

Draft Minutes of the 9th GST Council Meeting held on 16 January 2017

The ninth meeting of the GST Council (hereinafter referred to as 'the Council') was held on 16 January 2017 in Vigyan Bhavan, New Delhi under the Chairpersonship of the Hon'ble Union Finance Minister, Shri Arun Jaitley. The list of the Hon'ble Members of the Council who attended the meeting is at **Annexure 1**. The list of officers of the Centre, the States, the GST Council and the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure 2**. The officials from the Ministries of Power and Renewable Energy of the Government of India and the trade representatives who made presentations before the Council is at **Annexure 3**.

2. The following agenda items were listed for discussion in the ninth meeting of the Council –

1. Brief presentation by representatives of Power Sector
2. Confirmation of the Minutes of the 8th GST Council Meeting held on 3-4 January 2017
3. Provision of Cross-Empowerment to ensure Single Interface under GST
4. Discussion on issues of considering sale within twelve nautical miles as inter-state or intra-state sale
5. Date of the next meeting of the GST Council
6. Any other agenda item with the permission of the Chairperson

3. In his opening remarks, the Hon'ble Chairperson welcomed all the Members. He recalled that during the last meeting of the Council, the Hon'ble Minister from Bihar had suggested that Council should also hear the representatives of the Power Sector as electricity was very important to the common people. He stated that, accordingly, the representatives from the Power Sector had been invited to make a presentation before the Council.

Discussion on Agenda Items

Agenda Item 1: Brief presentations by representatives of Power Sector –

4. The Hon'ble Chairperson invited the representatives of the Power Sector to make a brief presentation on the impact of GST on Power Sector.

4.1 Shri Pradeep Kumar Pujari, Secretary, Ministry of Power, in his introductory remarks, stated that implementation of GST would have an impact on the cost of generation, transmission and distribution

of power. He observed that impact on thermal and hydel power plants would be different because coal was a major input for thermal power plants. He stated that any change in the tariff of power would have a big impact on the economy. He further stated that power tariff was approved by the regulator. He explained that there were broadly two regimes for determining power tariff, namely the cost-plus regime and the competitive bid regime. He explained that in the cost-plus regime, the cost of inputs was passed on to the consumers and in the competitive bid regime, the bidder took into account the cost of the inputs while making the bid for power tariff. He also explained that there was a very large element of cross subsidisation in the power sector where industrial and commercial consumers subsidised the power cost of domestic and agricultural consumers. He stated that due to this element of cross subsidisation, the effective impact on industrial and commercial sector would be much higher as about 50% of electricity consumption was by agriculture and domestic consumers. He stated that annually 1,100 billion units of power was generated and if due to the tax structure in GST, the rate of power per unit increased by 10 paisa, this would lead to a total additional burden of Rs. 11,000 crore on consumers and the proportionate burden to the consumers in the industrial and commercial sectors would be much higher due to cross subsidisation in the sector. He stated that keeping this in view, in the presentation, different scenarios for structuring the GST rates for power sector were being proposed.

4.2 Dr. Somit Dasgupta, Member (Economic & Commercial), Central Electricity Authority, Ministry of Power made a presentation giving different input tax rate scenarios under GST for the power sector and its impact on the price of power per unit for both coal-based and hydro power plants. For coal-based power plants, he stated that if electricity was kept out of the GST net, but inputs for generating electricity were taxed at the rate of 18%, the net impact could be an increase in price per unit from Rs. 6.99 to Rs. 7.10. He suggested alternative options for plants in operation and for new plants. He explained that if electricity was kept under GST in the zero rated category, the cost per unit would be reduced to Rs. 6.53 from the present Rs. 6.99. He stated that if this scenario was not possible due to revenue implication and if electricity was kept out of the GST net, the cost per unit of power for plants in operation would be Rs. 7.01 if coal was taxed at the rate of 12% and other inputs were taxed at the rate of 18%. He added that this cost could come down to Rs. 6.93 if coal was taxed at the rate of 5% while other inputs continued to be taxed at the rate of 18%. He further stated that for the new plants, the cost per unit of power for the above two scenarios would be Rs. 7.04 and Rs. 6.97 respectively. He stated that this calculation excluded the electricity duty levied by the States. The Secretary,

Ministry of Power stated that if electricity could not be zero rated under GST, the best option was to tax coal at the rate of 5% and other inputs at the rate of 18%.

4.3 Dr. Somit Dasgupta then discussed the impact of GST taxation on hydro power plants. He stated that in the present tax regime, the cost of power per unit from hydro power plants was Rs. 7.42 and in GST regime, it would go up to Rs. 7.46 per unit for plants under operation and Rs. 7.61 for new plants, if inputs were taxed at the rate of 18%. The Secretary, Ministry of Power explained that as coal was not an input for hydro power plants, the cost of power per unit would be higher if the same GST rate was kept for inputs for coal based and hydro power plants. He suggested that the hydro power plants should be treated as part of the renewable energy sector where presently duty regime was considerably lower as compared to coal and hydel power plants. He stated that around 11,000 megawatt hydro power capacity was expected to be added in the next five years and most of the projects were situated in the North-East or in the Special Category States. He suggested that supplies made to under-construction power projects should be granted the status of deemed export as was being contemplated for solar power projects. He observed that this would involve a relatively small tax short fall of Rs. 880 crore spread over a period of five years. He pointed out that any tariff increase on power due to GST would have a multiplier effect on economic development and would adversely impact industrial production, GDP growth, make in India campaign and export competitiveness of Indian products and services.

4.4 Shri Rajeev Kapoor, Secretary, Ministry of New & Renewable Energy stated that if inputs were taxed at the rate of 18% for the renewable energy sector, there would be an increase in the cost of power per unit by 30-40 paisa for wind-based power plants and 40-50 paisa for solar-based power plants. He suggested that supplies to renewable energy sector should either be treated as zero rated or as deemed export.

4.5 The Hon'ble Minister from Kerala observed that if demand to zero rate power sector was considered, then other sectors like transport, mining, aviation, etc. could also claim exemption on merit. He pointed out that the principle of GST was to reduce exemptions. He also expressed that any request for exemption would have an impact on the revenue neutral rate. The Secretary, Ministry of Power stated that they did not seek exemption and that they had shown their projections keeping in mind the rate of tax on coal at 5% and on other inputs at 18%. He pointed out that they had also given alternate proposals. The Hon'ble Chairperson enquired whether it would be desirable to maintain the present rate of taxation for the power sector and to this the Secretary, Ministry of Power responded

that this could work for the thermal power sector but not for the hydro power sector. He also pointed out that electricity sector was different from the sectors like transport, civil aviation, etc. as this was consumed by the poorer sections of the society and the aim of the Government has been to electrify every home. The Secretary, Renewable Energy observed that permitting zero rating for this sector would not have any impact as presently they were not charged to any taxes. The Hon'ble Minister from Tamil Nadu observed that tax rate should be revenue neutral. He also wondered whether increase of tariff was due to tax rate on services going up to 18% for EPC (Engineering Procurement and Construction) contracts. He also observed that this could be addressed if tax could be charged at a lower level for goods to maintain a revenue neutral situation.

4.6 The Hon'ble Chairperson thanked the presenters and observed that their inputs would be taken into account by the committee of officers discussing fitment of goods and services in the different tax rate slabs.

Agenda Item 2: Confirmation of the Minutes of the 8th GST Council Meeting held on 3-4 January, 2017:

5. The Hon'ble Chairperson invited comments of the Members on the draft Minutes of the 8th Council Meeting (hereinafter called the 'Minutes') held on 3 and 4 January 2017 before its confirmation. The Members suggested the following amendments to the draft Minutes.

5.1. The Hon'ble Minister from Kerala stated that his version recorded in the second sentence of paragraph 19.2 of the Minutes, should be changed and the phrase 'to raise the taxable threshold' should be replaced by the phrase 'to encourage voluntary registration'. The Council agreed to replace the version of the Hon'ble Minister as per the suggestion made.

5.2. The Hon'ble Minister from Karnataka stated that the decision recorded in paragraph 24(ii) in relation to Section 10 (2) of the Draft GST Compensation Law implied that the Council would sit and decide the mode of raising additional resources only when amount in the GST Compensation Fund fell short. He observed that this would not be a practical approach and suggested that, instead, the Council could give a standing authorisation to the Government of India to raise additional resources when the amount in the GST Compensation Fund fell short. The Secretary to the Council (hereinafter referred to as 'the Secretary') suggested to also add the expression 'is likely to fall short' in the fourth line. The Council agreed to the suggestion of the Secretary.

6. In view of the above discussions, for Agenda item 2, the Council decided to adopt the Minutes of the 8th meeting of the Council with the changes as recorded below.

6.1 To amend the version of the Hon'ble Minister from Kerala recorded in the second sentence of paragraph 19.2 of the Minutes, by replacing the phrase 'to raise the taxable threshold' by the phrase 'to encourage voluntary registration.'

6.2 To replace the expression 'fell short' with the expression 'is likely to fall short or fell short' in the fourth line of paragraph 24(ii) of the Minutes pertaining to Section 10(2) of the Draft GST Compensation Law.

Agenda Item 3: Provision of Cross-Empowerment to ensure Single Interface under GST:

7. The Hon'ble Minister from West Bengal stated that he had written a letter dated 13 January 2017, to the Hon'ble Chairperson pointing out that many issues, which were discussed in the previous meetings of the Council, still remained and that some of these issues had direct bearing on the issue of dual control and cross-empowerment. He proposed that these issues should be discussed first such as the 13 changes to the Model GST Law proposed by the Law Committee and circulated as an agenda note under agenda item 7 for the 8th GST Council meeting held on 3 and 4 January 2017, the provisions of Appellate Tribunal and the fitment of various commodities into the tax slabs. He suggested that the subject of cross-empowerment might be taken up after discussing and deciding the above issues. The Hon'ble Chairperson stated that the issues relating to the Model GST Law could be taken up later and that in this meeting, the Council should try to resolve the thorny issue of cross-empowerment. He invited the Chairman, Central Board of Excise and Customs (CBEC) to give his views on this subject. He further stated that along with the Members, officers could also contribute in the discussion to follow.

8. The Chairman, CBEC observed that cross-empowerment in the context of Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) was envisaged to facilitate trade and to ensure maximum utilisation of resources and skills of the tax administration of the Centre and the States. He observed that the States also wanted cross-empowerment under Integrated Goods and Services Tax (IGST) Act. He stated that there was already an agreement that for enforcement action, both the Central and the State administrations shall have jurisdiction over the entire taxpayer base. He further stated that there could also be cross-empowerment for granting tax refund subject to agreement by the accounting authorities. He stated that neither the Central nor the State tax administration should

be completely ousted from any part of the value chain in order to ensure proper checks and balances. He further added that both the administrations should be empowered across the value chain and that there should be no division of taxpayers on the basis of turn over threshold of Rs. 1.5 crore. He stated that most activities relating to taxpayers with turnover below Rs. 1.5 crore could be entrusted to the States and that the Centre could only have a small presence in this taxpayer segment. He stated that for taxpayers with turnover above Rs. 1.5 crore, Centre could carry out a greater percentage of scrutiny. He suggested that the taxpayers could be given a choice to go to either of the two administrations and that a taxpayer could choose to go to the State administration for activities relating to registration, post registration, etc. On IGST, he emphasised that there was a Constitutional challenge to entrust its administration to the State tax authorities, but in order to help build a consensus, he presented two options by which the Central government could cross-empower the State tax authorities under the IGST Act. He stated that the first option could be to empower State tax administrations for all processes like scrutiny, demand, audit, etc. but they should refer the case to the Central tax administration wherever a need for adjudication arose so that the levy and collection of IGST remained with the Centre as envisaged under Article 269A of the Constitution. He further stated that the second option could be that the States could also carry out adjudication for demands arising under the IGST Act subject to a carve out that disputes relating to place of supply issues shall only be handled by the Central tax administration. The Hon'ble Chairperson invited comments from the Members on the proposal of the Chairman CBEC.

9. The Hon'ble Minister from Kerala stated that the proposal changed the entire complexion of the issue and he requested that a written proposal be presented. The Hon'ble Minister from Tamil Nadu also requested for a written proposal. He stated that the Central tax administration could conduct audit of 20% of the taxpayers below the turnover of Rs. 1.5 crore, and 50% of taxpayers above the turnover of Rs. 1.5 crore. As regards suggestion for carve out for exclusive jurisdiction of the Centre for adjudication on place of supply issues, he suggested that this should apply only where there was a dispute between two States. The Chairman CBEC suggested that carve out for the Central tax administration should be for all place of supply issues including where a third State was aggrieved or where there was a valuation challenge for an inter-State supply.

10. The Hon'ble Chief Minister of Puducherry stated that earlier, several permutations and combinations had been discussed on this issue including a proposal of vertical division. He added that an entirely new concept had been introduced by the Chairman, CBEC and requested that it should be tabled in writing. The Hon'ble Minister from Karnataka observed that the proposal appeared

rational and worthy of consideration but requested more details in terms of numbers. He also added that the Chairman, CBEC had introduced a few caveats which needed to be deliberated upon in greater detail.

11. The Secretary amplified the proposal made by the Chairman, CBEC. He stated that the proposed division was not of the taxpayer base but only for the purpose of audit. He observed that 5% of the total taxpayer base could be taken up for audit and a ratio of interventions for the Central and State tax administration within the overall 5% cap would need to be decided. He stated that out of the number of taxpayers that fell in the Central Government's responsibility, they would take a smaller number of taxpayers below the turnover of Rs. 1.5 crore for audit. He stated that the State Government would be at liberty to decide the ratio of taxpayers to be taken for audit in the segments below and above Rs. 1.5 crore turnover. He suggested that for taxpayers below the turnover of Rs. 1.5 crore, Centre could undertake not to audit more than 10% of the taxpayers and for the segment above the turnover of Rs. 1.5 crore, the officers of the State and the Central tax administration could sit together and decide the percentage of audit to be done by each. He stated, as an example, that more complicated service tax assessee could be taken up for audit by the Central tax administration. He stated that other than audit, servicing of taxpayers in other areas like change in registration particulars, etc. could be done by the State tax administration if the taxpayer was comfortable with them and this could also include taxpayers from the services sector. He stated that on cross-empowerment under the IGST Act, out of the two options proposed by the Chairman, CBEC, the better option would be that the States could do adjudication relating to issues arising out of inter-State supply except for place of supply issues as such disputes would affect the interest of two States.

