Legality of GST Cess

What is the issue?

\n\n

\n
- The legal permissibility of levying a cess over and above GST has been a source of constant debate, for some time now.
\n
- In this context, it is imperative to assess the implications of the recent Supreme Court judgement in this regard.
\n

\n\n

What are the recent developments in this regard?

\n\n

\n
- At present, no other cess is imposed over GST.
\n
- But a Group of Ministers has recently been constituted to examine the feasibility and legality of levying such a cess.
\n
- It is intended to compensate Kerala for the loss caused due to the recent floods.
\n
- The Supreme Court has also upheld the constitutional validity of GST Compensation Cess.
\n
- It observed that the Centre has the power to levy such a cess.
\n

\n\n

What is SC's rationale?

\n\n

\n
- While declaring the levy of compensation cess to be legally permissible, the SC relied on multiple provisions.

\n
- Reference was made to Article 270 of the Constitution that deals with distribution of taxes between the Centre and states.
\n
- The SC also held that the Centre’s power to tax goods and services under Article 246A of the Constitution is a specific power that has a wide import.
\n
- From a combined reading of these two provisions, the Court concluded that the Centre is empowered to levy a cess on supply of goods and services.
\n
- Besides, Constitution (Hundred and First Amendment) Act, 2016 requires the Centre to compensate states on account of loss due to GST introduction.
\n
- This provision was also considered by the Supreme Court.
\n
- The court clarified that the amendment was enacted to subsume various cesses.
\n
- However, there was no bar imposed on the fresh levy of cesses over and above the GST.
\n

\n\n

What are the concerns?

\n\n

\n
- The reasoning adopted by the court and interpretation of various Constitutional provisions raise many concerns.
\n
- **Purpose** - The observations of the Court were with respect to the compensation cess.
\n
- But the reasoning could lead to the conclusion that any cess can now be levied on goods and services supply by exercising powers under Art 246A read with Art 270.
\n
- Such an interpretation of the judgment is likely to give scope for numerous similar levies in the future.
\n
- This may undermine the coherence and uniformity aimed through GST.
\n
- **Limitations** - The Court has not stated that the power to levy cess is restricted to only specific circumstances.

\n
- There is also no similar restriction in the text of Article 246A.
\n
- Thus, it seems like the Centre and states have complete freedom to levy cess over and above GST.
\n
- They may not even need prior approval of the GST Council.
\n
- **Implication** - This could likely contradict with the spirit of the GST framework based on a ‘one nation one tax’ policy.
\n
- It may revert the economy back to the regime where multiple levies and consequent cascading were prevalent.
\n
- Given these, the debate surrounding the legality of cess over GST is far from over and needs a reassessment.
\n

\n\n

\n\n

Source: Financial Express

\n

