

# CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

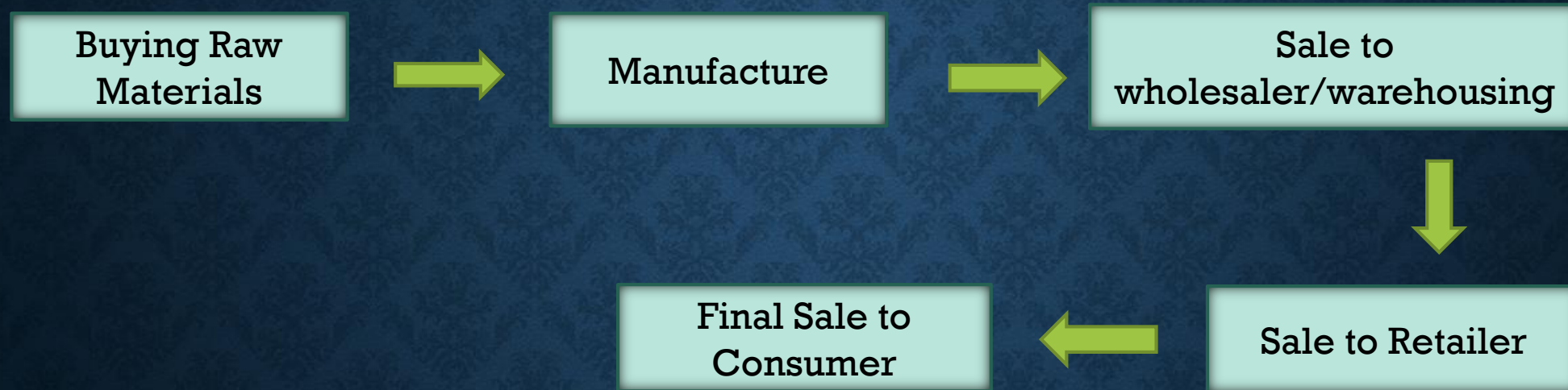
The relevant extract of the Statement of Objects and Reasons is as under:-

*"The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. **The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services.** The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax."*

Consequently, the GST laws primarily intend to:-

1. Provide a common national market for goods and services. One nation one tax.
2. Removing the cascading effect of taxes

# Multi stage



GST is levied on each of these stages making it a multi stage tax



# Value Addition



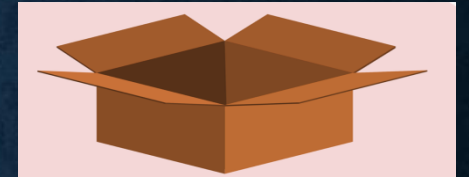
Stage s	Actions	Price+Tax =cost	Cost/ Addition	Total	Tax@10 % only on addition	Total price
1 <sup>st</sup>	Purchase of raw material by Manufacturer	-	2000	2000	200	2200
2 <sup>nd</sup>	Sold finished goods to wholesaler( raw material to finished goods)	2000+200= 2200	500	2700	50	2750
3 <sup>rd</sup>	Purchase of finished goods by Trader	2700+50 =2750	400	3150	40	3190
4 <sup>th</sup>	Purchase of finished goods by actual consumer	3150+40 =3190	300	3490	30	3520
	<b>Total</b>		<b>3200</b>		<b>320</b>	<b>3520</b>

## Destination - Based

- Consider goods manufactured in Gujarat and sold to the final consumer in Delhi. Since the GST is levied at the point of consumption, the entire (State ) GST will go to Delhi and not to Gujarat.