12. The Hon'ble Deputy Chief Minister of Gujarat suggested to first arrive at the ratio for division and the rest could follow. He stated that as the theme of GST was 'one tax-one nation', the theme of GST administration should be 'one businessman-one registration-one tax administration'. He also requested to give examples regarding problems relating to place of supply which only the Central tax administration should adjudicate. The Hon'ble Minister from West Bengal stated that earlier, five options were on the table and that during the Empowered Committee meetings, there was unanimity on Option II. He observed that now a new, sixth option was proposed which was not very clear and required greater specificity. He suggested that the proposal be put in writing. He also stated that the amount of revenue and the total number of taxpayers would need to be looked into. The Hon'ble Minister from Tamil Nadu stated that the sixth option was also discussed earlier but its one component, namely, that 5% auditable sample should be divided equally between the Central and the

State tax administration was rejected outright as the percentage of intervention above Rs. 1.5 crore would have exceeded 5%. Instead, he suggested that the auditable sample should be 5% each for taxpayers below and above Rs. 1.5 crore turnover. He also agreed that neither the Central Government nor the State Government should be ousted from any jurisdiction. He stated that 42 lakh taxpayers with turnover above Rs. 1.5 crore should be divided in the proportion of the staff strength of each administration. He also supported the proposal of the Chairman, CBEC that the other functions in relation to taxpayers below the turnover of Rs. 1.5 crore should be handled by the State tax administration. The Hon'ble Minister from Assam welcomed the proposal of the Chairman, CBEC to empower the State tax authorities under the IGST Act. The Hon'ble Minister from Telangana also observed that the suggestion of the Chairman, CBEC was a good one and it could be a basis to resolve this issue. Ms. Mona Khandhar, Secretary (Economic Affairs), Gujarat suggested to divide the taxpayers vertically.

13. During the lunch break, the Secretary discussed the issue of cross-empowerment with the officials of the State and the Central tax administration. He explained that the proposal of the CBEC was not to divide the taxpayers vertically but to only assign them for audit purpose within an overall cap of 5%. The Principal Secretary (Finance), Odisha stated that it was important to fix responsibility for individual taxpayer to one of the two tax administrations. He stated that several processes would arise in GST like cancellation of registration for truant dealers and that one tax administration should have the responsibility to take all necessary legal steps in this regard. The CCT, Andhra Pradesh also supported a vertical division and stated that one tax administration would need to be responsible for issuing show cause notice etc. for one taxpayer. He expressed an apprehension that if dealers were not assigned to one administration, each would blame the other for lack of action. The Additional Chief Secretary (Taxes), Kerala stated that if freedom was left to the taxpayer to choose one of the two administrations, he might choose the one who would favour him. The CCT, Assam also expressed the apprehension that a taxpayer might not choose any tax administration or choose one who could collude with him. The ACS and CCT, Tamil Nadu stated that a large number of functions needed to be carried out in the field and the taxpayers needed handholding by the tax administration. The CCT, Uttar Pradesh supported dividing the taxpayer base. The CCT, Gujarat observed that for a successful implementation of GST, responsibilities to tax administrations should be assigned clearly and, if this was not done, there would be lack of accountability. He supported a vertical division. The CCT, Bihar supported the suggestion of Chairman, GSTN that a tax payer should report to the same authority to whom he was reporting presently and a tax payer who had an overlap between two tax administrations,

could be given a choice to be assigned to one of the two tax administrations. CCT, Telangana supported a vertical division in a pre-defined ratio so that all tax-payers had one interface. He suggested that division should be done randomly by the computer.

14. After the lunch break, as per the demand made by some Members, the CBEC circulated a document outlining the broad principles for cross-empowerment of the State tax authorities under the IGST Act. In the paper, it was stated that CBEC was of the view that adjudication of the IGST could not be cross-empowered due to Constitutional impediments. It was further stated that if the Ministry of Law was able to find some legally viable method of delegation of adjudication in terms of Council's decision, then States might be empowered for the specified functions. The paper further stated that States might audit, scrutinise return /assessment and carry out enforcement functions. It added that the State's tax administration could issue demand, adjudicate or file appeals in respect of inter-State supplies of goods and services except in the following situation: (i) where issue related to changing the declared nature of supply from intra-State to inter-State or *vice versa* or led to change in the destination of supply from one State to another; (ii) consumption of supply was required to be apportioned between various States; (iii) valuation of inter-State supplies between related parties; (iv) the consuming State advise that the case be adjudicated by the Centre; (v) all import and export related functions.

15. The Secretary summed up the deliberations during the lunch break meeting with the officers and informed the Council that the overwhelming view of the States was to have a division of tax-payers for administrative purposes between the Central and the State tax administrations. He further informed that two options emerged in this regard: the first was that the present Value Added Tax (VAT) dealers could report to the State tax administration and the service tax registrants could report to the Central tax administration and that the tax payers who were registered with both the administrations, could be given a choice as to which administration to report to. He said that the second option was to divide the tax payer base across the entire value chain through a stratified random sampling by computer and also taking into account the geographical location of the tax payers. He observed that this would give certainty to the tax payer as to which tax administration he had to deal with. He added that independent of this arrangement, there should be a separate division regarding the units to be audited and that the units so divided could continue with one tax administration for three years or one year. He also referred to the paper circulated by the CBEC on crossing-empowerment under the IGST Act.

16. The Hon'ble Minister from West Bengal observed that the oral proposal of the Chairman, CBEC had only one caveat but the written paper circulated by the CBEC had five caveats. He expressed that the notion of taking geographically stratified sample was problematic. He further pointed out that CBEC's proposal appeared to be more in the nature of loud thinking as it was contingent upon the Ministry of Law being able to find a viable legal solution. The Hon'ble Chairperson stated that CBEC had taken a strict legal view that IGST could only be levied and collected by the Central tax administration and apportioned to the States. He pointed out that there was another view that under Article 258 of the Constitution, the Hon'ble President of India, with the consent of the Hon'ble Governor of the State, could entrust the function of the Central administration to the State administration. The Hon'ble Minister from Karnataka stated that another alternative was to delegate the entire task of administration to the States as was done under the Central Sales Tax(CST) Act under Article 269 of the Constitution. Dr. C. Chandramouli, ACS and CCT, Tamil Nadu pointed out that the Preamble of the CST Act provided for levy, collection and distribution of taxes for inter-State trade and commerce. He added that Section 9(2) of the CST Act permitted State tax administration to assess, re-assess and collect tax on behalf of the Government of India and emphasised that this delegation was given under the CST Act itself. The Hon'ble Chairperson observed that once the principles for cross-empowerment under the IGST Act were settled, the modalities under the Law could be worked out separately.

17. The Hon'ble Minister from Karnataka stated that CBEC's written proposal on cross-empowerment was more complex than what the Chairman, CBEC had offered in his oral intervention and that he was more comfortable with the latter. He observed that one caveat had turned into five caveats and he had reservations in this regard. The Hon'ble Minister from Tamil Nadu observed that CBEC's written note was at variance with the statement of the Chairman, CBEC. He stated that in his view, IGST could not work without cross-empowerment to the State tax authorities and that it was not a correct way of discussion to state that the legal department would need to find a solution for cross-empowerment. He suggested that in order to avoid dual interface for tax payers, there should be a cut off of Rs. 1.5 crore turnover and audit of a certain percent of tax payer falling below this threshold could be done by the Central tax administration but otherwise, the control of the taxpayers in this segment should rest with the States. He added that taxpayers above the turnover of Rs. 1.5 crore should be divided equally between the Central and the State tax administrations. He stated that the overall percentage of sharing should be 75% for the States and 25% for the Centre and that small taxpayers should remain with the State administration except for a small number to be audited by the

Central tax administration. He also suggested to have a higher percentage of audit, say 20%, for taxpayers with turnover of more than Rs. 1.5 crore. He added that all three taxes, i.e. SGST, CGST and IGST should be treated in the same way. The Hon'ble Chairperson invited response of the Members to the suggestions made by the Hon'ble Minister from Tamil Nadu. The Hon'ble Deputy Chief Minister of Gujarat suggested that there should be no artificial division of tax payers based on Rs. 1.5 crore turnover. He added that most of the taxes came from tax payers above the turnover of Rs. 1.5 crore. He did not support the idea that division of tax payers below Rs. 1.5 crore should be only for audit and that for other business processes, tax payers should be given the choice to approach one of the two tax administrations. The Hon'ble Minister from Kerala stated that tax payers with turnover below Rs. 1.5 crore should be exclusively with the State tax administration and those above the turnover of Rs. 1.5 crore should be divided equally between the two administrations. He further stated that there should be cross-empowerment under the IGST Act. Shri Alok Shukla, Joint Secretary TRU, CBEC stated that like States had concern regarding ensuring correctness of assessment of IGST and wanted powers under the IGST Act, the Central administration must also have a say on the collection of CGST for tax payers with turnover below Rs. 1.5 crore. He added that the Centre's jurisdiction for enforcement, audit and scrutiny of returns should not be completely ousted in respect of taxpayers below Rs.1.5 crore turnover segment but the other functions could be carried out by the States. He also suggested that for tax payers below Rs. 1.5 crore turnover, Centre's intervention could be limited to 1% within the overall cap of 5%. The Hon'ble Minister from Tamil Nadu observed that this construct was not workable as one was talking of two universe of tax payers - one with turnover below Rs. 1.5 crore and the other with turnover above Rs. 1.5 crore.

18. The Hon'ble Chairperson enquired whether the model suggested by the Hon'ble Minister from Tamil Nadu was acceptable. The Hon'ble Minister from Tamil Nadu clarified that his proposal was not the same as the Option IV on the table. He suggested that Centre should have powers to audit a certain percentage of units having turnover below Rs. 1.5 crore and that the powers of enforcement and return scrutiny should lie with both the administrations. The Hon'ble Deputy Chief Minister of Gujarat stated that the entire universe of taxpayers should be divided in the ratio of two-third for the States and one-third for the Centre. He also stated that there should be no ceiling of Rs. 1.5 crore turnover for administrative division. The Hon'ble Minister from Assam supported this proposal. He observed that there could be a potential dispute as to when a taxpayer crossed the turnover threshold of Rs. 1.5 crore or conversely went below this threshold. The Hon'ble Minister from Maharashtra also supported a vertical division in the ratio of two-third for the States and one-third for the Centre

and suggested that computer could do this division. The Hon'ble Minister from Kerala stated that all taxpayers below the turnover of Rs. 1.5 crore should be exclusively under the control of the State tax administrations. Shri Manish Kumar Sinha, Commissioner GST Council suggested that whatever model was adopted, the risk prone taxpayers for audit should be drawn from the entire taxpayer base.

19. The Hon'ble Chairperson, summing up the discussion laid out a few broad guidelines for a possible decision on the subject. He stated that out of the entire universe of the taxpayer base, draw a line of division for taxpayers below and above the turnover of Rs. 1.5 crore. For taxpayers below the turnover of Rs. 1.5 crore, States could do the entire administration. He added that scrutiny and audit could be done as per the agreed percentage drawn from the net taxpayer base below the turnover of Rs. 1.5 crore. He observed that the same principle could be applied in respect of scrutiny and audit of taxpayers with turnover above Rs. 1.5 crore. He also added that the enforcement functions shall remain common for both the tax administrations. The Hon'ble Minister from Tamil Nadu suggested that taxpayers paying IGST should also be included in this taxpayer base.

20. The Hon'ble Minister from West Bengal observed that in the goods segment, as per their calculation, the Centre was overall gaining approximately 23.54 lakh taxpayers and that the States were gaining approximately 17.07 lakh taxpayers in the services segment. He therefore strongly argued that all taxpayers below Rs. 1.5 crore should be with the State tax administration and that the Central administration should not take up audit of 10% of the taxpayers in this segment. The Hon'ble Minister from Kerala stated that the State tax administration was closer to small dealers in the administrative reach and he agreed that the Centre could have a small space for auditing taxpayers falling below the turnover limit of Rs. 1.5 crore and that this sample could be drawn from the entire taxpayer base below Rs. 1.5 crore turnover. The Hon'ble Minister from Maharashtra reiterated his preference for a vertical division with two-third share going to the States from the entire value chain and suggested that a variation of this principle might be allowed for those States who wanted to have exclusive control of taxpayers below Rs. 1.5 crore turnover. He added that the two-third share of such States could be calculated after adjusting the total number of taxpayers below Rs. 1.5 crore turnover in their share. He observed that his proposal would help in expanding the tax base of the States and would obviate the need to expand their tax collection overhead. The Hon'ble Deputy Chief Minister of Gujarat supported this proposal. The Hon'ble Chairperson observed that the pattern of division should be uniform across the country.

21. The Hon'ble Chief Minister of Puducherry stated that he supported the proposal made earlier by the Hon'ble Minister from Tamil Nadu. The Hon'ble Minister from West Bengal stated that his position was only slightly at variance with that of the Hon'ble Minister of Tamil Nadu. He stated that he did not support the proposal that 10% of taxpayers below the turnover of Rs. 1.5 crore should be allowed intervention by the Central tax administration. Shri Somesh Kumar, Principal Secretary (Revenue), Telangana stated that his State supported a vertical division across the taxpayer base and stated that there should be no dual control in respect of audit by the Central tax administration for taxpayers with turnover below Rs. 1.5 crore. He also supported the suggestion to give flexibility to the States in determining the share of two-third taxpayers falling under their jurisdiction. He further stated that such an arrangement should not be made as a part of the law; rather it could be operated through a resolution which could be changed later. He stated that the Council could also permit a State to move from one model to another. Shri Tuhin Kanta Pandey, Principal Secretary (Finance), Odisha stated that there should be no diffused accountability except for enforcement and that a fixed number of dealers should be assigned to the Central and the State tax administrations. He added that if a State wanted all taxpayers below the turnover of Rs. 1.5 crore under its control, then the Centre would get correspondingly a larger number of taxpayers in the turnover segment above Rs. 1.5 crore. The Hon'ble Minister from West Bengal stated that for division of taxpayers in the segment of above Rs. 1.5 crore turnover, a standardized model should be followed. The Hon'ble Minister from Kerala emphasised that the Central Government could not handle the small taxpayers below Rs. 1.5 crore turnover. The Principal Secretary (Revenue), Telangana suggested an alternative that the present Central Excise and Service Tax assesseees with turnover below Rs. 1.5 crore could be continued with the Centre for the next three years. The Hon'ble Minister from West Bengal observed that this formulation had already been rejected earlier. The Hon'ble Minister from Tamil Nadu pointed out that it would be a challenge to identify taxpayers on the basis of supply of goods and services. The Hon'ble Chief Minister of Puducherry stated that the Central Government would need to create additional infrastructure if it got more taxpayers under its jurisdiction and therefore supported the proposal of the Hon'ble Minister from Tamil Nadu.

22. The Hon'ble Chairperson summed up the suggestions and the possible solutions: (i) there should be a vertical division of taxpayers where two-third share should go to the States and one-third share should go to the Centre (Gujarat's suggestion); (ii) for taxpayers below Rs. 1.5 crore, the administrative control should vest with the States and only 10% of units to be audited by the Central tax administration (Tamil Nadu's proposal); (iii) administration of taxpayers below Rs. 1.5 crore

turnover to rest with the States and those above Rs. 1.5 crore to be divided between the Centre and States; (iv) States could have flexibility to negotiate the numbers with the Central tax administration; (v) Intelligence based action could be taken by both tax administrations without any division; (vi) Scrutiny and audit to be part of the division; (vii) IGST to be cross-empowered either under law or under Article 258 of the Constitution with a carve out for the Central tax administration in relation to place of supply issues; (viii) Territorial waters within the twelve nautical miles of the coastline to remain a territory of the Union of India unless the Supreme Court decided otherwise in the ongoing litigation on this subject but power to collect State tax in this area to be delegated by the Union of India to the States.

