Minutes of the 41st GST Council Meeting held on 27th August, 2020

The 41st Meeting of the GST Council (hereinafter referred to as 'the Council') was held on 27th August, 2020 under the Chairpersonship of the Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon'ble Members/Ministers of the Council who attended the meeting is at **Annexure 1**. A list of officers of the Centre, the States, the GST Council, the Goods and Service Tax Network (GSTN) who attended the meeting, is at **Annexure 2**.

2. The following agenda item was taken up for discussion in the 41st Meeting of the Council:

1. GST Compensation to the States and Union Territories

Preliminary Discussion

3. The Chairperson invited the Union Finance Secretary and the ex-officio Secretary to the GST Council (hereinafter referred to as the Secretary) to begin the proceedings. The Secretary welcomed the Hon'ble CM, Hon'ble Deputy CM's and Hon'ble Ministers to the 41st GST Council Meeting. He, on behalf of the Council welcomed the following new Members nominated from the various States, Sh. Ajit Pawar, Hon'ble Deputy Chief Minister of Maharashtra, Sh. Jagdish Devda, Hon'ble Minister for Commercial Tax, Finance, Statistics and Planning from Madhya Pradesh and Sh.Subodh Uniyal, Hon'ble Minister for Agriculture, Agricultural Marketing. Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development from Uttarakhand.

3.1 The Secretary then briefed the Council that the only Agenda that day was discussion on the GST Compensation to the States and UT's. He then asked Sh. Ritvik Pandey, Joint Secretary, DoR to begin with the presentation.

Agenda Item 1: GST Compensation to States/UT's

4. The Joint Secretary, DoR began with a presentation (attached as **Annexure 3**) stating that it was a small presentation to give the status on the Compensation released till then, the legal provisions, the interpretation of those legal provisions and thereafter a discussion on the options available with respect to GST compensation could be taken up. The JS, DoR stated that since the inception of GST i.e 1st July 2017 GST compensation of around Rs. 3 Lakh Crore had been released out of a collection of almost a similar

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amount of GST Compensation Cess. The releases were slightly more than the collection and he recalled that in the last GST Council Meeting it had been presented that around Rs.33,400 Crore were transferred out of the Consolidated Fund of India (hereinafter referred to as 'CFI') due to reversal of devolution of IGST which was not apportioned in 2017-18. Taking the same into consideration the balance in GST compensation fund was around Rs. 11,000 Crore as on 31 July 2020.

4.1 The Finance Secretary added that in the 39th GST Council Meeting held on 14th March 2020 the Hon'ble Chairperson had mentioned that she will take legal opinion on the entire issue. He highlighted that after the Meeting on 14th March 2020 compensation of around Rs. 65,000 Crore had been released to the States while during the period April, May, June and July the total collection has been only around Rs. 21,000 Crore.

4.2 Continuing with his presentation, the JS, DoR highlighting the challenges being faced in meeting the requirement of compensation brought out the following points:

a. The protected revenue continues to grow at a rate of 14% over previous year irrespective of how the revenue performs.

b. The GST revenues are expected to be adversely impacted due to economic impact of COVID-19.

c. Widened gap between protected revenue and actual collections.

d. Less than normal cess collection due to economic impact of COVID-19.

He stated that all of this had led to the unprecedented situation that they were in that day. Further giving a background of the same he briefed that such a hypothetical situation was discussed when the GST Council was deliberating the compensation framework and that now it had become a reality. Citing the deliberations of the Council from the 7th and the 8th GST Council Meeting the JS, DoR stated that when discussions were taking place as to whether the Compensation should be met out of the cess receipts and there should be a dedicated fund for paying compensation or whether it should be paid from the general revenues and CFI, the then Chairperson of the Council had remarked in the 7th GST Council Meeting held on 22-23 December 2016 that it was not possible to meet it from CFI. It would be unpragmatic to meet the compensation requirements from the CFI and that it should be met through the cess amount and if there was a shortfall the Council should sit and deliberate on how that shortfall should be met. The JS, DoR added that this

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was further discussed in the 8th GST Council Meeting held on 3-4 January, 2017 in which even the borrowing option was discussed and the Hon'ble Chairperson again had stressed that it was the GST Council that would need to deliberate on the ways available to meet such gap. JS, DoR stressed that the intent was always to have a dedicated stream of revenue in the form of cess for payment of compensation to the States/UT's on account of the loss of revenue due to implementation of GST. Further stating that this dedicated revenue stream had a good impact in 2017-18 and 2018-19 and because of the same the release of compensation to the States/UT's was never impacted due to competing demands on the CFI on account of various Centrally sponsored schemes or expenditure requirements of Government of India for internal security, defence requirement etc.

4.3 The JS, DoR stated that based on the discussions in the GST Council, when the Bill was presented in the Parliament similar issues were brought up and Sh.K.C.Venugopal, Hon'ble Member of the Parliament had introduced an amendment to the bill at that time stating that the compensation to the States for loss of revenue should be paid from the CFI. This was deliberated in the Parliament and this amendment was rejected by Parliament thereby clearly indicating the legislative intent of the Parliament that it was of the firm view that compensation should be paid from the compensation fund and that it should not be paid from CFI.

4.4 Proceeding further with the presentation, the JS, DoR brought out the constitutional provision on the basis of which the compensation law had been made. He detailed Section 18 of the Constitution (One Hundred and First Amendment) Act,2016 stating that the Parliament shall, by law, on the recommendation of GST Council, provide for compensation to the States for loss of revenue arising on account of implementation of GST for a period of five years.

4.5 The Finance Secretary emphasised that GST (Compensation to States) Act, 2017 was passed as per the mandate given through constitutional amendment made in 2016 and stressed that the compensation was to be paid to the States for loss of revenue on account of implementation of GST for a period of five years so the issue had to be looked at, from that perspective that compensation was to be paid for the loss on account of implementation of GST. Proceeding with the presentation, the JS, DoR stated that the GST (Compensation to States) Act, 2017 was accordingly enacted consisting of 14 Sections which provides for formula for calculation of base year revenue, protected

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revenue, levy of cess and the GST Compensation Fund. He detailed that Section 10 of the Act provides for the GST Compensation Fund which says that the proceeds of the cess levied under Section 8 shall be credited to the Fund, and such other amounts as recommended by the GST Council can be credited to the Fund. Further, Section 10(2) specifically provides that the compensation shall be released only from the Fund. So, based on these legal provisions and as was discussed in the 39th GST Council Meeting on 14th March, 2020, opinion of the Ld. AGI was sought about the options which are available to the Council for various aspects relating to compensation.