Chocolate



Label/packaging



Chocolate Packet



# Illustration Of How Cascading Effect Removed By GST-[Tax on Tax Eliminated]

## Old system

Manufacturing cost of Chocolate	2000
Add: Profit @20%	400
<b>Total Cost</b>	<u>2400</u>
 Add : Excise duty @10%	 240
<b>Cost after Tax</b>	<u>2640</u>
 Add: Vat @10%	 264
<b>Cost to Customer</b>	<u>2904</u>

## GST system

Manufacturing cost of Chocolate	2000
Add: profit @20%	400
<b>Total Cost</b>	<u>2400</u>
 Add : Excise duty @10%	 NA 0
<b>Cost after Tax</b>	<u>2400</u>
 Add: Vat @10%	 NA 0
	<u>2400</u>
 Add : GST 20%	 480
<b>Cost to Customer</b>	<u>2880</u>

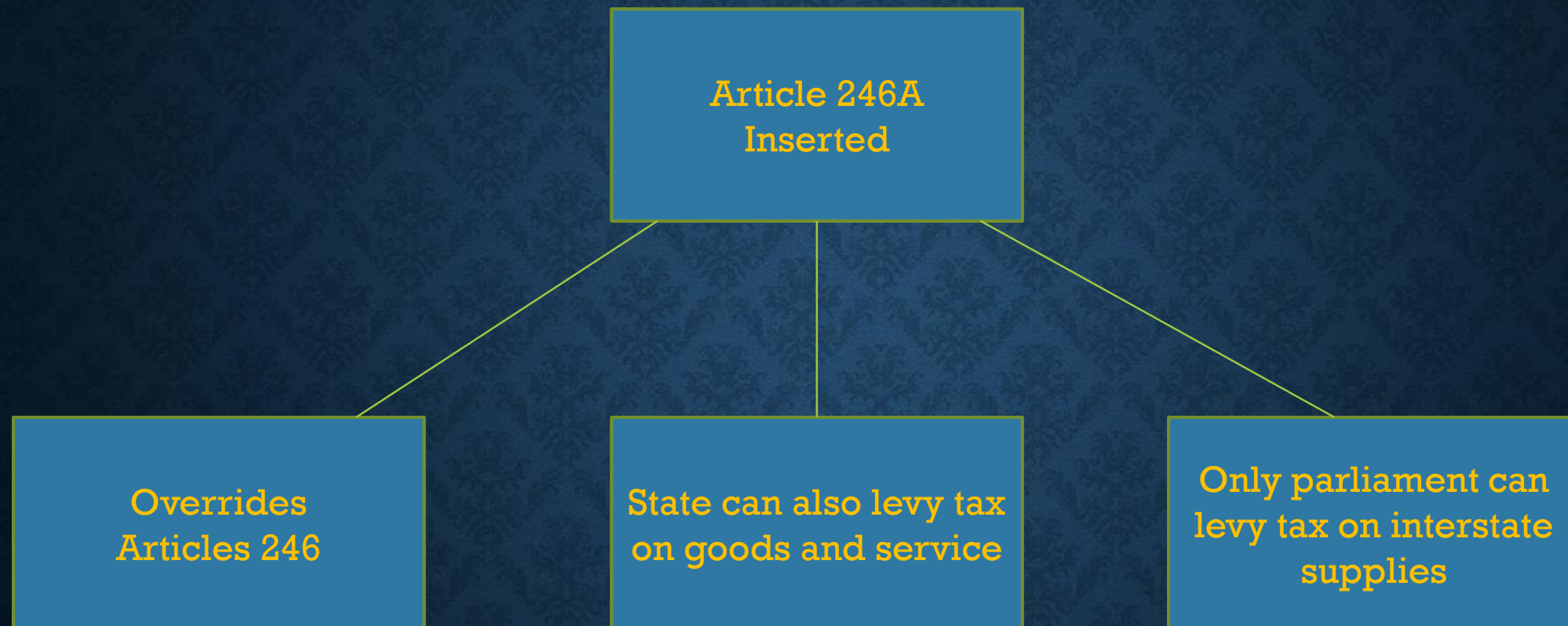
## Article 246A – Power & field of legislation: Departure from the norm of specifying fields in Sch. VII

- Article 246A defines the source of power as well as the field of legislation (with respect to goods and services tax) obviating the need to refer to the Seventh Schedule
- The provisions of Article 246A are available both to Parliament and the State legislatures. Parliament has exclusive power to enact GST legislation where the supply of goods or services takes place in the course of inter-State trade or commerce;
- Article 246A embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence. If GST laws were put in List III of the Seventh Schedule, it would have been subject to the doctrine of repugnancy under Article 254 – giving Parliament the supreme power (which was not desired).



