



Minutes of the 8th GST Council Meeting held on 3 - 4 January 2017

The eighth meeting of the GST Council (hereinafter referred to as 'the Council') was held on 3 and 4 January 2017 in Vigyan Bhawan, 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 list of officers from the various Ministries/Departments 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 eighth meeting of the Council –

1. Brief presentation by representatives of the following sectors –
 - a. Banking and Insurance
 - b. Telecommunication
 - c. Information Technology (IT) & Information Technology Enabled Services (ITeS)
 - d. Civil Aviation
 - e. Railways
 - f. Commerce
2. Confirmation of the Minutes of the 7th GST Council Meeting held on 22-23 December, 2016
3. Approval of the Draft IGST Law
- 3A. Definition of State, Imposition of Tax on Goods and Services in UTs without Legislature, Territorial Waters and Exclusive Economic Zones and Provisions for authorization of proper officers in States
4. Provision for Cross-Empowerment to ensure Single Interface under GST
5. Approval of the Draft Compensation Law as modified in accordance with the decisions of the GST Council
6. Date of the next meeting of the GST Council
7. Any other agenda item with the permission of the Chairperson

3. In his opening remarks, the Hon'ble Chairperson of the Council welcomed all the Members and informed that during this meeting, they would first hear the sectoral representatives of certain industries to understand their concerns. The Hon'ble Minister from Bihar recalled that in the last meeting of the Council, it was agreed that the representatives of the Power sector would also be called, but they had not been invited for

consultation, though electricity was a very important issue for the public at large. He also suggested that instead of discussing sectoral issues, it would be better to first complete the task of formulating the Goods and Services Tax (GST) Laws. The Secretary to the Council (hereinafter referred to as 'Secretary') informed that the Power sector could be called in the next meeting of the Council, if the Council so agreed. He further stated that it would be better to hear the stakeholders while the law was being formulated in order to factor in their concerns while drafting the law. The Council agreed to this suggestion.

Discussion on Agenda Items

Agenda Item 1: Brief presentations by representatives of the following sectors –

1. **Banking and Insurance**
2. **Telecommunication**
3. **Information Technology (IT) & Information Technology Enabled Services (ITeS)**
4. **Civil Aviation**
5. **Railways**
6. **Commerce**

4. The Hon'ble Chairperson invited the representatives of each sector to make a brief presentation regarding important issues faced by their sector in the proposed GST regime. The discussions on each of the above sectors are recorded as below.

4.1 Banking and Insurance

4.1.1 The Secretary, Department of Financial Services (DFS), Ms. Anjuly Chib Duggal made a few introductory remarks on some important aspects related to banking sector in India. Shri V.G. Kannan, Chief Executive Officer, Indian Banks Association (IBA) thanked the Council for the opportunity and introduced Ms. Bhavna Joshi, IBA who made a brief presentation on the challenges for the banking sector with regard to GST. She pointed out that it would be a challenge to determine on a real time basis whether a banking related taxable transaction was inter-State or intra-State. She further stated that the banking services were expanding with increasing use of mobile and internet banking and approximately 3.5 crore transactions took place daily. By way of illustration, she stated that if a bank headquarter was located in Maharashtra, the customer was located in Delhi and the factory was situated in Gujarat, it would be a challenge as to how and when to tax such a transaction. She gave an example of an ATM transaction and pointed out that it would be difficult to establish on real time basis whether the customer belonged to the same State or another State, and it would considerably slow down the IT system. In order to address these challenges, she suggested that in GST, there should be one registration for a bank for its headquarters and only Integrated Goods and Services Tax (IGST) might be charged for all

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transactions. She observed that this would simplify compliance and would obviate the need to determine whether a customer coming to make a demand draft in the bank, should pay CGST and SGST or IGST. She stated that at the end of the month, all the transactions could be segregated and invoices relating to business-to-business (B2B) transaction would be uploaded and information relating to business-to-consumer (B2C) transactions would be furnished to facilitate transfer of tax to the destination State. She observed that this would make compliance easier and emphasised that real time determination of place of supply would be very difficult due to large volume of transactions.

4.1.2. The Hon'ble Minister from West Bengal observed that when in goods sector, multi-State operators were registered under Value Added Tax (VAT) in every State, it would be desirable for multi-State operators in service sectors to be also registered in every State. He cautioned that any exception for one sector would lead to a demand for the same exception from other sectors, which would be difficult to accept. The Hon'ble Minister from Tamil Nadu stated that for defining the place of supply, the banking sector was same as other sectors and that the tax had to flow on the basis of the destination of the final consumer. He stated that even if IGST was charged, the final consumer would need to be identified to enable transfer of tax to the destination State. He stated that if this could be done for IGST, it could also be done for CGST and SGST. He remarked that it was not correct to say that the complexity of an IT system would increase due to the nature of the tax being paid. He expressed that keeping in view the overall philosophy of GST, registration should be taken in every State.

4.1.3. The Hon'ble Minister from Karnataka observed that if apportionment of tax could be done to each State at the end of the month, it could also be done through SGST/ CGST route. The Secretary, DFS explained that a related problem was that one bank was spread over many States and the cross-utilisation of input tax credit (ITC) would not be feasible if registration was taken State-wise and returns were filed State-wise. She stated that allocation of tax, State-wise, could be done but the netting of ITC would not be possible at institutional level. The Hon'ble Chief Minister of Puducherry raised a question about global practices in this area. Shri V.G. Kannan, Chief Executive Officer, IBA stated that in countries/Customs Union like Canada, Australia and EU, there was no levy of tax on Current Account and Savings Account (CASA), and that only fees-based services were taxed. The Hon'ble Minister from West Bengal pointed out that GST was a destination-based tax and the place where taxation originated was irrelevant. The IBA representative clarified that as destination was important, this could be handled more easily through IGST. He added that 75% of banking transactions were B2B transactions where credit flows would take place and that services to retail customers though large in number, were small in terms of revenue yield. He gave the example of complexity of a case where a customer of Bank A holding an account in Delhi went to Himachal Pradesh and drew money from an ATM of Bank B. In this case, Bank A would have to first determine whether the number of the transaction in the ATM (whether fifth or sixth) was such as to attract levy of GST and then to determine whether this tax should be charged as CGST and SGST or as IGST. He explained that determining this on real-time basis would be time-consuming and pose a problem for customers in terms of time taken to complete the transaction. He, therefore,

suggested carrying out this task at the end of the month. The Hon'ble Minister from Tamil Nadu observed that this example seemed to pose the least challenge as the place of supply would be where the ATM was located. He observed that there would be complexity for GSTN if all taxes relating to banks were charged as IGST.

4.1.4. In the presentation made on the Insurance sector, Shri G. Srinivasan, Chairman, General Insurers' Public Sector Association stated that the insurance industry had certain peculiarities. He added that presently, in the Service Tax regime, Insurance companies were dealing with only one tax authority and that they needed a simpler system under GST. He pointed out that the volume of transactions in life insurance policies was very large (approximately 13 crore) and involved different kinds of policies such as group policies, policies to persons located in different States, etc. which were issued in different modes including digital mode. He pointed out that there could be cases where an insurance policy would be issued in one State, the policy-holder would reside in another State and a claim against the policy would be made in a third State. He stated that the ease of doing business for the insurance sector should not be affected under GST and that the IGST model could make the process simple. He further stated that the rate of tax for government-sponsored insurance policies should be lower. Ms. Usha Sangwan, Managing Director, Life Insurance Corporation of India stated that the processes under GST should be simple and easy to monitor and suggested to have a single point of review of the system through a Management Information System (MIS). She stated that a centralized system at the backend could be used to ensure that the correct amount of tax reached every destination State. She also requested that if life insurance had to be taxed under GST, the rate of tax should not be so high as to make it unaffordable for the middle class and suggested to charge tax at the merit rate. On a query from the Hon'ble Chairperson regarding the existing rate of tax in the Insurance sector, she informed that presently the tax rate for term insurance products was 15% and for other categories, after taking into account abatement, was 3%. The Hon'ble Minister from Tamil Nadu raised a question as to what would be the likely expansion of life insurance coverage if there was a sharp reduction in tax rate for the insurance sector in GST. She clarified that penetration of life insurance coverage depended upon many factors but a high tax rate could be a psychological barrier. She added that life insurance was also very important from the perspective of social security.

4.2. Telecom

4.2.1. Shri J.S. Deepak, Secretary, Department of Telecommunication made three broad points. First, he pointed out that Telecom was an essential sector and it was unique in the sense that it was regulated through licensing. He informed that there were 22 telecom circles in the country and out of these, 12 circles covered more than one State (e.g. Delhi circle included the States of Delhi, UP and Haryana) and five States had more than one circle (for example, the State of Uttar Pradesh had UP East Circle and UP West Circle). He pointed out that this would create a structural mismatch if GST registration for the telecom operators was to be taken State-wise. He further pointed out that after the introduction of wireless telephony, allocation of spectrum was as per telecom circles and therefore, it would be difficult to make the telecom circles congruent with State-wise tax jurisdiction. He,

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therefore, suggested to have one registration under GST and also only one audit jurisdiction. The second issue that he raised was that voice call was seamless in nature and for a call made from Delhi to Goa, inputs were used from the exchange network of both Goa and Delhi and, therefore, pooling of ITC was essential. The third issue that he raised was that there were several instances of self-supply in telecom sector and these should not be taxed.

4.2.2. Shri Akshaya Moondra, CFO, Idea Cellular made a presentation on behalf of the industry. He pointed out that record-keeping, accounting, etc. were kept on circle-basis based on license conditions. He added that the spectrum allocations as well as network configurations were aligned to circle boundaries and it was not possible to align them to tax jurisdictions. He added that they did not record intra-circle transactions. The Hon'ble Chairperson raised a question as to whether it was possible to record it to which Shri Nilanjan Roy, CFO, Bharti Airtel clarified that it would not be possible to do so as the switch might be lying in one State and the call might originate in another State and it would be very complex to arrive at the value of such a transaction. He pointed out that complexity would be high as almost 10 billion calls were made every day. The CFO, Idea Cellular added that this sector had five hundred international roaming partners who billed and were billed by each of the 22 telecom circles separately and realigning them with each of the 32 tax jurisdictions would be highly challenging. He further pointed out that in transmission of a long-distance call, say, from Gujarat to Delhi, assets lying in the intervening States were also used leading to incurring of input cost without any corresponding output tax in the intervening circles. If tax had to be paid at each intermediate stage, this would lead to blockage of ITC in some circles.

4.2.3. Summing up, he made the following four requests for the consideration of the Council: (i) there should be no tax on self-supply of services between two registrants of the same entity in separate tax jurisdictions within the same circle as, for example, self-supply (B2B) from Maharashtra to Goa which were separate States, within the same legal entity and there should be no need for billing and GST compliance; (ii) in a B2B transaction, the place of supply for both recipient and supplier should be the place of the contractual billing; (iii) tax on prepaid vouchers should be charged at the first stage of invoicing to the distributor based on MRP (Maximum Retail Price) and that no tax be charged for subsequent transactions in relation to that voucher (this was requested because when the recharge happened at the retailer level, the credit to the customer was given based on MRP, whereas the retailer might have sold this at a lesser price and the industry would not want to get into disputes on non-compliance of GST for the difference between MRP and actual selling price by the retailer. It was also pointed out that in the eventuality that this was not considered, transitional provisions was needed to address the issue of tax on pre-paid vouchers lying in stock of various dealers on which service tax had been discharged on full value before the transition date and which would again become liable to GST. The current transitional provisions did not address this); (iv) telecom services should be charged at lower rate as it is an essential service. He pointed out that issues raised at (i) and (ii) above could be partly addressed only by having a system of centralized registration.

