

## Tax Sovereignty in an Unsettled World: A GST Practitioner's Reading of *Tiger Global and the Future of Fiscal Autonomy*

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### 1. Introduction

Taxation has never been a mere fiscal exercise; it is an assertion of sovereignty. In an era marked by geopolitical churn, economic realignments, and cross-border capital mobility, tax policy increasingly becomes a tool of statecraft. Against this backdrop, the recent decision of the Hon'ble Supreme Court in *Authority for Advance Rulings (Income Tax) v. Tiger Global International II Holdings* [2026] 182 taxmann.com 375 assumes significance far beyond the confines of income tax law.

While this author does not practise in the domain of direct taxation, the judgment—particularly the concurring but separate opinion of Hon'ble Mr Justice J.B. Pardiwala—offers a deeply engaging exposition on **tax sovereignty** in the contemporary global order. The discussion reads less like a routine judicial opinion and more like a jurisprudential lecture reminiscent of classical public law theorists, drawing attention to the changing nature of sovereignty itself. This article seeks to capture that discourse and examine its resonance from a **GST and indirect tax perspective**, where questions of pooled sovereignty, federal balance, and economic autonomy are already part of daily legal practice.

### 2. Tax Sovereignty in Times of Global Uncertainty

The strength of a nation lies in its capacity to exercise sovereign functions—legislative, executive, and fiscal—in a manner that advances the collective interest of its people. In the modern world, sovereignty is no longer confined to territorial boundaries. Economic activity routinely transcends borders, and with it arise challenges to a nation's ability to tax, regulate, and protect its revenue base.

Economic sovereignty today occupies centre stage in geopolitical affairs. International organisations, multilateral groupings, and global standard-setting bodies increasingly seek to influence domestic tax policies in the name of harmonisation, transparency, or investment facilitation. While cooperation is necessary, it often brings with it an asymmetry of bargaining power, particularly between developed and developing nations.

Historically, smaller or import-dependent economies have been compelled to cede elements of their fiscal autonomy to remain integrated within global trade and financial systems. The choice frequently presented is stark—economic isolation on one hand, or participation under externally dictated rules on the other. This has resulted in the proliferation of multilateral frameworks governing taxation, trade, and investment, sometimes at the cost of domestic policy space.

It is in this milieu that the assertion of tax sovereignty becomes not an act of defiance, but one of preservation.

### **3. Exercising Tax Sovereignty: A Constitutional Imperative**

The exercise of tax sovereignty, particularly in the international domain, is a complex constitutional endeavour. Unlike purely domestic taxation—where the legislature enacts law, the executive administers it, and the judiciary exercises review—the international projection of tax policy requires a delicate coordination of all three constitutional organs.

When a nation negotiates tax treaties, participates in global tax initiatives, or frames rules affecting cross-border transactions, legislative intent, executive diplomacy, and judicial interpretation must converge without diluting the doctrine of separation of powers. Any erosion in this balance weakens sovereignty itself.

Justice Pardiwala's reflections underline this very point: tax sovereignty is not merely about the power to levy tax, but about the freedom to design tax policy aligned with national priorities, economic realities, and constitutional values.

### **4. India's Evolving Assertion of Fiscal Sovereignty**

India's economic trajectory over the last few decades demonstrates a growing confidence in asserting its fiscal choices. With a vast market, a young and expanding workforce, and increasing global relevance in trade and services, India today negotiates from a position far stronger than in the past.

This evolution has direct relevance for tax sovereignty. A nation that is an attractive destination for investment need not compromise its core fiscal interests. Instead, it can demand alignment with its domestic laws and constitutional framework. The challenge lies in striking a balance—remaining open to global capital while safeguarding revenue and regulatory autonomy.

### **5. Direct and Indirect Taxes: GST as an Experiment in Pooled Sovereignty**

From a GST practitioner's standpoint, the discussion on tax sovereignty acquires a distinctive dimension. Broadly, sovereign taxation manifests through direct taxes on income and indirect taxes on consumption. While international tax debates often centre on income taxation, indirect taxes offer a powerful example of **structured sovereignty-sharing without surrender**.

India's introduction of the Goods and Services Tax in 2017 stands as a landmark constitutional reform. Prior to GST, indirect taxes were fragmented across states and the Union, leading to multiplicity of levies, rates, and compliance burdens. GST replaced this with a harmonised framework where both the Union and States simultaneously exercise taxing powers on the same transaction.

This was not a dilution of sovereignty, but its conscious pooling for mutual benefit. Interestingly, a similar experiment exists at the international level in the European Union's VAT regime, where multiple sovereign nations operate under a common indirect tax architecture. GST thus demonstrates that sovereignty can be **shared by design**, without being surrendered by compulsion. However, similar design is missing in the realm of direct taxes.

### **6. The Need to Assert Sovereignty to Protect National Interest**

The assertion of tax sovereignty becomes critical when external pressures—whether from multinational corporations, foreign governments, or global institutions—seek to influence domestic tax policy in ways that may undermine national interest. Economic independence is a prerequisite for sustainable growth, and fiscal autonomy is central to that independence.

Tax sovereignty must align with political sovereignty. Decisions on whether to push, pull, yield, or resist in tax matters must remain a sovereign choice. Any compelled dilution—especially in areas impacting revenue, enforcement, or economic security—risks becoming self-defeating.

### **7. Global Powers and Unilateral Assertion of Tax Sovereignty**

History shows that powerful economies do not hesitate to exercise unilateral tax measures to protect their interests. Whether through digital services taxes, anti-dumping duties, or unilateral adjustments to cross-border taxation rules,

such actions underscore an important truth: tax sovereignty has no inherent limitations, only self-imposed ones.

For developing economies, retaining this capacity is essential to combat tax evasion, money laundering, and illicit financial flows. Weak or overly concessional tax arrangements can compromise not just revenue, but national security itself.

## **8. Safeguards in International Tax Engagements**

While international cooperation is unavoidable, it must be accompanied by robust safeguards. These include carefully drafted limitation of benefits provisions, preservation of source-based taxation rights, protection of the digital tax base, and alignment with domestic constitutional principles. From a GST lens, this is particularly relevant as cross-border services, digital supplies, and destination-based taxation increasingly dominate indirect tax discourse.

## **9. Conclusion**

The *Tiger Global (supra)* decision serves as a timely reminder that taxation is inseparable from sovereignty. For GST practitioners, the judgment's broader reflections resonate deeply. GST itself is a testament to how sovereignty can be harmonised internally without being weakened externally. As India continues to engage with the global economy, the lessons from this decision are clear: cooperation must not come at the cost of constitutional autonomy, and harmonisation must never translate into submission.

In an unsettled world, the ability of a nation to design, defend, and deploy its tax policy in alignment with its constitutional ethos is not merely desirable—it is indispensable.

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