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THE ROADMAP FOR INCLUSION OF PETROLEUM UNDER GST

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Abstract

The research article shall aim to explore the inclusion of petroleum under the GST regime, an issue which had also been discussed recently in the 45th GST Council's Meeting at Lucknow. The article shall explore the legal and practical considerations of this widely demanded move and the opposition. It shall also brush up on the revenue side considerations for Central and State Governments. However, the primary focus shall remain on the legal aspects. Further, the paper shall also explore other regimes that have successfully brought petroleum under the ambit of a GST, like the regime and the models adopted and implemented.

1. ***METHODOLOGY***

The research article shall be a doctrinal study relying on secondary sources like statutes, published studies, judgments, et al. as part of literature review and analysis. All the works shall be duly cited to the best of the authors' knowledge.

2. ***APPROACH –***

The scope and approach of this article shall encompass secondary sources from journals and other print publications to make a detailed hypothesis surrounding the practical ramifications of including petroleum products under GST. The shift to cleaner and greener energy will also be looked at to reduce the dependency of the revenue department on fossil fuel-based products and control rising prices.

3. ***CHAPTERISATION***

- **Introduction**
- **Present Taxation Scenario**
- **Pro-inclusion arguments**
- **Anti-inclusion arguments**
- **Models Adopted by Different Legal Regimes**
- **Analysis & Conclusion**

HOW IS PETROL PRICED IN INDIA?

India follows a dynamic fuel price method. The retail price of Petrol and diesel are fixed and revised at 6 AM every day by the Oil Marketing Companies (OMCs).[1] These companies procure converted crude (Petrol and diesel) from Oil Refineries and supply them to dealers who ultimately make the commodity available to end-users.[2]

This price is also regulated by the Petroleum Planning and Analysis Cell under the Ministry of Petroleum and Natural Gas by prescribing base prices and cap prices in which OMCs deal.

Computation of price is done as follows –

Price at which dealers procure oil from OMCs

Add: Central Government levied Excise Duty

Add: Dealer's Commission

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[1]Petrol prices fall to lowest this year, diesel rates cut again. https://www.livemint.com/Companies/xd6yxX5BOA7WOVxw0BiLNN/Petrol-prices-fall-to-lowest-this-year-diesel-rates-cut-aga.html

[2] Shashank Srivastava, Petrol and Diesel Prices, THE PRS BLOG (Nov. 12, 2021, 9:29 PM), https://prsindia.org/theprsblog/petrol-and-diesel-prices .

Add: State Government levied VAT (Value Added Tax) = Retail Price

The excise duty imposed by the Centre is fixed as opposed to the VAT. Sates are free to determine the rate of levy of VAT which is dynamic and changes with the price of Petrol because of the very nature of the tax.

The excise duty has two components- tax component and cess and surcharge component. Presently, Agriculture Infrastructure and Development cess at INR 2.5 per litre of Petrol and INR 4 per litre of diesel, along with Road and Infrastructure cess, is levied on auto fuels in addition to the surcharge. [3]

As per the recommendations of the 15th Finance Commission, 59% of the revenue generated by taxes is retained by the Centre, while 41% is devolved unto the states. However, only the revenue generated by the tax component is devolved unto the states; the Centre retains revenue from the cess and surcharge component.[4]

INTERVENTION BY THE HIGH COURT OF KERALA

Kerala Pradesh Gandhi Darshanvedhi preferred a petition through a Public Interest Litigation in the Hon'ble High Court of Kerala about bringing Petrol and diesel within the ambit of GST. The petitioner had prayed the following reliefs-

1. *"Issue writ of mandamus or any other writ directing the Union of India and Ministry of Petroleum and Natural Gas to include Petrol and diesel within the GST regime*
2. *Issue writ of mandamus or any other writ directing the GST Council to recommend such inclusion to achieve harmonized national market as per Art. 279A of the Constitution of India*
3. *Declare the non-inclusion violative of Art. 14 and 21 of the Constitution of India."*[5]

