

in restaurant as a deemed sale, the logic for the remaining part needs to be analyzed. **It appears that the deletion of Article 366(29A) has been missed.** This may have very huge implications as all the items mentioned under Article 366(29A) may continue as 'deemed sale'. The taxing of certain supplies in such cases may throw very interesting questions.

1.6 GST ACTS

The Finance Minister introduced 4 GST Bills in Lok Sabha *i.e.* the Central Goods and Services Tax Bill, 2017, the Integrated Goods and Services Tax Bill, 2017, the Union Territories Goods and Services Tax Bill, 2017 and the Goods and Services Tax (Compensation to States) Bill, 2017 on 27th March 2017 and all 4 bills were passed by Lok Sabha on 29th March 2017. The Presidential assent was received thereafter. All the States introduced SGST Bills in their respective State Legislatures, based on SGST Laws approved by the GST Council so ensure that GST is implemented on July 1, 2017.

An important aspect to note is that most the provisions have been incorporated in the Act itself instead of being prescribed in the rules. CGST Rules have been notified under Notification No. 7/2017 Central Tax (dated 27-6-2017). A concern was raised that this could lead to delays in making amendments since the Act would have to be amended by the Parliament and this could not be achieved by a mere amendment of notification by the Government of the day.

The rationale behind keeping most the provisions in the Act itself is to ensure uniformity in procedures across States. No individual State would be unilaterally allowed to bring amendments in key procedural provisions.

The statutory provisions are discussed at length in subsequent Chapters.

1.7 CONSTITUTIONAL ISSUES

1.7-1 Legal Services

Recently the Delhi High Court issued an interim order with respect to writ petitions challenging the constitutional validity of reverse charge provisions in relation to legal practitioners under the GST Law (Refer *JK Mittal v. UoI* Writ Petition (Civil) No. 5709/2017 dated 12 July 2017; *JK Mittal and Legalliance IP Corp LLP v. Union of India & Ors* TS-181-HC 2017).

The writ petitions were filed against Notification 13/2017-CTR, which pertains to applicability of reverse charge only to representational services provided by advocates or firm of advocates and Notification No. 5/2017-CT dated 19 June 2017 which pertains to the exemption from registration provided to persons involved solely in providing taxable supply that is subject to reverse charge. The Writ Petitions also challenge the validity of Section 9(4) of the CGST Act and Section 5(4) of the IGST Act which pertains to applicability of reverse charge on registered persons receiving supply from unregistered suppliers.

The High Court passed an interim order making *prima facie* observations that the above challenges have merit. This Order *inter alia* clarified that Advocates (including Law firms of Advocates and LLPs of Advocates) will be continued to be governed under reverse charge mechanism in the GST regime as well. Further, any Advocate (law firms and LLPs) who are registered under the CGST or IGST from 1st July will not be denied the benefit of this interim order unless any legal service provider wants to take advantage input tax credit and seeks to continue with the voluntary registration under Section 25(3) of the CGST Act.

On 15 July 2017 a press release was published, which clarified the issues involved with legal services and specifically stated that Notification No. 13 of 2017 applies to all legal services including advisory and consultation. However, it was not clarified whether these benefits will be extended to law firms incorporated as LLPs. Pursuant to a specific writ on this issue by Legalian IP Corp LLP, it was clarified that all benefits enjoyed by a Firm of advocates would also get extended to LLPs.

While the final verdict on this issue is still awaited, in the interim order, the Hon'ble Court further directed the Respondents to explain under which authority was press release dated 15 July 2017 issued. The Hon'ble Court, with regard to Section 22(2) of the CGST Act, further directed the Respondent to ascertain whether there is an option of surrendering of registration by entities involved in rendering legal services, taken under the earlier regime and the present GST regime.

**THE CONSTITUTION (ONE HUNDRED AND
FIRST AMENDMENT) ACT, 2016**

[8th September, 2016.]

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and 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 commencement of that provision.

2. Insertion of new article 246A—After article 246 of the Constitution, the following article shall be inserted, namely:—

“246A. Special provision with respect to goods and services tax—(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”

3. Amendment of article 248.—In article 248 of the Constitution, in clause (1), for the word “Parliament”, the words, figures and letter “Subject to article 246A, Parliament” shall be substituted.

4. Amendment of article 249.—In article 249 of the Constitution, in clause (1), after the words “with respect to”, the words, figures and letter “goods and services tax provided under article 246A or” shall be inserted.

5. Amendment of article 250.—In article 250 of the Constitution, in clause (1), after the words “with respect to”, the words, figures and letter “goods and services tax provided under article 246A or” shall be inserted.

6. Amendment of article 268.—In article 268 of the Constitution, in clause (1), the words “and such duties of excise on medicinal and toilet preparations” shall be omitted.

7. Omission of article 268A.—Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

8. Amendment of article 269.—In article 269 of the Constitution, in clause (1), after the words “consignment of goods”, the words, figures and letter “except as provided in article 269A” shall be inserted.

9. Insertion of new article 269A—After article 269 of the Constitution, the following article shall be inserted, namely :

“269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.—(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into 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.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce”.

10. Amendment of article 270.—In article 270 of the Constitution—

(i) in clause (1), for the words, figures and letter “articles 268, 268A and 269”, the words, figures and letter “articles 268, 269 and 269A” shall be substituted;

(ii) after clause (1), the following clauses shall be inserted, namely—

“(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2)”.

11. Amendment of article 271.—In article 271 of the Constitution, after the words “in those articles”, the words, figures and letter “except the goods and services tax under article 246A,” shall be inserted.

12. Insertion of new article 279A.—After article 279 of the Constitution, the following article shall be inserted, namely:—

“279A. Goods and Services Tax Council—(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members,namely:

(a) the Union Finance Minister..... Chairperson;

- (b) the Union Minister of State in charge of Revenue or Finance..... Member;
 - (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.
- (3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.
- (4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—
- (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
 - (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
 - (c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
 - (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
 - (e) the rates including floor rates with bands of goods and services tax;
 - (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
 - (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
 - (h) any other matter relating to the goods and services tax, as the Council may decide.
- (5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- (6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.
- (7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.
- (8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.
- (9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:
- (a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and