4.6 The Finance Secretary reminded the Council that in the 39th GST Council Meeting held on 14th March, 2020, the Hon'ble Chairperson had mentioned that the entire issue of compensation will be discussed in a special meeting in the month of April, but due to the pandemic, meeting could not be held. He also reminded that the Chairperson had mentioned of taking legal opinion and release as much GST compensation to the States/UT's as was possible and that the entire issue would be examined. Accordingly, on the basis of directions given in the Meeting the opinion of the learned Ld. AGI was sought on the matter. The Secretary asked JS, DoR to present verbatim opinion of the Ld. AGI.

4.7 The JS, DoR presented the verbatim opinion of learned AG:

a. Irrespective of what the situation goes, whether cess resources are adequate or not at any point of time, the entitlement of the States are very hard coded in the Act that cannot be changed, it is protected revenue minus actual revenue, every year.

b. There is no express provision in the Compensation Act which puts a mandate on the Government of India to raise resources or to arrange resources for payment of compensation.

c. GST Council has the power to raise resources, it is very clearly mentioned in the Act that GST Council has to find other sources to meet the requirement.

d. Council will be well within its rights to discuss the borrowing issue to meet the compensation gap, nevertheless the borrowings will be determined by the constitutional provisions which are different from the GST provisions, which is governed by Article 293 of the Constitution.

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Giving gist of Ld. AGI's opinion as above the JS, DoR read out the Ld. AGI's opinion for kind information and consideration of the Council (**Annexure 4**).

Certain clarifications were sought on the AG's opinion above which were then responded `to by the Ld. AGI in his comprehensive response (**Annexure 4A**) which was read out by the JS, DoR for information and kind consideration of the Council.

5. The Hon'ble Minister from Punjab sought permission from the Hon'ble Chairperson to initiate discussions and expressed his regret that the opinion of the learned AG was not circulated or shared with the States in advance to allow them to be in a better position to comment on it. Having said so he emphasised that of all the issues faced by the Council the issue of compensation was at the very top. He added that the entire foundation of GST was built on the promise that if there were to be any GST deficit for any State, the Centre would make good the loss in the first five years. Now they were in a situation where doubts were being raised whether the Centre is legally accountable for compensation and should the compensation be met by allowing States to borrow. It is one thing to say that there are no funds available for compensation but an entirely another thing that there is no commitment to pay compensation. Perhaps a few lines in the law may create some confusion in the minds of some but for those who have dealt with the subject for over a decade, there is no ambiguity in this. The very first report of the Parliamentary Standing Committee on Finance which was headed by the former Finance Minister Sh. Yashwant Sinha, in which a Constitution Amendment Bill was being considered in 2011 and in the process provided for background of the GST Constitution Amendment Bill in 2014. It was at the time when UPA was in Government and a lot of the BJP run States had made a pitch for the mechanism of compensation to be made part of the Constitution itself. The Hon'ble Minister from Punjab drew attention of the Council to para 92 of the report, when asked whether compensation to States should be made part of the Constitution , Ministry of Finance stated that it was expected that there would be no loss of revenue, nonetheless the Centre assured to pay compensation for a specified period if there was such a loss. He emphasised that it was in this spirit that it finally got incorporated into the Constitutional Amendment Bill, 2014 which was later finally passed and was worded as follows " Parliament shall, by law, on the recommendation of GST Council, provide for compensation to the States for loss of revenue arising out of implementation of GST for a period of five years". So, the question was that the Parliament had enacted a law as provided in the Constitution including stated

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recommendations of the GST Council. Thus, this would require us to look at the Minutes of the Council's Meetings. He reminded the Council of the elaborate discussions on the subject prior to enactment of the GST Compensation law. Many Members had invited

History of members of GST Council.xlsx

attention that in case the compensation cess was insufficient to meet the needs Central Government should provide for the deficit from its own funds. Some suggested that if the amounts available for compensation were not sufficient to pay compensation then the levy of cess might be extended beyond five years to recover the shortfall. To these concerns, the Hon'ble Chairperson of the Council stated, the same being recorded towards the end of Para 21 on Page 33 of the Minutes of the 7th GST Council Meeting as follows:

"The Hon'ble chairperson observed that there was constitutional commitment for the Central Government to provide 100% compensation and how it would be done was for the Council to decide"

This was further reinforced in the 8th Meeting of the GST Council again in the words of the Chairperson which are recorded on page 27 of the Minutes which are as follows:

"The Hon'ble Chairperson assured the compensation to the States , shall be provided for five years in full within stipulated period of five years and in case, the amount in the GST Compensation Fund fell short of the compensation payable in any bi-monthly period, 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 Punjab added that it was evident from the above statements that there was no doubt that promised compensation would cover 100% of the deficit and that it would be payable within the stipulated period of five years and the Centre would have the obligation to pay and only the manner of payment was to be decided by the Council. If there was shortage borrowing was an option and in Page 28 of the Minutes of the 8th GST Council Meeting a formal decision is also recorded that Section 10(2) of the proposed draft of the GST Compensation Bill be modified to clearly reflect that in case the amount in the Compensation Fund was likely to fall short or fell short, the Council shall decide the mode of raising additional resources including borrowing from the market

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which could be repaid by collection of cess in the sixth years or further subsequent years. However, the GST Compensation Act which has been worded making no mention of the liability of the Central Government or of the borrowing. In fact, when pointed out in the 10th Meeting of the GST Council the Secretary to the Council statement is recorded in Para 6.3, Page No. 13 as follows:

"Central Government could raise resources by other means for compensation and this could then be recouped by continuation of cess beyond 5 years. He stated that other decisions including possibility of market borrowing for payments of compensation were part of the Minutes of the 8th Meeting and need not be incorporated in the law"

The Hon'ble Minister from Punjab further added that the Council agreed to the above suggestion. Thus it was evident that the GST Compensation Act was not worded as per the additional decisions of the Council, but in view of the assurances given by the Secretary to the Council, not to insist on legal change, agreeing to accept the promise there is no ambiguity what so ever that Centre was responsible for payment of compensation and that in case of a shortage Centre will have to provide for shortfall including borrowing. If the Centre had no obligation to pay GST compensation then the question arises as to why the orders for release of compensation from time to time were being issued by the Central Government, why not the Council Secretariat. The Compensation Fund is reflected in the Union Budget as a receipt of the Central Government under Major Head 009.Summing up he said that he appreciated the view of the learned AG but if the Minutes of the 7th,8th and 10th Council Meeting were seen it was amply clear that full compensation payment was Centre's obligation and they should not shy away from it.