The petitioner argued that different percentages of taxes levied by different governments led to disparity within the retail prices. This disparity deterred the realization of the vision of harmonized national market contained within Art. 279A (6)[6]-

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonized structure of goods and services tax and the development of a harmonized national market for goods and services.[7]

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[3] *Id.*

[4]Finance Ministry releases Rs 9,871 crore grant to 17 .... https://www.newindianexpress.com/business/2021/oct/11/finance-ministry-releases-rs-9871-crore-grant-to-17-states-2370365.html

[5] Kerala Pradesh Gandhi Darshanvedhi v. Union of India And Others, (2021) 2021 SCC OnLine Ker 2674.

[6] I INDIA CONST. art. 279A , *amended* by The Constitution (One Hundred and First Amendment) Act, 2016.

[7] INDIA CONST. art. 279A, § 6.

The Union of India and the Ministry of Petroleum and Natural Gas contended that such inclusion was a policy decision. The GST Council contended that mandamus could not be issued to direct the Council; only the Central Government could decide.[8]

The GST Council relied on *the Union of India vs Shipyard.*[9] to contend that the Court could not intervene and issue a writ of mandamus to the GST Council. In Shiyaad [supra], the Court held that a perusal of Article 279A reveals that no provision for grievance redressal of the general public exists. Therefore, a corresponding duty on the GST Council to address the general public is also non-existent. As a result, the writ of mandamus cannot be issued to GST Council for a legal duty has not been imposed on the Council which can be compelled to be performed by way of this writ.

The Hon'ble High Court of Kerala directed the GST Council to forward the presentation made by the petitioner to the appropriate authority in the Union Government. Moreover, it directed the Union Government to decide on the matter within six weeks from receipt of the representation.[10]

According to the order of the Hon'ble High Court of Kerala, the GST Council, in its 45th meeting, discussed levying Goods and Service Tax on Petrol and diesel. Finance Minister Nirmala Sitharaman, in the press conference following the meeting, made it abundantly clear that the council members unanimously decided against the motion for they felt the time was not right to bring petroleum under this tax regime. Furthermore, that the same shall be conveyed to the Hon'ble Court.

The Hon'ble High Court of Kerala took cognizance of the rejection of the petitioner's request. However, the Court observed that the GST Council had not furnished any reasons for rejection. On this issue, the petitioner has contended that the Council did not undertake the application of mind on the issue of fuel prices surging every day in the current climate. The time was ripe to bring the sector under the ambit of GST. Further, the petitioner also stated that loss of revenue could not be cited as a valid reason for such rejection because if Petrol were to be taxed under GST, it would fall under the 28% slab, which is the highest one available. This is apparent under the constitutional duty of the GST Council to make recommendations. Also, the Oil Companies were bound by oil prices in the international market; in such a scenario, regulating

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[8] Kamini Sharma, Ker HC | GST on Petrol and diesel; HC seeks Centre's take on inclusion of Petrol and diesel under the GST regime, THE SCC ONLINE BLOG (Jun. 28, 2021), https://www.scconline.com/blog/post/2021/06/28/gst-2/ .

[9] Union of India v. Shiyaad and Ors., (2019) SCC OnLine Ker 23759.

[10] Kerala Pradesh Gandhi Darshanvedhi v. Union of India And Others, (2021) 2021 SCC OnLine Ker 2674.

the levy of taxes becomes the sole resort to arrest cascading effect of cost-push inflation, accompanied by rising prices of fuel.[11]

Admitting the petitioner's averments, the Hon'ble Court has directed the GST Council to provide reasons for rejecting the petitioner's request.

PETROL, GST, AND FISCAL FEDERALISM

During the 2020 oil price downturn, India's gasoline taxes were dramatically hiked to make up for the sharp drop in tax income caused by the lockdown. Although both taxable income and worldwide oil prices have recovered, they have not been reversed.

Unfortunately, the Centre and the States are both vying for space, fearing that retreating will allow the other to encroach. Value-added taxes are levied by the State and rise in lockstep with inflation. The inclusion of energy in the GST provides a way out of this impasse.

