

IMPACT OF BIFURCATION ON GOODS AND SERVICES TAX IN THE NEW UNION TERRITORIES POST THE JAMMU AND KASHMIR REORGANIZATION ACT, 2019

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ABSTRACT

The Goods and Services Tax was introduced in India on the midnight of July 1, 2017, with the aim to subsume various indirect taxes that were levied at the Central as well as the State level. This dual-structure GST model, one of the most ambitious reforms that the Indian tax regime has witnessed, was implemented in order to create a common national market by bringing down fiscal barriers between the States. However, owing to the special autonomous status that the State of Jammu and Kashmir was endowed with under Article 370 of the Constitution, the new Article 246A vide which the GST Acts were implemented, was not automatically applicable to the State. This necessitated the employment of special measures in order for the State to join the GST fold. Subsequent to the passing of the Jammu and Kashmir Goods and Services Tax Bill, 2017, the President of India had promulgated two ordinances, which in effect brought the state of Jammu and Kashmir within the domain of the Central and the Integrated GST Acts, in consequence, integrating the state with the mainstream Indian economy. The recent Jammu & Kashmir Reorganization Act, 2019, bifurcated the state into the Union Territories of Jammu & Kashmir and Ladakh. This article analyses the impact of the bifurcation on the applicability of GST in the newly formed Union Territory of Jammu and Kashmir and Union Territory of Ladakh. It also delves into the transition plan that was implemented with the view to allow for a smooth transition. It further explores the changes in the registration process

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for businesspersons that entailed the bifurcation. The article concludes with an analysis of various challenges while making a shift from State-specific Acts to the Central GST Act.

I. INTRODUCTION

Historically, the State of Jammu and Kashmir ('State') signed the instrument of accession on the condition that the State be allowed to retain its autonomy while exercising its power to make decisions, and that any central decisions would require the state government's approval before being made applicable.¹

The insertion of Article 370² to the Constitution was made to ensure this autonomy to the State. This Article allowed the State to have its own constitution and ensured application of all Central laws in the State only subject to its passing by the State legislature. Article 35A,³ read with Article 370, further stated certain exceptions that were applicable with respect to the State.

However, in 2019, the Government of India initiated the revocation procedure mentioned in Article 370 itself and revoked the special status of the State. The Hon'ble President of India, Mr. Ram Nath Kovind, issued an order under Article 370, thereby bringing the State under President's Rule.⁴ Since the repealing of the Article required special measures, new clarificatory clauses were added to Article 367 in order to

¹ Instrument of Accession between Indian Union and Jammu and Kashmir, available at http://jklaw.nic.in/instrument_of_accession_of_jammu_and_kashmir_state.pdf

² INDIA CONST. art. 370.

³ *Id.*, art. 35A.

⁴ The Constitution (Application to Jammu and Kashmir) Order, 2019.

aid the interpretation of certain specific terms.⁵ As a consequence, the State was divided into two Union Territories (“UT”) – The Union Territory of Jammu & Kashmir and the Union Territory of Ladakh.⁶ This transition has been riddled with several practical problems within the UTs, one of them being the application of Central laws in the newly formed UTs.

II. INDIRECT TAXATION IN JAMMU AND KASHMIR PRE-BIFURCATION

The State, being autonomous, did not have direct application of any Central laws. In other words, laws that were passed by the Indian Parliament were voted upon by the State legislature of Jammu and Kashmir before the same was applied to the entire State. The first law with respect to indirect tax in the State was the Central Sales Tax Act, 1956. The Act aimed to regulate and govern the sale and purchase of goods in inter-state commerce or trade, or outside a state or in the course of import or export. The Act listed the industries which were liable to pay the sales tax. It also established the relevant authorities in the States that were responsible for levying and collecting the tax. Lastly, the Act laid down the scope of penalties to be levied on the taxpayer if they fail to discharge their liabilities under the Act. Apart from the general rules that have been stated above, the Act also made provisions for goods that were given

⁵ The Constitution (Application to Jammu and Kashmir) Order, 2019 C.O. 272.