23. The Hon'ble Minister from West Bengal responded that Members from five States including the large State of U.P. were not present in this meeting and suggested that a decision on this issue be deferred till the other Members were also present in the Council meeting. The Hon'ble Chairperson stated that there was a Constitutional binding in relation to GST implementation time line and that if some Members were not present due to election related commitments, the officers from such States were present and could express their views. The Hon'ble Minister from West Bengal observed that the issue regarding allowing 10% audit to Central tax administration for taxpayers below Rs. 1.5 crore turnover was an important matter and it should be discussed when the Hon'ble Member from U.P. was also present. The CCT Gujarat suggested that within the overall formula of two-third and one-third division between State and the Centre, it could also be considered whether the base of the Service Tax payers could be left with the Central tax administration. The Hon'ble Minister from Assam observed that the States might need to create more posts at State level if administration of all Service Tax assesseees below the turnover of Rs. 1.5 crore was entrusted to the States. The Hon'ble Minister from West Bengal suggested that both the Central and the State tax administrations could completely give up audit of taxpayers below Rs. 1.5 crore turnover and that the other aspects of administration should be left with the States alone.

24. The Secretary informed that in the officers' discussion during the lunch break, all State Governments expressed a preference of a vertical division of the taxpayers. He stated that there were approximately 26 lakh taxpayers between the turnover of Rs. 20 lakh to Rs. 1.5 crore, and if 20% was given to the Centre, about 5 lakh taxpayers would be with the Centre and 20 lakh taxpayers would go to the States. He further stated that taking approximately 14 lakh taxpayers above the turnover of Rs. 1.5 crore, and doing an equal division, 7 lakh taxpayers each would fall in the jurisdiction of the Central and State tax administrations. He stated that in total, about 12 lakh taxpayers would fall within

the jurisdiction of the Centre and about 27 lakh would fall within the jurisdiction of the States and this broadly conformed to the formula of one-third taxpayers being allocated to the Centre and two-thirds to the States. The Hon'ble Minister from Maharashtra reiterated that regional variation should be permitted for administrative division of taxpayers. The Hon'ble Chairperson observed that States had historically taken a certain position in respect of taxpayers below the turnover of Rs. 1.5 crore and that needed to be taken note of. The Hon'ble Minister from Tamil Nadu suggested that there should be a particular percent of division of taxpayers below Rs. 1.5 crore turnover and another percent for taxpayers above Rs. 1.5 crore. He further stated that no carve out should be allowed in relation to cross-empowerment under IGST. The Hon'ble Chairperson stated that the only grey area left was in relation to division of taxpayers below Rs. 1.5 crore threshold where the Centre proposed a 20% share and the Hon'ble Minister from Tamil Nadu had suggested a 10% share. He further observed that there was not much substantial difference between the two proposed percentages of 20 and 10.

25. The Hon'ble Minister from Tamil Nadu sought clarification that the proposed division was only in respect of audit and that all other administrative powers was to vest with the States. The Secretary clarified that there was a need for a vertical division for administrative purposes and that the proposed division of taxpayers was 20% for the Centre and 80% for States in respect of taxpayers below Rs. 1.5 crore turnover and 50% each for the States and the Centre for taxpayers above Rs. 1.5 crore turnover. The Hon'ble Minister from Karnataka stated that in principle, they opposed administrative division and observed that at State level, a flexibility could be given for not having such a division. The Hon'ble Minister from Haryana stated that a blanket division in the ratio of two-third and one-third could lead to skewed number and he suggested that this ratio should be applied for each slab of taxpayers such as for turnover slabs up to Rs. 20 lakhs, from 20 lakh to 50 lakh, from 50 lakh to 1 crore, from 1 crore to 1.5 crore and so on. He also observed that the proposed arrangement should not be binding on all the States. The Hon'ble Minister from West Bengal stated that for taxpayers below the turnover of Rs. 1.5 crore, there were three options on the table, namely to have a division in the ratio of 80% and 20% or 90% and 10% or 100% and 0% in favour of the States. He stated that Tamil Nadu's position was very close to the option of 100% and 0%. He added that the proposal made by the Hon'ble Minister of Tamil Nadu was not acceptable to his State and he sought a flexibility for West Bengal that 100% of its taxpayers below Rs. 1.5 crore turnover would remain with the State. The Hon'ble Chairperson stated that broadly, the concern of the States was that the Central tax administration should not scrutinise the books of account of small taxpayers in the goods sector and

one solution to this concern could be that the 20% taxpayers allocated to the Centre should only be from the Service Tax assessee base. The Hon'ble Minister from Assam strongly supported this proposal. The Hon'ble Minister from West Bengal reminded that there was a unanimous decision of the Empowered Committee of State Finance Ministers on this subject and it needed to be respected. The Hon'ble Minister from Haryana stated that the decision of the Empowered Committee was taken on the basis of certain inputs but now many more factors had to be taken into account to arrive at a decision. The Hon'ble Minister from Tamil Nadu stated that he agreed to the suggestion that 10% taxpayers below Rs. 1.5 crore turnover be allocated to the Centre in order to reach an agreement on cross-empowerment under IGST. The Hon'ble Minister from Assam reminded that the division of IGST taxpayers was not on the radar of the Empowered Committee.

26. The Hon'ble Chairperson stated that a revised formulation could be that for taxpayers below Rs. 1.5 crore turnover, 20% taxpayers in the jurisdiction of Centre could only be Service taxpayers and taxpayers above Rs. 1.5 crore turnover should be divided equally between the two administrations. He stated that other suggestions remained the same which he had earlier put on the table. The Hon'ble Minister from Bihar supported the proposal of the Hon'ble Chairperson. The CCT Andhra Pradesh raised an issue whether goods would include 'deemed' goods and whether these would remain with the States. The Secretary observed that the 'deemed' goods were mostly considered as services and that the Centre would have to get a share of such Service Tax assessees. The Hon'ble Minister from West Bengal stated that restaurant was in the category of deemed goods and it should remain in the jurisdiction of States. The Hon'ble Minister from Tamil Nadu suggested not to divide the taxpayer base on the basis of service category and suggested that the division should be based on the available resources with the Centre and the State tax administrations. The Hon'ble Minister from West Bengal again suggested that there could be no audit of taxpayers below Rs. 1.5 crore but the Hon'ble Minister from Tamil Nadu observed that audit was an important function and it should not be dispensed with.

27. The Hon'ble Minister from Maharashtra suggested that the existing taxpayer base should be divided in the ratio of two-third and one-third in the favour of States and for the new registrants also the same formula should be followed. The Secretary stated that no turnover figure would be available for the new registrants and that these could be divided equally between the Centre and the State tax administrations. The Hon'ble Chairperson stated that the new registrants could be divided one each between the Centre and the States. The Hon'ble Chairperson also stated that those States which wanted a different basis of division, could arrive at an agreement with the Central Government. The Hon'ble Minister from Haryana suggested that the Hon'ble Chairperson could seek the views of each

State on this issue. The Hon'ble Minister from West Bengal objected to this suggestion and stated that this amounted to voting in disguise. He also reminded the House that earlier on many occasions the sense of the House was not adopted as the basis of consensus and on this issue, no sense of the House had emerged as yet. The Hon'ble Chairperson observed that the Council had avoided voting till now and it must continue to work on the principle of consensus and develop a healthy convention in this regard. The Hon'ble Minister from Tamil Nadu stated that he had changed his position and now supported a vertical division with two-third of taxpayers going to the States and one-third to the Centre. The Hon'ble Chairperson stated that in order to reach consensus, he offered that of the taxpayers below Rs. 1.5 crore turnover, 90% should be allocated to the States and 10% to the Centre. He invited the Hon'ble Minister from West Bengal to join the emerging consensus on the basis of this revised proposal. However, the Hon'ble Minister from West Bengal stated that he was unable to join the consensus as he was still of the view that the entire taxpayer base below the turnover of Rs. 1.5 crore should fully remain in the administrative jurisdiction of the States and that his dissent should be recorded.

28. After further discussion, the Council agreed to the decisions as recorded below in respect of cross-empowerment to ensure single interface under GST.

- i. There shall be a vertical division of taxpayers between the Central and the State tax administrations for all administrative purposes;
- ii. Of the total number of taxpayers below Rs. 1.5 crore turnover, administrative control over 90% of the taxpayers shall vest with the State tax administration and 10% with the Central tax administration;
- iii. In respect of the total number of taxpayers above Rs. 1.5 crore turnover, the administrative control shall be divided equally in the ratio of 50% each for the Central and the State tax administration;
- iv. Those States wanting a different basis of division could do so in consultation with the Centre;
- v. The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;
- vi. The new registrants shall be divided equally between the Centre and the States;
- vii. The division of the taxpayers may be switched between the Centre and the States at such interval as may be decided by the Council;
- viii. The above arrangement shall be reviewed by the Council from time to time;

- ix. Both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain;
- x. Powers under the IGST Act shall be cross-empowered to the State tax administration on the same basis as under the CGST and the SGST Acts either under law or under Article 258 of the Constitution but with the exception that the Central tax administration shall alone have the power to adjudicate a case where the disputed issue relates to place of supply, or any issue relating to import or export of goods or services, or when an affected State requests that the case be adjudicated by the CGST authority;
- xi. The territorial water within the twelve nautical miles shall be treated as the territory of the Union of India unless the Hon'ble Supreme Court decides otherwise in the on-going litigation on the issue but the power to collect the State tax in the territorial waters shall be delegated by the Central Government to the States.

Agenda Item 4: Discussion on issues of considering sale within twelve nautical miles as inter-state or intra-state sale

29. This agenda item was covered during the discussion on agenda item 3.

Agenda Item 5: Date of the next meeting of the GST Council

30. Before discussing the next date of the meeting, the Council briefly discussed the date of implementation of GST. The Hon'ble Minister from Maharashtra suggested that GST should be implemented from 1st April, 2017. The Hon'ble Minister from Assam stated that it was not desirable to change the tax regime in the middle of the financial year and suggested that it should be implemented from 1st April, 2017. The Hon'ble Minister from Kerala stated that the decision could not be rushed to implement GST from 1st April, 2017 and that it could also be implemented from July or August, 2017. The Hon'ble Minister from Bihar expressed his preference for introducing GST from 1st April, 2017 but if it was not possible, he stated that it must be implemented from 1st July, 2017. The Hon'ble Minister from Karnataka suggested that there must be a time schedule for each task for timely roll out of GST. The Hon'ble Chairperson stated that the next step for the Council was to approve the cleaned draft of the Model GST Law, IGST Law and the GST Rules. The Hon'ble Chairperson asked the officers of Law Committee as to by when the revised Model GST Law could

be brought before the Council. Shri Upender Gupta, Commissioner (GST), CBEC stated that the Tribunal provisions and certain provisions of law that the Council had directed to examine would need to be discussed in the Council as part of the revised Model GST Law. He also informed that after the revised Model GST Law had been put in the public domain on 26 November, 2016, several comments had been received and on this account, about 15 to 20 minor changes might be needed. On enquiry from the Hon'ble Chairperson, he informed that the revised Model GST Law could be brought to the Council for its consideration by around 15 February, 2017. The Hon'ble Minister from Karnataka stated that the registration process was on going and that the status of fitment exercise for rates of tax was not known. The Hon'ble Minister from West Bengal stated that adequate time was needed for rate of taxes to be put into the ERP (Enterprise Resource Planning) of the taxpayers. The Hon'ble Minister from Tamil Nadu stated that 1st July, 2017 appeared a more practical date for implementation of GST. The Hon'ble Minister from Karnataka also concurred with this observation. The Principal Secretary (Revenue), Telangana stated that an effort could be made to implement GST by 1st April, 2017 and if it was not feasible, it should be implemented from 1st July, 2017. The Hon'ble Chairperson observed that the officers dealing with law would also need to work on the rates under GST which could spill into March, 2017 and in this view the deadline of 1st April, 2017 could be a major challenge. After further discussion the Council unanimously agreed to extend the date of GST rollout to 1st July, 2017.

31. After discussion, the Council agreed that its next meeting would be held on 18 February 2017.

32. The meeting ended with a vote of thanks to the Chair.

Annexure 1

List of Ministers who attended the 9th GST Council Meeting on 16 January 2017

<u>S No</u>	<u>State/Centre</u>	<u>Name of the Minister</u>	<u>Charge</u>
1	Govt of India	Shri Arun Jaitley	Finance Minister
2	Govt of India	Shri Santosh Kumar Gangwar	Minister of State for Finance
3	Puducherry	Shri V. Narayanasamy	Chief Minister
4	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
5	Assam	Dr. Himanta B. Sarma	Finance Minister
6	Bihar	Shri Bijendra Prasad Yadav	Minister, Commercial Taxes
7	Haryana	Captain Abhimanyu	Minister, Excise & Taxation
8	Himachal Pradesh	Shri Prakash Chaudhary	Minister, Excise & Taxation
9	Jharkhand	Shri Amar Kumar Bauri	Minister, Revenue
10	Karnataka	Shri Krishna Byregowda	Minister for Agriculture
11	Kerala	Dr. Thomas Issac	Finance Minister
12	Maharashtra	Shri Sudhir Mungantiwar	Finance Minister
13	Mizoram	Shri Lalsawta	Finance Minister
14	Rajasthan	Shri Rajpal Singh Shekhawat	Minister for Industries Minister, School Education, Sports & Youth Welfare
15	Tamil Nadu	Shri K. Pandiarajan	
16	Telangana	Shri Etela Rajender	Finance Minister
17	West Bengal	Dr. Amit Mitra	Finance Minister