Shares between the Centre and the States could be handled using GST rules, such as those established by the 15th Finance Commission (FC) based on proportionate expenditure obligations. A maximum luxury tax rate of 28% GST would result in a double-digit drop in per-litre fuel prices. It would also boost export competitiveness and household consumption demand while reducing cascading, cost-push inflation.

The graph depicts the increase and decline of international fuel costs. When they were administered in India, prices continued to rise. Taxes tend to rise more when international prices fall and fall less when prices rise, even after they become market-determined. As a result, Indian fuel prices are rising faster than global prices. Domestic oil prices are now more stable, which makes flexible inflation targeting more difficult. Because well-anchored inflation expectations minimize pass-through, monetary policy may look past erratic commodity price shocks.

Inflation expectations cannot be anchored after a shock if the policy makes the price rise permanent. Inflation is maintained through the upward ratchet. Wages will rise again, as will long-term bond rates. If policy rates are forced to climb, borrowing costs for the federal and State governments will also rise.

When petrol prices were administered, heated political conflicts made raising domestic rates difficult when international prices soared. Oil marketing organizations are now able to modify

[11] Shri Mohammed Ferosh v. The Assistant PF Commissioner, Appeal No.106/2018 (Before the Central Government Industrial Tribunal-Cum-Labour Court, Mar. 12, 2021)

rates seamlessly with foreign counterparts. However, the focus of political debate has shifted to the imposition of taxes.[12]

This discretion permits arbitrary price and resource distortion to continue, resulting in significant indirect economic consequences. Its removal will allow more time to be spent on more important matters. Will governments, on the other hand, be willing? The constant public demand for more obscures that the GST has not resulted in a net loss for the states; the 14 per cent compensation was generous and based on then-current nominal income growth rates.

The 15th Finance Commission's incentive reforms have opened up new revenue streams for states. Better services might be linked to higher user fees and property taxes.[13] Part of the reason for the strained relationship between the Centre and the States is that the Constitution gave the Centre more powers to keep the country together. If functions are split according to what is best performed at different levels, cooperative federalism works.

It is obvious that centralizing certain operations – vaccine procurement, borrowing, some types of taxation, and maintaining homogeneity of public services — offers advantages, even though the services must be given locally.

BEYOND INDIA: AUSTRALIAN PERSPECTIVE

Auto- fuels in Australia are subject to two taxes – excise and Goods and Service Tax. Domestic production of Petrol is taxed at 38.143 cents per litre, and import of fuel is subject to a corresponding customs duty. In comparison, GST is charged at 10% on the value of supply.[14] Fuel prices are determined as follows.[15]-

World Oil Price
Apply: Exchange Rate
Add: Transport + Refinery Costs
= Gate Fuel Price
Add: Margin
Add: Excise
Add: GST

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[12] Timesofindia.com , *GST on Petrol And Diesel,* THE TIMES OF INDIA, (Sep. 16, 2017, 5:55 PM) https://timesofindia.indiatimes.com/business/india-business/gst-on-petrol-and-diesel/articleshow/60511273.cms .

[13] Volume I- Main Report, XV FINANCE COMMISSION, FINANCE COMMISSION IN COVID TIMES REPORT FOR 2021-26 (Finance Commission India 2020)

[14] PARLIAMENT OF AUSTRALIA, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2004-07/petrol_price/report/c05 (last visited Nov. 14, 2021).

[15] *Id.*

= Retail

The excise duty is levied under the provisions of the Excise Tariff Act of 1921 and reviewed twice a year as per the movements in Consumer Price Index.[16] The country had adopted GST in the year 2000 and hence has followed the aforementioned system of taxation. State taxes are not levied on fuel after the High Court of Australia in Ha vs South Wales ruled that a fuel franchise fee and other licensing fee was a kind of excise duty that the Commonwealth could only levy. Any levy of such fee by the states is unconstitutional.

