change in the federal framework of India. A basic custom duty levied when a particular commodity enters the territory of India stills exists, it's not subsumed by GST.⁷ GST also has different tax slabs i.e. 0.1%, 0.25%, 3%, 5%, 12%, 18% and 28%, the usage of these tax rates varies on the basis of the goods and services concerned.

ANALYSIS OF IMPORTANT CHANGES BROUGHT IN MY 101ST AMENDMENT ACT, 2016:

The GST Constitutional 101st Amendment Act, 2016 is brought in the provisions that are important for the application and implementation of the GST. As already mentioned before, the present amendment subsumes a number of indirect taxes. These amendments were brought into the Constitution with an aim to give power to both the Centre (Parliament) and the State

⁷ Varun Kannan and others, *Analysing the working of GST Council from the Perspective of Fiscal Autonomy of the States*, INDIAN LAW JOURNAL (July 2nd, 2020, 11:22 PM) <https://www.indialawjournal.org/analysing-the-working-of-gst-council.php>.

legislatures in order to make necessary laws required for GST levy whenever a transaction takes place with respect to supply and Goods and Services.⁸

The following are a few of the most important amendments made through this act:

- **Section 2 - Insertion of Article 246A (Important Provision with respect to GST)⁹**
The provision talks about the power of the Parliament to make laws with respect to GST levied on interstate transactions (IGST). Therefore, the Centre and the States have the power to make CGST and SGST Acts respectively, whereas the power to make the IGST Act lies with the Central Government. This article consists of a non-obstante clause. It overrides Article 245 and Article 254 of the Indian Constitution, through which it's been trying to let go of the hierarchy of the Centre. It's unique as it lays down the power of both the Union legislature and State legislatures. The aim of this provision is to give out simultaneous power to both the Parliament and the State legislatures and bring in Co-operative Federalism.¹⁰
- **Section 9 – Insertion of new Article 269A¹¹**
This provision deals with the insertion of Article 269A into the Indian Constitution. This article deals with the levy of GST in case of inter-state trade, it provides that the tax in such case should be levied and collected by the Government of India. This tax shall be known as Integrated GST (IGST). The collected tax shall be allocated between the Union and the States based on the law passed by the Parliament on the basis of the recommendations provides by the GST Council. The article also empowers the Parliament to make principles with respect to the place of supply and when the supply of goods or services or both occurs in the course of inter-state trade or commerce.¹²
- **Section 11 – Amendment of Article 271¹³**

⁸ Raman Singla, *GST Constitutional (One Hundred & First Amendment) Act, 2016 notified*, TAXGURU (July 2nd, 2020, 11:24 PM) <https://taxguru.in/goods-and-service-tax/gst-constitutional-amendment-act-2016-notified.html>.

⁹ GST Constitutional 101st Amendment Act, 2016, Section 2.

¹⁰ Raman Singla, *supra* note 8, at 5.

¹¹ GST Constitutional 101st Amendment Act, 2016, Section 9.

¹² Raman Singla, *supra* note 8, at 5.

¹³ GST Constitutional 101st Amendment Act, 2016, Section 11.

This provision has brought an amendment in Article 271 of the Indian Constitution and kept restrictions on the power of the Parliament to levy surcharge. This provision provides for the exception of surcharge levy on the goods and services on which GST is levied.¹⁴

- **Section 12 – Insertion of Article 279A¹⁵**

This provision deals with the insertion of Article 279A into the Indian Constitution. This article provides the constitution and the mandate of the GST council.

