

Why Petroleum Products not in GST?

MARCH 17, 2021

By Vijay Kumar

THE

First Discussion Paper On Goods and Services Tax In India by The Empowered Committee of State Finance Ministers issued on November 10, 2009 stated,

Tax on Petroleum Products :

As far as petroleum products are concerned, it was decided that the basket of petroleum products, i.e. crude, motor spirit (including ATF) and HSD would be kept outside GST as is the prevailing practice in India. Sales Tax could continue to be levied by the States on these products with prevailing floor rate. Similarly, Centre could also continue its levies. A final view whether Natural Gas should be kept outside the GST will be taken after further deliberations.

The Comments of DOR (Department of Revenue, Government of India) dated 1st January, 2010 on the First Discussion Paper on GST were,

Keeping crude petroleum and natural gas out of the GST net would imply that the credit on capital goods and input services going into exploration and extraction would not be available resulting in cascading. Diesel, ATF and motor spirit are derived from a common input, viz., crude petroleum along with other refined products such as naphtha, lubricating oil base stock, etc. Leaving diesel, ATF and motor spirit out of the purview of GST would make it extremely difficult for refineries to apportion the credit on capital goods, input services and inputs. These products are principal inputs for many services such as aviation, road transport, railways, cab operators etc. As such, these may be levied to GST and in select cases credit of GST paid on these items may be disallowed in order to minimize the possibility of misuse.

GST actually rolled out more than seven years later and petroleum products were not exactly kept out of the GST net as recommended by the Empowered Committee; nor was it brought in as suggested by the Department of Revenue. Instead the Constitution by Article 279(5) stipulated:

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

And as we know, the GST Council is yet to recommend that elusive date. Why?

To a question as to whether the Government has any plan to bring petrol, petroleum products and diesel under the purview of Goods and Services Tax (GST), the Hon'ble Finance Minister Ms. Nirmala Sitharaman told the Lok Sabha on 24th June, 2019

As per Article 279A(5) of the Constitution, the Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel (ATF). As per the section 9(2) of the CGST Act, inclusion of these products in GST will require recommendation of the GST Council. So far, the GST Council has not made any recommendation for inclusion of petroleum products under GST.

Just day before yesterday, on 15 th March 2021, the Hon'ble Finance Minister placed a detailed statement before the House as:

Entry 84 of List I of the Seventh Schedule, inter-alia, provides for levy of excise duty on manufacture of:

- Â crude petroleum oil,
- Â natural gas,
- Â petrol,
- Â diesel and
- Â Aviation Turbine Fuel [ATF]

Similarly, Entry 54 of List II of the Seventh Schedule of the Constitution, inter-alia, provides for levy of VAT on sale of:

- Â crude petroleum oil,
- Â natural gas,
- Â petrol,
- Â diesel and
- Â Aviation Turbine Fuel [ATF]

Clause 12(A) of the Article 366 of the Constitution provides **"Goods and Services Tax"** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Thus, supply of above petroleum products is not excluded from the purview of GST.

Article 279 A (5) of the Constitution prescribes that the Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel (ATF), also as per the Section 9(2) of the CGST Act,inclusion of these products in GST will require recommendation of the GST Council. So far, the GST Council, in which the states are also represented, has not made any recommendation for inclusion of these goods under GST. The Council may consider the issue of inclusion of these five petroleum products at a time it considers appropriate keeping in view all the relevant factors including revenue implication. At present, there is no proposal to bring crude petroleum, petrol, diesel, ATF and natural gas under GST.

Obviously, the governments at the Centre and at the States are in no tearing hurry to include petroleum products under GST, though the trade and consumers seem to be hopeful in barrels.

The Hon'ble Minister for Petroleum and Natural Gas told the Lok Sabha on 15 th March 2021 that the Contribution of Petroleum Sector to Central and State Exchequer was a whopping Rs. 5,55,370 crores in 2019-20 and Rs.4,21,381coresfrom April to December in the current financial year. And that's a lot of money, which governments cannot simply write off.

The Petrol Price Puzzle : Petrol now costs nearly a hundred rupees a litre. Who gets what?

As per the data released by HPCL, this is what happens:

Price Build-up of Petrol at HPCL' Retail Pump Outlet at Niti Marg, Delhi	
Â	As on

Elements	Unit	01-03-2021
Price to Dealers (excluding Excise Duty & VAT)	r/Litre	33.57
Add: Excise Duty	r/Litre	32.90
Add: Dealer Commission (Average)	r/Litre	3.69
Add: VAT (including VAT on Dealer Commission) applicable for Delhi @ 30%	r/Litre	21.05
Retail Selling Price at Delhi (Rounded Off)	r/Litre	91.21

On a litre of petrol which is sold at Rs. 33.57 to the dealer, the Central Government gets by way of excise duty Rs. 32.90, which is 98% and the State Government gets Rs. 21.05 which is 63% of the dealer price. Looked in another way, on a sale price of Rs. 91.21, the State and Central governments take Rs. 53.95 (32.90+21.05), which is about 60% of the selling price and 161% of the base price.

When you buy petrol for Rs. 100,

The central government gets	Rs. 36
The State Government gets	Rs. 23
The dealer gets	Rs. 04
The Oil Company gets	Rs. 37

Now if petroleum products have to be brought under GST, what should be the rate of tax? Can you tax at 160%, a rate unknown to GST (at least as of now)? If you tax at 160%, you get about six lakh crores, but at the highest GST rate of 28%, you may get less than two lakh crores and some of it will go as input credit. So, you are left with a shortage of about 4 lakh crores. What are you going to fill that gap with?

For the week, I leave you with barrels of hope that soon we would become a five trillion economy and would be able to afford to sell petrol at Rs. 45 a litre with the highest GST rate of 28%.

Until next week