6. The Hon'ble Deputy Chief Minister of Bihar thanked the Hon'ble Chairperson for release of compensation for the year 2019-20 and for convening the meeting specifically on GST compensation. He opined that this shortfall was not due to structural design of GST, that there may have been some shortfall due to structural design but it was largely due to economic slowdown and thereafter because of the pandemic. He stated that he had gone through the Minutes of Parliamentary proceedings wherein Hon'ble Member of Parliament Sh. K.C.Venugopal, had moved an amendment on compensation to the states on loss of revenue on account of the implementation of GST shall be paid from the CFI. The amendment was rejected so compensation to the States out of CFI was out of

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question. He recalled the 8th GST Council Meeting in which the then Chairperson Late Sh. Arun Jaitley had given a roadmap in case of revenue shortfall which had already been mentioned but he would like to reiterate pointwise:

1. Compensation shall be paid for five years in full within the stipulated period of five years meaning compensation cannot be a deferred payment and shall be paid within five years.

2. In case of shortfall, GST Council to decide the mode of compensation which had two options one being raising additional resources, to which the Hon'ble Deputy CM of Bihar remarked that if tax rates were increased by 1% overall, that should yield only around Rs. 60,000 Crore of incremental revenue per annum and will lead to price rise and in view of the pandemic it was not an appropriate option at this stage to raise the tax rates.

3. With regard to raising cess rate, which are currently on demerit goods and may be extended to some other items. This again he opined was not feasible as most of the cess was from tobacco and motor vehicles. Increasing cess on motor vehicles was not an option as it was greatly affected by pandemic. There was little scope of raising cess on tobacco. He requested the Council to constitute a Committee of Officers which can look into the issueof increase of levy of cess on existing items under cess, look for additional items for levy of cess and rates thereon. He although opined that this exercise could lead to incremental revenues of around ten thousand to twenty thousand Crore per annum which again would not be sufficient to compensate the States.

4. The second option was borrowing from the market which he felt was the only option available which posed questions such as who would borrow, Central government will borrow or State Government would borrow and what could be the mode of repayment which had been answered to by the Hon'ble Chairperson as recorded in the Minutes that the repayment could be made through collection of cess in the sixth year and further subsequent years.

The Hon'ble Deputy CM of Bihar submitted to the Chairperson that the only option left was market borrowing. He stated that it would be better if Central Government could borrow and compensate the States, but understanding the limitations of the Centre as the Centre already had Rs. 12 Lakh Crore of borrowing this Financial Year which meant that

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fiscal deficit was crossing 5.5%. The projected revenue shortfall assuming collections in FY 2020-21 to be 65% of 2019-20 would be around Rs.3.65 lakh Crore. Even in case of 80% collection the shortfall would be around Rs.2.73 lakh Crore. He recognised the huge borrowings Centre had to undertake for this kind of deficit and the limitations it would entail. He proposed that in such a case borrowing by States was an option to which Bihar was agreeable based on certain conditions as follows:

1. Absolutely no burden on the State-exchequer.
2. Government of India to make necessary arrangements to enable the States to borrow.
3. Interest rate on market borrowing should be very low.
4. State is able to borrow as much and as often as it needs within the compensation gap limits.
5. Assurance/Guarantee to be borne by GST Council or Government of India for regular and timely transfer of amounts required for repayment and in case the cess fund falls short the gap will be funded by Govt. of India or through the compensation cess fund and in no case interest burden should fall on the States ex-chequer.

Summarising his arguments the Hon'ble Deputy CM of Bihar stated that even if the borrowing is decentralised to the States, it would be the responsibility of the Central Government to create a congenial atmosphere so that States could borrow at lower interest rates , whatever amount is required, which could be repaid for from compensation cess fund, so the cess period would have to be increased for another 4-5 years and as the cess fund is being maintained by the Centre and not the States so Centre would have to take care of repayment from this fund . The borrowing for this purpose should not impact the State's ability to borrow in the normal course. The FRBM Act had to be amended to exclude borrowing for this purpose from normal borrowing limits under the Act. He further stated that without going into the background reasons of shortfall, this year there would be a huge deficit and this year States required money as many didn't even have money to pay salaries to staff and pensioners. So the only option left was borrowing, If the Centre wanted States to borrow , they could borrow but the Centre had to then make arrangements as had been discussed wherein the States would borrow on behalf of the GST Council or the Government of India and all the repayments and other things would have to be taken care of by the GST Council. The Hon'ble Deputy CM stated that in the

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Compensation Act it was provided that at the end of five years the cess would be merged into CGST and SGST so the States would have to forego revenue which would otherwise have accrued to them had cess been merged with SGST after June 2022, so that would be a loss for the States but the States were willing to bear that loss. He further emphasised the immediate need of funds for the States and that whatever decision had to be taken should be finalised in this meeting itself. He urged the Council to consider his suggestions.

7. The Hon'ble Minister from Tamil Nadu stated that the issue being discussed was the most important issue causing anxiety amongst all the State Governments. He noted that it was worrisome that in this fiscal for the period up to July 2020 Compensation claims of Rs 12,258.94 Crore were pending for State of Tamil Nadu. He stated the importance that compensation payments held for the overall fiscal situation of the State need not be emphasised, moreover significance of the same had increased manifold due to the fiscal stress caused by Covid-19 situation. He added that the Government of Tamil Nadu expected the Government of India to continue to honour its commitment and to protect revenue at 14% growth from base year. Any reneging from the promise will not only affect the confidence of the State in the overall GST framework but will also stress State's finances particularly during Covid-19 situation. GST (Compensation to Sates) Act, 2017 assured revenues with 14% growth over base year. This law was enacted for implementation of Section 18 of the 101st Constitutional Amendment Act and to honour the commitment made by the Government of India while canvassing for ushering in to the new taxation regime. It was on the basis of those unequivocal assurances that most of the States including Tamil Nadu under leadership of the then Hon'ble CM Late Smt. J. Jayalalithaa agreed to support GST. He added that it was well understood that in the GST (Compensation to States) Act, 2017 it is the GST Council's responsibility to identify other sources for cess fund, but the primary, moral and legal responsibility of providing compensation remained with the Central Government. Therefore, as first option the Government of India should pay for compensation from its own sources, the Government of India could be requested to source money from market borrowing and if necessary, make changes in the Act to extend the levy of cess for a period beyond five years for financing repayment obligation. He further suggested the GST Council to request the Government of India to grant a loan to pay the compensation to the States, this loan could be repaid through future cess receipts. Government of India's borrowings would be

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cheaper than the State borrowings. He noted that it was also understandable that there may be apprehension that the economic slowdown may cause difficulty in mobilising resources for the cess fund and that there may also be an expectation from the Government of India that State governments must tighten their bills however they wished to emphasise that the States had already cut down drastically their non Covid related expenditure which could not be brought down any further. Any further cuts would severely impact implementation of welfare schemes which were essential for protecting the poor and vulnerable. He stated that under the present circumstance it was more difficult for the States to mobilise additions sources of revenue than it was for the Centre. He urged the Chairperson for her guidance in resolving this pressing issue in a manner that helped the States to continue contributing towards nation's development.