4.2.4. The Hon'ble Deputy Chief Minister of Delhi raised a question as to how a single registration would solve the issue of telecom circles not being co-terminus with the State boundaries. The CFO, Idea Cellular stated that the problem might not be fully solved and requests (i) and (ii) as stated above needed to be addressed but centralised registration would prevent litigation in allocating revenue State-wise as per return especially as one telecom circle spanned more than one State. In a Centralised Registration, the company would provide a State-wise revenue breakup of national level revenue reconciled with audited accounts and compliance could be ensured by a central assessing authority. This reconciliation would not be possible in a decentralised set-up. In a decentralised set up, given the nature of services and all-pervasive nature of networks, there would be different tax jurisdictions in a circle claiming that the revenue belonged to a particular State and it would result in litigation which was best avoided. The Hon'ble Chairperson raised a question in relation to the example given of a call between a location in Maharashtra and a location in Goa and questioned as to how revenue would be shared between the two States in a situation of centralized registration if telecom towers were not able to make a distinction as to where the service was supplied. The representative clarified that in B2C transactions, the revenue would be allocated on the basis of place of supply rules but when a call was of a B2B nature, there could be demand for charging tax at the intermediate level. The Hon'ble Minister from Tamil Nadu observed that as all billing for telecom customers was done at the location of the customer as validated by the KYC (Know Your Customer) norms, there might not be any difficulty in allocating taxes to the States. The CFO, Bharti Airtel clarified that for B2C supply, it would not be a challenge, but for B2B supply, it could be a challenge to determine the location of the service provider or the service recipient. Shri Deepak Garg, Head (GST), Reliance Jio pointed out that in case of a National Long Distance (NLD) licence for a call from Goa to Delhi, it might be disputed whether the location of service provider was in Goa from where the call originated or in Delhi, where the call terminated. Such disputes would be avoided in a single registration regime. The Hon'ble Deputy Chief Minister of Delhi observed that the issue relating to lack of congruence between the territory of telecom Circle and of State would require to be addressed. The Hon'ble Minister from Tamil Nadu observed that the issue seemed to be simple and complexity was being thrust upon it. He observed that the location of the service provider would be known through granular level invoicing without which billing could not be done. He further stated that in the Maharashtra-Goa example given earlier, if there was a single registration and the returns were filed centrally, then the telecom operator would not be able to show reconciliation if Goa and Maharashtra disputed the place of supply of service. The Hon'ble Minister from Karnataka observed that if the telecom operator was giving a declaration, it would have to be based on invoice and without it, centralized registration would be a challenge. The representative pointed out that the biggest challenge of State-level registration would be levying tax on self-supply where one call went through several States and tax could potentially be charged in each State and the issue of multiple States claiming revenue in their jurisdiction in a decentralised set up.

4.2.5 In the concluding part, the Hon'ble Minister from Mizoram pointed out that the quality of telecom service by BSNL was very poor in the North Eastern States and it needed to be improved urgently. The Hon'ble Chairperson observed that the quality of BSNL

service must be improved in the North Eastern States for effective implementation of GST. The Secretary, Department of Telecommunication clarified that they had provided broadband in all 506 blocks in Mizoram and in addition, dongle-based connectivity had also been provided. He stated that almost 97% of the population in Mizoram had internet connectivity. The Hon'ble Minister from Mizoram pointed out that broadband connectivity was not reliable and it needed improvement.

4.3. IT/ITeS

4.3.1. Ms. Aruna Sundararajan, Secretary, Ministry of Electronics and Information Technology made some broad points in relation to the IT sector. She stated that the growth of IT products and services was important for accelerating the growth rate of the country. She pointed out that IT products and services accounted for 10.6% of the Gross Domestic Product (GDP) of the country and created about 3.7 million direct and about 1 crore indirect jobs. She informed that India was also becoming a manufacturing hub for electronic hardware like mobile phones and that 40 mobile manufacturers and 30 component manufacturers have set up manufacturing facilities in India. She stated that if India harnessed this potential, it could create two to three crore jobs in the manufacturing sector alone. The second important point that she made was that the IT sector was highly intangible in nature and this created classification difficulties as to whether the supply made was a product or a software. She further pointed out that for creating a software, multiple teams worked at different locations including abroad and this aspect needed to be factored into the design of GST. She pointed out that if the presently proposed structure under GST was to be followed, this would significantly increase the cost of compliance due to multiple registrations and multiple invoicing and could also lead to cascading. She suggested that there should be a simpler process for registration and invoicing and that tax be charged only when something was delivered and not for intermediate processes.

4.3.2. Shri R. Chandrashekhar, President, NASSCOM (National Association of Software and Services Companies) stated that the present GST design would pose serious challenges to the IT sector, especially complex place of supply rules and valuation rules. He suggested that the IT sector be given an option for single registration especially for companies with pan-India operation. He stated that this would help centralised billing and centralised contract for exports. He also stated that the intra-entity valuation should not be such so as to lead to accumulation of ITC or a refund situation. He stated that the IGST mechanism could be relied upon for filing return, etc. and for allocating tax revenues to the States. He further added that GSTN should be leveraged for revenue sharing between the Centre and the States and that the design of GST should promote ease of doing business. He also suggested that software should be classified as services, including for electronic download, and that software loaded on a tangible medium should attract the same rate of tax as for software classified as services. He also stated that India was a pioneer in developing a global delivery model based on multiple location delivery and the GST in its current form would require raising disaggregated internal invoices and of taking ITC. He observed that this would require entering into multiple contracts for a single transaction whereas the requirement was for a single registration for billing and for taking ITC. He observed that due to intangible

nature of the IT industry, it was difficult to determine place of supply and place of consumption. He also suggested that not only should the valuation rules be simple, but valuation-related questions should not be raised in relation to internal supplies. He also added that the Indian IT sector which was globally competitive was becoming a victim of protectionism in other countries and its trouble should not be compounded by having a complicated domestic tax regime which could mire it in litigation.

4.3.3. The Hon'ble Minister from West Bengal raised a question as to what was 'intangible' from the perspective of GST. Shri P.V. Srinivasan from Wipro explained that 'intangible' meant something that had no physical attribute and that the nature of business was such that it could be carried out from many locations. The Hon'ble Minister from West Bengal inquired whether there was any internationally benchmarked definition of 'intangible' as many countries had GST and how they had addressed the intangible nature of the sector. The representative from Wipro clarified that the world over, GST was mostly a central levy and Canada, which had a dual levy, had a harmonized VAT like IGST. He explained that 'intangible' meant where input and output were not measurable and were fungible. He added that this led to a compliance challenge as to how to measure what was done at service-level from point to point. He stated that GSTN could address the revenue-sharing mechanism. The Hon'ble Minister from Tamil Nadu observed that IT and ITeS were distinct sectors and that companies like Netflix needed to be taxed with a fair degree of certainty. Shri Mahesh Jaising from BMR Advisors clarified that such downloads were a very small fraction and that they did not seek any change in B2C transactions. Once the customer identity and address was available in a B2C transaction, the destination State would get its share of tax. Their main suggestion was to levy tax on the basis of place of contract in B2B transactions. The Hon'ble Minister from Tamil Nadu observed that invoices would be raised internally and the customer of the software could be insulated from such splitting of invoices. The President, NASSCOM stated that it would be a challenge to attribute specific value to each State while raising invoices and it was desirable to avoid such challenges in the law.

4.4. Civil Aviation

4.4.1. Shri Rajiv Nayan Choubey, Secretary, Ministry of Civil Aviation stated that the Civil Aviation sector had reached parity with the Railway sector and was thus, no more a preserve of the rich and was a building block of the economy. He stated that air fares and the charges for AC 2-tier tickets were almost similar and that the number of passengers travelling in airlines was almost the same as the number of passengers travelling in the higher classes of railways, namely AC First Class, AC 2-tier and AC 3-tier. He stated that Aviation Turbine Fuel (ATF) being outside the ambit of GST and the entire ticketing system being under the purview of GST was a double whammy for the civil aviation sector. The Ministry raised the following issues for the consideration of the Council: (i) Aircraft leasing and aircraft import should not be subjected to taxation in GST as was the situation presently; (ii) To have a system of centralized registration as most aircrafts, engines, spare parts, cutlery and services moved inter-State very frequently and without centralised registration, each such transaction would need to be valued, invoiced and taxed leading to

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blockage of funds without accrual of any net revenue; (iii) Self-supplies such as import of aircraft and movement of aircraft in different States should not attract GST; (iv) The rate of GST for economy and non-economy class air travel under GST should be kept at the same level; (v) Zero-rate outward travel; (vi) Adopt the present definition under Service Tax for continuous journey so that a mere change of aircraft by a passenger in transit did not require splitting of revenue and meeting compliances; (vii) ATF being the single-largest cost in the airline industry should be brought under GST at the earliest.

4.5. Railways

4.5.1. Shri B.B. Verma, Adviser Accounts, Railway Board raised following important issues – (i) 54% of the operating cost was due to HSD (High Speed Diesel oil) and no ITC on diesel/electricity would be available in GST which was a severe disadvantage for the Railways; (ii) Numerous problems of billing and raising invoices were likely to be faced, especially in case of inter-State movement for a pan-India organisation like the Indian Railways and this could be addressed by permitting centralized registration either at national level or at least at the Zonal Railway level; (iii) To either continue 70% abatement for taxes on passenger/freight services or to have a tax rate which was neutral in terms of its financial impact on railways (preferably in the range of 5% or 12%); (iv) Not to levy tax on inter-State movement of goods by Railways for self-consumption (captive consumption) as well as on movement of empty coaches/wagons; (v) To provide for some concession on works contract especially in the area of safety related works and projects of national importance (like Jammu & Kashmir and the North Eastern region) as well as provision of clear valuation principle for works contract; (vi) Permit transfer of ITC inter-State; (vii) To incentivise PPP (Public Private Partnership) and JV (Joint Venture), GST should be zero rated or it may be kept at the base rate of 5%; (viii) To consider cleaning of railway platforms, etc. as part of Sanitation Conservancy service to enable them to be exempt from tax; (ix) Exemption of long-term lease (from IRFC, SPVs and other leasing arrangements) from the ambit of GST. He emphasised the role of Railways as the National Carrier especially as transport by rail was more environment friendly and was six time more energy efficient than road. On this account, he requested that rail transport should be incentivised through a favourable tax structure under the GST regime as compared to other modes of transportation.

4.5.2. The Hon'ble Chairperson raised an issue as to how taking registration under GST in every State would make their operations difficult and he responded that this would lead to several logistical problems. The Hon'ble Chairperson stated that the same issues could also arise for goods to which the Member (Finance) responded that if required, they could tweak their system to meet the requirement of GST. He added that tweaking of the pan-India system of Railways would be a time consuming process and necessary preparatory time must be given.

4.6. Commerce and Industry

4.6.1. Shri Ramesh Abhishek, Secretary, Department of Industrial Policy and Promotion made a suggestion that in GST, leather and footwear should be taxed at 5% and cement



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should be taxed at 12%. Shri A.K. Bhalla, Director General, Directorate General of Foreign Trade (DGFT) stated that export competitiveness was the core issue. He stated that the proposed GST system mandated that even though exports were zero rated, all duties must be paid at the time of purchase of inputs needed for manufacturing of an export product only to be refunded after actual exports. He added that since normal lead time starting from the sourcing of raw material to export ranged from six months to one year, the model to first pay and then claim refund would block working capital of about Rs. 185,000 crore for the exporters. He explained that this figure was a rough estimate based on the assumptions of manufactured product export value of about US\$200 billion (against India's total export of US\$262 billion in year 2015-16), average 30% value addition over the inputs and GST rate of 18%. He added that this would also result in an additional cost of Rs. 22,000 crore to the exporters assuming 12% cost of capital for one year and expressed that this would have adverse impact on export competitiveness. He further stated that the efficacy of current export promotion schemes like Advance Authorisation and Export Promotion Capital Goods schemes that currently allowed firms to buy inputs or machinery without payment of applicable duties through *ab initio* exemption, would get reduced due to working capital blockage. He also stated that the efficacy of deemed export scheme that covered supplies from the Domestic Tariff Area to Export Oriented Units (EOU)/ Software Technology Parks of India (STPI)/ Mega Power Projects and World Bank funded projects would also get reduced. He further added that on the Services side, services under Mode 2 of GATS (General Agreement on Trade and Services) such as health, tourism, etc. contributed significant amount of foreign exchange and therefore, they should be taxed at a moderate rate under GST.

