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AN INSIGHT ON A GOODS & SERVICE TAX (GST) ON BUSINESS OF OIL & GAS SECTOR IN THE CONTEXT OF CERTAIN PETROLEUM PRODUCTS KEPT OUT OF GST & EXPLORE WAY FORWARD TO DEVELOP SUITABLE TAX STRATEGY TO ACHIEVE TAX EFFICACY AND ECONOMIC PERFORMANCE OF INDIA

The goods & Service Tax (GST) was introduced in India from July 1, 2017 which subsumed all indirect taxes levied by the Central & State Government. So far Oil & Gas industry is concerned, Goods out of GST Includes:-Petroleum Crude, High Speed Diesel Oil, Motor Spirit Natural Gas &Aviation Turbine Fuel. Goods included in GST:-Naphtha, Fuel Oil, and Kerosene Liquefied Petroleum Gases (LPG)

Hearing a public interest litigation (PIL) in case of Kerala Pradesh Gandhi Darshanvedhi Vs Union of India (Kerala High Court) .Kerala High Court directed the GST Council to explain reasons for not including petrol and diesel within the ambit of GST on 21.6.2021. Plea taken by the petitioner reads:-

Prices of petrol and diesel vary in different states as tax levied by them was different and sought a uniform tax regime for petroleum product. Different rates of tax levied by the State governments under their fragment taxing policies, currently petrol and diesel were charged differently across the country. *This was an impediment in the way of achieving a harmonized national market as contemplated under Article 279 of the Constitution& non-inclusion of petrol and diesel under the GST regime are violative of the Article 14 and 21 of the constitution,*

Union and state governments plead helplessness in this citing petroleum marketing companies, both enthusiastically participated in the reduction of fuel price prior to elections. The rise in price of petroleum products had a cascading effect on all commodities, including essential ones, leading to an increase in the cost of living, both in rural and urban areas. In fact, the prices of fuel need to be rationalized. It also said the state and central taxes will account for at least 60 per cent of the price of one liter of fuel. Earlier, the counsel for both union and state governments opposed the PIL saying the fuel price regime was part of a policy decision and the judiciary can't intervene.

However, Constitutional Court has casted a constitutional duty upon the GST Council to make a serious recommendation to include both (petrol and diesel) in GST. Though oil companies had no choice but to fix the prices as per the global market rate for crude oil, the higher rate of tax levied by the Centre and the State Government was impacting fuel prices. The present situation was ripe enough to take a decision in this regard as the price of petrol and diesel was surging on a day-to-day basis and had a crippling effect on the economy.

Analysis of legal position:-

Article 279A in constitution of India provides that GST council will make recommendation to Union & State relating to GST .Decision of GST council will be taken with at least 75% of weighted average voting in favors of the decision . Union Government will have 33.33% voting power and state will have 66.67 % voting power. So The Recommendations of GST council have some effect but not legally binding on State/ Central Government.

GST council & finance ministry have yet not responded to the plea of bringing petrol& Diesel under the GST ambit. In fact, the government' rationale behind not including fuel in GST was to insulate states from loss of revenue.

Is GST the solution then? Inducting petroleum products in GST does really ague for good economics? Whether such move will take a major hit on revenuers to sate exchequer? What is the way forward?

International VAT/GST Guidelines by Organization for Economic Co-operation and Development (OECD)

Value Added Tax (VAT; also known as Goods and Services Tax, under the acronym GST in a number of OECD countries) has become a major source of revenue for governments around the world. Some 165 countries operated a VAT has adopted the International VAT/GST Guidelines in 2016, This central design feature of the VAT, coupled with the fundamental principle that the burden of the tax should not rest on businesses, requires a mechanism for relieving businesses of the burden of the VAT they pay when they acquire goods, services, or intangibles. There are two principal approaches to implementing the staged collection process while relieving businesses of the VAT burden, thus permitting successive taxpayers to deduct the VAT they pay on their purchases while accounting for the VAT they collect on their sales.

In general, OECD jurisdictions with a VAT impose the tax at every stage of the economic process and allow deduction of taxes on purchases by all but the final consumer. This design feature gives to the VAT its essential character in domestic trade as an economically neutral tax. India being member of OECD has not revisited the guidelines. These generally accepted *principles of tax policy* includes:-

Neutrality: Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation

Efficiency: Compliance costs for businesses and administrative costs for the tax authorities should be minimized as far as possible.

Certainty and simplicity: The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where, and how the tax is to be accounted.