8. The Hon'ble Deputy CM of Maharashtra extended greetings to all the Hon'ble members of the Council and stated that the State had pending compensation claim of Rs. 22,534 Crore for the FY 2020-21 till July and going by this rate this was likely to go up to Rs. 1 lakh Crore by the end of two years. If this compensation was not made available timely, the State's finances would further deteriorate and hinder development works of the State. He emphasised that in times of COVID-19 the State needed more resources to tide over the situation. He urged the Centre to borrow from the market as for States it was not possible to borrow owing to the fiscal limits, as also States would be unable to obtain the interest rates that Centre could obtain and this undue high rate would ultimately burden the final consumer in form of greater cess. If all States entered into market to take loan then interest rate will further shoot up and it will become more difficult to raise loans. Centre has made a mechanism in the form of cess to compensate the States that is to be paid up to five years till June 2022. This period should be increased further for levy of cess. Centre should, in the present situation make provision for loans and should compensate the States. Recovery made in the extended period can be used by the Centre to pay the amounts borrowed and interest accrued, till loan is repaid cess levy should be continued. For a developed State like Maharashtra such a difficult financial crisis has come, State is trying to get out of the same but because GST is a major source of revenue for the states so it is requested that States should get the compensation at the earliest, Centre as an elder brother should consider it sympathetically and help the states tide over this crisis.

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9. The Hon'ble CM of Puducherry said the meeting was at a very crucial time with Covid 19 pandemic situation and economic slowdown on one side, with all States in financial crisis and with struggle for economic revival on the other. He said that in his State more than 42% of the revenue was lost after the Covid pandemic. He emphasised that theirs was a small State with revenue coming through commercial tax and excise and since they did not have any minerals, tourism was one of their major sectors which was affected adversely due to Covid. He recalled the meetings when Late Sh. Arun Jaitley was the Hon'ble Chairperson of the Council and Finance Minister and the time when deliberations were going on among the members of GST Council. He stated that as the Hon'ble Minister from Punjab explained in detail the deliberations of the 7th, 8th and 10th Meeting, the then Finance Minister took the responsibility and said that Government of India would make good the losses to the States and compensation would be paid in time to them. The then Finance Minister also suggested that the Government of India would come to the rescue or they could go for market borrowing. Commenting on the two options given by Hon'ble Deputy CM of Bihar one being that Centre could borrow and give the compensation to the States and second that the States may be allowed to borrow based on certain conditions, he submitted that his State was not in a position to borrow from the market, already the FRBM had been increased from 3% to 5% and certain conditions had been imposed by the Central Government going for additional borrowing and it was taking a lot of time for State Governments to borrow from the market. Therefore, it was responsibility of the Central Government as per the commitment given in the Act and also in the GST Council to compensate and disburse protected revenue with 14% growth, to the States, moreover now when some of the States were unable to pay salaries to the employees, in addition to managing the Covid situation which required additional funds. Apart from this, economic activities had to be started for which some concessions had to be given by the State Government. That being the situation he urged the Chairperson not to burden the States any further. Let the central government borrow the money and give it to states, already there was provision in the GST Act that after a period of five years whatever additional cess had been collected it could be retained. He further added that from past several months the lockdown had slowly eased and economy had been opened but still tourism had taken a big hit in their State much like Goa. He requested the Hon'ble Chairperson to let Government of India take the responsibility. Two things have been quoted, one is the statement of Finance Secretary in the Standing committee on Finance. The Finance Secretary in the Standing Committee of Finance said

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that Government had no money at present to pay GST compensation to the States, this should not be have been done and solution should have been given. Taking opinion of the Hon'ble Finance Minister, secretary should have said that it is a burden on Centre government and also on State Government and Central Government is duty bound to pay compensation to the States, by not saying so an impression had been created in public of various States that Government of India is under no obligation to pay. Second, the Ld. AGI's view has also been received, he opined that the Central Government's commitment to pay compensation is very clear. Reading Section 7(2) of the GST (Compensation to States) Act he said that the compensation under this act shall be payable to the States during the transition period. He emphasised that the word being used was 'shall' and not 'may'. He brought into notice that at the time of enactment of the CGST Act, SGST Act and IGST Act an impression was given that the manufacturing States will get advantage. This did not happen; the manufacturing States were losers and consuming States were getting advantage. He stated that Puducherry though being a small State was a manufacturing State and was losing 40% of its GDP as their goods were going to other States. The land was theirs; electricity was theirs; water was theirs; labour was theirs and manufacturing was done in their State but revenue accrued to the consuming State. He stated that fundamentally they have to think about modifying and making a different model for GST. Since it was not working and they had to look into the fundamental things then alone they could arrive at a solution because five years alone are not enough, it is not going to solve the problem. Government of India should come to the rescue of the states because it was a natural thing and he was not blaming the Government of India. Government of India is also helping the states for the purpose of coming out of Covid. As far as borrowing is concerned the Government of India should take the responsibility, as deliberations that took place in the GST Council it was one of the options that had been given that the Government of India will borrow and give to States. Quoting a RBI report the Hon'ble CM of Puducherry stated that the States had lost Rs. 6.2 lakh Crore of revenue, and asked the Chairperson as to who would compensate for the same. Further he stated that Government of India should borrow and give to States. On the discussions with regard to Parliament rejecting the amendment moved by Hon'ble MP Sh. K.C.Venugopal, he reminded the Council that he had himself been an MP for more than 23 years and had great respect for the Parliament, but whatever deliberations that had taken place in the Council, the assurances made by the Hon'ble chairperson of the Council and decisions taken in Council may not be in the knowledge of the Parliament, so taking

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umbrage in the argument may not be appropriate. Further he brought up the issue that every State was getting 41% revenue share whereas Puducherry was getting only 26% whereas it was entitled to 41% and also Puducherry was not being duly compensated even in grants given by Government of India. He made a strong plea that the Hon'ble chairperson should think of extending the period of compensation for ten years or go for a different financial model for the States for GST. There was shortfall of cess and we were going for market borrowing and that being the situation, considering this aspect a separate meeting could be called as to what should be the different financial model, different sharing model so that GST Council can definitely in its wisdom come to the conclusion. They were all hard pressed, every State was suffering, decision be taken in this Council meeting so that Hon'ble members of the Council can understand how they will be able to receive the money for the States and then plan their expenditure.