One major criticism of the tax regime followed in the country is the manner of computation of price. It has often been contended that the addition of excise should occur post levy of GST. Under the present system purpose of GST of eliminating the cascading effect of the tax is not functioning properly. By calculating GST post addition of excise duty, the Government is essentially levying tax on tax.

STATE OF TAX SYSTEM IN INDIA

The existing tax system in India provides for levy and collection of multi-layered taxes both at the Centre and State level following the taxing powers. GST is the simple tax regime in which only a single tax shall be levied covering both goods and services at both State and the Central level. This tax will replace several existing taxes and mitigate the cascading effect, which will reduce the cost of production and distribution.

Also, in the present tax regime, the manufacturers and distributors file returns for different taxes on different dates. However, under the GST regime, they will have to file the returns only bi-annually or quarterly fixed by the Government.

• States like Jharkhand, which rely more on products than services, will have to share their revenues with the Government, and they may not have enough services to compensate for the revenue loss.

• The harsh tax would penalize everyone, making no distinction between the rich and the poor.

• Some states believe that a uniform tax rate will hurt their collections.

• Consumers will be the most affected since they would be required to pay tax at the point of consumption, which implies there may be no distinction between needs such as food, clothing, and medicines and luxuries.

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[16] AUSTRALIAN GOVERNMENT | AUSTRALIAN TAXATION OFFICE, https://www.ato.gov.au/Business/Excise-on-fuel-and-petroleum-products/Lodging,-paying-and-rates---excisable-fuel/Excise-duty-rates-for-fuel-and-petroleum-products/#Excisedutyratesfuel (last visited Nov. 14, 2021).

• There will be no differentiation between rich and poor, which may impact societal equity.[17]

REASONS BEHIND EXCLUSION OF AUTO-FUEL FROM THE AMBIT OF GST

The Empowered Committee made this judgement since these (fundamental petroleum products such as petroleum crude, high-speed diesel, motor gas, and aviation turbine) are the states' primary sources of revenue. "42 per cent of the central tax goes to states," stated the minister of petroleum and natural gas. States also have their taxation system. As a result, a significant amount of tax revenue is used and distributed to the states." Bringing petroleum goods under the GST will result in significant losses for the Centre and the states, resulting in a significant reduction in revenue and a poorer state exchequer.[18]

Take, for example, Delhi. The sale of a litre of fuel generates a 27 per cent VAT for the Government. According to Oil Minister Dharmendra Pradhan, the states also receive 42 per cent of the Excise Duty levied by the Centre. Each litre of Petrol sold earns the state Rs 22.91* in total. The states will be entitled to 14 per cent of the GST in the form of SGST (State Goods and Services Tax), which will amount to Rs 4.41**, resulting in a loss of Rs 18.5 per litre the state exchequer. It is for this reason that the administration is hesitant to include gasoline products under the GST.

Adverse Impact on Revenue - Because the Government's revenue relies on present tax levies, bringing petroleum goods under GST, even at the maximum rate of 28 per cent, would cause a considerable dent in the Government's coffers. To close the gap, the Government may levy an additional cess on petroleum products, although this would not significantly reduce the final price to the customer.[19]

Opposition By State Government - Petroleum products bring in a substantial amount of money for the states. In Maharashtra, for example, the VAT on petroleum goods is as high as 40%, bringing in almost Rs.25,000 crore per year. State governments have control over their

[17] Prashanth Perumal J, *Explained | Why has the GST Council decided to keep fuels outside the ambit of the tax regime for now?,* THE HINDU (Sep. 25, 2021, 11:03 PM) https://www.thehindu.com/news/national/explained-why-did-gst-council-refuse-to-bring-petrol-diesel-under-its-ambit/article36605404.ece .

[18] Mariya Paliwala, *4 Years of GST: Reasons Why Petroleum Products are still controlled by state,* TAXSCAN (Jun. 25, 2021, 3:43 PM) https://www.taxscan.in/4-years-of-gst-reasons-why-petroleum-products-are-still-controlled-by-state/120250/ .