4.6.2. Shri Alok Vardhan Chaturvedi, Additional Secretary, Department of Commerce mentioned that Special Economic Zone (SEZ) was treated as outside the Customs territory of India and the GST design of paying IGST on supplies to SEZ and then claiming refund would block substantial working capital. He added that as SEZ was like a bonded area, any supplies to it from the domestic tariff area or a supply from one SEZ to another should be *ab initio* exempt from tax. He also highlighted the importance of the plantation sector for job creation and stated that tea and coffee should either be exempt from GST or should be charged at a low rate of 5%. He also suggested to exempt green coffee beans from GST. He further stated that there should be seamless flow of ITC to growers and manufacturers and that the time for reversing ITC be increased from the present six months to eighteen months.

4.6.3. The Hon'ble Minister from Tamil Nadu asked a clarification as to how the figure of Rs. 22,000 crore locked in refund was arrived at. The Director General, DGFT clarified that the calculation was made on the basis of normal production cycle and where duty had been paid. He further added that the issue did not relate to refund which under GST was envisaged to be given quickly; rather it was the issue of blocking of working capital. The Hon'ble Minister from Jammu & Kashmir observed that the credit blockage would be rolled over a period of time. The Director General, DGFT stated that the capital blockage relating to processing of goods would vary for different sectors depending on the production cycle, but there was no logic to collect tax on supplies, which were zero-rated.



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Agenda Item 2: Confirmation of the Minutes of the 7th GST Council Meeting held on 22-23 December, 2016:

5. After the presentations by the various sectors, the Hon'ble Chairperson invited comments of the Members on the draft Minutes of the 7th Council Meeting (hereinafter called the 'Minutes') held on 22 and 23 December 2016 before the confirmation of the same. The Members suggested the following amendments to the draft Minutes.

5.1. The Secretary informed that a request had been received from the Government of Odisha to amend the version of the Hon'ble Minister from Odisha recorded in the third and the fourth sentence of paragraph 13 of the Minutes with the following version – 'He added that while the Central Government had enhanced the Clean Environment Cess to Rs. 400 per tonne in 2016-17, this cess was not being shared with the coal-bearing States. He further suggested that the Clean Environment Cess should be renamed as 'Environment and Rehabilitation Cess' and at least 60% of its proceeds should be shared with the coal-bearing States to meet the negative externalities and the remaining 40% of the cess may go to the GST Compensation Fund.' The Council agreed to make this change in the version of the Hon'ble Minister from Odisha.

5.2. The Secretary informed that the Government of Gujarat had sent a request to replace the version of the Hon'ble Deputy Chief Minister of Gujarat recorded in the fourth sentence of paragraph 8(iv) of the Minutes (relating to the discussion on Section 16 of the Model GST Law) with the following version - 'The Hon'ble Deputy Chief Minister of Gujarat expressed that credit on pipelines might be allowed for the first five years of implementation of GST only for which compensation was going to be paid to the States. He added that the entire credit might be allowed in the first year for these five years and that no credit should be allowed thereafter, so that there were no adverse financial implications on the revenue of the State.' The Council agreed to make this change in the version of the Hon'ble Deputy Chief Minister of Gujarat.

5.3. The Hon'ble Minister from Maharashtra stated that in paragraph 14 of the Minutes, the presently recorded version namely 'The Hon'ble Minister from Maharashtra suggested to add Local Body Tax (LBT) in the base year revenue' should be replaced by the following version – 'The Hon'ble Minister from Maharashtra stated that in view of abolition of the Local Body Tax (LBT), the following explanation should be added at the end of Section 5 of the draft GST Compensation Law; 'Explanation – For the purpose of clause C above, the term 'Revenue Collected' shall mean the amount of tax leviable under the erstwhile Entry 52 of List II of the Seventh Schedule to the Constitution prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016 that could have been collected in the Base Year had the same not been discontinued either fully or partially, during the course of the year.' The Council agreed to replace the version of the Hon'ble Minister as per the suggestion made.

5.4. The Hon'ble Minister from Maharashtra further stated that in paragraph 14 of the Minutes, the presently recorded version namely 'The Hon'ble Minister suggested to release compensation on the basis of self-certification by the State Government instead of CAG

certification' should be replaced by the following version – 'The Hon'ble Minister suggested to release compensation on the basis of self-certification by the State Government instead of CAG certification, or as the case may be, by the Audit Department of the State Government'. The Council agreed to replace the version of the Hon'ble Minister as suggested.

5.5. The Hon'ble Minister from Maharashtra also pointed out that in the 7th Meeting of the Council, he had suggested that even if the amount available in the GST Compensation Fund was not sufficient to pay compensation, the States shall be paid compensation within the five-year period and that levy of cess might be extended beyond five years to recover the shortfall. He stated that this was not clearly recorded in the last sentence of paragraph 14 of the Minutes and requested to replace the last sentence with the following version: 'He also suggested that even if the amount available in the GST Compensation Fund was not sufficient to pay compensation, the States shall be paid compensation within the five-year period and that levy of cess might be extended beyond five years to recover the shortfall'. The Council agreed to modify the version of the Hon'ble Minister as proposed.

5.6. The Hon'ble Minister from Karnataka stated that his version recorded in paragraph 7(xxxviii) of the Minutes namely 'The Hon'ble Minister for Karnataka stated that while he agreed with the flexibility principle by bringing Schedule IV in a notification, one advantage of keeping these exemptions in the Law was that the suppliers of Government services would not be required to take registration if they were also making small quantum of taxable supply' should be replaced with the following version – 'The Hon'ble Minister for Karnataka stated that while he agreed with the flexibility principle by bringing Schedule IV in a notification, one advantage of keeping these ~~exemptions in the Law~~ items as neither supply of goods nor of services was that the suppliers of Government services would not be required to take registration if they were also making small quantum of taxable supply'. The Council agreed to modify the version of the Hon'ble Minister as suggested.

5.7. The Hon'ble Minister from Karnataka further stated that his version recorded in paragraph 8(i) namely, 'The Hon'ble Minister from Karnataka suggested not to call these products as agricultural products and instead give them specific exemption from tax' should be replaced with the following version 'The Hon'ble Minister from Karnataka suggested not to call ~~these products as agricultural products~~ persons involved in production of these products as agriculturists and instead give them specific exemption from tax'. The Council agreed to change the version of the Hon'ble Minister as suggested.

5.8. The Hon'ble Minister from Tamil Nadu recalled that in the last meeting, he had suggested to specifically reflect ITC adjustment and ITC reversal in the GST Compensation Law as Section 5(1)(h) and in response, it was clarified (as recorded in paragraph 20 of the Minutes) that the spread sheet containing details of ITC adjustment and ITC reversal was not meant to be added to the revenue collected as it was already decided in the Council that for compensation, the amount of revenue to be taken into account would be net of ITC reversals. In this regard, he pointed to the decision in the 3rd Meeting of the Council held on 18-19 October 2016 (in paragraph 34) that 'ITC reversals shall be included in the definition of 'revenue subsumed' for the base year 2015-16 for the calculation of compensation to the

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States for any loss of revenue owing to the implementation of GST for five years' and stated that in this view, it should be recorded that Section 5(1)(h) be added to reflect ITC adjustment and ITC reversal. The Secretary clarified that the decision in the 3rd Meeting of the Council was correctly recorded and it implied that the net revenue of States would also include ITC reversal. He further clarified that prior to this decision, the proposal was that the amount of ITC reversal would be excluded from the calculation of the net revenue of the States. He added that since the decision now was that the income coming out of the ITC reversal would be counted as part of the net revenue of the States, the net revenue of States would also include ITC reversal. He stated that if the amount of ITC reversal was again added to the base year revenue in Section 5 of the GST Compensation Law, then, this would result in double-counting of the amount representing ITC reversal.

6. In view of the above discussions, for Agenda item 2, the Council decided to adopt the Minutes of the 7th meeting of the Council with the changes as recorded below.

6.1. To amend the version of the Hon'ble Minister from Odisha recorded in the third and the fourth sentence of paragraph 13 of the Minutes with the following version – 'He added that while the Central Government had enhanced the Clean Environment Cess to Rs. 400 per tonne in 2016-17, this cess was not being shared with the coal-bearing States. He further suggested that the Clean Environment Cess should be renamed as 'Environment and Rehabilitation Cess' and at least 60% of its proceeds should be shared with the coal-bearing States to meet the negative externalities and remaining 40% of the cess may go to the GST Compensation Fund.'

6.2. To replace the version of the Hon'ble Deputy Chief Minister of Gujarat recorded in the fourth sentence of paragraph 8(iv) of the Minutes (relating to the discussion on Section 16 of the Model GST Law) with the following version – 'The Hon'ble Deputy Chief Minister of Gujarat expressed that credit on pipelines might be allowed for the first five years of implementation of GST only for which compensation was going to be paid to the States. He added that the entire credit might be allowed in the first year for these five years and that no credit should be allowed thereafter, so that there were no adverse financial implications on the revenue of the State.'

6.3. To replace the version of the Hon'ble Minister from Maharashtra in paragraph 14 of the Minutes, presently recorded as 'The Hon'ble Minister from Maharashtra suggested to add Local Body Tax (LBT) in the base year revenue' with the following version – 'The Hon'ble Minister from Maharashtra stated that in view of abolition of the Local Body Tax (LBT), the following explanation should be added at the end of Section 5 of the draft GST Compensation Law; Explanation – For the purpose of clause C above, the term Revenue Collected shall mean the amount of tax leviable under the erstwhile Entry 52 of List II of the Seventh Schedule to the Constitution prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016 that could have been collected in the Base Year had the same not been discontinued either fully or partially, during the course of the year.'

6.4. To replace the version of the Hon'ble Minister from Maharashtra in paragraph 14 of the Minutes, presently recorded as 'The Hon'ble Minister suggested to release compensation on the basis of self-certification by the State Government instead of CAG certification' with the following version – 'The Hon'ble Minister suggested to release compensation on the basis of self-certification by the State Government instead of CAG certification, or as the case may be, by the Audit Department of the State Government'.

6.5. To replace the version of the Hon'ble Minister from Maharashtra recorded in the last sentence of paragraph 14 of the Minutes with the following version: 'He also suggested that even if the amount available in the GST Compensation Fund was not sufficient to pay compensation, the States shall be paid compensation within the five-year period and that levy of cess might be extended beyond five years to recover the shortfall'.

6.6. To replace the version of the Hon'ble Minister from Karnataka recorded in paragraph 7(xxxviii) of the Minutes as 'The Hon'ble Minister for Karnataka stated that while he agreed with the flexibility principle by bringing Schedule IV in a notification, one advantage of keeping these exemptions in the Law was that the suppliers of Government services would not be required to take registration if they were also making small quantum of taxable supply' with the following version – 'The Hon'ble Minister for Karnataka stated that while he agreed with the flexibility principle by bringing Schedule IV in a notification, one advantage of keeping these items as neither supply of goods nor of services was that the suppliers of Government services would not be required to take registration if they were also making small quantum of taxable supply'.

6.7. To replace the version of the Hon'ble Minister from Karnataka recorded in paragraph 8(i) as 'The Hon'ble Minister from Karnataka suggested not to call these products as agricultural products and instead give them specific exemption from tax' with the following version – 'The Hon'ble Minister from Karnataka suggested not to call persons involved in production of these products as agriculturists and instead give them specific exemption from tax'.

Agenda Item 3: Approval of the Draft IGST Law:

7. The Council took up the discussion of the draft IGST Law (hereinafter referred to as 'the IGST Law') section-wise and the important points discussed are recorded as below.

