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## Eight Years of GST in India: A Legal Retrospective and Road Ahead



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### 1. Introduction

July 1, 2017, marked a watershed moment in India's fiscal history with the rollout of the Goods and Services Tax (GST)—a unified indirect tax regime envisioned to replace a complex web of Central and State levies. As we approach the completion of eight years of GST, it becomes imperative for legal professionals, policymakers, and taxpayers alike to critically evaluate this transformation—its constitutional vision, judicial shaping, practical challenges, and structural shortcomings. The evolution of GST has not been linear; it has unfolded through a dynamic interplay of legislative refinements, administrative hurdles, and intense judicial scrutiny. This article attempts to map that journey and chart the road ahead.

### 2. Constitutional Vision and Legislative Reality

The 101st Constitutional Amendment Act, 2016, was a transformative enactment that enabled simultaneous taxing powers for the Union and States over goods and services. The stated objectives of GST were ambitious and multifaceted:

- Subsuming multiple indirect taxes under one umbrella,
- Eliminating the cascading effect of taxation,
- Expanding the tax base and enabling seamless credit flow,
- Simplifying compliance and tax administration,
- Reducing production costs and improving competitiveness, and
- Creating a unified national market.

While the constitutional framework has withstood legal and political scrutiny, its implementation has been uneven. The GST Council, designed as a federal consensus-building body, has largely functioned harmoniously but has seen tensions emerge—particularly around compensation cess, rate rationalisation, and fiscal autonomy of States. These tensions reflect the deeper push and pull between cooperative federalism and revenue sovereignty.

### 3. The Judicial Landscape: GST Before the Courts

In the eight years since its inception, GST has generated a prolific body of litigation. The judiciary has emerged as a vital arbiter—interpreting key statutory provisions, balancing taxpayer rights with revenue interests, and shaping constitutional doctrine in the context of fiscal federalism.

## Noteworthy Judgments:

- ***Union of India v. Mohit Minerals (P.) Ltd.* [2022] 139 taxmann.com 331/92 GST 101/61 GSTL 257 (SC):** The Supreme Court struck down the IGST levy on ocean freight in CIF contracts, invoking the principles of non-taxation of extraterritorial services and double taxation. The judgment also held that GST Council recommendations are **persuasive** and not binding, a landmark affirmation of India's federal character.
- ***Union of India v. VKC Footsteps India Ltd.* [2021] 130 taxmann.com 193/52 GSTL 513 (SC):** The Court upheld Rule 89(5), denying ITC refund on input services under the inverted duty structure, reaffirming judicial restraint in matters of economic and legislative design.
- ***Skill Lotto Solutions (P.) Ltd.* [2020] 122 taxmann.com 49/43 GSTL 289 (SC):** Upheld the constitutionality of GST on lotteries and categorised lottery tickets as "goods," affirming Legislature's competence under Article 246A.
- ***Radha Krishan Industries v. State of Himachal Pradesh* [2021] 127 taxmann.com 26/86 GST 665/48 GSTL 113 (SC):** Emphasised that provisional attachment under Section 83 must not be exercised mechanically, and reiterated the maintainability of writ petitions under Article 226 in cases involving violation of fundamental rights.
- ***Central Board of Indirect Taxes and Customs v. Aberdare Technologies (P.) Ltd.* (2025) 29 Centax 10 (S.C.):** Clarified that bona fide clerical or arithmetic errors should not lead to penal consequences, especially where there is no loss of revenue—establishing an important safeguard for taxpayers.
- ***Chief Commissioner of CGST v. Safari Retreats (P.) Ltd.* [2024] 167 taxmann.com 73/106 GST 250/90 GSTL 3 (SC):** Recognised that buildings used for leasing constitute business assets, and allowed ITC on construction-related capital expenses in such cases—challenging the restrictive interpretation of Section 17(5).

These decisions highlight the evolving and unsettled nature of GST jurisprudence. Issues of procedural fairness, concessional vs vested rights, federal structure, and substantive vs technical compliance remain alive and complex.

## 4. Key Challenges: From Compliance to Interpretation

### a. Frequent Amendments and Notifications

The GST regime has seen an overwhelming number of notifications, circulars (over 250), instructions, FAQs, and even retrospective amendments—creating confusion, especially for MSMEs and professional advisors. The scattered changes contribute to legal uncertainty and frequent litigation.