[19] Surajit Das, *Some Concerns Regarding the Goods and Service Tax,* ECONOMIC & POLITICAL WEEKLY (Mar. 4, 2017) http://www.epw.in/journal/2017/9/web-exclusives/some-concerns-regarding- goods-and-services-tax.html .

revenues by being able to collect VAT on these things. Because the Centre is in charge of setting the GST rate, bringing petroleum under GST removes that power.[20]

VAT rates differ widely amongst states - Another factor is that the VAT rate on gasoline and diesel varies greatly between states. For example, Maharashtra levies a 40% tax on gasoline, but Andaman and Nicobar levy only 6%. Prices will rise drastically in Andaman & Nicobar if GST is adopted, but they will reduce in Maharashtra if the cumulative rate is lower than the current rate.[21] As a result, the average person would be forced to spend more. Recently, there has been much speculation that the Centre might include fuel under the Goods and Services Tax (GST), providing significant relief to consumers struggling with high fuel prices. The matter was brought up for discussion during the GST Council meeting on September 17. However, it was determined that it was not the "appropriate time" to include fuel in the GST system. As a result, customers will have to pay the high cost of gasoline and diesel for a longer period. On September 21, Petrol in Delhi cost Rs 101.19 a litre, while diesel cost Rs 88.62. Both fuels were more expensive in Mumbai, with Petrol costing Rs 107.26 per litre and diesel costing Rs 96.19 per litre.

Compare this to the State of fuel prices in India during the start of the Covid-19 pandemic in March 2020. In Delhi, petrol costs roughly Rs 70 per litre, while diesel costs around Rs 63. Petrol prices have climbed by more than Rs 31 in the last 16 months, while diesel prices have risen by about Rs 25. Inflation is driven by higher fuel prices, as we have seen in recent months. The rise in crude oil prices on the worldwide market has not helped matters either. On September 21, Brent crude was trading at $74.79 per barrel on the international market. They were around $40 a barrel in September of last year. Imports meet nearly 80% of India's crude oil needs.

Five commodities were exempt from the scope of GST when it was implemented in July 2017: crude oil, natural gas, gasoline, diesel, and aviation turbine fuel because the Centre and states relied substantially on these for revenue. The general expectation was that fuel prices would drop significantly if the central and State taxes were replaced by GST, which has a top tax rate of 28%. According to some calculations, replacing central and Government taxes with a 28% GST will bring gasoline prices in Delhi down to roughly Rs 56 and diesel costs down to around Rs 55.

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[20] *GST Council Meet: All States Oppose Talks About Including Petrol, Diesel Under GST* , OUTLOOKINDIA.COM, (Nov. 15, 2021, 5:58 PM) https://www.outlookindia.com/website/story/business-news-gst-council-meet-all-states-said-to-oppose-talks-about-including-petrol-diesel-under-gst/394928 .

[21](2017). Statement showing the effective rates of GST/Sales tax/VAT levied by various states/UTs. Mumbai: PPAC.

Fuel taxes have long been a substantial source of revenue for both the federal and State governments, which is one of the reasons they are opposed to bringing it under GST. In Delhi, taxes account for 55.5 per cent of the retail price of gasoline and roughly 46 per cent of the retail price of diesel. For example, on September 16, the central taxes (excise) on Petrol in Delhi were Rs 32.90 and Rs 31.80, respectively. The State's taxes (value-added tax, or VAT) was Rs 23.35 for gasoline and Rs 12.96 for diesel. Excise on fuel brought Rs 3,71,726 crore to the Centre in 2020-21, while states brought in Rs 2,02,937 crore.

In June of this year, the Kerala High Court ordered the GST Council to send a representation to the Centre requesting that gasoline and diesel be brought under the GST regime and make a decision within six weeks. This came after the Kerala Pradesh Gandhi Darshanvedi filed a public interest lawsuit asking for these fuels to be included in the GST to "create a harmonized national market as anticipated under Article 279A(6); of the Constitution of India."