10 The Hon'ble Minister from Chattisgarh stated that for him the issue was not just a matter of revenue or shortfall but the matter was of ensuring protected revenue guaranteed under Section 18 of the 101st Constitutional Amendment Act. The issue as had been discussed earlier is Parliament 'shall' and there were no options. The only rider was recommendation of the GST Council. So, the Council had to make recommendation to the Parliament. He stated that views had been expressed that Government of India is constrained for revenue and so were the States, so if the shortfall had to be met by borrowing, who should make the borrowings. He stated that if the States were asked to make the borrowings and as was mentioned by the Hon'ble Deputy CM of Bihar that States could be given benefit of additional limit apart from the limits for financial prudence set by FRBM etc, then how did it restrain the same thing to be applicable to the Government of India. Why should the head of family for this country shy away from this constitutional provision that had been made, that Parliament shall see that there would be no shortfall as far as protected revenue for the States is concerned. So eventually if the States were asked to take this loan, even under relaxed norms, the Government of India was standing surety and being asked to provide sovereign guarantee. As also pointed out by Tamil Nadu that the rate of interest will be lower for Government of India then why should not GST Council ask Government of India to borrow, why should Parliament not make this provision and in addition prudence norms could be relaxed for the States by the Government of India, so that these borrowings taken at lower rates be credited into the Cess Fund and the States be paid compensation. He also pointed out that there were

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suggestions that the five-year GST compensation term be extended for another five years on which the Council was yet to take a decision. He added that lot of views had been expressed and discussions held before the implementation of the GST regime but the basic issue was that if they were going for borrowing to meet out the deficit in the cess funds then who shall borrow. He asked why the Government of India seemed to be backing out and putting it on the State Governments maybe at higher interest rate and standing sovereign guarantee. He recommended that the Government of India and the Parliament must come forward, must stand for the country, for the federal structure and ensure that they were there with the States in times of stress. The rights of the taxation have been taken away from the States and given to GST Council. He added that he was also not in agreement that GST Council should take initiative and opined that Parliament should take initiative as enshrined in the 101st Constitutional Amendment Act. He humbly reminded the Chairperson that she was leading them in the Council and also representing the Government of India and in these times of hardship they should ask the Government of India to take these loans. He added that he had some other suggestions regarding other possible revenue sources which he would share in writing.

11. The Hon'ble Deputy CM of Delhi noted that he has had the privilege of being associated with GST Council and before that in the empowered committee since 2015 when the Constitutional amendments were being framed. The intent of lawmakers was very clear. GST was envisioned as a new tax regime in the nation with a vision seen by the Centre and as also shown to the States that it would be very beneficial. In the process the States surrendered their rights for tax collection up to 70-80% and let go of the flexibility in their revenue generation. He noted that contrary to the vision, the ground realities were hard and specially in these times. Hon'ble Member from Punjab discussed about the 7th, 8th and 10th Meeting of the GST Council, he pointed that a careful reading of the Minutes of these meetings made the intentions of the lawmakers very clear. He added that Hon'ble Minister from Punjab had clearly brough forth the assurances made in the Council and what had been documented in law and he would refrain from reiterating the same. He highlighted that in the circumstances that had arisen today it was the responsibility of the Central Government as the States were promised that they would be given a protected revenue for five years in lieu of the States surrendering their 70-80% rights of taxation. He drew the attention of the Council to a vital point that after the inception of GST for two years the compensation cess collected was more than the what

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was required to paid to the States and in those times the Central Government had been enjoying the possession of the additional cess so collected. When such was the situation Central Government transferred Rs.47,000 Crore to the CFI from that cess fund. He submitted that when Cess being collected was more then there had been no consultation with the Ld. AGI as to how to utilise the additional cess so collected, whether it was required to be distributed amongst states or kept with Centre. At that time Centre conveniently credited the money to CFI, now that it was falling short, they were shifting responsibility to States to borrow and manage. He added that he had always been raising the issue of Rs. 3,000 Crore of IGST settlement pending for Delhi which had yet not been resolved. He lamented that when the cess collected was more, the Central Government had full liberty to utilise the excess cess so collected and now that it was falling short the Council was discussing that whether States could borrow. On the points made by Hon'ble Deputy CM of Bihar regarding possibility of borrowings by the States he said that Delhi did not have the power to take loans and give guarantee. He again reiterated that Delhi was one State that did not have the power to take loans and take guarantee. He again stressed that the responsibility of meeting the shortfall was of the Central Government as was evident from the Minutes of the 7th, 8th and 10th GST Council Meeting and the assurances given by the Chairperson and Secretary therein as discussed by Hon'ble Minister from Punjab. He added that he had been very vocally advocating federal structure like the GST Council in sectors of education and health where State and Centre could work together and that if a decision was taken that it is the State's responsibility and that the States should borrow to make good the shortfall then this would be the last time that States would ever trust assurances by the Centre. He stated that the assurances given in the meeting and the intent of the Council in bringing out the GST framework were more important than what was written in the law. He emphasised that the intent of entire journey of bringing in the new tax regime should be seen and not what was written in the law or what the learned AG opined. He stated that Hon'ble Minister from Punjab had brought forth the point that the Act was actually failing to adhere to the Constitutional Amendment and that being the case, they should amend the act and not put the onus on to the States. He again pointed out that if the States would be asked to borrow it would be big betrayal to Delhi which did not even have the power to take loans.

12. The Hon'ble Minister from Goa congratulated the Chairperson for convening the meeting and taking heed to the suggestions made by the Hon'ble Ministers of different

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States. He stated that they had seen how the GST had been doing thus far and that he had painfully listened to some of the views expressed by Hon'ble Ministers before him. He stated that the situation that they were facing was not anyone's doing and specifically not of the Central Government. He stated that he was certain that if even half the money was available in the kitty of the Centre, it would have been ensured that compensation reached the States in time to all States that deserve it and who are badly waiting for it. He stated that it was economic slowdown initially and thereafter the most unexpected COVID 19 impact had been to the extent of economy coming to a halt during lockdown. He added that had lockdown not been imposed there would have been a situation of large number of people dying in various States and regions thus, the situation warranted a lockdown. He said it was a challenging task to get the economy back on track and to get the GST compensation collections to a level that States did not have to complain. He stated it was important to look at finer points which were notable in the GST journey thus far such as reaching levels of one lakh Crore collection, increasing taxpayer base from 64 lakhs to 1.24 Crore and impact on collection of direct taxes through increase in number of assesses to a higher level due to GST. He noted that if today collections were down then all the States have been party to it to the extent that tax reductions were State specific and as per suitability of the electorate in the State. He stated that the Covid pandemic had resulted in a grim situation and the figures show that as economy is slowly getting back on track, collections are increasing but he acknowledged that States were heavily impacted as compensation was not being released on time. He drew the attention of the Council towards Goa and noted that Goa was heavily dependent on mining which the Hon'ble Supreme Court prohibited, Further, he added that Goa was also heavily dependent on tourism which had been demolished by the pandemic which raised questions on Goa's economic survival. He stated that similar were the problems of other States, but small states get impacted by small amounts, noting that total dues to Goa were less than Rs. 1000 Crore. He stated that Compensation Cess Fund currently had a balance of Rs. 11000 Crore and if his counterparts from bigger States could have a larger heart, smaller States could be given their dues in time allowing them to survive and be saved from financial collapse. Smaller States such as Goa had a very small tax base and no new commodities or activities could be taxed to generate revenue. My learned friends in the Council had been privy and part of the formulation of the entire GST structure, He found it appalling that 7th,8th and 10th GST Council Meetings were being quoted , though they had a roadmap mentioned in these very Minutes that if there was a shortfall in the revenue, GST Council