Annexure 2

List of Officers who attended the 9th GST Council Meeting on 16 January 2017

<u>S No</u>	<u>State/Centre</u>	<u>Name of the Officer</u>	<u>Charge</u>
1	Govt of India	Dr. Hasmukh Adhia	Secretary, GST Council & Department of Revenue
2	Govt of India	Shri Najib Shah	Permanent Invitee to GST Council & Chairman, CBEC
3	Govt of India	Shri Arvind Subramanian	Chief Economic Adviser
4	Govt of India	Shri Ram Tirath	Member (GST), CBEC
5	Govt of India	Shri Mahender Singh	Director General, DG-GST
6	Govt of India	Shri P.K. Jain	Principal Commissioner, (AR), CESTAT, CBEC
7	Govt of India	Shri B.N. Sharma	Additional Secretary, Department of Revenue
8	Govt of India	Shri Vivek Johri	Principal Commissioner, Customs, Delhi, CBEC
9	Govt of India	Shri P.K. Mohanty	Advisor (GST), CBEC
10	Govt of India	Shri Alok Shukla	Joint Secretary (TRU), Department of Revenue
11	Govt of India	Shri Upender Gupta	Commissioner (GST), CBEC
12	Govt of India	Shri Udai Singh Kumawat	Joint Secretary, Department of Revenue
13	Govt of India	Shri Amitabh Kumar	Joint Secretary (TRU), Department of Revenue
14	Govt of India	Shri G.D. Lohani	Commissioner, CBEC
15	Govt of India	Shri Hemant Jain	Advisor to MoS
16	Govt of India	Shri D.S.Malik	ADG, Press, Ministry of Finance
17	Govt of India	Shri Paras Sankhla	OSD to FM
18	Govt of India	Shri Ravneet Singh Khurana	Deputy Commissioner, GST Policy
19	Govt of India	Shri Siddharth Jain	Assistant Commissioner (GST), CBEC
20	Govt of India	Shri Mahar Singh	Assistant Director, Press, MoF
21	Govt of India	Shri S.P. Bhatia	Additional PS to FM
22	GST Council	Shri Arun Goyal	Additional Secretary
23	GST Council	Shri Shashank Priya	Commissioner

S No	State/Centre	Name of the Officer	Charge
24	GST Council	Shri Manish K Sinha	Commissioner
25	GST Council	Shri G.S. Sinha	Joint Commissioner
26	GST Council	Ms. Thari Sitkil	Deputy Commissioner
27	GST Council	Shri Rakesh Agarwal	Assistant Commissioner
28	GST Council	Shri Kaushik TG	Assistant Commissioner
29	GST Council	Shri Sandeep Bhutani	Superintendent
30	GST Council	Shri Shekhar Khansili	Superintendent
31	GST Council	Shri Manoj Kumar	Superintendent
32	GST Council	Shri Amit Soni	Inspector
33	GST Council	Shri Alok Bharti	Inspector
34	GST Council	Shri Anis Alam	Inspector
35	GST Council	Shri Ashish Tomar	Inspector
36	GST Council	Shri Sharad Kumar Verma	PA to Commissioner
37	GST Council	Shri Sher Singh Meena	Tax Assistant
38	Andhra Pradesh	Shri J. Syamala Rao	Commissioner, Commercial Taxes
39	Andhra Pradesh	Shri T. Ramesh Babu	Additional Commissioner, Commercial Taxes
40	Andhra Pradesh	Shri D. Venkateswara Rao	OSD, Revenue
41	Arunachal Pradesh	Shri Marnya Ete	Secretary & Commissioner, Commercial Taxes
42	Arunachal Pradesh	Shri Ando Pankaj	Deputy Commissioner, Legal
43	Arunachal Pradesh	Shri Tapas Dutta	Assistant Commissioner, VAT
44	Arunachal Pradesh	Shri Nakut Padung	Superintendent
45	Assam	Shri Anurag Goel	Commissioner, Commercial Taxes
46	Bihar	Ms. Sujata Chaturvedi	Principal Secretary & Commissioner, Commercial Taxes
47	Bihar	Shri Ajitabh Mishra	Assistant Commissioner, Commercial Taxes
48	Bihar	Shri Virendra Kumar	PS to Minister

S No	State/Centre	Name of the Officer	Charge
49	Chhattisgarh	Ms. Sangeetha P	Commissioner, Commercial Taxes
50	Chhattisgarh	Shri Khemraj Jhariya	Additional Commissioner, Commercial Taxes
51	Delhi	Shri H. Rajesh Prasad	Commissioner, VAT
52	Delhi	Shri Anand Kumar Tiwari	Joint Commissioner, GST
53	Goa	Shri Dipak Bandekar	Commissioner, Commercial Taxes
54	Gujarat	Dr. P.D. Vaghela	Commissioner, Commercial Taxes
55	Gujarat	Ms. Mona Khandhar	Secretary (Economic Affairs)
56	Haryana	Shri Sanjeev Kaushal	Additional Chief Secretary
57	Haryana	Shri Shyamal Misra	Commissioner, Excise & Taxation
58	Haryana	Shri Vidya Sagar	Joint Commissioner, Excise & Taxation
59	Haryana	Shri Rajeev Chaudhary	Deputy Commissioner, Excise & Taxation
60	Himachal Pradesh	Shri Pushpendra Rajput	Commissioner, Excise & Taxation
61	Himachal Pradesh	Shri K.L. Negi	OSD to Excise & Taxation Minister
62	Jammu & Kashmir	Shr P.I. Khateeb	Commissioner, Commercial Taxes
63	Jammu & Kashmir	Shri P.K. Bhat	Additional Commissioner, Commercial Taxes
64	Jharkhand	Shri Sushant Kumar Mukherjee	Private Secretary to the Minister
65	Jharkhand	Shri Sanjay Kumar Prasad	Joint Commissioner, Commercial Taxes
66	Jharkhand	Shri G.S. Kapardar	Assistant Commissioner, Commercial Taxes
67	Karnataka	Shri Ritvik Pandey	Commissioner, Commercial Taxes
68	Kerala	Shri P. Mara Pandiyan	Additional Chief Secretary (Taxes)
69	Kerala	Dr. Rajan Khobragade	Commissioner, Commercial Taxes
70	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
71	Madhya Pradesh	Shri Sudip Gupta	Deputy Commissioner
72	Maharashtra	Shri Rajiv Jalota	Commissioner, Sales Tax
73	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, Sales Tax

S No	State/Centre	Name of the Officer	Charge
74	Meghalaya	Shri Abhishek Bhagotia	Commissioner, Taxes
75	Meghalaya	Shri L. Khongsit	Assistant Commissioner, Taxes
76	Mizoram	Shri K.S. Thanga	Parliamentary Secretary, Taxation
77	Mizoram	Shri Umakant	OSD to Government of Mizoram
78	Mizoram	Shri L.H. Rosanga	Joint Commissioner, Taxes
79	Mizoram	Shri R. Zosiamliana	Deputy Commissioner, Taxes
80	Nagaland	Shri Asangba Chuba Ao	Commissioner, Taxes
81	Odisha	Shri Tuhin Kanta Pandey	Principal Secretary (Finance)
82	Odisha	Shri Saswat Mishra	Commissioner, Commercial Taxes
83	Odisha	Shri Sahadev Sahu	Joint Commissioner, Commercial Taxes
84	Puducherry	Dr. V. Candavelou	Secretary (Finance)
85	Puducherry	Shri G. Srinivas	Commissioner, Commercial Taxes
86	Punjab	Shri Satish Chandra	Additional Chief Secretary
87	Punjab	Shri Rajeev Gupta	Advisor (GST), Govt of Punjab
88	Punjab	Shri Varun Roojam	Commissioner, Excise & Taxation
89	Punjab	Shri Kumar Saurabh	Additional Commissioner, Excise & Taxation
90	Sikkim	Shri Manoj Rai	Joint Commissioner, Commercial Taxes
91	Rajasthan	Shri Praveen Gupta	Secretary (Finance - Revenue)
92	Rajasthan	Shri Alok Gupta	Commissioner, Commercial Taxes
93	Rajasthan	Shri Ketan Sharma	Deputy Commissioner (GST)
94	Tamil Nadu	Dr. C. Chandramouli	Additional Chief Secretary & Commissioner, Commercial Taxes
95	Tamil Nadu	Shri K. Gnanasekaran	Additional Commissioner, Commercial Taxes
96	Telangana	Shri Somesh Kumar	Principal Secretary
97	Telangana	Shri Anil Kumar	Commissioner, Commercial Taxes
98	Telangana	Shri Laxminarayan Jannu	Joint Commissioner, Commercial Taxes

<u>S No</u>	<u>State/Centre</u>	<u>Name of the Officer</u>	<u>Charge</u>
99	Uttarakhand	Shri Vipin Chand	Additional Commissioner, Commercial Taxes
100	Uttarakhand	Shri Yashpal Singh	Deputy Commissioner, Commercial Taxes
101	Uttar Pradesh	Shri Mukesh Kumar Meshram	Commissioner, Commercial Taxes
102	Uttar Pradesh	Shri S.C. Dwivedi	Special Secretary
103	Uttar Pradesh	Shri Vivek Kumar	Additional Commissioner, Commercial Taxes
104	Uttar Pradesh	Shri Niraj Kumar Maurya	Assistant Commissioner, Commercial Taxes
105	West Bengal	Ms. Smaraki Mahapatra	Commissioner, Commercial Taxes
106	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, Commercial Tax
107	GSTN	Shri Navin Kumar	Chairman
108	GSTN	Shri Prakash Kumar	CEO

Annexure 3

List of Representatives from the Power Sector who attended the 9th GST Council Meeting on 16 January 2017

<u>S No</u>	<u>Sector/Ministry</u>	<u>Name</u>	<u>Designation</u>
1	Ministry of Power	Shri Pradeep Kumar Pujari	Secretary
2	Ministry of Power	Shri Raj Pal	Economic Adviser
3	Ministry of Power	Shri Somit Das Gupta	Member (E&C), CEA
4	Power Sector	Shri K.P. Gupta	Executive Director, NTPC
5	Power Sector	Shri Atul Gupta	Consultant (GST)
6	Power Sector	Shri Ajay Kapoor	CEO, Tata Power
7	Ministry of New & Renewable Energy	Shri Rajeev Kapoor	Secretary
8	Ministry of New & Renewable Energy	Shri Santosh Vaidya	Joint Secretary
9	Ministry of New & Renewable Energy	Shri Ruchin Gupta	Deputy Secretary

THE GOODS AND SERVICES TAX (COMPENSATION TO ~~THE~~ STATES ~~FOR LOSS OF REVENUE~~) BILL, 2017

~~(No. — of 2017)~~

~~{ —th —, 2017 }~~

A Bill to provide for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax ~~for a period in pursuance of the provisions~~ of ~~five years as per Section 18 of The~~ the Constitution (One Hundred and First Amendment) Act, 2016.

BE it enacted by Parliament in the Sixty-~~seventh~~ eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT.

- (1) This Act may be called the Goods and Services Tax (Compensation to the States ~~for Loss of Revenue~~) Act, 2017.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint ~~in this behalf~~.

2. DEFINITIONS.

- (1) In this Act, unless the context otherwise requires,—

~~(1) “base year” shall have the meaning assigned to it in section 4;~~

~~(2) “base year revenue” shall have the meaning assigned to it in section 5;~~

(a) “central tax” means the central goods and services tax levied and collected under the Central Goods and Services Tax Act;

(b) “Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;

(c) “cess” means the goods and services tax compensation cess levied under section 8;

(d) “compensation” means an amount, in the form of goods and services tax compensation, as determined under section 9;

~~(3) “Compensation Fund” means a non-lapsable fund in the Public Account, created for the purpose of compensation to the States for loss of revenue arising on account of~~

~~implementation of the goods and services tax for the transition period and funded through levy of cess and such other revenue as the Council may decide.~~

~~(4) "earlier law" shall have the meaning assigned to it in the State Goods and Services Tax Act of the respective State;~~

~~(e) "Council" means Goods and Services Tax Council established as per the Article constituted under the provisions of article 279A of the Constitution;~~

~~(5) "Goods and Services Tax Compensation Cess" means the cess levied under section 8;~~

~~(f) "Fund" means the Goods and Services Tax Compensation Fund shall have the meaning assigned to it referred to in section 10;~~

~~(g) "input tax" in relation to a taxable person under this Act, means the Goods and Services Tax Compensation Cess, --~~

~~(i) cess charged on any supply of goods or services or both made to him;~~

~~(ii) cess charged on any supply of goods and/or services to him, Goods and Services Tax Compensation Cess charged on import of goods; and~~

~~(iii) includes the Goods and Services Tax Compensation Cess cess payable on reverse charge basis;~~

~~(5) "input tax credit" means credit of 'input tax' as defined in section 2(9);~~

~~(h) "Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;~~

~~(i) "integrated tax" means the integrated goods and services tax levied and collected under the Integrated Goods and Services Tax Act;~~

~~(j) "prescribed" means prescribed by rules made this Act;~~

~~(k) "projected growth rate" means the rate of growth projected for the transition period as per section 0;~~

~~(6) "projected revenue" shall have the meaning assigned to it in section 6;~~

~~(l) "State" shall include –~~

~~(i) for the purposes of sections 3, 4, 5, 6 and 7, the States mentioned in and the First Schedule to the Constitution Union territories with Legislature mentioned in the First Schedule to the Constitution; and~~

~~(ii) for the purposes of sections 1, 2, 8, 9, 10 and 11 shall have the meaning States as defined under the Central Goods and Services Tax Act;~~

~~(14) "taxable person" shall have the meaning as assigned to it in, 2016;:~~

~~(m) "State tax" means the State goods and services tax levied and collected under the State Goods and Services Tax Act;~~

~~(n) "State Goods and Services Tax Act" means the law to be made by the State Legislature for levy and collection of tax by the concerned State on supply of goods or services or both;~~

(o) “taxable supply” means a supply of goods ~~and/or~~ services or both which is chargeable to the ~~Goods and Services Tax Compensation Cess~~ cess under this Act;

(p) “transition date” shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force;

(q) “transition period” means a period of five years from the transition date;

(2) The words and expressions used ~~but and~~ not defined in this Act ~~and but~~ defined in the Central Goods and Services Tax Act, ~~2016 (... of 2016), and the Integrated Goods and Services Tax Act~~ shall have the meanings respectively assigned to them in those Acts. ~~that Act, in the context of GST Compensation Cess levied on taxable supplies of goods and/or services made in the course of intra-State trade or commerce; and~~

~~(7) words and expressions used but not defined in this Act and defined in the Integrated Goods and Services Tax Act, 2016 (... of 2016) shall have the meanings respectively assigned to them in that Act, in the context of GST Compensation Cess levied on taxable supplies of goods and/or services made in the course of inter-State trade or commerce.~~

3. PROJECTED GROWTH RATE.

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be ~~14%~~ fourteen per cent. per annum.

4. BASE YEAR.

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending the 31st March, 2016 ~~will~~ shall be taken as the base year.