7.1. **Section 2(25) (Definition of "State"):** Starting the discussion, the Hon'ble Minister from Karnataka stated that this issue could be looked at from two perspectives as to whether to define 'State' for GST or to define an area for administration of GST. He said that while he was agreeable to either of the two approaches, the administrative route would be simpler and would avoid legal complexities. He pointed out that the definition of 'State' proposed under agenda item 3A left out part of the coast from the jurisdiction of the coastal States which they administered otherwise, as, for example, the responsibility for policing up to twelve nautical miles from the coastline. He pointed out that even if coastal waters were not part of the territory of the coastal States, the policing responsibility had been entrusted to such States. He suggested that a similar approach could be followed for SGST namely, not

to include territorial waters as part of the definition of 'State' but treat it as part of State for the administration of SGST. He pointed out that if territorial waters were treated as Union Territory, then, the indirect tax revenues accruing from transactions in the territorial waters would go into the Centre's pool and would not be available even for devolution to the States. He further stated that for the purposes of fishing, territorial waters along the coastline were treated as part of the State. The Hon'ble Minister from Kerala stated that VAT on ship bunkering was an important source of revenue for his State and it could not be given up in the GST regime. He also pointed out that the Fisheries Act of the coastal States included territorial waters. The Hon'ble Minister from Maharashtra pointed out that under Entry 57 of List I of Schedule Seven of the Constitution, the Centre's right to fishing and fisheries extended only beyond the territorial waters and therefore, the territory of the State of Maharashtra included the territorial waters up to twelve nautical miles. He added that keeping this in mind, his State was installing a statue of 'Chhatrapati' Shivaji in the territorial waters along the coast of Maharashtra.

7.2. The Commissioner, Commercial Taxes (hereinafter referred to as 'CCT'), Gujarat, Dr. P.D. Vaghela and CCT, Maharashtra, Shri Rajiv Jalota made a presentation on the subject of definition of 'State'. The CCT, Gujarat pointed out that States had jurisdiction over the adjoining territorial waters under the existing VAT and Central Sales Tax (CST) regime and emphasized that *status quo* must be maintained in the GST regime. He pointed out that the important activities presently taxed by the States in the adjoining coastal waters included: (i) Bunkering to the ships and dredgers; (ii) Supply to the ships, including cruise ships; and (iii) Supply of used oil from the ship. He also pointed out that the Centre never imposed VAT in the territorial waters as it had done in the Union Territories without Legislature and if the States did not have the power to levy VAT, the Centre would have certainly intervened earlier. He further pointed out that the coastal States had made considerable investment in development of ports, related logistics and other infrastructure such as roads, railways, power supply and environmental conservation measures. He also referred to certain judgements of High Courts and the Supreme Court which held that territorial waters were part of the State. He pointed out that in the case of A.M.S.S.V.M. and Co. vs. The State of Madras (in Order dated 24th February 1953), the Court had held that the territorial waters adjoining the State of Madras were very much a part of the State of Madras and that the Bombay High Court concurred with this view in the case of A. Ebrahim & Co. vs. The State of Bombay (in Order dated 11th April 1962). He further stated that in the case of State of Madras vs. Davar & Co. (in Order dated 20th May 1969), the Supreme Court had upheld the assessment under the Madras General Sales Tax Act and pointed out that assessment could be upheld only on the ground that the territorial waters were part of the territory of the State of Madras. He pointed out that all the judgements had held ground for fifty years. He further stated that the stay granted by the Supreme Court in the case of Great Eastern Shipping Co. Ltd. vs. the State of Karnataka (in Order dated 23rd January 2004) was only a stay *in personem* to the appellant for the balance dues.

7.3. The Hon'ble Chief Minister of Puducherry referred to a Circular of the Union Home Ministry under which States had been authorized to carry out patrolling up to twelve nautical miles and pointed out that the States also enjoyed powers to carry out fishing

within the territorial waters. He cautioned that the Centre could not encroach upon the power of the States. The Hon'ble Minister from Tamil Nadu stated that sales carried out in the territorial waters adjoining coastal States could be charged to VAT only if the territorial waters became part of the coastal State. He observed that without such an understanding, SGST could not be levied and this would adversely affect the revenue of the State. The Hon'ble Minister from Kerala pointed out that under Article 297 of the Constitution, all lands, minerals, etc. underlying the ocean within the territorial waters vested in the Union of India but GST applied to the activity of trade in the territorial waters and for this purpose, State should be defined to include territorial waters. The Hon'ble Minister from Andhra Pradesh stated that the coastal States exercised administrative control over fisheries and Law and Order. He informed that his State got VAT revenue of about Rs 600 crore from transactions in the territorial waters such as bunkering and transportation through pipelines and it could not afford to lose this revenue in the GST regime. He added that the Centre's proposal on the definition of State was not acceptable and States must be allowed to collect SGST in the territorial waters. He pointed out that for SEZs, both the Centre and the States had made laws deeming it as foreign territory and in a similar manner, territorial waters up to twelve nautical miles could be deemed to be part of State for collecting tax on sales or supplies.

7.4. The Hon'ble Chairperson broadly summarising the discussion, observed that States had been charging VAT for bunkering, etc. within the twelve nautical miles of the territorial waters and the presentation by the CCT, Gujarat referred to certain judgements. He stated that Article 1 of the Constitution read with Schedule 1 defined the territories of a State but not its boundaries. He added that Entry 56 in List II of Schedule 7 of the Constitution referred to the States' power to levy taxes on goods and passengers carried on inland waterways but was silent about territorial waters and that what was not mentioned in List II would automatically go to List I of Schedule 7 of the Constitution by virtue of residuary Entry 97 of List I. He further stated that there was a logic in the argument presented by the States that they should share the administration of GST in the territorial waters as the Centre did not collect VAT in the territorial waters, but the conceptual difficulty was that a definition in law could not be contrary to what was provided in the Constitution. He explained that the meaning of Entry 57 in List I of Schedule 7 was that the Union of India could fish beyond twelve nautical miles and this implied that the Union of India was excluded from fishing up to twelve nautical miles. He observed that when viewed in this manner, and also keeping in mind that Entry 21 in List II of Schedule 7 gave the power of fisheries to States without any restriction, the States were possibly entitled to enact in their fishing related laws that the territorial waters were part of the coastal State. He added that the power regarding fisheries within the territorial waters was given to the States under the Constitution itself whereas maintenance of law and order in the territorial waters was entrusted by the Centre to the States. He referred to the definition of Union Territory in Article 366 (30) of the Constitution to mean any Union Territory specified in the First Schedule of the Constitution and includes any other territory comprised within the territory of India but not specified in that Schedule. He pointed out that as the territorial water was not referred to in the First Schedule of the Constitution, it appeared to be a Union Territory. He said that it might not be advisable to define State in a law in a way different from the

definition of State given in the Constitution. He cautioned that if the power to levy SGST within the territorial water was given to the States under law, there was a risk that the law might get struck down as unconstitutional. The Hon'ble Minister from Maharashtra stated that there were judgments of the Court that the power to levy VAT within the territorial water lay with the States. The CCT Gujarat stated that in view of the judgements mentioned in his presentation, the affidavit filed by the Union of India in the Supreme Court in the case of Great Eastern Shipping Co. Ltd. vs. the State of Karnataka needed re-examination. He further pointed out that the State of Gujarat recovered about Rs. 1200 crore as VAT for transaction within the territorial water and they would lose considerable revenue if States were denied the power of taxation in the territorial water.

7.5. The Hon'ble Minister from Karnataka stated that the discussion should be on how the Union could be empowered to concede part of its territory for administration to States. He pointed out that power of the coastal police was not just to look after the territorial water but also to book cases and take follow up legal action. He further pointed out that a SEZ was physically located in the geographical territory of a State but in the GST law, supply from it was deemed to be inter-State supply and this could also be potentially *ultra vires* of the Constitutional provisions. He also observed that the States and the businessmen had accepted the SEZ law without a legal challenge. The Hon'ble Minister from Tamil Nadu stated that his State earned revenue of about Rs. 500 crore by bunkering, dredging, etc. and it could not afford to lose it in the GST regime. He further stated that there was enough precedence of State authorities carrying out administration in the territorial water like law and order, fishing, etc. He observed that if the Central Government kept to itself the administration of GST in the territorial water, it would amount to territorial expansion by the Centre. The Hon'ble Minister from West Bengal observed that their State had a coastline of 920 kilometres and it was important that SGST in the territorial waters should be collected by the State. He stated that in addition to the case laws mentioned in the presentation by the CCT Gujarat, there was an additional judgement of the High Court of Madras in the case of Madras Marine & Co. vs State of Madras wherein it was held that sales to ship within the territorial water was sale within the State and it was not to be considered as export as the sale was for consumption aboard the ship. He added that presently sale in the territorial waters was under VAT and no contrary view was acceptable to them.

7.6. Shri Udai Singh Kumawat, Joint Secretary, Department of Revenue (DoR) pointed out that there were also some contrary judgements holding that the coastal waters were not part of the territory of the adjoining coastal State. He stated that in the case of Raj Shipping vs. State of Maharashtra, on the subject of jurisdiction of the States over the territorial waters, the judgement referred to the debate in the Constituent Assembly where Dr. B. R. Ambedkar, the Chairman of the Drafting Committee in the Constituent Assembly, stated as follows: "we therefore want to state expressly in the constitution that when any Maritime State joins Indian Union, the territorial waters of that Maritime State will go to the Central Government. This kind of question shall never be subject to any kind of dispute or adjudication." The Joint Secretary, DoR also cited certain precedents under International Law. He stated that the US Federal Supreme Court in the case of United States vs. State of

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California ruled that California was not the owner of the three-mile marginal belt and that the Federal Government rather than the State had paramount rights over that belt. He further mentioned that in another case the Supreme Court of Canada dismissed the contention of British Columbia, one of the States of Canada, that the territorial waters belonged to it and held that the territorial waters belonged to the Union as sovereignty was based on International Law. The Hon'ble Minister from Tamil Nadu responded that the judgement in the Raj Shipping case was relating to the State of Travancore, which upon accession to India, demanded rights over 12 nautical miles and that this judgement applied to States acceding to the Union of India.

7.7. The Hon'ble Minister from Kerala observed that the States had been administering VAT in the territorial waters till now and they could not be ousted from their jurisdiction in the GST regime. The Hon'ble Chief Minister of Puducherry observed that the States exercised powers under the law to sort out disputes between fishermen in the territorial waters, and if it was to be treated as a Union Territory, then only the Indian Navy could intervene in such disputes. The Hon'ble Chairperson observed that the power to levy Customs duty and Service Tax in the territorial waters lay with the Union and accordingly, the Central Government was collecting these taxes. He observed that earlier, relying on Entry 21 in List II of Schedule 7 of the Constitution, the coastal States had passed their Fishery and Marine Acts in which they had included territorial waters in the definition of State. He added that in 1956, the Constitution was amended to incorporate definition of Union Territory in Article 366(30) which provided that whatever territory was not part of the State in Schedule 1 of the Constitution was deemed to be a Union Territory. He stated that the first case cited by CCT, Gujarat was a fisheries case and this was legally not problematic as fisheries was Constitutionally in the domain of the States and the second judgement followed the first one. He stated that the judgement in the case of Great Eastern Shipping Co. relied upon the fisheries case to say that it applied to it and the Union of India had objected to this decision. He further observed that as the power to levy VAT was never vested with the Union, the State Governments made legislation to administer VAT in the coastal waters and the practice thus continued. He added that now, in view of the definition of Union Territory in Article 366(30) of the Constitution, it needed to be considered carefully whether States could be given power to impose GST in a territory which was constitutionally a Union Territory. The Hon'ble Minister from Tamil Nadu stated that as States were allowed to collect VAT earlier, they should also be allowed to collect SGST in the spirit of cooperative federalism. The Hon'ble Minister from Karnataka stated that by an administrative arrangement, territorial waters could still remain a Union Territory and only a deeming fiction could be created to treat supplies in the territorial waters as intra-State. He pointed out that Article 269A (5) of the Constitution gave Parliament the power to formulate, by law, the principles for determining the place of supply and the Parliament could use this power to deem certain supplies as intra-State.