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will take a call, the GST Council had to decide a way out in case of shortfall and it had to be a concerted effort of both the Centre and the States and the Centre alone could not be held responsible in isolation. He found that no one was offering any solution as to from where the revenue could come. He stated that solution could come from out of box thinking as these times do not give room for any further taxation. He suggested that tobacco was injurious to health and quoting 2011 figures for direct and indirect disease costs attributable to tobacco use exceeded one lakh crore, close to 1.16% of GDP and thus the Council should consider taxing tobacco and tobacco products. Tobacco was affecting both rich and the poor, with poor finding no means for treatment. He noted that if cost of beedi increased by Rs.1 the exchequer could realise an additional Rs. 50,000 Crore and even a slight higher increase will result in further up to 50/60/70 thousand Crore. He urged the Council to re-analyse on which products higher cess and more taxes could be imposed without impacting growth of economy. He urged the Council to come to a solution through consensus and not blame anyone. He further stated that the levy of cess could be extended for a period beyond five years so that the collection of compensation cess thereafter could be used to pay off current borrowings, which are much required in the current scenario and not let the economy worsen. He agreed with the opinion of the learned AG that the GST Council had to decide in such situation. The States and the Centre had to come together and decide on borrowing and the cess could be collected far beyond the five-year period to repay the borrowings taken so that situation in the States did not worsen any further, with no salaries paid to the employees and staff. He called for a solution driven discussion and consensus in the Council. He noted that there were 221 items in the 12% GST slab and 607 items in 18% slab, and that this could be rationalised to a single rate slab instead of two. He highlighted that the collection levels of Rs. 1 lakh Crore had been touched in 2019-20 and that there was a 10% increase in GST Collection in the period Jul-Mar 2018-19 vis a vis the same period in 2017-18, implying that the new GST regime had worked well. He urged the Hon'ble Members to give solutions in these challenging and difficult Covid times on how the revenue could be increased, how greater cess could be collected and possibly later rates could also be increased so that States don't suffer and the Centre would have sufficient revenue. It is not as though the Centre had plenty of funds which they were reluctant to release to the States. The quantum of stimulus provided by Centre in all sectors including Housing where tax rate is only 5% and for affordable housing only 1%. These were all positive steps. He stated that India had always been resilient and under the leadership of dynamic PM they would tide

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through these times and India will be the most prosperous country and that economy would rise again. He added that he had carefully listened to and appreciated the application of mind exhibited by the Hon'ble Chairperson in the recent CII meeting and he was confident that the economy will make a strong comeback. Stating on behalf of the smaller States he again requested the Hon'ble Chairperson to look into problem of smaller States. He compared the Centre to a father figure and the smaller states as little children crying for little things and sometimes the father lets the smaller child eat first and lets the elders, in the form of bigger States eat later as their hunger is more so also their capacity to wait. He again requested the Centre and bigger States that the current balance of over Rs. 11,000 Crore in the cess fund be utilised for paying off the smaller States so that not everyone is in a critical situation and the smaller States fair well and going forward they were all in it together and helping each other to revive economy.

12. Hon'ble Member from Jharkhand recalled the statement by Hon'ble member from Goa that Goa was a small State and there is a necessity of putting more focus on it and he stated that Jharkhand is a little bigger than Goa but would be one among the small States. Also, they also are among poor States. The amount they would ask from the Central Government which the Government of India possesses, in the GST Council, is also a small amount. They are requesting for Rs 2481 crore which is not large. It is below Rs 2500 crore. Hence, in the beginning they request that this amount may be released immediately so that business of the State Government can continue. Hon'ble Finance Minister from Punjab, in the deliberation, spoke about how the GST was made in the beginning, how consensus was achieved which is remarkable. This is worth focusing on. It is possible that the opinion of the learned Attorney General would be about the legal responsibility. However, any government would be vested with moral responsibility along with legal responsibility. The Hon'ble Union Finance Minister is the head of the family. She is the eldest and taking care of the younger ones is her moral responsibility, especially during these times. The Government of India is helping the States but more help is required on the issue of GST. Hon'ble Member from Bihar had stated that States can borrow. He would want to slightly differ here. When there is a requirement of taking loan, then the head of the family has to take the loan. If the Central Government does not take the loan, then the GST Council should take the loan and the Government of India can become the guarantor and the payment may also be made by them. He stated that protected revenue for five years, which was guaranteed as per the amendment to the

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Constitution, has to be given to the States. Hence, there should not be backtracking on these commitments. They have trusted the Central Government in the past, they continue to trust now and will continue to trust in the future as well. They should not be any issue in giving the protected revenue of 14%. He stated that the issue with Jharkhand is that they are a manufacturing State. They get less revenues in the GST regime. Consuming States will get more revenues as was stated by Hon'ble Member from Puducherry. He was right when he said that manufacturing States have a loss in GST. Their collections are low. There is a necessity of focusing on this issue. COVID-19 times have brought social and health related responsibilities. There is a dire need for money and their collections are also falling. Since the Chairperson is also the Finance Minister for the Government of India, he felt that it was necessary to convey that the Central Government has lot of pressure on the resources of the State. For example, 24% of the all coal mining in the country is done in Jharkhand. The production is done within the State but the revenues accrue to the Government of India. Fifty thousand acres of the State Government's land was lost but they did not get anything in return. Hon'ble Coal Minister visited Jharkhand and sanctioned only Rs 250 crore. Their outstanding requirement is about Rs 45,000-50,000 crore. What purpose will Rs 250 crore serve. He requested for those funds as well. He is well aware that this is the meeting of the GST Council but the Chairperson is also the Finance Minister of the country. He requested that they may be given the funds through Coal India Ltd in consultation with the Hon'ble Minister of Coal. The compensation for the State Government's lost land is still to be paid to the State. The Coal below the surface belongs to the Central Government but the land belongs to the State Government. He also requested for the GST Compensation money (protected revenues) and also the compensation for coal mining. He thanked the Chairperson for listening to him.