5. BASE YEAR REVENUE.

(1) Subject to the provision of sub-sections (2), (3) (4) and (5), the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or ~~Centre, Union and~~ net of refunds, with respect to the following taxes, imposed by the respective State or ~~Centre Union~~, which are subsumed into goods and services tax, namely:--

(a) the value added tax, sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile Entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, ~~prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;~~

(b) the Central sales tax levied under the Central Sales Tax Act, 1956;

(c) the entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile Entry 52 of List-II (State List) of the Seventh Schedule to the Constitution, ~~prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;~~

(d) the taxes on luxuries, including taxes on entertainments, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile Entry 62 of List-II (State List) of the Seventh Schedule to the

Constitution, ~~prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;~~

(e) the taxes on advertisement or any other tax levied by the concerned State under the erstwhile Entry 55 of List-II (State List) of the Seventh Schedule to the Constitution, ~~prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;~~

(f) the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile article 268 of the Constitution, ~~prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;~~ and

(g) any cess or surcharge or fee ~~levied by the State Government under any Act which is included in the definition of 'earlier laws' as per section 2(39) of the State Goods and Services Tax Act of the concerned State. Provided that the fee referred to in section 5(1)(g) had been imposed under Entry~~ leviable under entry 66 read with entry 52, 54, 55 and 62 of State List in list II of the Seventh Schedule of to the Constitution as it existed by the State Government under any Act notified under sub-section (4).

prior to ~~amendment vide the commencement of the provisions of~~ the Constitution (~~101stOne Hundred and First~~ Amendment) Act, 2016:

~~(2) The Acts of the Central and State Governments under which the specific taxes are being subsumed into the goods and services tax shall be as notified.~~

Provided that the revenue collected during the base year in a State, net of refunds, ~~on account of under the~~ following taxes, shall not be included in the calculation of the base year revenue for that State, namely:-

(a) any taxes levied under any Act enacted under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, prior to ~~bringing the coming~~ into effect of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

(b) any taxes levied under the Central Sales Tax Act, 1956 on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

(c) any cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and

(d) the entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile Entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to ~~bringing coming~~ into effect of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

- (2) In respect of the State of Jammu and Kashmir, the base year revenue shall include the amount of ~~sales~~-tax collected on sale of services ~~collected~~ by the said State Government during the base year.
- (3) In respect of the States mentioned in sub-clause (g) of clause (4) of article 279A~~(4)(g)~~ of the Constitution, the amount of revenue foregone on account of exemptions or remission given by the said State ~~Government to specific entities under the laws specified under sub-section (2)~~ Governments to promote industrial investment in the State, with respect to such specific taxes referred to in sub-section (1), would be included in the total base year revenue of the State, subject to ~~the~~ such conditions as may be prescribed.
- (4) The Acts of the Central Government and State Governments under which the specific taxes are being subsumed into the goods and services tax shall be such as may be notified.
- (5) The base year revenue shall be calculated as per sub-sections (1), (2) and (3), ~~(4) and (5)~~ on the basis of the figures of revenue collected and net of refunds given in that year, as audited by the Comptroller and Auditor General of India.
- (6) In respect of any State, if any part of revenues mentioned in sub-sections (1), (2) and (3) are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to ~~the~~ such conditions as may be prescribed.

6. PROJECTED REVENUE FOR ANY YEAR.

The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

Illustration: If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is ~~Rs. 100~~ one hundred rupees, then the projected revenue for, ~~say,~~ financial year 2018-19 shall be as follows:

$$\text{Projected Revenue for 2018 - 19} = 100 \left(1 + \frac{14}{100} \right)^3$$

7. CALCULATION AND RELEASE OF COMPENSATION.

- (1) The ~~GST~~ compensation payable to a State shall be provisionally calculated and released ~~bi monthly, and shall~~ at the end of every two months period, and shall be finally calculated for ~~every financial year~~ every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor General of India ~~(CAG);~~

Provided ~~further~~ that in case any excess amount has been released as ~~GST~~ compensation to a State in any financial year during the transition period, as per the ~~CAG~~ audited figures of revenue collected, the excess amount so released shall be adjusted against the ~~GST~~ compensation amount payable to ~~the~~ such State in the subsequent financial year.

- (2) The total ~~GST~~ compensation payable for any financial year during the transition period to any State shall be calculated ~~as follows:~~ in the following manner, namely:--

- (a) the projected revenue for any financial year during the transition period, ~~that~~ which could have accrued to a State in the absence of ~~GST the goods and services tax~~, shall be calculated as per section 0;
- (b) the actual revenue collected by a State in any financial year during the transition period would be the actual revenue from State ~~Goods and Services Tax~~ collected tax collected by the State, ~~and~~ net of refunds given by the said State under Chapters XI and XXVII of the ~~SGST Act, and the Integrated State Goods and Services Tax Act, and the integrated goods and services tax~~ apportioned to that State, as certified by the Comptroller and Auditor General of India;
- (c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State ~~as defined in sub-section (b)-referred to in clause (b).~~
- (3) The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of ~~every two months as follows: the said period, in the following manner, namely:--~~
- (a) the projected revenue that could have been earned by the State in absence of ~~GST the goods and services tax~~ till the end of ~~the relevant bi-monthly period~~ every two months of the respective financial year would be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, ~~as calculated as per in accordance with~~ section 6.
- (Illustration: If the projected revenue for any year calculated ~~as per in accordance with~~ section 6 is Rs. 100, one hundred rupees, for calculating the projected revenue that could be earned till the end of ~~fifth bi-monthly~~ the period of ten months for the purpose of this sub-section shall be $100 \times (5/6) = \text{Rs. } 83.33$.)*
- (b) the actual revenue collected by a State till the end of relevant ~~bi-monthly~~ two months period in any financial year during the transition period would be the actual revenue from State ~~Goods and Services Tax~~ collected by tax collected by the State, net of refunds given by the State under Chapters XI and XXVII of the ~~SGST State Goods and Services Tax Act~~, including ~~Integrated Goods the integrated goods~~ and ~~Services Tax~~ services tax apportioned to that State, as certified by the Principal ~~CCA (CBEC)~~, Chief Controller of Accounts of the Central Board of Excise and Customs;
- (c) the provisional ~~GST~~ compensation payable to any State at the end of the ~~relevant bi-monthly period~~ in relevant two month period in any financial year shall be the difference between the projected revenue ~~for~~ till the end of the relevant period ~~as per sub-section (3)~~ (in accordance with clause (a) and the actual revenue collected by a State in the said period as defined referred to in sub-section (3) (clause (b), reduced by the provisional GST compensation paid to a State till the end of the previous bi-monthly period in previous two months period in the said financial year during the transition period.
- (4) In case of any difference between the final ~~GST~~ compensation amount payable to a State calculated ~~as per in accordance with the~~ provisions of sub-section (2) upon receipt of the audited revenue figures from the ~~CAG~~ Comptroller and Auditor General of India, and the

total provisional ~~GST~~-compensation amount released to a State in the said financial year ~~as per in accordance with the provisions of~~ sub-section (3), the same shall be adjusted against release of ~~GST~~-compensation to the State in the subsequent financial year.

- (5) Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the ~~GST Compensation~~-Fund in ~~asuch~~ manner as may be prescribed. __

____*Explanation.*— For the ~~purpose~~~~purposes~~ of this section, the actual revenue collected would include the collection on account of ~~SGST~~~~State tax~~, net of refunds of ~~SGST~~~~such tax~~ given by the State under Chapter XI of the concerned ~~SGST~~~~State Goods and Services Tax~~ Act, and any collection of taxes on account of the taxes levied by the respective State under the ~~laws~~~~Acts~~ specified ~~under in sub-section (4) of~~ section 5(2), net of refunds of such taxes.

8. LEVY AND COLLECTION OF CESS.

- (1) There shall be levied a cess ~~to be called the GST Compensation Cess~~ on such intra- State supplies of goods ~~and/or~~ services ~~or both~~, as provided for in section ~~87~~ of the ~~CGST~~~~Central Goods and Services Tax~~ Act, ~~2016~~, and such inter-State supplies of goods ~~/or~~ services ~~or both~~ as provided for in section 5 of the ~~IGST~~~~Integrated Goods and Services Tax~~ Act, ~~2016~~, ~~as may be prescribed on the recommendations of the Council~~ and collected in such manner as may be prescribed, ~~on the recommendations of the Council~~, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the ~~CGST~~~~provisions of Central Goods and Services Tax~~ Act is brought into force, for a period of five years; or for ~~any~~ such period as ~~may be prescribed on~~ the ~~GST~~~~recommendation of the Council~~ ~~may recommend~~;

Provided that no such cess shall be leviable ~~under this section~~ on supplies made by a taxable person who has decided to opt for composition levy under section ~~98~~ of the ~~CGST~~~~Central Goods and Services Tax~~ Act, ~~2016~~.

- (2) The ~~GST Compensation~~ cess shall be levied on the basis of value, quantity ~~etc.~~ or on ~~such~~ basis as may be recommended by the ~~GST~~ Council. ~~The GST Compensation Cess shall be levied~~ at such rate ~~not exceeding~~ per cent as may be notified by the Central Government, ~~but not exceeding, ... per cent~~ Where:

Provided that where the ~~GST Compensation Cess~~~~cess~~ is chargeable on any supply of goods ~~and/or~~ services ~~or both~~ with reference to their value, for each such supply ~~such value shall be on~~ the value ~~shall be~~ determined under section 15 of the ~~CGST~~~~Central Goods and Services Tax~~ Act, ~~2016~~ ~~for for~~ all intra-State and inter-State ~~supplies~~~~supply~~ of goods ~~and/or~~ services ~~or both~~:

Provided further that the ~~GST Compensation Cess~~~~cess~~ on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 ~~(51 of 1975)~~ at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 ~~(52 of 1962)~~, on a value determined under the ~~first mentioned~~ Customs Tariff Act, ~~1975~~.

9. RETURNS, PAYMENTS AND REFUNDS.

(1) Every taxable person ~~registered under CGST Act, 2016~~, making a taxable supply of goods ~~and/or services~~ or both, shall—

(a) pay the amount of cess as payable under this Act;

(b) furnish such returns in such formats, as may be prescribed forms, along with the returns to be filed under the Central Goods and Services Tax Act, 2016, shall pay the amount payable under the Act in the manner as may be prescribed and Act; and

(c) apply for refunds of cess of such cess paid and refundable in such form, as may be prescribed.

as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the ~~format~~ form to be filed, the provisions of the Central Goods and Services Tax Act, ~~2016~~, and the rules made ~~thereafter~~ thereunder, shall, as far as may be, apply in relation to the levy and collection of the ~~cess~~ leviable cess leviable under section 8 on all taxable supplies of goods ~~and/or services~~ or both, as they apply in relation to the levy and collection of Central ~~Goods and Services Tax tax~~ on such supplies under the said Act or the rules made thereunder, ~~as the case may be~~.

10. CREDITING PROCEEDS OF CESS TO ~~GST~~ COMPENSATION FUND.

(1) The proceeds of the ~~GST Compensation Cess~~ cess leviable under section 8 and ~~proceeds of~~ such other ~~revenue~~ revenues as may be recommended by the ~~GST~~ Council ~~may decide~~, shall be credited to a non-lapsable fund known as the ~~GST~~ Goods and Services Tax Compensation Fund ~~to be credited in the Public Account, public account~~ and shall be utilized for purposes specified in the said section-8.

(2) All amounts payable to the States under section 7 shall be paid ~~from out of~~ from the ~~Goods and Services Tax Compensation~~ Fund.

(3) Fifty ~~percent~~ per cent of the amount remaining unutilized in the ~~GST Compensation~~ Fund at the end of the transition period shall be transferred to the Consolidated Fund of India, as ~~Centre's~~ the share of Centre, and the balance fifty ~~percent~~ per cent shall be distributed amongst the States ~~and Union Territories with or without legislature~~ in the ratio of their total revenues from ~~SGST or Union Territory GST, as the case may be~~ the State tax in the last year of the transition period.

(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor General of India.

(5) The accounts of the Fund, as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

11. OTHER PROVISIONS RELATING TO CESS.

- (1) ~~The provisions of the Central~~ Goods and Services Tax Act, ~~2016~~, and the rules made thereunder, including those relating to assessment, input tax credit ~~(subject to sub-section (3))~~, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, apply be, *mutatis mutandis*, in relation to the levy and collection of the cess leviable under section 8 on the intra-~~state~~State supply of goods and services, as they apply in relation to the levy and collection of Central ~~Goods and Services Tax tax~~ on such intra-~~state~~State supplies under the said Act or the rules made thereunder, ~~as the case may be.~~
- (2) The provisions of the Integrated Goods and ~~Service~~Services Tax Act, ~~2016~~, and the rules made thereunder, including those relating to assessment, input tax credit ~~(subject to sub-section (3))~~, non-levy, short-levy, interest, appeals, offences and penalties, shall, ~~as far as may be, apply~~ *mutatis mutandis*, apply in relation to the levy and collection of the ~~cess~~leviable cess leviable under section ~~8~~on 8 on the inter-~~state~~State supply of goods and services, as they apply in relation to the levy and collection of Integrated ~~Goods and Services Tax tax~~ on such inter-~~state~~State supplies under the said Act or the rules made thereunder, ~~as the case may be.~~
- (3) ~~=~~ Provided ~~further~~ that the input tax credit in respect of ~~GST Compensation Cess~~cess on supply of goods and services leviable under section 8, shall be utilized only towards payment of ~~GST Compensation Cess~~ said cess on supply of goods and services leviable under the said section.

12. POWER TO MAKE RULES.

- (1) The Central Government shall, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) the conditions which were included in the total base year revenue of the States referred to in sub-clause (g) of clause (4) of article 279A of the Constitution, under sub-section (2) of section 5;
 - (b) the conditions which were included in the total base year revenue of any State under sub-section (4) of section 5;
 - (c) the amount credited to the Fund under sub-section (5) of section 9;
 - (d) the tax on reverse charge basis and the manner of collection of said tax under sub-section (1) of section 8;
 - (e) the forms for furnishing of returns under sub-section (1) of section 9; and
 - (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

13. LAYING OF RULES BEFORE PARLIAMENT.

Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should

not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

14. POWER TO REMOVE DIFFICULTIES

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of three years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Agenda Item 3: Approval of the legal provisions in the Model GST Law as per suggestions of the GST Council and vetted by the Union Ministry of Law

Introduction

The first reading of the Model GST Law as examined and recommended by the GST Council has been completed by the Union Ministry of Law on 11 February 2017. It has commenced the second reading of the draft GST Law from 13 February 2017. The Union Ministry of Law has suggested several changes to the Model GST Law. The proposed changes have been discussed by the Law Committee of the GST Council (hereinafter referred to as the 'Law Committee') up to Section 49 and the sections dealing with Appellate Tribunals (Sections 104 to 121). Keeping in view the changes suggested by the Union Ministry of Law, the Law Committee was of the opinion that after examining the entire draft received from the Union Law Ministry, it would be desirable to have a joint meeting between the officers of the Ministry of Law and the Law Committee in order to arrive at a consensus draft.

2. The GST Council, during its 5th, 6th and 7th meetings, had suggested certain changes to the Model GST Law. These have been suitably incorporated in the law and vetted by the Union Ministry of Law. These are included as **Annexure I** to this document for information of the GST Council and discussion where so required.

3. Further, the GST Council had asked the Law Committee to re-examine certain provisions of law. The following issues have been put on the agenda for further deliberations and approval.