7.8. The Hon'ble Chairperson stated that as per the Constitutional provision, there appeared no ambiguity that territorial waters up to twelve nautical miles were part of Union Territory. He observed that the power for fisheries in territorial waters lay with the States and by convention, States started levying VAT on petroleum products sold in territorial waters by

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passing their own law. He said that the issue remained as to whether a State could levy VAT in a Union Territory and added that the responsibility of coastal security was delegated to the States after a conference of the Directors General of Police of States in which they were asked to supplement the security in the territorial waters though this task was basically entrusted to the Coast Guard. He stated that this matter was very sensitive and if territorial waters were declared as State territory, then maintenance of law and order in the territorial waters would become a State responsibility which had serious security implications. He stated that the Government of India had taken a stand in the case of Great Eastern Shipping Co. that territorial waters were Union Territory and it could be examined further as to what could be the legal methodology to legalize State jurisdiction to impose tax in the territorial waters though it did not belong to them. The Hon'ble Minister from Karnataka stated that this could be achieved by deeming supplies in territorial waters as intra-State and reminded that a similar deeming arrangement had been made for SEZs. The Hon'ble Minister from Tamil Nadu stated that such an arrangement for territorial waters would not be as much of a deeming fiction as SEZ was. He also pointed out that the Coastal Police and not the Coast Guard was responsible for law and order in the territorial waters. The Hon'ble Minister from Bihar observed that if GST was to be implemented from 1 April 2017, then so much time should not be spent on discussing an issue which went beyond the topic of the tax law. The Hon'ble Chairperson observed that this issue was relevant for tax law as States' territory for levying tax could potentially shrink if territorial waters were taken out of the taxable jurisdiction of the coastal States. The Hon'ble Minister from Odisha stated that his State had been collecting VAT, managing law and order, implementing fisheries law, etc. in the territorial waters and stated that in keeping with the past practice, States be allowed to collect SGST in the territorial waters.

7.9. The Hon'ble Chief Minister of Puducherry observed that all regions of his Union Territory were coastal areas and fishermen's livelihood came from fishing within the twelve nautical miles of the territorial waters. He observed that his State had also been involved in coastal policing and collecting tax and this power could not be taken away. He requested the Hon'ble Chairperson to suggest a formulation which, without affecting the legal position of territorial waters, gave power to the States to levy SGST. The Hon'ble Chairperson observed that taxation power of States within twelve nautical miles of territorial waters was somewhat fluid and uncertain despite certain judgements discussed earlier and presently, the Union of India had filed an affidavit in the Supreme Court in the case of Great Eastern Shipping Company Ltd disputing the jurisdiction of States to levy VAT in the territorial waters. He stated that this issue would need to be further discussed with the Union Law Ministry in order to find a legally sustainable solution. He noted that there was already one suggestion from the Hon'ble Minister from Karnataka and invited the other Members of the Council to also send their suggestions.

8. Dr. C. Chandramouli, Additional Chief Secretary (ACS) and CCT, Tamil Nadu stated that another legal issue that needed examination was the definition of 'State' in Article 366(26B). He stated that during GST consultations, they had received some inputs that the existing definition of 'State' under Article 366(26B) had made Union Territories without Legislature technically non-taxable territory. He explained that Article 246A

appeared to give power of levying tax only to the States and the Union Territories with Legislature which implied that Union Territories without Legislature had become non-taxable territory and this could be a potential ground for legal challenge. The Hon'ble Chairperson stated that this provision permitted Delhi and Puducherry to collect SGST whereas the power of taxation for other Union Territories would remain with the Central Government. The Secretary added that the definition of State under Article 366(26B) did not appear to exclude Union Territories without Legislature.

9. **Section 2(5) (Definition of "export of goods"):** In respect of the definition of 'export of goods', the Hon'ble Minister from West Bengal suggested to replace the phrase 'taking goods out of India' with the phrase 'supplying goods out of India'. He explained that this would be a more correct formulation technically as 'taking goods out' would also apply to tourists taking goods out of India which was not the meaning of export. Shri Upender Gupta, Commissioner (GST Policy Wing), Central Board of Excise and Customs (CBEC) clarified that this definition was taken from the Customs Act, 1962 which had stood the test of time and for the sake of uniformity, it would not be desirable to change the definition. He further clarified that Section 20 of the draft IGST Act also contained a provision for GST refund to tourists on meeting prescribed conditions and therefore, goods taken out of India by tourists also qualified as exports.

10. **Section 3(3) (Supplies of goods and/ or services in the course of inter-State trade or commerce):** The Hon'ble Minister from Karnataka suggested to make changes in this Section to enable the further passing on of ITC. The CCT, Karnataka explained that if a person sold goods in the territorial waters, there should be a provision of deemed delivery to the buyer to enable him to get the credit of the tax and the subsequent transactions could then be either inter-State or intra-State depending on the place of supply of the goods. It was agreed that this issue could be further discussed by the Law Committee of officers.

11. **Section 3(6) (Supplies of goods and/ or services in the course of inter-State trade or commerce):** The Hon'ble Minister from Tamil Nadu suggested to add, after the expression 'SEZ unit' the phrase 'situated outside the State'. He stated that the area of a State in which SEZ was located was specified in the first Schedule of the Constitution and the States could not be bifurcated without following the procedure specified in Article 3 of the Constitution. He added that presently, sale made to SEZ units or developers was considered as zero-rated or exempted sale under the VAT Acts but it was not treated as a territory outside the State or a Customs frontier under Article 286 of the Constitution. The Secretary clarified that no sovereignty was being granted to SEZ and it was only proposed that supplies by SEZ would be treated as inter-state supplies. The CCT, Tamil Nadu observed that the existing formulation would lead to sales to the domestic tariff area (DTA) within the State also being treated as inter-State sales. He added that all other State laws like labour laws, etc. applied to SEZ. The Hon'ble Minister from West Bengal observed that such a provision was a deviation from the existing provision of the State VAT Acts and suggested that under the Model GST Law, supplies from SEZ could be made zero-rated supplies. The Secretary clarified that IGST was proposed to be charged on supplies from SEZ to DTA. The Commissioner (GST Policy Wing), CBEC further clarified that for

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supplies from SEZ to DTA, both Basic Customs duty and IGST would be charged and if such supplies were to be treated as intra-State, then no Basic Customs Duty could be levied. The Hon'ble Chairperson observed that this provision needed to be kept in its present form in order to enable levy of Basic Customs Duty. The Council agreed to this suggestion.

12.1. Section 5(1) (Levy and collection of Integrated Goods and Services Tax): The Hon'ble Minister from Tamil Nadu observed that this provision allowed the IGST rate to be applied independently of the combined rate of CGST and SGST whereas the understanding was that the IGST rate would be the sum total of the rates of CGST and SGST. He therefore suggested that in this provision, a link should be established to the applied rate of CGST and SGST. The Commissioner (GST Policy Wing), CBEC observed that the sum total of CGST and SGST rates might vary if a band of SGST rates was operated by some State in future. The Hon'ble Minister from Tamil Nadu raised a question as to whether States had the authority to have a different rate of tax. The Secretary stated that a band of rate could be permitted for a State only if the Council agreed to it.

12.2. Section 5(1) (Levy and collection of Integrated Goods and Services Tax): The Hon'ble Minister from Haryana suggested that the cap on the rate of IGST should be increased from 28% to 40% as it had already been agreed in the 5th meeting of the Council held on 2-3 December 2016 that the cap of rate for CGST and SGST under Section 8(1) of the Model GST Law would be increased from 14% to 20%. He suggested that in the alternative, it could be provided that the GST Council shall recommend the rate of tax. The Secretary observed that the rate of tax would need to be specified in the law and under IGST, the cap of rate could be made 40% in view of the decision already taken to raise the rate cap for CGST and SGST to 20% each. The Hon'ble Minister from Haryana further suggested to specify that the rate cap of 40% shall be fixed for five years and that the Council could thereafter review the rates. The Secretary observed that it might not be desirable to bind the Council to a particular rate of GST for a fixed period of time as this would curtail the flexibility of the Council to respond to any exigencies. He further added that if the tax rate was fixed for five years with a review provision thereafter and in case such a review could not take place in time, it could lead to a legislative vacuum. The Hon'ble Minister from Haryana suggested that in order to permit States to impose cess on demerit goods after the expiry of the compensation period of five years, the provision could be amended to the effect that cap of 40% shall apply for goods other than demerit goods. The Secretary stated that the issue of charging tax or cess on 'sin' goods could be revisited at a later date. He also explained that the formulation suggested by the Hon'ble Minister from Haryana would require a separate definition of 'sin' goods and other consequential changes which would not be desirable. After discussion, the Council agreed to amend Section 5(1) by substituting the rate of 28% with 40%.

13. Section 5(3) (Levy and collection of Integrated Goods and Services Tax): The Hon'ble Deputy Chief Minister of Delhi observed that the second proviso to this section appeared to bring electronic commerce operators under the tax net, which had not been the practice till now. The Commissioner (GST Policy Wing), CBEC clarified that this provision was essentially for suppliers of services from abroad. The Hon'ble Deputy Chief Minister of

Delhi observed that this intention was not clearly reflected in the wordings of the provision. After discussion, it was agreed to continue with the present formulation.

14. **Section 6(1) (Power to grant exemption from tax):** The Hon'ble Minister from Tamil Nadu suggested that in Section 6(1), there should also be a reference to the SGST Act so that uniform exemptions were applied to CGST, SGST and IGST. He explained that this suggestion stemmed from the decision already taken in the 5th Meeting of the Council to make suitable modification in the wording of Section 11 of the Model GST Law to reflect the understanding that applicability of exemptions under CGST, SGST and IGST shall be uniform. The CCT, Tamil Nadu stated that in the absence of such a provision, in future, there could be a situation where rate of tax on a product could be lower for inter-State supplies vis-à-vis intra-State supplies. He said that in order to avoid such a situation, it would be desirable to state in the law itself that all exemptions shall apply under all the three laws, i.e. CGST, SGST and IGST. The Secretary observed that such uniformity would be maintained in view of the fact that all notifications were to be issued after the approval of the Council.

15. **Section 14 (Transfer of input tax credit):** The Hon'ble Minister from West Bengal suggested that in Section 14(1) and Section 14(2), the phrase 'in the manner and time as may be prescribed' should be replaced by the phrase 'on the first day of the month following the month in which the return is filed'. He explained that this would ensure that fund-flow to the destination State was credited on the first day of the month following the month in which the return was filed and that there was no scope for discretion in the matter. The Secretary stated that this could be provided for in the relevant Rules. The Hon'ble Minister from Jammu & Kashmir stated that GSTN was only a banking mechanism and the issue was the lateral transfer of fund between the importing and the exporting States and it needed consideration as to who would be the enforcing authority in cases of default. Shri Prakash Kumar, Chief Executive Officer (CEO), GSTN stated that tax returns would be filed on the twentieth day of every month and by the thirtieth day of the month, matching of invoice details would be done and a settlement order would be issued by an inter-State Cell as per the draft accounting rules shared with the States. The Commissioner (GST Policy Wing), CBEC added that the accounting rules would be recommended by the Council and that details regarding fund transfer were circulated in a publication released by the Principal Chief Controller of Accounts, CBEC. The Hon'ble Minister from West Bengal expressed that this provision should be incorporated in the law. The Secretary stated that if, for some reason, the prescribed timeline could not be adhered to under the law, the flexibility to modify the provision would be much more in the Rules rather than in the law. The CEO, GSTN added that if, for some reason, the time period for return-filing was extended, it could create serious legal complications.