13. Hon'ble Member from Haryana stated that many Hon'ble Members spoke before him on the issue of compensation. Without going on the same lines, he wanted to convey that Haryana was a manufacturing and exporting State. He felt that States like these were worst hit where revenue had declined. On top of that, COVID pandemic had negatively impacted the overall functioning. Not only the State but also the Centre was affected by this. He wanted to sum up the discussion by making three points. First, as Hon'ble Members from Delhi, Punjab and others had stated that when Centre had the power over the formation of the GST Council, it was stated that Parliament would decide. He

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requested that in the coming session, as the Chairperson of the GST Council, she should take up this issue and let the borrowing come from the Centre. Today, when he speaks for Haryana, around Rs 5,850 crore GST compensation is pending pertaining to the last four months. It is pretty hard for States like Haryana, which are manufacturing and exporting, to work without capital. Second, COVID had given a jolt to every State and he felt that extension of protected revenue period should be extended beyond 2022 and the GST Council should start working on it. Maybe the 14% gap could be reduced, there should be a revision but it should be extended further for at least three to five years. Third point which no Member had spoken till then was that there had to be a plan which was also put forth by Hon'ble Member from Goa. Why shouldn't the GST Council plan on increasing the tax slabs. Revenues come only when there is tax collection. This power is with the GST Council which can decide and propose to Government of India that at least the tax slabs should be reviewed. If the 5% tax slab is changed to 6% tax slab, then according to him there wouldn't be a huge variation in the rate but the tax collection will increase. 5% tax slab had the largest basket. If the 12% slab was increased to 14% or 15% and 28% was increased to 30%, then at least the gap which was created over the last three years will be filled. He felt that for the coming meeting on 19th September, Central Government could deliberate and the States also should propose on how to get additional collections since Cess couldn't be the only way to get tax. If Rs 90,000 crore would be the cess collection, then the Central Government cannot fill the gap for the States. There have to be alternative ways which have to be worked out by the GST Council. He thought that all the members will agree. He made another request that Vidhan Sabhas are being conducted physically, Parliament session will be attended physically and so, next meeting of the GST Council may be physically conducted at Vigyan Bhawan. This is better since each and every State would be present in the meeting and it would be very easy to coordinate and discuss on issues which may be not done effectively through video conferencing.

14. Hon'ble Member from Telangana stated that on the sovereign guarantee of the Central Government, all the States had joined the GST. In the Act itself, it was stated that it was protected revenue. This Act had clearly conveyed that States' revenue will be protected. Protected revenue minus actual revenue would be the compensation which would be paid accordingly. So, on the Central Government's guarantee all the States had joined GST Council. The Chairperson knows that most of the States subsumed around

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70-80% of their revenues. Whereas the Central Government subsumed only around 30-31% revenues. The Central Government has other sources like Income Tax, Corporation Tax, Central Excise Tax and many other opportunities are present for the Central Government. States had only few opportunities left and meagre things are left with the States. Hon'ble Member from Punjab stated that it was clearly decided in the 7th, 8th and 10th GST Council Meetings that if compensation cess falls short, either the GST Council or Central Government will take a loan and give to the States. Now there was a proposal that States should take the loan. He wanted to state that when compensation cess was left with the Centre, at that time Rs 47,000 crore were credited into Consolidated Fund of India and IGST amounts of around Rs 1.5 lakh crore were transferred to Consolidated Fund of India. When there were excess funds, they were transferred to the Central Government but when the funds fall short, the States are being asked to borrow. Technically there is a problem in this. It's not that he was just passing it to the Centre, he stated that they all should think that if States had to take loan then lot of issues would come. FRBM limits, variable rate of interest between States, loan tenure for two or three years (the rate of interest will be decided on the tenure as well), when they will pay the compensation back, when States will get the compensation and when will they pay back the banks etc will be there when the State takes the loan. He sincerely requested that Centre should take the entire responsibility, Centre should take the loan and give money to the States and the GST cess period can be extended. Till what time the cess period has to be extended cannot be told now. Nobody was able to tell clearly when the COVID issue will subside, quantum of losses etc. In these circumstances, they suggest that the cess period should be increased till the repayment is over. Total period is for five years, so there are about 20 more months to go. How much compensation will be paid, when the COVID situation will improve, when exactly the revenues would increase nobody can tell. So, it is better that Central Government should take the responsibility and it should pay the compensation as quickly as possible to the States so that States can work better in health sector and other sectors during the COVID pandemic times. They were not able to pay the employee salaries for three months and they have to pay their employees. Their situation is very bad. His plea is that Central Government should take all the responsibility and they should take the loan. It will be easier for the Central Government to take the loan rather than the States since individual States will get loans at different rates. What rate of interest should be applied for repayment, how many months should be the loan tenure etc. complications can be avoided. The request from State of Telangana was that the Central

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Government should take the loan and pay the States. His second request was to Dy. CM, Bihar. In the 40th GST Council Meeting, a committee on IGST settlement was formed under his chairmanship. He requested that a meeting of the committee on IGST settlement may be convened as early as possible. Once the election notification for Bihar is released then he would get more busy. Telangana should get around Rs 2700 crore. Decision has already been taken, only the method has to be finalized in this issue. He requested Dy.CM, Bihar that a meeting of the committee should be convened as early as possible, the method for IGST settlement should be decided and States should be paid what their dues at the earliest. Dy. CM, Bihar clarified that in the 40th GST Council Meeting it was suggested that the officials would prepare a note regarding this issue and circulate among the States after which a meeting of the committee on IGST settlement would be convened. He requested the Finance Secretary and other officials that a note should be prepared on this immediately and then this issue can be discussed. Hon'ble Finance Minister directed that this be done expeditiously.

