

Legality of GST Cess

What is the issue?

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- The legal permissibility of levying a cess over and above GST has been a source of constant debate, for some time now.

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- In this context, it is imperative to assess the implications of the recent Supreme Court judgement in this regard.

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What are the recent developments in this regard?

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- At present, no other cess is imposed over GST.

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- But a Group of Ministers has recently been constituted to examine the feasibility and legality of levying such a cess.

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- It is intended to compensate Kerala for the loss caused due to the recent floods.

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- The Supreme Court has also upheld the constitutional validity of GST Compensation Cess.

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- It observed that the Centre has the power to levy such a cess.

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What is SC's rationale?

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

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- Reference was made to Article 270 of the Constitution that deals with distribution of taxes between the Centre and states.
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- 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.
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- 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.
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- Besides, Constitution (Hundred and First Amendment) Act, 2016 requires the Centre to compensate states on account of loss due to GST introduction.
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- This provision was also considered by the Supreme Court.
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- The court clarified that the amendment was enacted to subsume various cesses.
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- However, there was no bar imposed on the fresh levy of cesses over and above the GST.
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What are the concerns?

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- The reasoning adopted by the court and interpretation of various Constitutional provisions raise many concerns.
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- **Purpose** - The observations of the Court were with respect to the compensation cess.
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- 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.
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- Such an interpretation of the judgment is likely to give scope for numerous similar levies in the future.
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- This may undermine the coherence and uniformity aimed through GST.
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- **Limitations** - The Court has not stated that the power to levy cess is restricted to only specific circumstances.

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

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