⁶ Jammu And Kashmir Reorganisation Act, 2019, No. 34, Acts of Parliament, 2019, §§ 3 & 4 [hereinafter **J & K Reorganization Act, 2019**].

special importance, and the liability if the obligations for the same were not met.⁷

The second indirect tax law that was implemented in the State was the Jammu and Kashmir General Sales Tax Act, 1962. While the Central Sales Tax Act was implemented with the aim to tax the sale and purchase of goods in the course of inter-state commerce or trade, the 1962 Act was implemented to levy a general tax on the sale or purchase of goods in the State and for other related matters. The Act established the relevant authorities for levying this tax. It also specified exceptional circumstances where an individual or a company would be exempted from this tax. A noteworthy provision of this Act was the special provision in the interest of industrial development in the State. It empowered the State Government to make policies for deferment of payment of admitted or assessed tax for a specific class of industries if it was satisfied that it was necessary and expedient to do so in the interest of industrial development.⁸

The Jammu and Kashmir Passengers Taxation Act, 1963 was another legislation, implemented with the intention of taxing the passengers that were who travelled by road in motor vehicles. The Act provided for the procedure for levy of tax and created a provision for payment of tax in lump sum amount. It also provided for certain exemptions which could only be approved by the State Government. Lastly, the Act provided for penalties for non-compliance, a list of

⁷ Central Sales Tax Act, 1956, No. 74, Acts of Parliament, 1956.

⁸ Jammu and Kashmir General Sales Tax Act, 1962, No. 20, Acts of Legislative Assembly of State of Jammu and Kashmir, 1962.

offences and prosecution procedure. This Act also provided for certain exceptions which the Government could exercise at its discretion.⁹

The Jammu and Kashmir Entry Tax on Goods Act, 2000 was legislated to provide for levy of entry tax on goods in the State. The Act barred the import of scheduled goods that exceeded the amount prescribed by the State Government, except in exceptional circumstances, for example, when a bill of sale, a delivery note or a declaration was presented. It may be said that this Act was implemented in furtherance of the Jammu and Kashmir General Sales Tax Act, 1962, as the redressal mechanism was similar in both the Acts.¹⁰

The year 2005 was an important year in terms of taxation laws for the State as two new Acts were implemented. The first was the Jammu and Kashmir Value Added Tax Act, 2005. This Act was to provide for the levy and collection of Value Added Tax on the sale and purchase of goods in the State. It defined the relevant authorities for the purposes of the Act as well as their powers under specific circumstances, the incidence and levy of tax under different categories, and methods of computation for different transactions such as sale and purchase, and payment and recovery of tax with penalties and interests in the relevant situations. A unique provision that was incorporated in this Act was the establishment of a Special Investigation Unit. The main function of this Unit was to carry out investigations or hold enquiries where there was a reason to believe that

⁹ Jammu and Kashmir Passengers Taxation Act, 1963, No. 12, Acts of Legislative Assembly of State of Jammu and Kashmir, 1963.

¹⁰ Jammu and Kashmir Entry Tax on Goods Act, 2000, No. 4, Acts of Legislative Assembly of State of Jammu and Kashmir, 2000.

the evasion of tax had taken place, and furnish a report in respect of the same to the supervising authority.¹¹

The second Act in line was the Jammu and Kashmir Motor Spirit and Diesel Oil (Taxation of Sales) Act, 2005. This Act levied a tax on the retail sale of motor spirit and diesel oil. This Act incorporated a provision for the levy of tax on the first sale after the import of motor spirit and diesel oil into the State. It provided a section for the relevant authorities that were to be approached in case of any doubts or confusion with regard to the Act. It also provided a penalty section for defaulters in payment of this specific tax and in cases of unauthorized sale of the goods covered by the Act. Lastly, this Act also created an investigation procedure where the power to conduct such an investigation was in the hands of an officer, not below the rank of Petrol Taxation Officer. This power also included the power to detain and arrest any person with respect to whom the officer had a reason to believe that he/she is guilty of an offence punishable under the Act.¹²

III. APPLICABILITY OF GST IN JAMMU & KASHMIR PRE-BIFURCATION

After the insertion of Article 246A to the Constitution, *vide* the Constitution (One Hundred and First Amendment) Act, 2016,¹³ the Union as well as all the States have been granted concurrent power to legislate, in

¹¹ Jammu and Kashmir Value Added Tax Act, 2005, No. 4, Acts of Legislative Assembly of State of Jammu and Kashmir, 2006.

¹² Jammu and Kashmir Motor Spirit and Diesel Oil (Taxation of Sales) Act, 2005, No. 5, Acts of Legislative Assembly of State of Jammu and Kashmir, 2005.