Effectiveness and fairness: Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimized while keeping counteracting measures proportionate to risks involved.

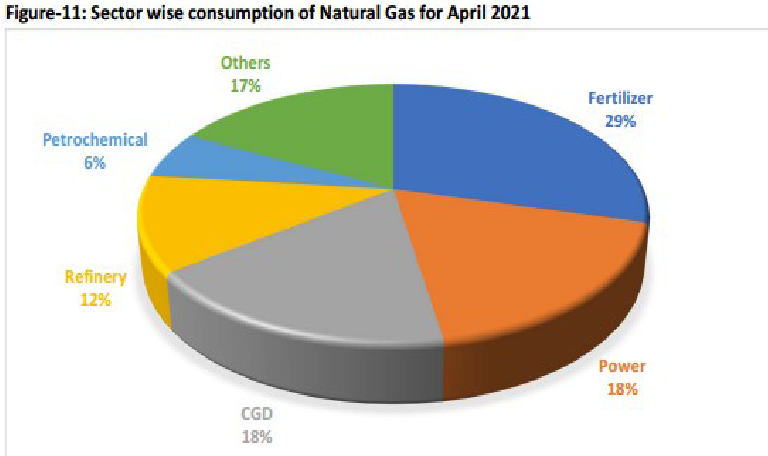
Flexibility: The systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments

Synopsis of study of Analysis:-

Government is under Horns of dilemma for developing a suitable tax strategy to bring petroleum to include crude petroleum, natural gas, petroleum products and electricity under the GST system. Keeping Petroleum& Electricity will result cascading tax effects which has Bering on the Economic Performance in across the sectors. The degree of cascading will vary across the sectors depending on their direct as well as indirect (inputs embedded in outputs of other sectors) input use. Eight core sector industries are coal, crude oil, natural gas, refinery products, fertilizers, steel, cement and electricity. The eight core sector industries represent about 40% of the weight of items that are included in the IIP.The eight core industries in decreasing order of their weightage: Refinery Products> Electricity> Steel> Coal> Crude Oil> Natural Gas> Cement> Fertilizers. Challenges under GST regime – Restricted Flow of Credit by blocking CENVATChain across the industry which is affecting Economic Performance of Country as a whole.

Figure-11 gives the sector wise consumption of Natural Gas for April 2021.

Figure-11: Sector wise consumption of Natural Gas for April 2021



Policy Options for including Petroleum, Natural Gas and Electricity in the Goods and Services Tax to achieve not only tax efficiency, but optimum Economic Performance of Country by Core & Other sector

An insight on the impact of keeping these items(crude petroleum, natural gas, motor spirit (gasoline/ petrol), high-speed diesel (diesel), aviation turbine fuel and electricity) out of the input tax credit mechanism (either partially or fully) would result in implications for cascading.. It captures the degree of cascading across major 48 sectors under different scenarios.

The tax on petro-leum products and corresponding change in prices generates both direct and indirect effects across the sectors. Petroleum products directly enter as an input into a large number of economic activities (e g, transportation, and electricity generation and fertilizer production). Apart from such direct uses, there are a number of indirect uses as well. For instance, since most com- modifies need to be transported for use by the final consumer, petroleum products enter into the picture. Therefore, changes in prices (or taxes) of petroleum products would have a significant impact on the economy both through direct as well as indirect or cascading routes.

In other words, inputs going into the extraction of crude petro- leum would remain embedded in the costs of exploration and production of crude and passed on to refineries. Similarly, when petrol, diesel and aviation turbine fuel (ATF) are kept out of the VAT/GST system, the taxes associated with inputs used for production of these goods would remain embedded. This results in cascading. Since petroleum products are used as inputs in a large number of industries in the economy cas- cading would have widespread impact.13 Flow of uncredited input taxes in the proposed regime of GST is demonstrated in Figure 1.