- i. Provisions relating to Tribunal
- ii. Reconciliation of Sections 4 & 5
- iii. Power to waive penalty
- iv. & v. Issues relating to Supply read with Schedules II and IV
- vi. Power of CAG
- vii. Definition of 'Agriculture'

4. The full text of the finally vetted Model GST Law is proposed to be presented in the next meeting of the GST Council.

Note:

- 1. Text in blue indicates changes made in the law as per the decisions of the GST Council.
- 2. Text in red indicates the suggestions of the Law Committee.
- 3. Text in green indicates provisions that are to be incorporated in the SGST Law only.

Issue No. 1: Provisions relating to Tribunal:

4. It was decided in the 7th Meeting of the GST Council held on 22-23 December 2016 that the provisions relating to Tribunals in the GST regime would be revised and that in the revised draft, the following would be provided: (a) the selection of the Vice Chairperson of State Tribunals to be done jointly by the Centre and the concerned State as appeal against both taxes were to be heard by the State Tribunals; and (b) pre-deposit for appeal before the First Appellate Authority shall be 10% of the disputed amount and that for the Tribunal shall be 20% of the disputed amount. Draft formulation as discussed by the Law Committee is indicated in the table below. The formulation has also been vetted by the Union Ministry of Law.

Old Section 100 to Section 103	104. (1) The Central Government shall, by notification, on the recommendation of the Council, constitute, with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.	Constitution of Appellate Tribunal.
	105. (1) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereafter in this Chapter referred to as “Regional Benches”), State Benches and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).	Benches of Appellate Tribunal and their composition.
	(2) There shall be constituted a National Bench of the Appellate Tribunal at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).	
	(3) The Central Government shall, by notification, on the recommendation of the Council, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).	
	(4) The Central Government, shall, by notification, specify for each State, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as State Bench) for exercising the powers of the Appellate Tribunal within the concerned State:	
	Provided that the Central Government shall, on receipt of a request from any State Government and on the	

	recommendation of the Council, constitute such number of Area Benches in that State, as it deems fit.	
	(5) (a) Each State Bench or Area Bench of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).	
	(b) The State Government may designate the senior most Judicial Member in a State as the State President.	
	(6) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a bench of two Members.	
	(7) If the Members of the National Bench, Regional Bench, State Bench or Area Bench, differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Bench, State Bench or Area Bench and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.	
	(8) The Central Government, in consultation with the President may, for the administrative convenience, transfer –	
	(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional, or	
	(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area Bench.	
	(9) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.	

	106. (1) A person shall not be qualified for appointment as-	Qualifications for appointment of President, Vice-President and Members.
	(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court;	
	(b) a Judicial Member, unless he has been – (i) a Judge of the High Court; or (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or (iii) Member of Indian Legal Service holding a post not less than Additional Secretary for three years.	
	(c) a Technical Member (Centre) unless he is a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;	
	(d) a Technical Member (State) who is not below the rank of Additional Commissioner of Value Added Tax or the State Goods and Services Tax or such rank as may be notified by the concerned State Government on the recommendation of the Council with at least three years of experience in the administration of an earlier law or the State Goods and Services Tax.	
	(2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Central Government after consultation with the Chief Justice of India or his nominee.	
	(3) The Technical Members of the National Bench and Regional Bench shall be appointed by the Central Government on the recommendation of the Selection Committee consisting of such persons and in such manner as may be prescribed.	
	(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of High Court of the State or his nominee.	
	(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government in such manner as may be prescribed.	

	(6) The Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.	
	(7) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.	
	(8) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.	
	107. (1) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-eight years, whichever is earlier and shall be eligible for re-appointment.	Term of Office of President and Members of Appellate Tribunal.
	(2) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which they enter upon their office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment.	
	(3) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term until he attains the age of sixty three years.	
	108. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the Senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.	Senior most Member of the National Bench to act as President in certain circumstances.
	(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.	
	109. The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:	Salary, allowances and other terms and conditions of service of

		President, State President or Members of Appellate Tribunal
	Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.	
	110. The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or State Government, as the case may be, resign from his office:	Resignation of President, State President or Members of Appellate Tribunal
	Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.	
	111. (1) The Central Government may after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Member of the National Bench, Regional Bench or Technical Members (Centre) of State Bench or Area Benches, and the State Government may after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—	Removal of President, State President or Members of Appellate Tribunal
	(a) has been adjudged an insolvent; or	
	(b) has been convicted of an offence which, in the opinion of such Government, involves moral turpitude; or	
	(c) has become physically or mentally incapable of acting as such President, State President or Member; or	
	(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member;	

	(e) has so abused his position as to render his continuance in office prejudicial to the public interest:	
	Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e) unless he has been informed of the charges against him and giving him a reasonable opportunity of being heard.	
	(2) Without prejudice to the provisions of sub-section (1), the President or a Judicial and Technical Member of the National Bench or Regional Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given a reasonable opportunity of being heard.	
	(3) Without prejudice to the provisions of sub-section (1), the Member Technical (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the Central Government and of which the said Member had been given a reasonable opportunity of being heard.	
	(4) Without prejudice to the provisions of sub-section (1), the Judicial Member or Member Technical (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given reasonable opportunity of being heard.	
	(5) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Member of the National Bench or the Regional Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2).	

	(6) The Central Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Member Technical (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (3).	
	(7) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Member Technical (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (4).	
	112. Subject to the provisions of article 220 of the Constitution of India, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.	Prohibition to appear, act or plead before Appellate Tribunal
	113. No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal, as the case may be.	Vacancy in Appellate Tribunal not to invalidate acts or proceedings.
	114. (1) The National Bench or Regional Bench of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.	Jurisdiction of National Bench, Regional Bench and State Bench or Area Benches
	(2) The State or Area Bench shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (1).	
	(3) The President and the State President shall, by general or special order, distribute the business or transfer cases among the Regional Benches or Area Benches in a State.	
5 of 1908.	115. (1) The Appellate Tribunal shall not, while disposing of any proceeding before it or, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.	Procedure before Appellate Tribunal
	(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as	

5 of 1908.	are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: —	
	(a) summoning and enforcing the attendance of any person and examining him on oath;	
	(b) requiring the discovery and production of documents;	
	(c) receiving evidence on affidavits;	
1 of 1872.	(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;	
	(e) issuing commissions for the examination of witnesses or documents;	
	(f) dismissing a representation for default or deciding it ex parte;	
	(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and	
	(h) any other matter which may be prescribed.	
	(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction, —	

	(a) in the case of an order against a company, the registered office of the company is situated; or	
	(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.	
	(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of	

45 of 1860. 2 of 1974.	sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.	
	116. (1) Any person aggrieved by an order passed against him under section 102 or section 103 of this Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.	Appeals to Appellate Tribunal.
	(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed one lakh rupees.	
	(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State Goods and Services Tax call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act and under the State Goods and Services Tax Act as authorized under section 7 of the State Goods and Services Tax SGST Act, for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order. <i>(CGST Law)</i>	“as authorized under section 7 of the State Goods and Services Tax SGST Act,” to be restored in order to ensure that order passed by an authority exercising only cross-empowered orders being revised
	(3) The Commissioner may, on his own motion, or upon request from the Commissioner of Central Goods and Services Tax call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act and under the Central Goods and Services Tax Act as authorized under section 7 of the Central Goods and Services Tax CGST Act, for the purpose of	“as authorized under section 7 of the State Goods and Services Tax SGST Act,” to be restored in order to ensure

	<p>satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.</p> <p style="text-align: right;"><i>(SGST Law)</i></p>	<p>that order passed by an authority exercising only cross-empowered orders being revised</p>
	<p>(4) Where in pursuance of an order under sub-section (3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 102, or as the case may be, under sub-section (1) of section 103 and the provisions of this Act shall, apply to such application, as they apply in relation to appeals filed under sub-section (1).</p>	
	<p>(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).</p>	
	<p>(6) The Appellate Tribunal may</p> <p>(a) admit an appeal within three months after the expiry of the period referred to in sub-section (1), or</p> <p>(b) permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5),-</p> <p>if it is satisfied that there was sufficient cause for not presenting it within that period.</p>	
	<p>(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed:</p>	
	<p>Provided that no such fee shall be payable in the case of an appeal filed by the Commissioner or a Memorandum of cross objections referred to in sub-section (5).</p>	

	(8) No appeal shall be filed under sub-section (1), unless the appellant has deposited—	
	(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and	
	(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount deposited under sub-section (6) of the section 102, arising from the said order, in relation to which the appeal has been filed.	
	(9) Where the appellant has deposited the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.	
	(10) Every application made before the Appellate Tribunal, —	
	(a) in an appeal for rectification of error or for any other purpose; or	
	(b) for restoration of an appeal or an application,	
	shall be accompanied by such fees as may be prescribed:	
	Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner.	
	117. (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority, as the case may be, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.	Orders of Appellate Tribunal
	(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, to the	

	parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:	
	Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.	
	(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State Tax or the other party to the appeal within a period of three months from the date of the order:	
	(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of Central Tax or the other party to the appeal within a period of three months from the date of the order:	
	Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless he has been given a reasonable opportunity of being heard.	
	(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.	
	(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State Tax.	
	(6) Save as provided in section 125 or section 126, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.	

	118. (1) The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed.	Financial and administrative powers of President and State President
	(2) The State President shall exercise such financial and administrative powers over the Benches of the Appellate Tribunal in a State, as may be prescribed:	
	Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the conditions that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President:	
	Provided further that the State President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the Appellate Tribunal, subject to the conditions that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the State President.	
45 of 1860.	119. The President, State President, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.	President, State President, Members, officers, etc., to be public servants.
	120. No suit, prosecution or other legal proceeding shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.	Protection of action taken in good faith.
	121. In this Chapter, unless the context otherwise requires, the expressions, -	Definitions
	(a) “Appellate Tribunal” includes the National Bench, Regional Bench, State Bench or Area Benches thereof;	

	(b) “Judicial Member” means a member of the Appellate Tribunal appointed as such and includes the President or the State President, as the case may be;	
	(c) “President” means the President of the Appellate Tribunal;	
	(d) “State President” means the President of the State Bench of the Appellate Tribunal.	

Issue No. 2: Reconciliation of Sections 4 & 5:

5. It was decided in the 7th Meeting of the GST Council held on 22-23 December 2016 to address the contradiction between Section 4(2) and Section 5(2) in respect of the authority that would specify the jurisdiction of officers other than of the Commissioner. The Law Committee has proposed to delete Section 4(2) of the Model GST Law and make certain amendments in Section 5 of the Model GST Law, which is indicated in the table below. The formulation has also been vetted by the Union Ministry of Law.

Issue No. 2	<p>Section 5 (of SGST Law)</p> <p>(2) The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner in respect of all or any of the functions assigned to them, shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the State Government Commissioner may, by order, specify.</p> <p>Note: Section 4(2) of SGST Law proposed to be deleted</p>	
-------------	---	--

Issue No. 3: Power to waive penalty:

6. In the 7th Meeting of the GST Council held on 22-23 December 2016, CBEC had proposed a provision for Power to waive penalty (Section 87A) which is as below:

“Notwithstanding anything contained in the provisions of section 85 or 86 of this Act, no penalty may be imposed on an assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure or that he had made a reasonable attempt to comply with the provisions of this act to avoid such failure.”

7. After discussion, the Council decided that the Officers of the Law Committee would redraft Section 87A (Power to waive penalty) of the Model GST Law in a manner so as not to give discretion to officers for levying penalty. A revised draft is placed below but there was no consensus on this draft in the Law Committee.

Issue No. 3	<p>Section 87A (Power to waive penalty)—</p> <p>Notwithstanding anything contained in the provisions of section 85 or 86 of this Act, any of the penalty referred to in the said sections may be waived in part or full for such class of the taxpayers, under such mitigating circumstances as may be notified by the Central/State Government in this regard, on the recommendation of the Council.</p> <p>Note: There was no consensus in Law Committee. Issue proposed to be discussed in the Council.</p>	
-------------	---	--

Issue No. 4 & 5: Issues relating to Supply read with Schedules II and IV:

8. It was decided in the 7th Meeting of the GST Council held on 22-23 December 2016 that the Law Committee would examine Schedule IV and suggest a draft formulation through which the services mentioned in Schedule IV (except those mentioned in Clause 4) would be exempted through a notification and that such notification shall be issued on the recommendation of the Council.

9. The Law Committee has proposed that Clause 4 (dealing with services provided by the Government towards diplomatic or consular activities; citizenship, naturalization and aliens; admission into, and emigration and expulsion from India; currency, coinage and legal tender, foreign exchange; trade and commerce with foreign countries, import and export across customs frontiers, inter-State trade and commerce; and maintenance of public order) can also be deleted from Schedule IV and be dealt through a notification. Keeping the above in view, the draft formulation of the Law Committee making amendments in Section 3 of the Model GST Law is placed below.

10. In the 5th Meeting of the GST Council held on 2-3 December 2016, it was decided to incorporate supplies of works contract (paragraph 5(f) of Schedule-II) and restaurant (paragraph 5(h) of Schedule-II) as composite supply on which all provisions relating to services shall apply. The amendment made in Schedule II is placed below.

11. The revised drafts relating to Section 3 and Schedule II have been vetted by the Union Ministry of Law.

Issue No. 4 & 5	Section 3. For the purposes of this Act, the expression “supply” includes—	Scope of supply.
	(a) (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;	
	(b) importation import of services for a consideration whether or not in the course or furtherance of business; and (Note : The clause will be moved to IGST Act)	

	(b)(e) supply the activities specified in Schedule I, made or agreed to be made without a consideration.	
	(2) (c) The matters activities to be treated as supply of goods or supply of services as referred to in Schedule II.	
	(2) Notwithstanding anything contained in sub-section (1) ,—	
	(a) activities or transactions specified in Schedule III; or	
	(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Central/State Government on the recommendation of the Council, as specified in Schedule IV	
	shall be treated neither as a supply of goods nor a supply of services.	
	(4) Subject to sub-sections (1) and (2), the Central Government may, upon the recommendation of the Council, specify, by notification, the transactions that are to be treated as—	
	(a) a supply of goods and not as a supply of services; or	
	(b) a supply of services and not as a supply of goods. or	
	(c) neither a supply of goods nor a supply of services.	
	Schedule – IV is proposed to be deleted in view of above changes in Section 3 relating to Supply.	