¹³ INDIA CONST. art. 246A, *vide* The Constitution (One Hundred and First Amendment) Act, 2016.

order to levy Goods and Services Tax ('GST'). In addition to this, the Parliament of India has been granted exclusive power to make laws with respect to inter-state supply of goods or services or both.¹⁴ The implementation of GST Acts was carried out *vide* the insertion of a new Article¹⁵, therefore, it did not require any corresponding entry in either of the three lists, i.e., the Union, State or the Concurrent List, in order to empower the Centre or the State or both to levy GST. However, owing to the special autonomous status that the State of Jammu and Kashmir was endowed with under Article 370 of the Constitution, the new Article 246A in the Constitution did not automatically become applicable to the State, and special measures had to be taken before the State could join the GST fold.

On 6th July 2017, the President of India gave assent to the Constitution (Application to Jammu and Kashmir) Amendment Order, 2017,¹⁶ in effect marking the first step towards the adoption of GST regime by the State of Jammu and Kashmir, and thereby making the One Hundred and First Amendment applicable to the State of Jammu and Kashmir as well. Ensuing this, the State passed the Jammu and Kashmir Goods and Services Tax Bill, 2017,¹⁷ which empowered the State to levy State GST on intra-state supplies with effect from 8th July, 2017.

¹⁴ *Id.*

¹⁵ INDIA CONST. art. 246A, *vide* The Constitution (One Hundred and First Amendment) Act, 2016.

¹⁶ Constitution (Application to Jammu and Kashmir) Amendment Order, 2017, C.O. 269, available at http://www.jakfinance.nic.in/GST_2017/presidential%20Order.pdf.

¹⁷ Jammu and Kashmir Goods and Services Tax Bill, 2017, available at http://jakfinance.nic.in/GST_2017/SRO%20282%20dated%2008.07.2017%20GST_RULES%202017%20with%20forms.pdf.

Simultaneously, two ordinances¹⁸ were promulgated by the President of India that brought the State of Jammu and Kashmir within the domain of the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017, with effect from 8th July, 2017, thereby integrating the State of Jammu and Kashmir with the mainstream Indian economy.

IV. THE JAMMU AND KASHMIR REORGANISATION ACT, 2019

The Jammu & Kashmir Reorganization Act, 2019 was enacted in order to bifurcate the State of Jammu & Kashmir into two Union Territories, namely, the Union Territory of Jammu & Kashmir and the Union Territory of Ladakh, necessitating the numerous changes – both legislative as well as administrative. The Reorganization was effective from 31st October 2019.¹⁹

The Jammu and Kashmir Re-organization (Removal of Difficulties) Order, 2019,²⁰ provides that the Jammu & Kashmir Goods and Services Tax Act, 2017 shall be applicable in the UT of Jammu & Kashmir for the levy of State GST in respect of transactions taken place therein,²¹ and the Union Territory Goods and Services Tax Act, 2017 would be applicable in the UT of Ladakh.²²

¹⁸ The Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017.

¹⁹ J & K Reorganization Act, 2019, object and purpose.

²⁰ Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019, *available at* <https://www.scconline.com/blog/post/2019/10/31/jammu-and-kashmir-reorganisation-removal-of-difficulties-order-2019/>.

²¹ *Id.*, ¶ 7.

²² *Id.*

As per Section 13 of the Reorganisation Act 2019 – “On and from the appointed day, the provisions contained in article 239A, which are applicable to “Union territory of Puducherry”, shall also apply to the “Union territory of Jammu and Kashmir.”²³

This implies that the UT of Jammu & Kashmir would hold an equivalent status like that of a State akin to that of Puducherry, with its own Legislative Assembly and partial statehood. This also becomes relevant through Section 4 of the Reorganization Act,²⁴ which is titled ‘Formation of UT of Jammu & Kashmir with Legislature’.

With the coming of the Finance Bill of 2020, the definition of ‘Union Territory’ under the Central Goods and Services Tax Act, 2017 has been amended to include Ladakh.²⁵ However, even prior to this amendment, it was clear from the conjoint reading of Section 1(2), Section 2(8), and Section 2(10), of the Union Territory Goods and Service Tax Act (‘UTGST’) that Ladakh would fall within the ambit of “Other Territory” under Section 1. Section 1(2)²⁶ lays down the territories where the UTGST Act is applicable, and it includes ‘other territories’. Section 2(8)²⁷ defines the term ‘Union Territory’. Section 2(10) states that any words or expressions that which have not been defined under the UTGST Act shall be assigned the same meaning as under the CGST Act, the IGST Act, the SGST Act, and the Goods and Services Tax (Compensation to

²³ J & K Reorganization Act, 2019, § 00313.

²⁴ *Id.*, § 4.

²⁵ Finance Bill, 2020, cl. 116, available at https://www.indiabudget.gov.in/doc/Finance_Bill.pdf.

