

**In the Matter of**  
**In Re: Special Reference regarding the 66<sup>th</sup> Constitutional Amendment Act, 2017**  
**(Special Reference No. 1 of 2017)**

1. The Republic of Westeros consists of seven States, which are:
  - a. The North;
  - b. The Mountain and the Vale;
  - c. The Isles and the Rivers;
  - d. The Rock;
  - e. The Stormlands;
  - f. The Reach; and
  - g. Dorne
  
2. The Republic of Westeros was one of the several colonies which the British Empire had ruled over. As a colonial State, the British Government ruled over Westeros as a unitary state and limited British-style parliamentary system. After Westeros had gained independence in the year 1947, a Constituent Assembly was formed for the purpose of drafting the Constitution. The Constitution of Westeros was finally completed in the year 1950 after several rounds of debates and discussions over provisions and structure with which the Constitution.
  
3. Dr. Hank Pym, who is considered as the father of the Constitution, while speaking in the Constituent Assembly explained the true character of the Constitution of Westeros in the following significant words:

*“There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralisation and that the States have been reduced to municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States have been provided a clear demarcation of their legislative powers under the Constitution. It is difficult to see how such a Constitution can be called centralism. It is true that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It is also true that the residuary powers are given to the Centre and not to the States. These features capture the very essence of our Constitution’s federal structure. The chief mark of federalism as I said lies in the*

*partition of the legislative and executive authority between the Centre and the units by the Constitution. This is the principle embodied in our Constitution.”*

4. To the same effect a statement was made by Dr. Reed Richards, a member of the Constituent Assembly, during the Constituent Assembly Debates on the draft Constitution, when he said:

*“Sir, I would like to go into a few fundamental objections because as I said it would not be right for us to leave these criticisms uncontroverted. Let me take up a matter which is perhaps partly theoretical but one which has validity so far as the average man in this country is concerned. Are we framing a unitary Constitution or is this Constitution centralising power in Kingsland? Are the States to be given absolute autonomy in their legislative powers? Can the Constitution ever permit an override of the division of powers between the Centre and the States? I think it is a very big charge to make that this Constitution is purely a federal Constitution, and that it is not a unitary one. We should not forget that this question that the Constitution should be federal one with a strong Centre has been settled by our Leader who is no more with us, in the Round Table Conference in London eighteen years back.”*

*“I would ask my honourable friend to apply a very simple test so far as this Constitution is concerned to find out whether it is federal or not. The simple definition I have got from the German school of political philosophy is that the first criterion is that the State must exercise compulsive power in the enforcement of a given political order, the second is that these powers must be regularly exercised over all the inhabitants of a given territory, and the third is the most important and that is that the activity of the State must not be completely circumscribed by orders handed down for execution by the superior unit. The important words are ‘must not be completely circumscribed’, which envisages some powers of the State are bound to be circumscribed by the exercise of federal authority. Having all these factors in view, I will urge that our Constitution is a federal Constitution only to the extent the States have been granted powers under Schedule VII of the Constitution. I will urge that our Constitution is one in which we have given power to the units which are both substantial and significant in the legislative sphere and in the executive sphere. However, the Constitution will never mandate a situation whereby the basic tenets such as repugnancy between Centre and State subjects or overlap in law shall be permissible. The structure of the Constitution has not been canvassed to provide the States with such sweeping powers that they administrate themselves as one isolated unit. It has always been the objective of this Constitution that the Centre be allowed to harmonize the nation as one socio-economic unit. If ours was a truly federal structure then there could be devastating effects, such as a grant of right to self-determination to each State becoming protectionist in nature and hampering its neighbours. Provincialism is a concept which must be discarded. That is why this Constitution has been made with a strong Centre.”*

5. Accordingly, in the years to follow the Centre and the States enacted laws within the spheres enshrined in the Constitution. The power to tax was also clearly demarcated,

without there being any overlap in terms of the taxable event. The Centre and State historically have never shared a field wherein both have a concurrent power to levy and collect a tax.