	SCHEDULE II [Section 3 (2)]	
	MATTERS ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES	

	<p>1. Transfer</p> <p>(a) any transfer of the title in goods is a supply of goods;</p> <p>(b) any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;</p> <p>(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.</p> <p>2. Land and Building</p> <p>(a) any lease, tenancy, easement, licence to occupy land is a supply of services;</p> <p>(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.</p> <p>3. Treatment or process</p> <p>Any treatment or process which is being applied to another person's goods is a supply of services.</p> <p>4. Transfer of business assets</p> <p>(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.</p> <p>(b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.</p> <p>(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—</p>	

	<p>(i) the business is transferred as a going concern to another person; or</p> <p>(ii) the business is carried on by a personal representative who is deemed to be a taxable person.</p> <p>5. The following shall be treated as “supply of service”</p> <p>(a) renting of immovable property;</p> <p>(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.</p> <p><i>Explanation.</i>—For the purposes of this clause—</p> <p>(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—</p> <p>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (-- of 1972); or</p> <p>(ii) a chartered engineer registered with the Institution of Engineers (India); or</p> <p>(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;</p> <p>(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;</p> <p>(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;</p> <p>(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;</p> <p>(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and</p> <p>(f) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;</p>	
--	--	--

	<p>(g) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and</p> <p>(h) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p> <p>6. The following composite supplies shall be treated as a supply of services—</p> <p>(a) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; and</p> <p>(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p> <p><i>Explanation.</i>— For removal of doubts, it is clarified that activities specified in clause (f) and (h) shall be treated as a composite supply and supply of service involved in such supply shall be deemed to be the principal supply.</p> <p>7. The following shall be treated as supply of goods</p> <p>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.</p>	
--	--	--

Issue No. 6: Power of CAG:

12. In the 6th Meeting of the GST Council held on 11 December 2016, it was decided to delete Section 65 (Power of CAG to call for information for audit) and to inform the CAG that the Council was not in favour of keeping this provision. However, subsequently, the Comptroller & Auditor General of India has discussed this issue with the Government of India and has strongly urged to retain this provision and also to add “and such other information as required for conduct of audit”. It is accordingly proposed to deliberate upon the provision as drafted below in the Model GST Law.

Issue No. 6	Section 65. The proper officer shall, upon request made in this behalf, make available to the Comptroller and Auditor General of India or an officer authorised by him, information, records and returns furnished under this Act, and such other information as required for conduct of audit as required under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.	Power of CAG to call for information for audit.
-------------	---	---

Issue No. 7: Definition of ‘Agriculture’

13. In the 5th GST Council meeting held on 2-3 December, 2016, the definition of ‘agriculture’ related sections were decided as follows:

Section 2(7): “agriculture” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, pisciculture, ~~the~~ raising of crops, grass or garden produce, ~~and also grazing, but does not include~~ dairy farming, poultry farming, stock breeding, piggery, apiculture, ~~the mere~~ cutting of wood or grass, gathering of fruit, collection of minor forest produce, raising of man-made forest or rearing of seedlings or plants;

Section 2(8) r/w 2 (106) – “agriculturist” means ~~a person~~ an individual or a Hindu Undivided Family, who ~~cultivates land personally, for the purpose of agriculture;~~ carries on any agricultural operation on his own account –

(a) by one’s own labour, or

(b) by the labour of one’s family, or

(c) by servants on wages payable in cash or kind or by hired labour under one’s personal supervision or the personal supervision of any member of one’s family;

Explanation 1. - a widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation 2, - in the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

14. However, in view of a number of observations by the Members of the Council in the 7th GST Council meeting held on 3-4 January 2017, it was decided that Officers of the Law Committee should examine whether or not definition of ‘agriculture’ and ‘agriculturist’ was needed in the GST Law.

15. The Law Committee took note of the suggestions made in the 7th GST Council meeting that the definition concerning agriculture in GST Law should follow the same approach as that in the Income Tax Act. The Law Committee went through the definitions in the Income Tax Act. The Income Tax Act follows an approach where the phrase “agriculture” has not been defined.

The Act goes on to define only the phrase “agricultural income” as the Income Tax Act is concerned only with agricultural income rather than agriculture in general. Income tax Act restricts agricultural income to income to the cultivator or receiver of rent-in-kind from agricultural land and building connected to the land. Thus the salient feature of the definition is that it should be agricultural land based and should be linked to cultivation and related activities.

16. In the GST law, the main purpose is to keep the agriculturist out of the registration liability and therefore, following the approach of Income Tax Act, the focus should be on defining agriculturist and not agriculture. Secondly, the definition of agriculturist should be restricted to cultivation of land, broadly on the lines of the Income Tax Law. **The Law Committee has, therefore, recommended that the definitions of ‘agriculture’ and ‘to cultivate personally’ may be deleted and that only a revised definition of ‘agriculturist’ may be incorporated.** The Law Committee has also proposed consequential change in the provisions relating to the registration.

17. The new definition will serve the purpose as follows:

- a) Most of the primary agricultural and agriculture allied products are likely to be exempted items. Therefore, anyone dealing with only exempted items, or having a turnover less than twenty lakh rupees will not be required to take the registration as per provisions in Clause 2(a) of Schedule V.
- b) A person cultivating cash crops like cotton, groundnuts, sugarcane etc., which are not likely to be exempt (as they attract VAT in some States), will be covered by the new definition of the agriculturist. In such a case, GST on supply of these crops by the farmer will get collected on reverse charge from the buyer.

Therefore, following new formulations as vetted by the Union Ministry of Law are proposed for approval.

Issue No. 1	<p>Section 2 definitions</p> <p>(7) “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land on one’s own account—</p> <p>(a) by one’s own labour, or</p> <p>(b) by the labour of one’s family, or</p>	
-------------	--	--

	(c) by servants on wages payable in cash or kind or by hired labour under one's personal supervision or the personal supervision of any member of one's family;	
	23. The following persons shall not be liable to registration, namely:—	Person not liable for registration
	(b) an agriculturist, for the purpose of agriculture to the extent of supply of produce out of cultivation of land;	

Annexure I

Changes made in Model GST Law as suggested by the GST Council

Note:

1. Text in blue indicates changes made in the law as per the decisions of the GST Council.
2. Text in red indicates the suggestions of the Law Committee.

S No.	Date of Decision	Changes suggested by MGL	Changes in MGL (Suggested Changed in Blue)	Comments by Ministry of Law
1	5 th Meeting of the GST Council held on 2-3 December 2016	Section 1(2): To amend the provision to exclude the applicability of the GST statute to the State of Jammu and Kashmir.	Done. Section 1(2) is amended as (2) It extends to the whole of India except the State of Jammu and Kashmir.	Accepted by Ministry of Law
2	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (7): To modify the definition of agriculture as follows – “agriculture” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, pisciculture, the raising of crops, grass or garden produce, grazing, dairy farming, poultry farming, stock breeding, piggery, apiculture, the mere cutting of wood or grass, gathering of fruit, collection of minor forest produce, raising of man-made forest or rearing of seedlings or plants.	Circulated as a separate Agenda item.	Accepted by Ministry of Law
3	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (8) and Section 2 (106): To merge the definitions under these two sections as follows – “agriculturist” means an individual or a Hindu Undivided Family, who carries on any agricultural operation on his own account-	Circulated as a separate Agenda item.	Accepted by Ministry of Law

		<p>a) by one's own labour, or</p> <p>b) by the labour of one's family, or</p> <p>c) by servants on wages payable in cash or kind or by hired labour under one's personal supervision or the personal supervision of any member of one's family and to retain the Explanation 1 and 2 under Section 2 (106).</p>		
4	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (11): To discuss the definition of 'State' at the time of discussion on the draft IGST Act.	This issue will be taken up along with IGST Act.	---
5	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (17): To add the following provision in Schedule IV of the Draft Model GST Law: "Any licence fees, user charges, and other fees arising out of statutory compliances and related to State welfare and development measures".	Circulated as a separate Agenda item.	Accepted by Ministry of Law
6	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (57) and 2 (58): To incorporate the definitions of 'intra-state supply of goods' and of 'intra-state supply of services' in the Model GST Law instead of only cross-referencing it to the IGST Act.	This issue was discussed by the Law Committee. It is proposed that cross-referencing from the IGST Act may be retained as definitions are pretty long.	-----
7	5 th Meeting of the GST Council held on 2-3	Section 2 (63): To incorporate the definition of 'manufacturer' as given in the Central	Done. Section 2(63). Manufacturer definition provided by the Law Committee in lines of Central Excise Act.	Accepted by Ministry of Law

	December 2016	Excise Act, 1944 in the Model GST Law.	(63) “manufacture” means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly;	
8	5 th Meeting of the GST Council held on 2-3 December 2016	Section 3 (2): To consider supplies of works contract (paragraph 5(f) of Schedule- II) and restaurant (paragraph 5 (h) of Schedule-II) as composite supply on which all provisions relating to services shall apply.	Circulated as a separate Agenda item.	Accepted by Ministry of Law
9	5 th Meeting of the GST Council held on 2-3 December 2016	To incorporate the definition of ‘location of recipient of service’ in the Model GST Law as presently defined in the IGST Act.	<p>Done. Section 2(69) and 2(70) inserted.</p> <p>(69) “location of the recipient of services” means, -</p> <p>(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;</p> <p>(b) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;</p> <p>(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and</p> <p>(d) in absence of such places, the location of the usual place of residence of the recipient;</p>	Accepted by Ministry of Law

			<p>(70) “location of the supplier of services” means, -</p> <p>(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;</p> <p>(b) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;</p> <p>(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and</p> <p>(d) in absence of such places, the location of the usual place of residence of the supplier;</p>	
10	5 th Meeting of the GST Council held on 2-3 December 2016	Section 7: To discuss it later as it related to cross-empowerment.	To be discussed by Law Committee with Ministry of Law.	
11	5 th Meeting of the GST Council held on 2-3 December 2016	Section 8 (1): To change the rate cap from the existing rate of 14% to 20%.	<p>Done. Section 8 (1)(a) is amended as follows:</p> <p>8. (1) There shall be levied a tax called the Central Tax on all intra-State supplies of goods or services or both except alcoholic liquor for human consumption, on the value determined under section 15 and at such rates as may be notified by the Central Government in this behalf, but not exceeding fourteentwenty percent., on the recommendation of the Council and collected in such manner as may be prescribed:</p> <p>Provided that said tax on supply of petroleum crude, high speed diesel, motor spirit (commonly known as</p>	Accepted by Ministry of Law.

			petrol), natural gas, aviation turbine fuel shall be levied from such date as may be notified by the Central/State Government on the recommendation of the Council.	
12, 13 & 14	5 th Meeting of the GST Council held on 2-3 December 2016	<p>(1) Section 9: To modify the original decision taken in the 1st GST Council meeting dated 22-23 September 2016 as per which manufacturers were not to be extended the benefit of the Composition Scheme and agreed to extend the said benefit to manufacturers also, subject to clause (e) of Section 9 (1) of the Model GST Law, and that such a scheme shall be limited to turnover-based composition rather than capacity based composition.</p> <p>(2) Section 9 (1): To amend the section so as to provide that the benefit of Composition scheme shall be availed on the basis of intimation rather than permission.</p> <p>(3) Section 9 (1): To amend the provision by inserting that the aggregate turnover for availing the Composition Scheme shall be such amount as may be specified by the GST Council but shall not be less than Rs. 50 lakh and to have a total composition rate of 1% (i.e. 0.5% for CGST and 0.5% for SGST) for traders and a total composition rate of 2% (i.e. 1% for CGST and 1%</p>	<p>Done. Section 9 is amended as follows:</p> <p>9. (1) Notwithstanding anything to the contrary contained in this Act but subject to sub-section (3) or (4) of section 8, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed but not exceeding one percent. of the turnover in case of a manufacturer and 0.5 percent.—of the turnover in case of other suppliers, subject to such conditions and restrictions as may be prescribed in this behalf.</p> <p>Explanation. - For the purposes of this sub-section, the expression ‘turnover’ shall mean turnover in a State during the year.</p> <p>(2) The registered person shall be eligible to opt under sub-section (1) subject to the fulfilment of the following conditions namely, —</p> <p>(a) he is not engaged in the supply of services;</p> <p>(b) is not engaged in making any supply of goods which are not taxable under this Act;</p> <p>(c) he is not engaged in making any inter-State outward supplies of goods;</p> <p>(d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 151; or</p> <p>(e) he is not a manufacturer of such goods as may be notified on the recommendation of the Council:</p> <p>Provided that the registered person shall not be eligible to opt for such</p>	<p>Accepted by Ministry of Law.</p> <p>Suggestion of the GST Council Secretariat: In order to retain greater flexibility with the GST Council, it may consider taking a decision to fix a higher ceiling, say Rs. 1 Crore, in the Model GST Law for eligibility under the Composition Scheme and may agree to presently have a lower threshold of Rs. 50 Lakh.</p>

		for SGST) for manufacturers.	scheme unless all the registered persons, having the same Permanent Account Number, also opt to pay tax under sub-section (1).	
15	5 th Meeting of the GST Council held on 2-3 December 2016	Section 9 and Section 8: To levy tax on reverse charge basis on all commodities when supplied by an unregistered person (which is otherwise chargeable to tax) to a registered person.	Done. Section 8(4) added as follows: (4) The Tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such registered person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.	Accepted by Ministry of Law.
16	5 th Meeting of the GST Council held on 2-3 December 2016	Section 11: To make suitable modification in the wording of Section 11 to reflect the understanding that applicability of exemptions under CGST, SGST and IGST shall be uniform.	Proviso to Section 11 (1) proposed to be added but issue to be discussed by Law Committee with Ministry of Law.	---
17	5 th Meeting of the GST Council held on 2-3 December 2016	Section 12 (4): To define the term 'voucher' in the Definition section.	Done. 2(114) inserted as follows : (114) "Voucher" means an instrument in the form of a document containing an undertaking or an obligation to supply, in exchange of such instrument, goods or services or both of specified description or of any description in accordance with the condition of such exchange;	Accepted by Ministry of Law.
18	5 th Meeting of the GST Council held on 2-3 December 2016	Section 16 (1): to defer decision regarding ITC in respect of capital goods till data on the total quantum of ITC availed on capital goods was received from CBEC.	Done. (1) Proviso to section 16(1) omitted. Provided that credit of input tax in respect of pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto shall not exceed—	Accepted by Ministry of Law.