# UOI v. VKC Footsteps India (P) Ltd., 2021 SCC OnLine SC 706

*"27.....The One Hundred and First Amendment to the Constitution is a watershed moment in the evolution of cooperative federalism. Since its origin, the Constitution contained a three-fold distribution of legislative power. Under Article 246, the subjects of legislation enumerated in the Union List of the Seventh Schedule were assigned to Parliament, those in the State List were assigned exclusively to the States and those in the Concurrent List were assigned both to Parliament and the States with precedence to Parliament under the provisions of Article 254."*





## Article 269A Inserted

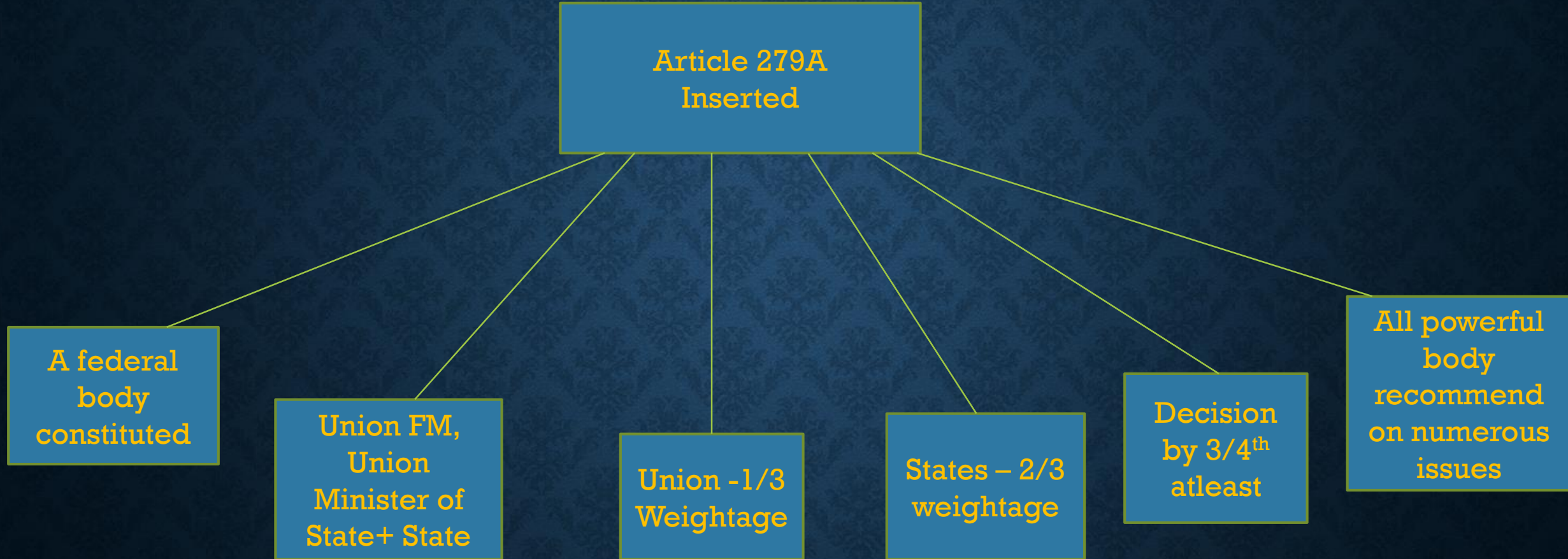
Parliament alone  
shall levy IGST on  
inter-State supply

Import/export is a  
deemed inter-State  
supply

IGST distributed  
between Centre  
and State/UT

Parliament to  
determine place  
and time of supply

However, it shall be  
apportioned between Union  
& States by a law made by  
Parliament on  
recommendation of GST  
Council