- **Section 14 – Amendment of Article 366¹⁶**

This provision deals the amendment of Article 366 of the Constitution. Clause (12) of Article 366 defines ‘Goods and Services tax’ along with adding an exemption to alcoholic liquor for human consumption. Clause 12 of the Article defines “Goods” and Clause 26A defines “Services”.¹⁷

- **Section 17 – Amendment of the Seventh Schedule¹⁸**

This provision deals with the amendment in the Seventh Schedule of the Indian Constitution. It has been amended to provide for the amendments in the Union List and the State list entries.¹⁹

- **Section 18 – Mandatory compensation to states for 5 years for loss of revenue²⁰**

This provision deals with compensation to the states for 5 years to the states which have faced the loss of revenue due to the introduction of GST.²¹

The 101st Constitutional Act, 2016 provides a path for the implementation of GST as the old Constitution was not suitable for implementation of GST. It also provides a proper description with respect to the division of the tax powers between the Centre and the State.²²

¹⁴ Raman Singla, *supra* note 8, at 5.

¹⁵ GST Constitutional 101st Amendment Act, 2016, Section 12.

¹⁶ GST Constitutional 101st Amendment Act, 2016, Section 14.

¹⁷ Raman Singla, *supra* note 8, at 5.

¹⁸ GST Constitutional 101st Amendment Act, 2016, Section 17.

¹⁹ Raman Singla, *supra* note 8, at 5.

²⁰ GST Constitutional 101st Amendment Act, 2016, Section 18.

²¹ Raman Singla, *supra* note 8, at 5.

²² Somesh Kumar Shukla, *A revolutionary reform for indirect tax with an analysis of GST Constitutional [One hundred and first Amendment] Act, 2016*, INTERNATIONAL RESEARCH JOURNAL OF COMMERCE AND LAW, 82-97 (2017).

STRUCTURE OF GST:

The GST design embraced by India; it has followed a three-tier followed a three-tier structure:

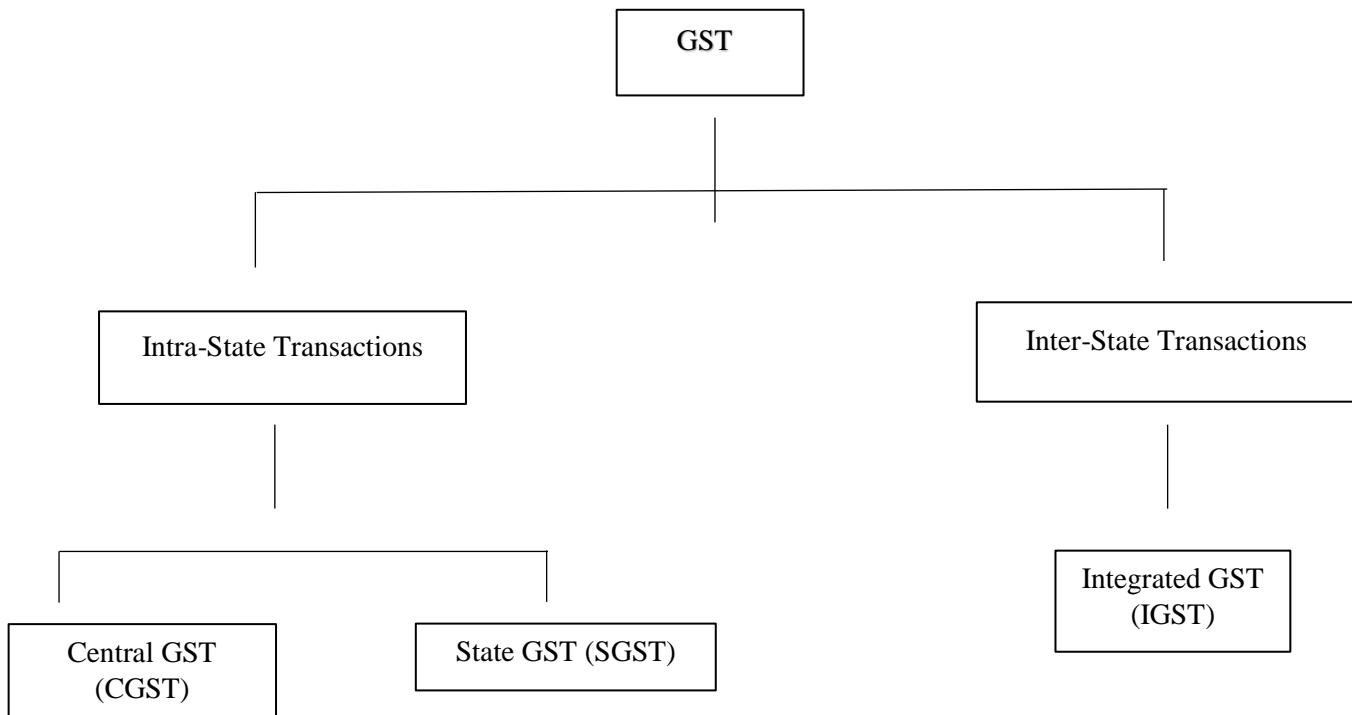
1. **Central GST (CGST):** CGST is the GST levied by the Centre with respect to the intra-state supply of good or services or both. CGST is levied under the Central Goods and Services Tax Act, 2017. This act consists of provisions dealing with the levy and collection of the tax by the Central Government.²³
2. **State GST (SGST):** SGST is the GST levied by the States with respect to the inter-state supply of goods and services or both based on the SGST Act. Union Territories which do not have a legislature are governed by the UTGST Act.²⁴
3. **Integrated GST (IGST):** IGST is GST applicable on the interstate and import transactions. It's collected by the Centre under the IGST Act and the tax collected is divided between the Centre and the States.²⁵