			<p>(a) one third of the total input tax in the financial year in which the said goods are received;</p> <p>(b) two third of the total input tax, including the credit availed in the first financial year, in the financial year immediately succeeding the year referred to in clause (a) in which the said goods are received; and</p> <p>(c) the balance of the amount of credit in any subsequent financial year.</p> <p>(2) Explanation below section 16(4) amended as follows :</p> <p>Explanation.— For the purposes of this Chapter, the expression “plant and machinery” means apparatus, equipment, and machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures.</p>	
19	5 th Meeting of the GST Council held on 2-3 December 2016	Section 22: To make the wordings of Section 22 clearer regarding recovery of excess distribution of credit to one or more recipients of credit.	Section 22 already clear and no change is required.	Accepted by Ministry of Law
20	5 th Meeting of the GST Council held on 2-3 December 2016	Section 42: To change the wording in the law suitably to reflect that the maximum late fee shall not be less	Done. Section 42(1) amended as follows: 42. (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 32 or section 33, as the case may be, or returns required under	Accepted by Ministry of Law: It has been suggested that the amount can be notified by the Council but a

		than Rs. 5,000 or an amount as recommended by the Council.	section 34 or section 40 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.	definite maximum amount has to be specified by the Council.
21	5 th Meeting of the GST Council held on 2-3 December 2016	Section 46: To prescribe the limit for TDS to Rs. 2.5 lakh for all categories of supplies.	Done. Section 46(1) amended as follows: [hereafter in this section referred to as “the deductor”], to deduct tax at the rate of one per cent. from the payment made or credited to the supplier [hereafter in this section referred to as “the deductee”] of taxable goods or services or both, , where the total value of such supply, under a contract, exceeds five lakh two lakh fifty thousand rupees or such higher amount as may be prescribed on the recommendation of the Council....	Accepted by Ministry of Law
22	6 th Meeting of the GST Council held on 16 th December 2016	Section 2(7), 2(8) and 2(106): To revisit the definition in view of the observations of the Hon’ble Deputy Chief Minister of Gujarat in paragraph 3(ii) of the Minutes and of the Hon’ble Minister from Punjab in paragraph 3(iii) of the Minutes.	Circulated as a separate Agenda item.	---
23	6 th Meeting of the GST Council held on 16 th	Section 4 and Section 5: To be taken up after the first reading of the Model GST Law to examine and address any contradiction	Circulated as a separate Agenda item.	Accepted by Ministry of Law.

	December 2016	in respect of the jurisdiction of the SGST officer.		
24	6 th Meeting of the GST Council held on 16 th December 2016	Section 43: To amend the provision by replacing the term 'Tax Return Preparer' with the term 'GST Practitioner.'	Done. Section 2(54) 43, 124(2)(e), 171(2)(xlii) has been amended and Tax Return Preparer has been replaced by Goods and Services Tax Practitioner .	Accepted by Ministry of Law. Suggestion of the GST Council Secretariat: The GST Council may consider using the expression 'GST Sahayak' instead of 'Goods and Services Tax Practitioner' as 'practitioner' has a much wider connotation than what is intended under this provision (filing of returns and such other tasks as may be prescribed).
25	6 th Meeting of the GST Council held on 16 th December 2016	Section 48(4)(b): To amend the provision by reducing the limit for granting refund on the basis of self-certification (regarding no unjust enrichment) from Rs. five lakh to Rs. two lakh or such amount as the Council may decide.	Done. First Proviso to Section 48(4)(b) amended as follows: Provided that where the amount claimed as refund is less than five two lakh rupees or such higher amount as may be recommended by the Council , it shall not be necessary for the applicant to furnish any documentary and other evidences and instead, he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.	Accepted by Ministry of Law.
26	6 th Meeting of the GST Council held on 16 th	In all Sections where amounts are prescribed, an amendment be done by incorporating an additional expression 'or	The expression 'or such amount as the Council may decide' will be incorporated throughout the Act.	Ministry of Law has pointed that the Council may specify any amount

	December 2016	such amount as the Council may decide’.		but a maximum limit needs to be fixed in the law.
27	6 th Meeting of the GST Council held on 16 th December 2016	Section 48(3): To add another proviso to this Section granting power to the Council not to allow refund in certain cases even when there was an inverted duty structure.	<p>Done. Proviso to Section 48(3) added as follows:</p> <p>Provided that no refund of unutilized input tax credit shall be allowed in cases other than:</p> <p>(i) zero rated supplies made without payment of tax;</p> <p>(ii) or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies except supplies of goods or services or both as may be notified on the recommendation of the Council:</p>	Accepted by Ministry of Law.
28	6 th Meeting of the GST Council held on 16 th December 2016	Section 53 (6): To add the expression ‘transporter’ so that they are also made liable to maintain record of goods being transported by them.	<p>Done. Section 53(6) amended as follows:</p> <p>(2) Every owner or operator of warehouse or godown or any other place used for storage of goods or every transporter irrespective of whether he is a registered person or not shall maintain records of the consigner, consignee and other relevant details of the goods as may be prescribed.</p>	Accepted by Ministry of Law.
29	6 th Meeting of the GST Council held on 16 th December 2016	Section 54: To amend the Section by increasing the period of retention of records from five years to six years.	<p>Done. Section 54 amended as follows:</p> <p>Every registered person required to keep and maintain books of account or other records under sub-section (1) of section 53 shall retain them until the expiry of sixty seventy two months from the due date of filing of Annual Return for the year pertaining to such accounts and records:</p>	Accepted by Ministry of Law.
30	6 th Meeting of the GST Council held on 16 th	Section 56(1): To suitably clarify that only aggregators would be treated as electronic	<p>Done. Section 56(1) amended as follows:</p>	Accepted by Ministry of Law.

	December 2016	commerce operators and it would exclude those entities who sold their goods through their own electronic portal.	56. (1) Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator(hereafter in this section referred to as the “operator”), not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.	
31	6 th Meeting of the GST Council held on 16 th December 2016	Section 56(4), 56(5), 56(6), 56(7), 56(8) and 56(10): To correct the typographical error and to incorporate the correct sub-section number.	Done. Section numbers to be re-aligned towards the end of the drafting stage.	---
32	6 th Meeting of the GST Council held on 16 th December 2016	Section 58: To amend the Section by reducing Commissioner’s power to extend provisional assessment for up to four years.	Done. Proviso to Section 58(3) amended as follows: Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years as he may deem fit.	Accepted by Ministry of Law.
33	6 th Meeting of the GST Council held on 16 th December 2016	Section 59(1): As it has an implication for cross-empowerment, it would be taken up later.	This will be finalized along with Section 7.	---
34	6 th Meeting of GST Council held on 16 th December 2016	Section 61: To amend the Section by expanding the scope of assessment of unregistered persons to also include ‘those persons whose registration certificate had been cancelled but	Done. Section 61 has been amended as follows: Notwithstanding anything to the contrary contained in section 66 or section 67, where a taxable person fails to obtain registration even though liable to do so or whose registration	Accepted by Ministry of Law.

		who was liable to pay tax’.	has been cancelled under sub-section (2) or (3) of section 25 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the due date for filing of the annual return for the year to which the tax not paid relates:	
35	6 th Meeting of the GST Council held on 16 th December 2016	Section 65: To delete this provision and to inform the CAG that the Council was not in favour of keeping this provision.	Circulated as a separate Agenda item.	---
36	6 th Meeting of GST Council held on 16 th December 2016	Section 72(1)(e): To amend the provision suitably by adding the words ‘any other officer authorized by the Government’.	Done. Section 72(1)(e) amended as follows: (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or any officer authorized by Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;	Accepted by the Ministry of Law.
37	6 th Meeting of the GST Council held on 16 th December 2016	Section 81: To be redrafted providing that arrest could be made for duty evasion of Rs. 2 crore or more and that arrest made for duty evasion ranging from Rs. 2 Crore to Rs. 5 Crore shall be bailable and beyond Rs. 5 Crore shall be non-bailable. The language of the provision to also convey that wherever there was a grey	Done. Adequate Changes done in section 81 of Prosecution. (4) The offences specified in clauses (a), (b) or (c), (d) or (e) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable. Note: This was already shown in the 7th Meeting of the GST Council.	Accepted by Ministry of Law

		area relating to assessment, no arrest shall be made.		
38	6 th Meeting of the GST Council held on 16 th December 2016	The committee of officers dealing with GST law to harmonize the provisions of Section 85 (1) (xiv) and Section 89(1)(a) of the Model GST law.	Done. Section 89 amended as follows: (3) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (2), shall be deemed to be concluded.	Accepted by Ministry of Law
39	6 th Meeting of the GST Council held on 16 th December 2016	Section 85: In addition to the reference of the specified amount of penalty, to further add 'or such amount as may be prescribed by the Council'	Done. Section 85 amended as follows: shall be liable to pay a penalty of ten thousand rupees or such higher amount as may be recommended by the Council or an amount equivalent to the tax evaded or the tax not deducted under section 46 or short deducted or deducted but not paid to the Government or tax not collected under section 56 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.	Not accepted by Ministry of Law as it amounts to excessive delegation. Note: A higher amount can be fixed in the law, below which an amount may be notified by the Central Government as recommended by the Council.
40 & 41	6 th Meeting of the GST Council held on 16 th December 2016	(1) Section 89 (1) (a): To amend the provision by adding that while detaining a vehicle, a detention order shall be served on the owner or the driver of the vehicle. (2) Section 89 (1) (c): To slightly modify the language to provide for issuance of notice before imposition of penalty.	Done. Section 89 amended as follows: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.	Accepted by Ministry of Law.

42	6 th Meeting of the GST Council held on 16 th December 2016	Section 98(6): To amend the provision by increasing the rate of pre-deposit from 10% to 20% for all cases without providing for any discretion.	<p>Done. Section 98(6) and 102(8) [Old Section 101(9)(a)(ii)] amended.</p> <p>(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed:</p> <p>(b) a sum equal to twenty per cent of the remaining amount of tax in dispute, in addition to the amount deposited under sub-section (6) of the section 98, arising from the said order, in relation to which the appeal has been filed.</p>	Accepted by Ministry of Law.
43	7 th Meeting of the GST Council held on 22-23 December 2016	Section 2(7), 2(8) and 2(106): Officers of the Law Committee to examine whether or not the definition of ‘agriculture’ and ‘agriculturist’ is needed in the GST Law and to revert to the Council.	Circulated as a separate Agenda item.	Accepted by Ministry of Law.
44	7 th Meeting of the GST Council held on 22-23 December 2016	Section 2(110): The Law Committee of officers to look into the definition of Works Contract so as to include both movable and immovable property.	<p>Done. Section 2(110) amended as follows:</p> <p>(110) “works contract” means a contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any moveable or immovable property wherein transfer of property in goods is involved in the execution of such contract;</p>	Accepted by Ministry of Law.
45	7 th Meeting of the GST Council held on 22-23 December 2016	Sections 4 and 5: To address the contradiction between Section 4(2) and Section 5(2) in respect of the authority that would specify the jurisdiction of officers other than of the Commissioner.	Circulated as a separate Agenda item.	Accepted by Ministry of Law.

46	7 th Meeting of the GST Council held on 22-23 December 2016	Section 16: To modify the provision so as not to extend the benefit of ITC for pipelines and telecom towers.	Done. Same as S No. 18.	Accepted by Ministry of Law.
47	7 th Meeting of the GST Council held on 22-23 December 2016	Revised Section 81 (power to arrest) and 92 (prosecution): The revised formulation in respect of Section 81 and Section 92 approved with the following changes: (a) arrest to be provided for repeat offences; (b) to replace the expression 'Central Government' in the proviso to the explanation in the revised Section 92(1) by the expression 'designated authority.'	Section 92 amended as follows: (2) If any person convicted of an offence under this section is again prosecuted for an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine: (5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority. Note: This was already shown in the 8th Meeting of the Council.	Accepted by Ministry of Law.
48	7 th Meeting of the GST Council held on 22-23 December 2016	Section 87A: Officers of the Law Committee to redraft Section 87A and it is to be drafted in a manner so as not to give discretion to officers for levying penalty.	Circulated as a separate Agenda item.	----
49	7 th Meeting of the GST Council held on 22-23 December 2016	Section 95(2): To delete the sub-section (2) of Section 95.	Done. Section 95 (2) deleted. (2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.	Accepted by Ministry of Law.
50	7 th Meeting of the GST Council	Section 100, 101, 102 and 103: The revised draft to be shared with the States	Circulated as a separate Agenda item.	Accepted by Ministry of Law.

	held on 22-23 December 2016	in advance. In the revised draft the following to be provided: (a) the selection of the Vice Chairperson of State Tribunals to be done jointly by the Centre and the concerned State as appeal against both taxes were to be heard by the State Tribunals; and (b) pre-deposit for appeal before the First Appellate Authority shall be 10% of the disputed amount and that for the Tribunal shall be 20% of the disputed amount.		
51	7 th Meeting of the GST Council held on 22-23 December 2016	Section 138: To amend Section 138(1) by replacing the word 'shall' with the word 'may' and to amend Section 138(2) by adding the phrase 'by the GST Council' at the end of the sentence.	Done. Section 138 amended as follows: (2) The GST compliance rating score shall may be determined on the basis of such parameters as may be prescribed, on recommendation of the Council.	Accepted by the Ministry of Law.
52	7 th Meeting of the GST Council held on 22-23 December 2016	Section 142: To amend Section 142(4) by changing the maximum limit set for imposing fine from Rupees One Thousand to Rupees Twenty-Five Thousand.	Done. Section 142(4) amended as follows: 142. If any person engaged in connection with the collection of statistics under section 141 or compilation or computerization thereof or if any GST officer having access to information specified under sub-section (1) of section 148, or any person engaged in connection with provision of service by the common portal or the agent of common portal, wilfully discloses any information or the contents of any return prescribed under this Act or rules made thereunder, otherwise than in execution of his duties under that section or for the purposes of the prosecution of an offence under this Act or under any other Act for the time being in force, he shall, be punishable with imprisonment for a	Accepted by Ministry of Law.

			term which may extend to six months or with fine which may extend to one twenty five thousand rupees, or with both.	
53	7 th Meeting of the GST Council held on 22-23 December 2016	Section 163: To amend Section 163(1) by replacing the phrase 'by law' by the phrase 'on the recommendation of the Council by a notification'. Additionally, the requirement of passing the benefit of duty reduction to the consumers should be incorporated in the relevant provisions of the GST Law in addition to that contained in Section 169(1)(ii)	<p>Done. Section 163 amended as follows:</p> <p>163. (1) Any reduction in rate of tax on any supply of goods or services or both or by way of allowing input tax credit shall be passed on the recipient by way of reduced prices.</p> <p>(2) The Central Government may on recommendation of the Council, by notification, constitute an Authority, or entrust an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the price on account of any reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.</p>	Accepted by Ministry of Law.
54	7 th Meeting of the GST Council held on 22-23 December 2016	Section 164: To harmonize the provisions of Section 164(1)(f) and Section 182.	<p>Done. Section 164 amended.</p> <p>(2) Where any return, furnished under the earlier law, is revised after the appointed day but within the time limit specified for such revision under the earlier law and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the earlier law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount so refunded shall not be admissible as input tax credit under this Act.</p>	Accepted by Ministry of Law.

55	7 th Meeting of the GST Council held on 22-23 December 2016	Section 169: The Rules Committee of Officers to provide for allowing ITC of embedded VAT through Rules to be made in this regard.	Will be handled by Rules.	---
56	7 th Meeting of the GST Council held on 22-23 December 2016	Schedule II: To revisit Clause 5(f) and 5(h).	Circulated as a separate Agenda item.	Accepted by Ministry of Law.
57	7 th Meeting of the GST Council held on 22-23 December 2016	Schedule IV: The Officers' Committee to examine Schedule IV and to suggest a draft formulation that the services mentioned in Schedule IV (except those mentioned in Clause 4) to be exempted through a notification and that such notification shall be issued on the recommendation of the Council.	Circulated as a separate Agenda item.	Accepted by Ministry of Law.