²⁶ Union Territory Goods and Services Tax Act, 2017, No. 14, Acts of Parliament, 2017, § 1(2).

²⁷ *Id.*, § 2(8).

States) Act.²⁸ Ladakh Kargil and Leh were districts prior to the bifurcation, and were not covered under the definition of State or Union Territories under sub clauses (a) to (e) of Section 114 of the CGST Act. Therefore, by implication, Ladakh was considered to be a UT for the purpose of GST within the ambit of ‘other territories’ as per Section 1(2) of the UTGST Act even prior to the said amendment, and was to be directly administered by the Centre, and could fall within the purview of Article 240 of the Constitution.

V. TRANSITION PLAN

Post the abrogation of Article 370 of the Constitution and creation of two new Union Territories, a plan which was to be followed till 31st December, 2019, was laid down, in order to ease the transition for the taxpayers with respect to the State of Jammu and Kashmir.

The most relevant Notification in this regard is Notification No. 62/2019-Central Tax, which was issued on 26th November, 2019. It notifies the transition plan with respect to Jammu and Kashmir reorganization with effect from 31st October 2019. The transition plan applies to the class of persons whose principal place of business, or place of business, was in the erstwhile State of Jammu and Kashmir till 30th October, 2019, and it now lies in either the UT of Jammu and Kashmir or in the UT of Ladakh from 31st October, 2019 onwards, shall follow the following special procedure till the 31st day of December, 2019 (the transition date) –

²⁸ *Id.*, § 2(10).

The said class of persons shall determine the relevant tax period as per Section 2(106) of the Central Goods and Services Tax Act, 2017. Furthermore, October 2019 and November 2019 shall be read as 1st October 2019 to 30th October 2019 and 31st October 2019 to 30th November 2019 respectively for the purposes of any of the provisions of the said Act. The taxpayers will also have to pay the appropriate applicable tax in the return under Section 39 of the Central Goods and Services Tax Act, 2017 irrespective of the particulars of the taxes written down in the invoices or other documents for the period from 31st October 2019 till the transition date.

This implies that there are some adjustments that have been allowed in GSTR-3B. The first is the option to transfer the input tax credit from the registered GSTIN in the state to the new GSTIN in the UT of Ladakh or Jammu and Kashmir from 31st October, 2019 by following the procedure. The first step is that the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of input tax credit, within one month of obtaining new registration. The input tax credit shall then be transferred on the basis of ratio of turnover of the place of business in the UT of Jammu and Kashmir and in the UT of Ladakh. This transfer will be carried out through the return under Section 39 of the said Act for any tax period before the transition date.

Furthermore, the balance of State taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the UT of Ladakh from the 31st October 2019, shall be transferred as balance of UT tax in the electronic credit ledger. Some exceptions have also been

provided for under the transition plan. For instance, the persons who deal or will be dealing in the inter-state supplies between the Union Territories of Jammu and Kashmir and UT of Ladakh from 31st October 2019 till the transition date would not be required to take compulsory registration under Section 24(i) of the Central Goods and Services Tax Act, 2017.

VI. MEASURES TO EASE THE TRANSITION PROCESS

There were several implementation problems that had not been anticipated by the Central Government with respect to filings for GST purposes. After the transition plan was formalized, it became clear that the taxpayers needed more time than what was apprehended by the authorities.²⁹ The Government, through the Central Board of Indirect Taxes and Customs, issued various notifications specifying special procedure to be followed till 31st of December 2019, by registered persons who have businesses in the Union Territories of Jammu & Kashmir and Ladakh to allow for a smooth transition process.

The Department, vide Notifications 57/2019 to 62/2019 notified that the registered persons whose principal place of business was in the State of Jammu and Kashmir, were granted an extension till 30th November, 2019 to furnish returns in FORM GSTR-1 for the months of July 2019 to October 2019.³⁰ This was only applicable to businesses who had an aggregate turnover of over ₹ 1.5 crore in the preceding or the

²⁹ The dates decided for filing under the transition plan were further extended vide Notifications 63/2019 to 67/2019 – Central Tax (Dec. 12, 2019), available at <https://cbic-gst.gov.in/central-tax-notifications.html>.

³⁰ Notification Nos. 57/2019 and 58/2019 - Central Tax (Nov. 26, 2019), available at <https://cbic-gst.gov.in/central-tax-notifications.html>.

present financial year. Further, an extension was also granted to the GSTINs registered in the State of Jammu and Kashmir till 30th November, 2019 for furnishing of returns in FORM GSTR-7 and FORM GSTR-3B.³¹

However, vide Notification Nos. 63/2019 to 67/2019 – CT,³² the abovementioned due date, i.e., 30th November, 2019 was further extended till 20th December, 2019 for furnishing of returns in FORM GSTR-1, FORM GSTR-7 and FORM GSTR-3B.