16. **Section 15(7) (Apportionment of tax collected under the Act and settlement of funds):** The Hon'ble Chief Minister of Puducherry stated that he had addressed a letter dated 7 December 2016 to the Hon'ble Chairperson pointing out that in the second proviso to Section 15(7) of the Draft IGST Law, it was proposed to apportion the balance amount relating to cases where the taxable person making such supplies could not be determined, in

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accordance with clause 2 of Article 270 of the Constitution and that since the Union Territories with Legislature did not come under the purview of the Finance Commission as per Article 270, it was apprehended that Puducherry would not get its share of balance of IGST amount apportioned to the States through this mechanism. He therefore suggested that instead of apportioning the amount based on the devolution formula under Article 270, the amount due to the States under IGST Law should be apportioned among the States and Union Territories with Legislature in proportion to the SGST collection. The Hon'ble Minister from Assam cautioned against adopting a different formula for distribution as the Finance Commission followed a set pattern for sharing revenue taking into account various factors and agreeing to any other distribution method required careful consideration. The Hon'ble Minister from Kerala supported the proposal of the Hon'ble Chief Minister of Puducherry and stated that since the distribution related to only residuary amount of IGST, it could be based on the proportion of collection of SGST by States. The Hon'ble Minister from West Bengal also supported the proposal of the Hon'ble Chief Minister of Puducherry. The Council agreed to modify the second proviso to Section 15(7) to provide that the balance amount for a year shall be apportioned to all States in proportion to the SGST collection of the States for that year.

17. The Hon'ble Minister from Tamil Nadu raised a question as to why the SGST portion of IGST could not go directly to the concerned State instead of going through a clearing house mechanism. The CEO, GSTN explained that the money was first paid through a return and then, it was passed on to the State. Shri G.D. Lohani, Commissioner (Central Excise), CBEC explained that tax was not paid invoice-wise and tax could also be paid by utilizing the ITC instead of cash payment. On account of these features, there would be one bulk debit for each State for IGST payment made in cash and several debits from the ITC accounts of the taxpayers. The Secretary stated that it would not be advisable to question the entire model of IGST at this stage as this model was accepted after protracted discussion over many years.

18. Commissioner (GST Policy Wing), CBEC made a presentation on the IGST Model and explained its basic features. He pointed out that the basic premise of the IGST Model was a uniform e-Registration, common e-Return, common periodicity of returns, a uniform cut-off date for filing of return, mandatory reporting of supply and purchase and purchase invoice details along with e-Return, a system-based verification of returns on monthly basis, a system-based validation/consistency check on the ITC availed, utilized and tax payments. He also explained the working of the IGST Model and the manner of utilization of ITC for payment of IGST and the fund-settlement mechanism for ITC utilization. He explained through flowcharts, the incidence of taxation for intra-State and inter-State transactions pre- and post-GST and highlighted the benefit to the consumer by way of reduction of final price of goods due to elimination of cascading of taxes. The Hon'ble Minister from West Bengal stated that the model presented showed a gain of Rs. 7.7 for the consumer in an inter-State transaction and wondered how this loss of tax was allocated between the Centre and the States. The Secretary clarified that the example related to goods where the loss might be more for the States but in services, there would be a big gain to the States. He further added that the present service tax collection of the Central Government was about Rs. 2.1 lakh

crore and in the GST regime, this would be shared with the States. The Hon'ble Minister from Kerala stated that in the presentation, the rates of SGST and CGST were assumed to be the same, but there was a need to discuss the rate split between CGST and SGST. He also added that he needed to understand the role of States in the administration of IGST.

19.1. **Section 18 (Power to make rules):** The Hon'ble Deputy Chief Minister of Delhi observed that under this section, the Central Government had power to make rules on the recommendation of the Council. He raised an interpretational issue as to whether the Central Government would have the power to override the recommendation of the Council. The Hon'ble Chairperson stated that the Council represented a pooled sovereignty and therefore, a tradition needed to be built that recommendations of the Council shall be binding on both the Central and the State Governments. He observed that technically, the Parliament and the State Legislatures were sovereign entities but if each such body chose to depart from the recommendation of the Council, then GST would not work. He stated that the word 'recommendation' in the case of the Council should be read to mean that the Centre and the States shall not act otherwise than in accordance with the recommendations of the Council. He observed that it needed to be recognized that *de facto*, the Council was the legislative body while the Parliament and State Legislatures were *de jure* the legislative bodies. He added that if the Central or a State Government was not comfortable with any recommendation of the Council, it would need to come back to the Council to get it changed. The Hon'ble Minister from Assam raised an issue as to what stand a State Government should take in case amendments to the SGST law were suggested in the State Legislature. The Hon'ble Chairperson responded that the State Government's stand should be that it could not legislate contrary to the recommendation of the Council and that it would need to go back to the Council for approval of the desired modification.

19.2. The Hon'ble Minister from Kerala stated that the State legislature should have the freedom to enact a provision on its own without the approval of the Council if it did not have any implication for other States. He gave some examples in this regard, like certain facilities to be given to traders or measures to encourage voluntary registration. The Hon'ble Chairperson said that in the first cited example, the State legislature could act without the recommendation of the Council, but not in the second cited example as this measure could impact revenue of other States. The Hon'ble Minister from Jammu & Kashmir observed that such an interpretation would disempower the Legislative Assemblies of the States. He added that the Council could not be placed above the State legislatures. The Hon'ble Minister from Kerala stated that the State legislatures should have the freedom to enact measures like introducing electronic billing, uploading invoice on real time basis or registration of tourists. The Secretary observed that facilitation measures which did not impact the law need not be brought to the Council. The Hon'ble Minister from Kerala observed that if, for every measure, the State government had to come to the Council, then the State legislature would become irrelevant in relation to indirect tax legislation. The Hon'ble Minister from Jammu & Kashmir added that the powers of the State legislature could not be subsumed even in the GST matter.

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19.3. The Hon'ble Chairperson stated that Article 246A gave power to the Parliament and the Legislatures of the States to make laws with respect to goods and services tax and this could be made on the recommendation of the Council as referred to in Article 279A. He observed that the Parliament or the State Legislature could not legislate contrary to the recommendation of the Council. The Hon'ble Minister from Jammu & Kashmir stated that if the recommendation of the Council was binding on the Parliament and the State legislature, then a huge power was being conferred to the Council. The Hon'ble Chairperson stated that the interpretation given was in response to the question raised by the Hon'ble Deputy Chief Minister of Delhi as to whether the Central Government was bound by the recommendation of the Council while exercising its rule making power under Section 18 of the IGST Act. The Hon'ble Minister from Jammu & Kashmir stated that in a desire to bind the Central Government to the recommendation of the Council, the country's entire legislative framework of indirect tax should not be bound by the recommendation of the Council. The Hon'ble Chairperson observed that if every State as well as the Centre had a different GST law, then GST could not function. He stated that this question was being raised a year too late and that this question was also raised by the Hon'ble Members of Parliament from Tamil Nadu during the Parliamentary debate before the passage of the GST Constitution Amendment Bill.

19.4. The Hon'ble Deputy Chief Minister of Gujarat stated that the Council could not discuss the fundamental principles of GST and it should confine its discussion to the administrative and practical aspects of GST implementation. The Hon'ble Chairperson observed that the Council could decide as to what flexibilities could be allowed to the Legislatures in regard to procedures but they could not go against the meat of the matter as decided by the Council. He added that if the Legislature supplemented the decision with certain procedures not impacting law without bringing it to the Council, it could be acceptable. The Hon'ble Minister from Assam stated that interpretation of Article 279A of the Constitution now lay with the Courts. The Hon'ble Minister from Kerala stated that the provisions of Article 279A could also be interpreted by the Council but if there was a dispute, recourse could be taken to the court of law. The Hon'ble Chairperson observed that in the legal terminology, for the fields occupied by Article 279A, the State Legislatures and the Parliament were bound by the recommendation of the Council. The Hon'ble Minister from West Bengal stated that Article 279A only referred to recommendation by the Council and not regarding any binding nature of such recommendation. The Hon'ble Minister from Jammu & Kashmir observed that the Finance Commission's recommendation was not binding. The Hon'ble Minister from Assam stated that the Centre had developed a practice of accepting the recommendation of the Finance Commission and a similar practice needed to be developed in respect of the recommendations of the Council. The Hon'ble Minister from West Bengal stated that if the recommendation was meant to be binding, a 'shall' language would have been used in the Constitution. The Hon'ble Minister from Assam stated that it was only a civility in language but otherwise it was to be treated as binding. The Hon'ble Chairperson observed that the State Legislatures and Parliament could go beyond the recommendations of the Council but not contrary to it. He added that unless the framework of law and rules was common to all States and the Central Government, GST could not function.

20. **Section 24 (Appointment of officers of SGST as proper officer in certain circumstances):** The Council agreed to discuss this section under Agenda Item 4 relating to cross-empowerment to ensure single interface under GST.

21. In respect of Agenda Item 3, the Council approved the IGST Law subject to the decisions and observations as recorded below.

- i. **Section 2(25) (Definition of "State"):** The definition of 'State' needed to be discussed further to find a legally sustainable solution.
- ii. **Section 3(3) (Supplies of goods and/ or services in the course of inter-State trade or commerce):** This section to be discussed by the Law Committee of officers to examine whether a provision be added regarding deemed delivery of goods to the buyer when supply took place before the goods had crossed the customs frontiers of India.
- iii. **Section 5(1) (Levy and collection of Integrated Goods and Services Tax):** To amend Section 5(1) by substituting the rate of 28% with 40%.
- iv. **Section 15(7) (Apportionment of tax collected under the Act and settlement of funds):** To modify the second proviso to Section 15(7) to provide that the balance amount for a year shall be apportioned to all States in proportion to the SGST collection of the States for that year.
- v. **Section 24 (Appointment of officers of SGST as proper officer in certain circumstances):** To discuss the issue of cross-empowerment as part of Agenda Item 4.

Agenda Item 5 – Approval of the draft Compensation Law as modified in accordance with the earlier decisions of the GST Council

22. The Hon'ble Minister from Karnataka stated that as agenda item 5 relating to the draft Compensation Law was a small topic, it could be taken up for consideration before agenda item 4 on cross-empowerment. The Hon'ble Ministers from West Bengal and Tamil Nadu supported this request. The Council agreed to the suggestion and decided to take up discussion on agenda item 5 ahead of agenda item 4.

23. The important points discussed in respect of the draft Compensation Law are recorded as follows –

- i. **Section 8(1) (Levy and collection of GST Compensation Cess):** The Hon'ble Minister from Bihar raised a question whether cess would also be levied on supply of services. The Secretary clarified that law only provided an enabling power to levy cess on services for compensation but the Council would decide whether or not to levy such a cess.
- ii. **Section 10(1) (Crediting proceeds of cess to GST Compensation Fund):** The Hon'ble Minister from Tamil Nadu stated that he agreed with the definition of Compensation Fund inserted in Section 2(4) of the draft Compensation Law and requested that the same wordings should be used in relation to the expression 'GST Compensation Fund' in Section 10(1) to provide that cess or other revenue as

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Council may decide shall be part of the Compensation Fund. The Council agreed to this suggestion. The Hon'ble Minister from West Bengal stated that this clause should not lead to additional tax being levied to raise higher amount of cess for meeting a possibly higher compensation requirement due to demonetisation. He observed that as the Central Government had carried out demonetisation, any fall in indirect tax revenue on this account should not be a ground for the Council to consider increasing the GST rate. He informed that West Bengal had suffered a 2% loss in revenue in the month of December vis-à-vis revenue of the corresponding month last year and added that when compared to December 2014, there was a growth of 11% in December 2015. The Hon'ble Minister from Jammu & Kashmir stated that the Council was India's first truly federal body and it should avoid binding itself from not raising tax as this would reduce the policy flexibility of the Council whereas the Council might need to raise taxes in the future.