For the purpose of collection of CGST, location of the supplier and recipient inside India is not required. Whereas, for SGST to be levied, both the supplier and the recipient have to be located inside the State.

²³ Niti Bhasin, *supra* note 6, at 4.

²⁴ *Id.*

²⁵ Somesh Kumar Shukla, *supra* note 22.



SALIENT FEATURES OF GST:

1. GST is a **destination-based tax**, in the erstwhile prevailing tax regime, it used to be an origin-based tax. GST is collected on the basis of the principle of destination-based consumption taxation.²⁶
2. GST considers **Supply as its base**. In the previous regime tax used to be collected on manufacturing the goods and services. GST shall be applied on the basis of supply of the goods or services.²⁷

²⁶ Niti Bhasin, *supra* note 6, at 4.

²⁷ *Id.*

3. The concept of **Dual GST**. As per this the Centre and the States use a common base to levy tax. As per the structure of the GST model, CGST is levied by the Centre, SGST is levied by the States (including the Union territories with legislature) and UTGST is levied by the Union territories without a legislature.²⁸

4. The concept of **Input Tax Credit**. The input tax credit can be defined as the tax that is paid by the dealer at the time of purchases and the dealer now has a right to get credit for that. It allows you to reduce the tax owed to the government at the time of sales by deducting the tax that you have already paid on the purchases. Section 2(63) of the GST Act, 2017 defines Input Tax Credit. In the present GST regime, cross-utilization of credit is not allowed (i.e. CGST ITC can be availed only against CGST and cannot be used to pay SGST; on the other hand, SGST ITC can be availed against SGST and cannot be used to pay CGST) (*S.49 CGST*). To pay IGST, ITC from both CGST and SGST can be used. The burden of proof to prove that one is eligible for availing ITC is on the person who claims that he is eligible for ITC (*S.155 CGST*).²⁹

E.g. If A is a manufacturer and is liable to pay a tax of Rs.1000 on the final product. But A has already paid Rs. 300 as taxes when he was purchasing the input which is required to make the final product. In this scenario, A can claim an input tax credit of Rs.300 and is required to pay only Rs.700 as taxes for the given final product.

GST COUNCIL:

The GST Council was formulated to play an important role in implementing GST, the council has taken many important policy decisions which were required to move towards the GST regime. If any changes are brought in the constitutional framework of the GST, it will show

²⁸ Somesh Kumar Shukla, *A revolutionary reform for indirect tax with an analysis of GST Constitutional [One hundred and first Amendment] Act, 2016*, INTERNATIONAL RESEARCH JOURNAL OF COMMERCE AND LAW, 82-97 (2017).