Figure 1: Input Tax Credit Pass-through Mechanism (6 Sector Model)

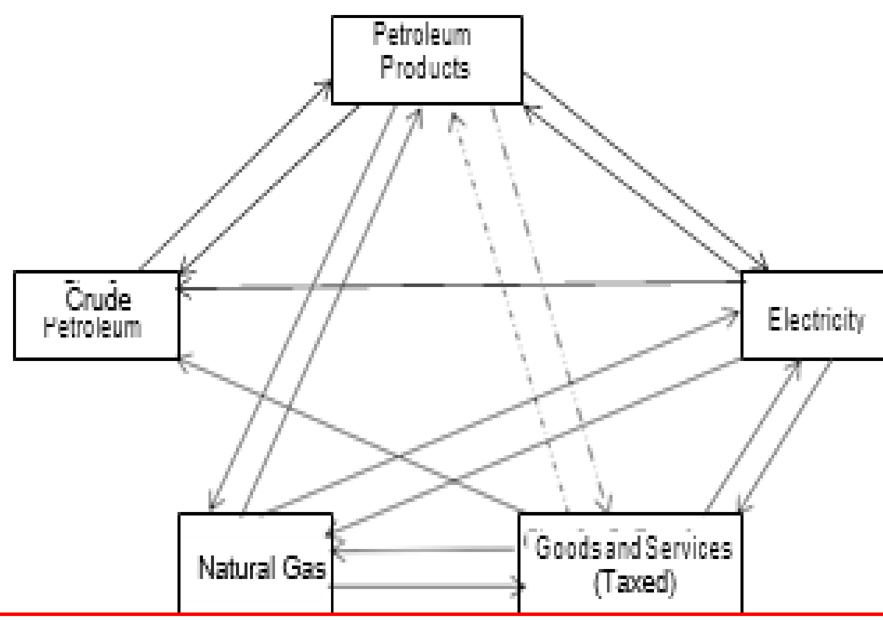


Table 4: Input Tax Credit Claimed against Central and State Taxes (Rs Crore): 2010-11#

Central Taxes		State Taxes		Total
Value of purchase of goods and services (Rs crore) (A)	61,719	Value of purchase of goods (Rs crore) (A)	10,004	71,723
Percentage share in total value of purchase (%) (B)	86.05	Percentage share in total value of purchase (%) (B)	13.95	
Excise duty (ED)/service tax (ST) charged	5,769	VAT and CST paid	565.1	6334.1
CENVAT setoff of excise duty/service tax	3,342	Input tax credit (ITC) claimed	285.2	3627.2
Weighted ED/ST set off (%) (C)*	61.4	Weighted VAT setoff (%) (C)*	47.6	
Final weighted effective tax rate (%)@ (D) [(B)*(C)/100]	52.84	Final weighted effective tax rate (%)@ (D) [(B)*(C)/100]	6.64	59.48

This is based on company-wise information provided in NIPFP (2011). * Weights are based on company-wise share in total value of purchase.

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Source: - NIPFP 2011

From the above TABLE of NIPEP, we could conclude that petroleum companies on an average claim 60% of total tax paid to Central & State Government as Input Tax Credit (ITC), the rest is their stranded costs in Pre –GST regime. Some sates allow petroleum companies to avail ITC against their purchase of inputs (Good). The % of setoff availed by companies vary depending on the states where companies are operating and their input and output baskets.

Extent of cascading for a sector depends not only tax treatment of the sector but pn overall indirect tax structure of the economy.

Revenue short fall under GST is not conducive for fiscal sustananity. Such shortfall arises due to problems associated with (a) design and structural issues related to GST (b) Policies & practices of GST administration (c) Tax Compliances & finally (d) Not following OECD Guidelines on VAT /GST Guidelines by India despite being a member .

The revenue deficit of states, cascading effects & flow of input credit across the sectors for a sustainable Economic performance can be achieved by rationalization of all GST rates, addressing various challenges faced by Oil, GAS & other Core sectors due to limitations of flow less credit .

The Revenue Neutral rates could be maintained by keeping Crude Petroleum , Natural gas , Petroleum Products and electricity within ambit of GST .Estimation of Revenue Nutral rates is to be done state wise impacts depending on composition of economic activities , different sates will have different impact of taxations on petroleum products .States having larger share in sector with greater cascading impacts will have larger impacts .

Conclusion :

Since globalization & Automation of all industrial sector is the key parameters for Economic Performance, India must raise to the occasion to make an evaluation of existing business model of Oil & Gas sector as well as Expiring GST model to be redesigned & structured the in alignment of International VAT /GST guidelines to be business leader in international & domestic market. The same will give long term suitability to all industry, more particularly in international trade. The same will pave the way for fair taxation, one nation one tax, easy of doing business for economic performance of industry as a whole.

So government of India should consider restructuring of GST laws by following the basic principles of Taxation, implement international VAT /GST guidelines in latter & amp; spirit. Such welcome move will not only to achieve tax efficiency in business, but for improving Economy of India by facilaiting Economic performance in all core & other sector.