iii. **Section 10(2) (Crediting proceeds of cess to GST Compensation Fund):** The Hon'ble Minister from Karnataka stated that he was very uncomfortable with the new definition of Compensation Fund under Section 2(4) which provided that if the cess amount fell short, the Council would decide as to how to raise resources. He observed that all States had come on board for GST on the understanding that their interest would be fully protected and therefore, if there was a shortfall in cess, it must be met. He added that as it was decided that compensation would be paid on bi-monthly basis, it could not be paid in the sixth year and therefore payment of compensation could not be deferred beyond 5 years. He added that the understanding should be that if the amount for compensation was inadequate in the GST Compensation Fund, then cess could be collected in the sixth year or subsequent year to adjust the payment. The Hon'ble Chairperson assured that compensation to States shall be paid for 5 years in full within the stipulated period of 5 years and, in case the amount in the GST Compensation Fund fell short of the compensation payable in any bimonthly period, the GST Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth year or further subsequent years. The Hon'ble Minister from Karnataka stated that the wordings of Section 10(2) should clearly reflect that compensation shall be paid bi-monthly and that it shall be paid within 5 years. The Council agreed to this suggestion.

iv. **Section 10(3) (Crediting proceeds of cess to GST Compensation Fund):** The Hon'ble Chief Minister of Puducherry stated that he had addressed a letter dated 7 December 2016 to the Hon'ble Chairperson pointing out that as per sub-section (3) of Section 10 of the draft GST Compensation Bill 2016, 50% of the unutilized fund would be devolved in proportion to the State's GST collection and the balance 50% as per provision of clause (2) of Article 270 of the Constitution, as per the recommendations of the Finance Commission. He explained that in such a scenario, Puducherry, being a Union Territory with Legislature, would be deprived of its share in the 50% to be devolved as per the norms of the Finance Commission, as Union Territories with Legislature did not come under the purview of the Finance Commission. He therefore suggested that instead of apportioning the amount based

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on the devolution formula under Article 270, the 50% unutilized amount available in the GST Compensation Fund should be apportioned among the States and Union Territories with Legislature in proportion to the SGST collection. The Hon'ble Chief Minister of Puducherry stated that a similar proposal had earlier been agreed in relation to the second proviso to Section 15(7) of the IGST Act. After discussion, the Council decided that 50% 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 the Centre's share and that the balance 50% of the amount remaining unutilised in the GST Compensation Fund shall be distributed amongst the States as well as among Union Territories with or without legislature in the ratio of their total revenues from SGST or Union Territory GST, as the case may be, in the last year of the transition period.

- v. The Hon'ble Minister from Meghalaya stated that considering the geographical factors and the limited resources of the North Eastern States, the projected growth rate for them should be 18% instead of 14%. After discussion, the Council did not agree to this suggestion.
- vi. The Hon'ble Minister from Karnataka stated that a possibility should be explored to levy a single point cess instead of the presently proposed multi-stage levy of cess. After discussion, the Council agreed to examine this suggestion and weigh its advantage against revenue implications.

24. The Council approved the revised draft GST Compensation Law subject to the decisions as recorded below –

- i. **Section 10(1) (Crediting proceeds of cess to GST Compensation Fund):** To modify this sub-section in line with the definition of Compensation Fund under Section 2(4) to provide that cess or other revenue as Council may decide shall be part of the GST Compensation Fund.
- ii. **Section 10(2) (Crediting proceeds of cess to GST Compensation Fund):** To modify this sub-section to clearly reflect that compensation shall be paid bi-monthly and that it shall be paid within 5 years, and in case the amount in the GST Compensation Fund is likely to fall short or fell short of the compensation payable in any bimonthly period, the GST Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth year or further subsequent year.
- iii. **Section 10(3) (Crediting proceeds of cess to GST Compensation Fund):** To modify this sub-section to provide that 50% of the amount remaining unutilised in the GST Compensation Fund shall be transferred to the Consolidated Fund of India and that the balance 50% of the amount remaining unutilised in the GST Compensation Fund shall be distributed amongst the States as well as among Union Territories with or without legislature in the ratio of their total revenues from SGST or Union Territory GST, as the case may be, in the last year of the transition period.
- iv. To examine the possibility whether cess should be levied at single point, instead of the presently proposed multi-stage levy and weigh its advantage against revenue implications.



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Agenda Item 4 – Provision for Cross-Empowerment to ensure Single Interface under GST

25. Initiating discussion on this agenda item, the Hon'ble Minister from Tamil Nadu stated that the State officers must be empowered to carry out administration of IGST and that in its absence, GST would not function. He stated that IGST was a combination of CGST and SGST and there could be instances like false invoicing showing an inter-State supply which State officials would require to verify. He added that there was no bar for State administration to administer a Central law and if any clarification was required in course of its administration, the issue could be referred to the Central Government or to the other State Government. He added that this was a very fundamental issue and was not a matter of give and take. He further added that every taxpayer would pay IGST as well as SGST and CGST and both needed to be verified by the same tax administration. The Hon'ble Minister from Rajasthan stated that Section 24 of the draft IGST Act had been provided to appoint SGST officers as proper officers in certain circumstances. He added that any activity of enforcement, scrutiny or audit of a taxpayer might lead to detection of IGST irregularity by SGST officers and that complete cross empowerment was required in IGST to achieve single interface for smooth implementation of GST. He further added that without complete cross empowerment of IGST, the whole purpose of single interface would be defeated and that provisions for cross empowerment might be made in line with the draft I of Section 7 of the Model GST law. The Hon'ble Minister from Odisha stated that State's interest was involved in IGST as it consisted of both CGST and SGST and therefore cross-empowerment was required.

26. The Hon'ble Minister from Punjab supported cross-empowerment under the IGST Act and emphasised that there should be one single interface for the taxpayer, which could either be the Central Government or the State Government. He added that he supported a vertical division of taxpayers without any threshold limit of Rs. 1.5 crore turnover and suggested that the ratio of division could be 60%:40% or 70%:30% in favour of the States. He also supported cross-empowerment under IGST. The Hon'ble Minister from Telangana stated that the States should be involved in the administration of IGST. He stated that if there was to be a vertical division, then it should be in the ratio of 70%:30% in favour of the States, or otherwise States should administer all taxpayers below the turnover of Rs. 1.5 crore. He emphasised that there must be single interface for the taxpayer. The Hon'ble Chief Minister of Puducherry stated that the Central Government did not have infrastructure for indirect tax administration at the district level. He informed that the Central office for indirect tax for Puducherry was located in Tamil Nadu and stated that without the support of the State machinery, which was fully active in the field, IGST could not be implemented.

27. The Hon'ble Chairperson observed that the best method of apportionment of work between the two administrations needed to be worked out. He added that Article 269A of the Constitution provided that IGST shall be levied and collected by the Central Government. The Hon'ble Minister from Punjab stated that in such a situation, there would be dual control over taxpayers. The Hon'ble Minister from Tamil Nadu stated that the power of the Central Government under Article 269A of the Constitution could be

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delegated to the State Governments as was done for Article 269. The Hon'ble Chairperson observed that under Article 269 of the Constitution, the taxes on sales or purchase of goods was levied and collected by the Government of India but was assigned to the States but this language was missing from Article 269A of the Constitution. The Hon'ble Minister from Tamil Nadu observed that Article 269A of the Constitution did not also prevent delegation of power to the States. The Hon'ble Chairperson observed that for delegation of power under Article 258 of the Constitution, the Hon'ble President of India would have to agree and this arrangement could not become part of the law. The Hon'ble Minister from Karnataka stated that the word 'assign' in Article 269 of the Constitution referred to the proceeds of taxes and in Article 269A of the Constitution, this was replaced by the word 'apportioned' as the entire amount of tax was not being assigned to one State but was rather apportioned between the Centre and the destination State. The Hon'ble Chairperson stated that the power to administer the IGST Law would involve making assessment of taxes in certain cases and expressed a doubt as to how such function could be passed on to the State administration. The Hon'ble Minister from Karnataka stated that the powers of assessment of tax etc. would come from the word 'collected' in Article 269A of the Constitution. The Hon'ble Chairperson stated that the power to levy, collect and apportion IGST belonged to the Centre. The Hon'ble Minister from Karnataka stated that single interface would not work without cross-empowerment of IGST. The Chairman, CBEC stated that originally GST was conceived as a dual administration and later on, it was realised that single interface was desirable. He observed that having a single interface for CGST and SGST was much less challenging and that for IGST, there was a Constitutional challenge due to the wording of Article 269A of the Constitution. He informed that the object and the purpose of the sixth amendment of the Constitution in 1956 was to address the problem of collection of sales tax and the wording was drafted in that context but there was no such intent when Article 269A of the Constitution was drafted and it was understood that tax would be levied and collected by the Central Government. He observed that given the fact that registration, return etc. were common and tax dispute was likely to be minimal, the intervention of tax administration would be in very limited cases.

28. The Hon'ble Chairperson observed that the issues that emerged from the discussion were: (i) GST was a single tax, so it was desirable to have a single interface; (ii) States were of the view that small shopkeepers and traders should remain in the domain of the States; (iii) IGST was to be levied, collected and apportioned by the Union of India, and going by the language of the Constitution, single interface would not be possible; (iv) conventionally, CBEC had been administering service tax (v) how to optimally use the machinery of the Central and State Governments. The Hon'ble Minister from West Bengal stated that the question of dual control was a separate issue and the point at this stage was that States be conferred power to administer IGST so that it could address the issue of SGST which was part of IGST. He added that as the Chairman of the Empowered Committee, he had suggested an amendment in the wording of Article 269A of the Constitution to give a role to the States in the administration of IGST but at that stage, it was stated that this would be reflected in the law. He added that this should accordingly be reflected in the IGST Law. He emphasised that it was important to first resolve the IGST issue and then address the issue of dual control. He noted that while the States had different views on dual control, all of

them supported the demand to empower the State Government officials under the IGST Law.

29. The Hon'ble Minister from Karnataka stated that CBEC's ability to administer the indirect tax was limited and the States were still willing to cross-empower the Centre for SGST also. He added that GST could be implemented better if the officers of CBEC and the States came together. He added that if an officer of CBEC issued an order under SGST, the States were also bound by it and that the cross-empowerment was premised on the concept of pooled sovereignty of the Centre and the States. The Hon'ble Minister from Maharashtra emphasised that States should also administer IGST. The Hon'ble Minister from Andhra Pradesh stated that the traders wanted a single interface and a legal solution to this issue was possible as was done in respect of CST. The Hon'ble Deputy Chief Minister of Delhi stated that a tax reform like GST should be seen from the perspective of the taxpayers and not on the basis as to how many working hands were available in the tax administrations. He stated that in Delhi, the proportion of VAT dealers who were also paying CST was very high and so this could not be completely entrusted to the Central Government. He suggested a division of taxpayers in the ratio of 60:40 in favour of States. The Hon'ble Minister from Tamil Nadu stated that it was a mistake to make GST a three dimensional tax. He stated that there should be only one tax and sharing its proceeds between the Centre and the States should be an internal matter. The Hon'ble Chairperson stated that due to lack of time this issue would be discussed further in the next meeting of the Council. The Council agreed to this suggestion.