²⁹ Niti Bhasin, *Chapter 2 - Introduction to Goods and Service Tax (GST)*, TAXMANN (July 2nd, 2020, 11:20 PM), <https://www.taxmann.com/bookstore/bookshop/bookfiles/nitibhasinchapter2.pdf>.

the effect on the fiscal autonomy of the State Governments.³⁰ The GST council has representations from both Centre and the States. The GST Council is composed under Article 279A of the Indian Constitution. The council comprises of the Union Finance Minister as the chairman of the council, it also consists of the Revenue Minister and the State finance or Taxation Ministers for the purpose of making recommendations to the Union and the States with respect to the issues listed down under the Article (e.g. threshold limits, tax rates, taxed and exempted goods and services, etc).³¹ Various provisions with respect to GST are made of the basis of the recommendation given by the GST council since the council itself consists of the finance ministers from the Centre and the States a different stand cannot be taken by either of them when the provisions of the different GST laws are enacted.

The term “council” is defined under Section 2(36) of the CGST Act, 2017.³² The council is made as a quasi-legislative cum quasi-administrative body. The council is designed for handling both the legislative duties and the administrative duties which are assigned to it by the Parliament. Article 279A Clause (9) stipulates the voting pattern which the GST Council has to follow and says that any decision taken by the GST Council has to be taken in a meeting by a majority of not less than 3/4th votes of the member present in the meeting. In the council, the Centre has a weightage of 1/3rd of the total votes cast and the States have a weightage of 2/3rd of the total votes cast. The quorum of the council is formed by half of the total number of members of the council. The GST Council also has a mechanism established for the resolution of disputes between (a) The Government of India and one or more states (b) The Government of India and one or more states on one side and one or more states on the other side (c) the disputes arising between states. The GST Council’s role is to supervise the tax collections; along with this the council has also become a platform for taking important decisions with respect to matters other than indirect taxation and this has brought a rise in the new horizontal federal system.³³

³⁰Varun Kannan and others, *supra* note 7, at 5.

³¹ Shreetaxchambers, *Goods and services Tax Council (GST Council) - Constitution & Powers*, TAXGURU (July 3rd, 2020, 12:33 AM), <https://taxguru.in/goods-and-service-tax/goods-services-tax-council-gst-council-constitution-powers.html>.

³² Shreetaxchambers, *supra* note 31, at 10.

³³Varun Kannan and others, *supra* note 7, at 5.

COMPENSATION CESS:

As already mentioned, GST is a consumption-based tax, therefore the states producing, or manufacturing goods will not be receiving any tax revenue from the supply of these goods. This might lead to a huge revenue loss to many manufacturing states such as Andhra Pradesh, Haryana, Maharashtra, Gujarat, etc. The consuming states shall be benefited from GST, but the manufacturing states shall be at loss on implementation of GST. To compensate such states for their losses, a special provision has been made for compensating the manufacturing states.³⁴

To levy Compensation cess, the Goods and Services Tax (Compensation to States) Act, 2017 was introduced which was brought into effect from the date the CGST Act, 2017 was brought into force. This cess shall be levied for a period of 5 years since the date of implementation or for such period as recommended by the GST Council. In regard to goods that are imported into India, the compensation cess is levied as per Section 3 of the Customs Tariff Act, 1975.³⁵

In regard with exports, the compensation cess shall not be levied on the good which is being exported by an exporter on the basis of a bond, such exporter shall be eligible to get a refund of the Compensation Cess ITC in regard with the goods which are exported. In cases where the Compensation cess is paid for the goods which are being exported, then such exporter is liable for a refund of the Compensation Cess paid by the exporter. A taxable person who has opted for the Composition levy, Compensation cess cannot be levied on the supplies made by such person. The ITC which a person receives under Compensation cess can be used only for the purpose to pay the Compensation cess.³⁶

CONCERNS WITH GST:

³⁴ 53: *GST Compensation Cess*, TAXMANN (July 3rd, 2020, 12:35 AM), <https://gst.taxmann.com/gst-ready-reckoner.aspx>.