# Article 279A – Constitution of GST Council

- The GST Council is to consist of the Union Finance Minister, the Union Minister of State in charge of Revenue of Finance; and the Minister In-charge of Finance or Taxation or any other Minister nominated by each State Government.
- GST Council has been vested with the powers to make recommendations to the Union and the States in relation to matters pertaining to GST. This is crucial for harmonized structure of GST.
- GST Council is a step towards legislative co-operation as States and Centre have to collectively make recommendations on the single levy for goods and services.



# GST Council to be guided by the need for a harmonised structure

- Clause (6) of Article 279A reads as under:

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

In this context, in VKC Footsteps India (P) Ltd., it was observed as under:

*"39. Article 279A(6) indicates that in the discharge of its functions, the GST Council is to be guided by the need for a harmonised structure of goods and services tax and the development of a harmonised national market for goods and services. This emphasis on harmony is crucial to co-operative federalism. It underscores that in a federal arrangement where the States and Union are converging together for the first time to adopt the same event for taxation, both sets of partners must be guided by the over-arching need to preserve harmony. Harmony postulates balance, an acceptance of mutual co-existence."*



# Decisions of the GST Council

- All decisions of the GST Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting. To strike a balance:-
  - ✓ the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
  - ✓ the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting
- The voting pattern has been worked out on a formula where no one is at a disadvantageous or dominating position, be it Centre or States. In order to take decision on any issue 75% votes are necessary.

# GST Council - Functions

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- GST Council to make recommendations on:
  - ✓ Taxes to be subsumed
  - ✓ Goods and services subjected to GST
  - ✓ Model GST laws, principles of levy, apportionment of IGST, place of supply
  - ✓ Threshold limits of turnover for exemption from GST
  - ✓ Rates including floor rates and bands of goods and services
  - ✓ Any special rates for a specified period, to raise additional resources during any natural calamity or disaster
  - ✓ Special provision for north-eastern States
  - ✓ Any other matter relating to GST as the Council may decide
- 46 GST Council Meetings have taken place so far. Centre and State have come together in forming a uniform GST law



# Apportionment of taxes [Article 269]

- SGST – States will collect and retain
  - No need for separate provision in Constitution
- IGST - Apportioned between Centre and States
  - As per law made by the Parliament on recommendations of the GST Council. The same is under Section 17 of the IGST Act [Article 269A(1)].
  - The amount apportioned to a State shall not form part of the Consolidated Fund of India.

# Distribution of Revenue [Article 270]

- All taxes and duties levied by the Union with reference to the Union List, along with any surcharge on taxes or duties under Article 271 or cess imposed by the Union for specific purposes, shall be levied and collected by the Government of India and shall be distributed between the Union and the States
  - As per recommendation of Finance Commission (Article 270 (1))
- CGST collected by Union will be distributed to the Center and States
  - As per recommendation of Finance Commission (Article 270 (1A))
- CGST paid by utilising credit of IGST
  - As per recommendation of Finance Commission (Article 270 (1B))



## GST – EMERGING CONSTITUTIONAL ISSUES



# Challenges to provisions of GST under Article 226

- Sections 109(3) & 109(9) dealing with constitution of GST Appellate Tribunal, the manner and appointment of judicial members [Madras Bar Association]
- Arrest provisions under Section 69
- Anti-profiteering provisions under Section 171 & rules framed thereunder
- Retrospective amendment in Section 140 defining 'eligible duties and taxes'



# Challenges to provisions of GST under Article 226

- Section 16(2)(c) denying credit to the recipient in case tax is not deposited by the supplier
- Rule 90(3) which treats rectified refund application as fresh refund application
- Section 13(8)(b) & 8(2) of the IGST Act which deems that the place of supply in cases of intermediary services will be the location of intermediary
- Differential tax treatment for services provided through e-commerce operator and through offline mode