30. For Agenda Item 4, the Council agreed to discuss this matter further in the next meeting of the Council.

Agenda Item 6: Date of the next meeting of the GST Council

31. After discussion, it was agreed that the next meeting of the Council would be held on 16 January 2017 in New Delhi.

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


(Arun Jaitley)

Chairperson, GST Council

List of Ministers who attended the 8th GST Council Meeting on 3-4 January 2017

S No	State/Centre	Name of the Minister	Charge
1	Govt. of India	Shri Arun Jaitley	Finance Minister
2	Govt. of India	Smt. Nirmala Sitharaman	Minister of State, Commerce & Industry
3	Govt. of India	Shri Santosh Kumar Gangwar	Minister of State for Finance
4	Puducherry	Shri V. Narayanasamy	Chief Minister
5	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
6	Delhi	Shri Manish Sisodia	Deputy Chief Minister
7	Gujarat	Shri Nitin Patel	Deputy Chief Minister
8	Andhra Pradesh	Shri Yanamala Ramakrishnu	Finance Minister
9	Assam	Shri Himanta B. Sarma	Finance Minister
10	Bihar	Shri Bijendra Prasad Yadav	Minister, Commercial Taxes
11	Chhattisgarh	Shri Amar Agrawal	Minister, Commercial Taxes
12	Haryana	Captain Abhimanyu	Minister, Excise & Taxation
13	Jammu & Kashmir	Dr. Haseeb A. Drabu	Finance Minister
14	Jharkhand	Shri C.P. Singh	Minister for Urban Development & Housing
15	Karnataka	Shri Krishna Byregowda	Minister for Agriculture
16	Kerala	Dr. Thomas Issac	Finance Minister
17	Madhya Pradesh	Shri Jayant Malaiya	Finance Minister
18	Maharashtra	Shri Sudhir Mungantiwar	Finance Minister
19	Meghalaya	Shri Zenith Sangma	Minister for Taxation
20	Mizoram	Shri Lalsawta	Minister for Taxation
21	Odisha	Shri Pradip Kumar Amat	Finance Minister
22	Punjab	Shri Parminder Singh Dhindsa	Finance Minister
23	Rajasthan	Shri Rajpal Singh Shekhawat	Minister for Industries
24	Tamil Nadu	Shri K. Pandiarajan	Minister, School Education, Sports & Youth Welfare
25	Telangana	Shri Etela Rajender	Finance Minister
26	Tripura	Shri Bhanu Lal Saha	Finance Minister
27	Uttarakhand	Smt. Indira Hridayesh	Finance Minister
28	West Bengal	Dr. Amit Mitra	Finance Minister

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Annexure 2

List of Officers who attended the 8th GST Council Meeting on 3-4 January 2017

S No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Dr. Hasmukh Adhia	Secretary, GST Council & Dept 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, Dept 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 D.S.Malik	ADG, Press, Ministry of Finance
11	Govt. of India	Shri Alok Shukla	Joint Secretary (TRU), Dept of Revenue
12	Govt. of India	Shri Upender Gupta	Commissioner (GST), CBEC
13	Govt. of India	Shri Udai Singh Kumawat	Joint Secretary, Dept of Revenue
14	Govt. of India	Shri Amitabh Kumar	Joint Secretary (TRU), Dept of Revenue
15	Govt. of India	Shri G.D. Lohani	Commissioner, CBEC
16	Govt. of India	Shri Hemant Jain	Advisor to MoS
17	Govt. of India	Shri Paras Sankhla	OSD to FM
18	Govt. of India	Shri Vishal Pratap Singh	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
24	GST Council	Shri Manish K Sinha	Commissioner
25	GST Council	Ms. Himani Bhayana	Joint Commissioner
26	GST Council	Shri G.S. Sinha	Joint 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 Amit Soni	Inspector
31	GST Council	Shri Alok Bharti	Inspector
32	GST Council	Shri Shekhar Khansili	Superintendent

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S No	State/Centre	Name of the Officer	Charge
33	GST Council	Shri Anis Alam	Inspector
34	GST Council	Shri Ashish Tomar	Inspector
35	GST Council	Shri Manoj Kumar	Superintendent
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	Arunachal Pradesh	Shri Marnya Ete	Secretary & Commissioner, Commercial Taxes
41	Arunachal Pradesh	Shri Tapas Dutta	Assistant Commissioner, VAT
42	Assam	Dr. Ravi Kota	Finance Commissioner
43	Assam	Shri Gautam Das Gupta	Deputy Commissioner, Commercial Taxes
44	Bihar	Shri Ravi Mittal	Principal Secretary (Finance)
45	Bihar	Smt. Sujata Chaturvedi	Principal Secretary & Commissioner, Commercial Taxes
46	Bihar	Shri Arun Kumar Mishra	Additional Secretary, Commercial Taxes
47	Bihar	Shri Ajitabh Mishra	Assistant Commissioner, Commercial Taxes
48	Bihar	Shri Birendra Kumar	PS to Minister
49	Chhattisgarh	Shri Amitabh Jain	Principal Secretary, Finance & Commercial Taxes
50	Chhattisgarh	Ms. Sangeetha P	Commissioner, Commercial Taxes
51	Chhattisgarh	Shri Khemraj Jhariya	Additional Commissioner, Commercial Taxes
52	Delhi	Shri H. Rajesh Prasad	Commissioner, VAT
53	Delhi	Shri Anand Kumar Tiwari	Joint Commissioner (GST)
54	Goa	Shri Dipak Bandekar	Commissioner, Commercial Taxes
55	Gujarat	Dr. P.D.Vaghela	Commissioner, Commercial Taxes
56	Gujarat	Ms. Mona Khandhar	Secretary (Economic Affairs)
57	Gujarat	Shri Riddhesh Raval	Assistant Commissioner
58	Haryana	Shri Sanjeev Kaushal	Additional Chief Secretary
59	Haryana	Shri Shyamal Misra	Commissioner, Commercial Taxes
60	Haryana	Shri Vidya Sagar	Joint Commissioner, Commercial Taxes
61	Haryana	Shri Rajeev Chaudhary	Deputy Commissioner, Commercial Taxes
62	Himachal Pradesh	Shri Pushpendra Rajput	Commissioner, Commercial Taxes
63	Jammu & Kashmir	Shri P.K. Bhat	Additional Commissioner, Commercial Taxes
64	Jharkhand	Shri Sanjay Kumar Prasad	Deputy Commissioner, Commercial Taxes

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S No	State/Centre	Name of the Officer	Charge
65	Jharkhand	Shri Gouri Shankar Kapardar	Assistant Commissioner, Commercial Taxes
66	Karnataka	Shri Ritvik Pandey	Commissioner, Commercial Taxes
67	Kerala	Shri P. Mara Pandiyan	Additional Chief Secretary (Taxes)
68	Kerala	Dr. Rajan Khobragade	Commissioner, Commercial Taxes
69	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
70	Madhya Pradesh	Shri Sudip Gupta	Deputy Commissioner
71	Maharashtra	Shri Rajiv Jalota	Commissioner, Sales Tax
72	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner
73	Manipur	Shri R.K. Khurkishor Singh	Assistant Commissioner, Taxes
74	Manipur	Shri Y. Indrakumar Singh	Superintendent, Taxes
75	Mizoram	Smt. L.N. Tochwawng	Finance Commissioner
76	Mizoram	Shri K. Sanglawma	Commissioner, Taxes
77	Mizoram	Shri Umakant	OSD to Govt. of Mizoram
78	Mizoram	Shri L.H. Rosanga	Joint Commissioner, Taxes
79	Nagaland	Shri Wochamo Odyuo	Joint Commissioner, Taxes
80	Odisha	Shri Ashok Meena	Special Secretary (Finance)
81	Odisha	Shri Saswat Misra	Commissioner, Commercial Taxes
82	Odisha	Shri Sahadev Sahu	Joint Commissioner, Commercial Taxes
83	Puducherry	Dr. V. Candavelou	Secretary (Finance & Commercial Taxes)
84	Puducherry	Shri G. Srinivas	Commissioner, Commercial Taxes
85	Punjab	Shri Satish Chandra	Additional Chief Secretary
86	Punjab	Shri Varun Roosam	Commissioner, Commercial Taxes
87	Punjab	Shri Pawan Garg	Deputy Commissioner (GST)
88	Rajasthan	Shri Prem Singh Mehra	Principal Secretary Finance (Revenue)
89	Rajasthan	Shri Praveen Gupta	Secretary Finance (Revenue)
90	Rajasthan	Shri Alok Gupta	Commissioner, Commercial Taxes
91	Rajasthan	Shri Ketan Sharma	Deputy Commissioner, Commercial Taxes
92	Sikkim	Shri Manoj Rai	Joint Commissioner, Commercial Taxes
93	Tamil Nadu	Dr. C. Chandramouli	Additional Chief Secretary & Commissioner, Commercial Taxes
94	Tamil Nadu	Shri D. Soundararajapandian	Joint Commissioner
95	Telangana	Shri Somesh Kumar	Principal Secretary (Revenue)
96	Telangana	Shri Anil Kumar	Commissioner, Commercial Taxes
97	Telangana	Shri Laxminarayan Jannu	Joint Commissioner, Commercial Taxes
98	Telangana	Shri Ch. Chakravarthi	PRO

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S No	State/Centre	Name of the Officer	Charge
99	Tripura	Shri Shailendra Singh	Additional Resident Commissioner
100	Uttar Pradesh	Shri Mukesh Kumar Meshram	Commissioner, Commercial Taxes
101	Uttar Pradesh	Shri S.C.Dwivedi	Special Secretary
102	Uttar Pradesh	Shri Vivek Kumar	Additional Commissioner
103	Uttar Pradesh	Shri Niraj Kumar Maurya	Assistant Commissioner, Commercial Taxes
104	Uttarakhand	Shri Ranveer Singh Chauhan	Commissioner, Commercial Taxes
105	Uttarakhand	Shri Piyush Kumar	Additional Commissioner, Commercial Taxes
106	Uttarakhand	Shri Yashpal Singh	Deputy Commissioner
107	West Bengal	Shri H.K. Dwivedi	Principal Secretary (Finance)
108	West Bengal	Ms. Smaraki Mahapatra	Commissioner, Commercial Taxes
109	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, Commercial Tax
110	GSTN	Shri Navin Kumar	Chairman
111	GSTN	Shri Prakash Kumar	CEO

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Annexure 3**List of Representatives from Sectors who attended the 8th GST Council Meeting on 3-4 January 2017**

S No	Sector/Ministry	Name	Designation
1	Banking & Insurance	Smt. Anjuly Chib Duggal	Secretary, DFS
2	Banking & Insurance	Shri Girish Chandra Murmu	Addl. Secretary, DFS
3	Banking & Insurance	Shri Anil Kumar Khachi	Addl. Secretary, DFS
4	Banking & Insurance	Shri Pankaj Jain	Joint Secretary, DFS
5	Banking & Insurance	Shri N. Srinivasa Rao	Economic Adviser, DFS
6	Banking & Insurance	Shri V.G. Kannan	Chief Executive Officer, IBA
7	Banking & Insurance	Ms. Bhavna Doshi	Representative, IBA
8	Banking & Insurance	Shri Sushil Kumar Shah	DGM, SBI and Member, IBA Taxation Committee
9	Banking & Insurance	Ms. Radhika Kamath	Tax Head, Deutsche Bank & Member, IBA Taxation Committee
10	Banking & Insurance	Shri V. Manickam	Secretary, Life Insurance Council
11	Banking & Insurance	Ms. Neetu Gupta	Head Taxation, AVIVA life
12	Banking & Insurance	Ms. Usha Sangwan	MD, LIC
13	Banking & Insurance	Shri G. Srinivasan	CMD, New India Assurance Co. Ltd & Chairman, GIPSA
14	Banking & Insurance	Shri K. Govind Rajan	Chief Executive, GIPSA
15	Banking & Insurance	Shri S S Gopalathnam	MD, Cholamandalam MS GIC Ltd
16	Banking & Insurance	Shri Antony Jacob	CEO, Apollo Munich Health Insurance Co. Ltd.
17	Banking & Insurance	Shri R. Chandrasekaran	Secretary General, GI Council
18	Telecom	Shri J.S. Deepak	Secretary, DoT
19	Telecom	Shri P.K.Mittal	Sr. Deputy Director General, DoT
20	Telecom	Shri P.K. Sinha	Sr. Deputy Director General, DoT
21	Telecom	Shri Akshaya Moondra	Chief Financial Officer, M/s Idea Cellular
22	Telecom	Shri Deepak Garg	Head (GST), Reliance Jio
23	Telecom	Shri Nilanjan Roy	CFO, M/s Bharti Airtel
24	IT/ITeS	Smt. Aruna Sundararajan	Secretary, MeitY
25	IT/ITeS	Shri Rajiv Kumar	Joint Secretary, MeitY
26	IT/ITeS	Shri S. K. Marwah	Director, MeitY
27	IT/ITeS	Shri R. Chandrashekhar	President, NASSCOM
28	IT/ITeS	Shri P. V. Srinivasan	Wipro
29	IT/ITeS	Shri Mahesh Jaising	BMR Advisors
30	Civil Aviation	Shri R.N. Choubey	Secretary, Ministry of Civil Aviation