VII. REGISTRATION PROCESS FOR BUSINESSES IN THE NEWLY FORMED UNION TERRITORIES

Apart from furnishing of returns, there were confusions with respect to the registration process for GSTs. The businesses with GSTINs registered in the State of Jammu and Kashmir could now fall within the jurisdiction of either of the two Union Territories post the bifurcation. The anticipation of an administrative shift between the two Union Territories made it imperative for the taxpayers to be cognizant of the tax implications that this reform would entail.

As discussed above, Jammu & Kashmir is a UT with a legislature, and has a status equivalent to that of a state. In view thereof, the UT may continue to levy SGST and CGST for intra-state supplies. However, supplies made from Jammu & Kashmir to Ladakh and vice versa shall be treated as an inter-state supply, and therefore IGST shall be charged on

³¹ Notification Nos. 60/2019 and 58/2019 - Central Tax, available at <https://cbic-gst.gov.in/central-tax-notifications.html>.

³² Notifications Nos. 63/2019 to 67/2019 – Central Tax (Dec. 12, 2019), available at <https://cbic-gst.gov.in/central-tax-notifications.html>.

them.³³ Therefore, in cases where the place of business lies solely in the UT of Jammu & Kashmir, the Jammu & Kashmir GST Act shall be applicable. It may be inferred from notification no. 62/2019-CT³⁴ that taxpayers would be permitted to operate under the pre-existing registration. Further, since the UT of Ladakh is formed without a legislature, UTGST and CGST would be levied on supplies made in Ladakh. It may be inferred from notification no. 62/2019-CT³⁵ that where the place of business exclusively lies in the UT of Ladakh, all the taxpayers supplying goods and services from the said UT would be required to get a registration under the Union Territory GST Act, or they may be allowed to migrate.

Lastly, in the instance where the place of business lies in both the Union Territories as a consequence of the bifurcation, with respect to place of business in the UT of Ladakh, the taxpayers will be required to obtain fresh registration under the UTGST Act. However, with respect to place of business in the UT of Jammu & Kashmir, the taxpayers may be permitted to operate under the pre-existing registration.³⁶

In light of the above implications, it is clarified that, with effect from 31st October, 2019, all supplies between persons (including distinct persons) located in Jammu & Kashmir and Ladakh shall be treated as

³³ Integrated Goods and Services Tax Act, 2017, § 7.

³⁴ Notification No. 62/2019-Central Tax (Nov. 26, 2019), available at: <http://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-62-central-tax-english-2019.pdf;jsessionid=1FBDAA6FCA78C28C49C9E450BAE0D68A>.

³⁵ *Id.*

³⁶ *Id.*

inter-state supplies, subject to other provisions of law, and would therefore attract the levy of IGST.³⁷

VIII. CONCLUSION

The application of GST to the newly formed UTs, being fairly new reform, is still riddled with implementational issues and confusions. It is evident that as a consequence of the bifurcation there is a need for separate state codes for UT of Kashmir and UT of Ladakh. However, the UT of Ladakh has not been allotted a separate Code as of today.

Clause 2(ii) of the Notification,³⁸ mandates the registered taxpayers to pay the appropriate applicable tax under Section 39 of the JKGST Act, 2019,³⁹ irrespective of the specifications of taxes levied in invoices and other similar documents that have been issued from 31st October, 2019 till the transition date. However, the term ‘appropriate applicable tax’ is vague and open to interpretation.

The businesses with GSTINs registered in the State of Jammu and Kashmir could, at their option, transfer the input tax credit till 30th October, 2019 to the new GSTIN in the Union Territory where their principal place of business would lie from 31st October, 2019. In author’s view, it should be imperative to transfer the balance of both CGST and SGST to new GSTIN.

The implementation of the GST Acts in the UTs of Jammu & Kashmir and Ladakh has been a difficult and tedious process. There exist

³⁷ *Id.*

³⁸ *Id.*

³⁹ Jammu and Kashmir Goods and Services Tax Act, 2017, No. 5, Acts of Legislative Assembly of State of Jammu and Kashmir, 2017, § 39.

enumerable issues that require clarification. However, the implementation of GST is one of the most ambitious and the largest reform that the Indian tax regime has witnessed. In due course, the existing problems will be acknowledged and addressed, allowing for a uniform, efficient, and effective taxation regime.