6. The current indirect tax regime in Westeros is considered as highly convoluted and extremely cumbersome for people to conduct their business in the country. This is mainly because there are multiple statutes by State Municipalities, the States and the Union. For each of these statutes there exists a separate administrative setup, leading to lack of uniformity in terms of the procedures that have to be followed by the various businesses looking to enter the market in Westeros. In addition, the cost of compliance also increases due to multiple tax authorities to which the business entities are answerable to.
7. In order to combat the multiplicity of problems that had been created by the prevalent indirect tax regime, the Prime Minister of the newly elected government of Westeros, Mr. Vader, along with his trusted Finance Minister, Mr. Skywalker, decided to introduce the Goods and Services Tax (GST). The GST would effectively consolidate all the current indirect taxes being paid and the current administrative setup would be updated with digital infrastructure effectively lowering the compliance cost.
8. Prime Minister Vader, after engaging in a long drawn debate with the elected representatives of each State, finally succeeded in passing the 66<sup>th</sup> Constitutional Amendment Act of 2017 in the Parliament which introduced the GST. An Imperial Council has been set up under the scheme of the Constitutional Amendment which shall assist the States in resolving any grievances they have regarding the rate of tax, etc. and has certain legislative powers. However, any statute finalized by the Imperial Council has to be tabled before the Parliament and can only then be passed. In addition, the Imperial Council's function is merely recommendatory in nature, and does not bind the Centre or the States.
9. On the 18<sup>th</sup> of February, 2017 the Imperial Council finalized the Central GST (CGST), the Integrated GST (IGST) and the Union Territory GST (UTGST) Act and was tabled before the Parliament in March. The CGST, IGST and UTGST was finally approved of and passed with a roaring majority on the 1<sup>st</sup> of April, 2017. Thereafter, on the 15<sup>th</sup> of April, 2017 the aforesaid Acts received assent from the President of Westeros. In the meanwhile, during the month of April, several States began preparing a draft of their State GST (SGST) Acts.
10. As a matter of coincidence it happens to be that all the laws of India (except SGST Acts/Rules) and Westeros are *pari materia* and the 66<sup>th</sup> Constitutional Amendment Act is the same as the 101<sup>st</sup> Constitutional Amendment Act of India. The GST laws which been given effect to in Westeros are the current Model GST and IGST laws of India along with their respective Rules.

11. During the introduction of GST in Westeros the Central Government had faced severe criticism and opposition from multiple States. A major concern for the States was loss of revenue and lack of autonomy in the States' taxing power. Therefore, prior to the enactment of the Model GST laws by the Imperial Council, the Parliament had introduced the 66<sup>th</sup> Constitutional Amendment which casts away any doubts which the States had in relation to impinging on their autonomy to levy/collect tax.

12. Article 246A of the Constitution as it stands today is reproduced hereunder:

*“246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.*

*(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.*

*Explanation. – The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”*

13. Goods and Services Tax has been defined under the Constitution as follows:

*“366(12A) 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;”*

14. The North, a State which has been opposing the GST since the very beginning, has recently released its SGST Act, and defined “supply” under Section 7 of The North SGST Act, 2017 (TN-SGST) as follows –

*“Section 7: Supply means any income earned on goods or services or both shall be deemed to be supply.”*

15. By doing so, the North has effectively imposed an income-tax in the garb of GST under its SGST Act. Mr. Tony Stark and Mr. Bruce Wayne who are influential industrialists in Westeros have taken objection to the legislative action of the state of The North. They have made several representations to the Prime Minister's Office and also initiated various protest movements against the law as they considered it to promote double taxation.

16. Mr. Stark and Mr. Wayne had approached the High Court of the North challenging the *vires* of the TN-SGST Act, as it violated the fundamental principle laid down by the Supreme Court of Westeros, stating that what could not be done directly cannot be done indirectly. However, the High Court of the North upheld the validity of the TN-SGST

Act, since the state of the North had the legislative competence to levy a tax on 'supply'. It was opined that in the absence of any constitutional definition of the term 'supply', the meaning ascribed to it would depend on the definition provided under the SGST Act. Therefore, the state was well within its jurisdiction to levy/impose such a tax.

17. President Francis Underwood taking a note of the aforesaid litigation, and seeing as how other states might also take advantage of Article 246A to further their own interests (*i.e.* maximizing revenue generation), on the advice of Mr. Vader has sought for a presidential reference under Article 143. Mr. Stark and Mr. Wayne have put in applications before the Registrar of the Supreme Court seeking permission to be heard as a concerned party in the open court while the presidential reference is being heard. The Registrar after consulting the Attorney General, Gold D. Roger, impleaded Mr. Stark and Mr. Wayne as parties to be heard in the presidential reference. The following are the questions which are referred to the Supreme Court and to be addressed by the Supreme Court in open court:

- a. Whether the scope of 'supply' under Article 246A is restricted by the definitions provided in the TN-SGST and other State GST Legislations.
- b. Whether the current fiscal regime under the Constitution of Westeros permit double taxation by the various GST legislations and thus violative of Article 19(1)(g).
- c. Whether the 66<sup>th</sup> Constitutional amendment violates of the principle of federalism embodied under the doctrine of Basic Structure.

Note:

- The Constitution of Westeros is *pari materia* with the Constitution of India.
- Jurisdiction or the maintainability of the suit cannot be raised by the participants.
- All names, places and incident mentioned in the problem are fictional. Any resemblance to real life is co-incidental.