### b. ITC-Related Litigation

Input Tax Credit, the lifeblood of GST, remains its most contentious aspect. The interplay between Section 16, GSTR-2A/2B reconciliation, Rule 36(4) restrictions, and Rule 86A (blocking of credit) has sparked a massive wave of litigation. These procedural controls often conflict with the fundamental right to credit as a component of the GST structure.

### c. Penalty and Prosecution Regime

Sections 122, 129, 130, and 132 Central Goods Services Tax Act, 2017 introduce criminal and quasi-criminal consequences, often triggered by procedural lapses. The line between inadvertent non-compliance and fraudulent intent is blurred in practice, leading to arrests, provisional attachments, and coercive actions sometimes in cases which are devoid of mala fide conduct per-se.

### d. Parallel Proceedings

Section 6(2)(b) of the CGST Act mandates that once proceedings are initiated by either the Centre or State on a given issue, the other authority shall not initiate parallel proceedings. However, this safeguard is often ignored. Taxpayers

frequently face dual audits, investigations and assessments for the same subject matter by CGST and SGST officers, undermining procedural fairness and creating conflicting outcomes. Courts have called for strict enforcement of this statutory bar, and a technology-driven coordination mechanism is urgently needed to address this problem.

## **5. Role of GST Advocates: Beyond Litigation**

GST has transformed the landscape of tax practice. The role of a GST advocate now transcends courtroom representation. It encompasses:

- Strategic advisory on classification, place of supply, and valuation;
- Appearances before AARs, appellate forums, and enforcement authorities;
- Drafting representations for policy changes, and writ petitions;
- Navigating search, seizure, and summons proceedings;
- Advising on parallel proceedings, anti-profiteering litigation and ever evolving changes.

The GST advocate is no longer merely a tax technician, but a cross-functional legal strategist, engaging with constitutional law, economic policy, digital compliance, and human rights frameworks.

## **6. Towards a More Mature GST: The Way Forward**

### **a. Constitution of the GST Appellate Tribunal (GSTAT)**

A glaring void in the GST architecture has been the absence of an operational GST Appellate Tribunal. Despite statutory backing under Section 109 of the CGST Act, taxpayers have been left without a dedicated second appellate forum for years, compelling them to approach High Courts even for routine disputes. This has resulted in increased litigation costs, judicial backlog, and inconsistency in legal outcomes across states. The long-pending constitution of the GSTAT—with benches at the national and state levels—must now be treated as an urgent institutional reform.

### **b. Simplification**

There is an urgent need to reduce the complexity scattered in between the Act, Rules, and all subordinate legislation. This will reduce ambiguity and improve compliance certainty.

### **c. Data-Driven Adjudication**

The GSTN, e-invoicing systems, and AI-led audit tools offer an opportunity to shift from discretion-driven enforcement to data-centric adjudication, reducing arbitrariness and improving transparency. However, human intervention at appropriate level is necessary to avoid artificial disputes.

### **d. Inclusion of Excluded Sectors**

Electricity, real estate, petroleum products, and alcoholic liquor for human consumption remain outside the GST framework. Their exclusion leads to cascading taxes, breakage in credit chains, and policy distortions. Including these sectors—while constitutionally and politically challenging—will broaden the tax base, ensure neutrality, and fulfil the promise of GST as a comprehensive value-added tax. This will require amendments to the Constitution and broader consensus within the GST Council.

## **7. Conclusion**

Eight years into the GST journey, the foundations of a unified tax regime have been firmly laid, yet the system continues to evolve. While challenges relating to litigation, compliance, and federal coordination persist, there is no denying that GST represents one of the most ambitious fiscal reforms in independent India. The judiciary has played a pivotal role in interpreting and refining its contours, and tax professionals have consistently adapted to the shifting regulatory landscape.

Importantly, kudos must be given to the GST Council for its pre-emptive and timely interventions, whether in rate rationalisations, pandemic-related relief measures, clarificatory circulars, or course corrections in response to judicial pronouncements. Its largely consensus-driven functioning amidst diverse political and economic interests reflects the strength of India's cooperative federalism.

For GST advocates and stakeholders, the path ahead is one of constructive engagement—not just to challenge or comply, but to contribute meaningfully to shaping a tax system that is fair, predictable, and growth-oriented. The next phase of GST's evolution must strive to deliver not just revenue, but also justice, simplicity, and trust. \_\_\_\_\_

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