The GST Council meeting on September 17 was headed by Union Finance Minister Nirmala Sitharaman, who stated that the inclusion of fuel in GST was added to the agenda only due to the Kerala High Court's directives. She informed the reporters after the council meeting, "The Council had discussed it, and (it) felt that now was not the time to put petroleum items into the GST." She also stated that "members" believed that petroleum goods should not be subject to the GST, but she did not name any specific state. According to media sources, Kerala, Tamil Nadu, and the BJP-ruled State of Karnataka have all vigorously rejected such a move.

Kerala's finance minister, K.N. Balagopal, has stated that placing Petrol under GST will not reduce fuel prices and that the Centre should first slash excise rates. "As a cess, the Union government already collects Rs 28 for diesel and Rs 26 for gasoline. Outside the swimming pool, there is a separate cess. The states do not have access to it. An agricultural cess of Rs 4 is added to the price of a litre of diesel. As a result, if the Government wishes to lower the price, the cess must be eliminated," he stated. He has previously stated that bringing fuel under GST would result in annual losses of Rs 8,000 crore for his State. The Centre should minimize the additional charges because they are not shared with the state governments.

On September 21, Palanivel Thiagarajan, the finance minister of Tamil Nadu, stated his administration was willing to revisit its decision on putting fuel prices under the GST regime if the Centre removed the cess levy on gasoline and diesel. The Centre will face increased pressure to decrease petrol prices, and it may be forced to reconsider putting fuel under GST at some point. It should have considerable leeway to take such steps if GST collections improve. With the second wave of Covid-19 fading and the vaccination rate increasing up (India had administered vaccines to over 810 million people as of September 21)

GST collections are projected to improve after a period of stagnation. Recent figures suggest that both GST and excise/cess collections are rapidly improving. July's GST collections of Rs 1.16 lakh crore were higher than May's (Rs 1.02 lakh crore) and June's (Rs 1.02 lakh crore) (Rs 92,849 crore). According to a recent note from Care Ratings, the forecast for collections is substantially brighter in July, with average daily e-way bills generated higher than in June and May.[22]

ANALYSIS AND CONCLUSION

States want GST compensation to be extended beyond the agreed-upon deadline – it might be less generous and related to the inclusion of energy in the GST. Revenue neutrality will be achieved by increased efficiency and growth, supported by a new carbon tax, which will stimulate green alternatives while lowering India's oil bill. Domestic add-ons would then be less likely to exacerbate international oil price shocks.

India demands the inclusion of Petrol and other petroleum products in GST due to the following reasons;

1. 1. It will result in uniform taxation and the elimination of other indirect taxes.
2. Revenue Neutral Rate is Lower (RNR).
3. 3. To control the inflation that will occur after the GST is implemented in India.
4. To complete the chain and extend the GST's true benefits.
5. To increase GDP.

Mr. Dharmendra Pradhan, the Union Minister for Petroleum and Natural Gas, has expressed worry about the rising price of petrol and petroleum-based products in recent weeks. He even intimated that petroleum and petroleum-based items might be included in the GST ambit sooner rather than later. However, the reality appears to be in stark contrast to the billion Indians' dreams. The Central Government's commitment of bearing the revenue loss sustained by states owing to GST implementation was a crucial agreement that set the groundwork for the effective and mutual adoption of GST by the 29 Indian states. 11 of India's 29 states were expected to lose a total of 9500 crores in revenue. The following are some of the highlights of the Compensation Bill for States Under GST LAW: [23]

States will be compensated for revenue losses over a five-year period by levying a GST Compensation Cess.

[22] Economic Outlook for India FY 2021-22 Careratings.com, https://www.careratings.com/uploads/newsfiles/26072021065434_Economic_Outlook_for_India_FY_2021-22.pdf (last visited Nov 15, 2021).

[23] The Goods and Services Tax (Compensation to States) Act, 2017, No. 15, Acts of Parliament , 2017 (India).

Cess input tax credit will be available.

Given the foregoing, states may be hesitant to forego the VAT earnings earned by gasoline and diesel. Even if the central government manages to take the rabbit out of the hat, the pressing question remains, about securing the money to provide States just compensation.