³⁵ *Compensation Cess in GST*, CBIC (July 3rd, 2020, 12:36 AM), https://www.cbic.gov.in/resources/htdocs-cbec/gst/51_GST_Flyer_Chapter22.pdf;jsessionid=CAE3BB06660FEABCAC52ADCC519123B5.

³⁶ *Id.*

GST has been proved as a much need changed in the indirect tax system of India, but there are few concerns prevailing around this concept:

1. **Firstly**, the issue of multiple tax slabs. The tax slabs have for sure justified their importance but at the same time, it has complicated the complete tax system, which in turn dilutes the main objective of the GST which is to simplify the taxation system. This has caused difficulty for the dealers who sell multiple items which have different tax slabs due to which they have to maintain multiple bill books which have become a concern.³⁷
2. **Secondly**, the issue with the dispute-resolution mechanism is that it's not efficient in India. There have been many strategies brought in regard to this issue even in the erstwhile tax regime, but they weren't adopted properly due to many reasons. The government has to seriously look into this issue and take necessary steps to resolve the issues with regard to the dispute-resolution and take measures that are business-friendly. The government should also take steps to mandate a time-bound dispute settlement mechanism under GST.³⁸
3. **Thirdly**, the issue with an Input tax credit. As per the GST structure, it allows a taxable person to claim refunds of the tax that he has paid earlier in the form of an Input tax credit. There is still a lack of clarity about the complete system amongst people, especially the ones from the small-scale and the medium scale business sectors and the people who are the end of the supply chain.³⁹

CONCLUSION:

There may be few technical drawbacks with GST but its not that difficult to overcome those issues. On a bigger scale, GST was an important step taken for the development of the nation, many developed countries around have adopted to GST many years ago it was time that even India had to adopt it. GST has proved its importance in many aspects, it has brought in a

³⁷ Satyam Sharma, *Mega GST confusion: Here are five issues that need more clarity*, THE ECONOMIC TIMES (July 3rd, 2020, 12:38 AM), <https://economictimes.indiatimes.com/news/economy/policy/mega-gst-confusion-here-are-five-issues-that-need-more-clarity/articleshow/59371969.cms?from=mdr>.

³⁸ Satyam Sharma, *supra* note 37, at 12.

³⁹ *Compensation Cess in GST*, CBIC (July 3rd, 2020, 12:41 AM), https://www.cbic.gov.in/resources/htdocs-cbec/gst/51_GST_Flyer_Chapter22.pdf;jsessionid=CAE3BB06660FEABCAC52ADCC519123B5.

stronger common market, with GST there came uniformity in the indirect taxation system and tax rates which made it easy to improve the businesses. It has also brought in the efficiency in the tax regime which was lacking due to a lot of inefficient taxes present in the erstwhile tax regime, this efficiency brought in through GST will bring in competitive nature amongst the manufacture as they have to pay a single tax and this competition will, in turn, increase the exports of the country which will bring a rise in the country's economy.⁴⁰ GST also aims to elucidate the complete system of indirect taxation and removes the cascading effect caused due to different taxes. It strives in bringing one common Good and Services throughout the country (the motive being "ONE NATION-ONE MARKET-ONE TAX").⁴¹ There were questions raised if the GST amendment provisions blurred the Separation of Powers which was here pre-GST, it hasn't blurred the Separation of Powers but as already mentioned earlier it has brought in "Cooperative federalism" which brings the Parliament and the State legislature (i.e. the centre and state work together). The whole GST regime has been proven beneficial for traders, consumers and the economy at large.

⁴⁰ Niti Bhasin, *supra* note 6, at 4.

⁴¹ Varun Kannan and others, *supra* note 7, at 5.