15. Hon'ble member from Andhra Pradesh stated that GST enactment probably in independent India was the biggest exercise and deliberation that could have happened which resulted in the enactment that everyone was aware of. He did not have the opportunity to participate in the initial years. In the presentation that was given at the beginning to this meeting there were four issues that were mentioned. One is that the then Chairman when requested by certain Members from various States had opined that it was difficult to pay money out of the Consolidated Fund of India because of Income Tax and other taxes coming there. Second, there was a particular instance of Hon'ble Member of Parliament Shri. K.C. Venugopal from Kerala asking for money coming in from Consolidated Fund of India which also was not accepted. Another was interpretation of Section 18 of 101st Constitutional Amendment and then the learned AG's opinion. On the whole it appeared that in the presentation itself, there was an indication of showing the way forward i.e. by way of States being enabled to borrow. He felt it was indicated that way. When they look at the actual enactment and the way the various deliberations that took place over more than a decade ago, the spirit of the entire enactment which was mentioned by Hon'ble member from Punjab and other Members, in the 7th GST Council Meeting, he reiterated that "*The Hon'ble Chairperson observed that there was Constitutional commitment for the Central Government to provide hundred per cent compensation and how it would be done was for the Council to decide*". In another

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instance the minutes of the 7th GST Council Meeting state that "*The Hon'ble Chairperson said that in the Council there was shared sovereignty between the Centre and the States and the Council was the de facto legislative body and it was expected that the Parliament and the State legislators would adopt the decision of the Council in toto*". Hon'ble Member from Punjab had earlier stated and he repeated that in the 8th GST Council Meeting, while perusing the draft of the Compensation Act it was approved that "***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*". In the minutes of the 10th GST Council Meeting it was recorded that the then Hon'ble Chairperson " *expressed a hope that good faith would prevail and that the Parliament and the State Legislatures would refrain from amending the Rules placed before them after the approval of the Council* " and then Secretary also stated that "*this implied that the Central Government could raise resources by other means for compensation and this could be then recouped by continuation of cess beyond five years*". In this entire deliberation and the process that followed before the enactment of Compensation Cess Act, it is clearly seen that all States had cooperated with the Centre in all ways for a common good cause and there might be certain technicalities or words that have been used in the actual Act but on the whole the spirit states that it is the Centre that will take care of any shortfall in the States' revenues. In that context, for example, when demonetization happened, most of the States revenues fell short, but all States actually cooperated in the spirit of federalism and went on to take whatever was given. On the whole, the State of Andhra Pradesh feels that responsibilities of States are multitude in nature and far more closer to the common man. So they would like to emphasize that the transfers to the States should get overriding consideration over other demands of the Central Government and keeping in view the multitude of services that State Governments are mandated to provide, where any shortfall will have direct and adverse effect on the citizenry, the responsibilities and commitments have become more onerous due to the COVID-19 pandemic especially towards heath care and social protection services. Just like Hon'ble member from Telangana said he felt that it was difficult to even pay the salaries of the government employees in view of this crisis. Since

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the Central Government has the power, authority and facility to raise the money, the Centre either by revision of compensation cess or Government of India borrowing and then extending the compensation period or even by authorizing the RBI to raise the money so that they tide over the crisis. On the whole, they truly opine that the because of various sizes of States, various revenue patterns and various specific nature and financial situations, they feel that Centre has to somehow hand hold the States and take them forward by providing all the compensation they have to receive and even more, if possible. It becomes very difficult for smaller and medium States to repay at later stage because of amount of borrowing.

16. Hon'ble Member from Assam thanked the Chairperson for convening this important meeting. He had mentioned his thoughts on this issue in the previous meeting also. Some of his esteemed colleagues had taken a stand that it was for the Central Government to pay compensation if it was not legal responsibility, at least it was a moral responsibility. The provision of the Constitution was very clear that compensation will be provided for GST implementation. Nowhere is it mentioned that if State and Central Government suffer revenue loss for certain other reasons not because of GST, he thought that Central Government was neither morally nor legally responsible to pay compensation to the States. There have been losses in the past four to six months (analysis of records will show this), They have lost certain amount because of implementation of GST but they have also lost GST revenue because of the COVID-19 situation and lockdown which was imposed state wide. When Central Government imposed a nationwide lockdown, it was a national policy. But, thereafter in his State, lockdown was imposed in Guwahati on their own count. There was question by Central Government whether it was warranted but the State went ahead. On that count, they suffered a loss of Rs 100 crore. Was it the moral responsibility of the Central Government to pay that amount to them? He thought that if a tough stand is taken like joining in the federal structure of GST Council was wrong like his colleague from Delhi had stated, then everything would be scrutinized afresh. At some point of time, this pandemic had come and lockdown was imposed, it was not envisaged by the former Chairperson when drawing the minutes which Hon'ble Member from Punjab referred to. Those minutes referred to a situation of shortfall of revenue because of the GST implementation. Those minutes should not be referred out of context today to emphasize that whatever may happen, the Central Government was morally responsible to pay to States. In Centre-State relationship, morality had no place.

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Parliament had passed the Constitution which states that it was for the GST Council to prescribe the manner in which the compensation can be paid. Once the Parliament passed the law and State Assembly ratified it, the States cannot make the Central Government morally responsible. He thought that an artificial aura around them should not be created that they will not do anything to earn revenue, whenever there is a proposal for increasing revenue, they will collectively say that it was not the proper time and then come back to the Central Government to fix moral responsibility. There was nothing moral in this world. It was purely a legally binding relationship where they have entered into the GST Council. He agreed that for the loss on account of implementation of GST which can be easily separated, he thought that at some point of time, whatever may be the wording, they have to find out a way for paying the compensation cess to the States. For the loss on account of COVID situation, when Kerala had suffered floods, they allowed certain provision, for Kerala to raise revenue and under the Constitution they had been given a prescription to raise revenue. There was no morality involved at that point of time which was done by the Constitution. He admitted that the Central Government has taken good care of States during the pandemic and if someone used harsh words, he was very sorry for that. The Central Government had arranged Revenue Deficit Grant and Devolution Grant. They could have taken a moral and legal stance that Income Tax, Excise Collections were low and hence grants may not be given. The moral question would have been flattened. The Central Government was looking after the States like a mother looked after her child during crisis. The Chairperson was playing the exact same role. He stated that in spite of revenue loss, he would require about Rs 2,148 crore but he would not use a single harsh word or put moral, legal responsibility on the Centre. Going by the conduct of the Chairperson in March, he was convinced that the special meeting was convened to help the States knowing that it was neither the moral responsibility nor legal responsibility to pay for the loss due to COVID-19. He stated that on account of GST implementation, the Central Government may have responsibility. His suggestion was that the GST Council at some point of time had to clearly make up mind that they had to raise the revenue. They cannot block revenue realization/revenue generation proposals and then ask for the compensation. State of Assam will support on this front and any State which opposes revenue generation program, he thought that they should not be given compensation. After four to six months, when Central Government comes with the proposal to hike rates, then they should not try to destabilize those proposals. If they have said that Central Government had moral and legal responsibility to pay compensation

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then equally the Central Government can also say that it was their moral and legal responsibly to come to Council with proposals and the States should approve morally and legally, whatever tax generation program the Central Government proposed. Learned AG had opined that loan could be raised. He would suggest two things. On the account of implementation of GST, whatever loss was suffered, the Central Government could give by raising loan. On the loss suffered due to COVID-19, the States may be given some fiscal space where they will raise loan subject to the requirement. If they did not require, then no loan will be raised. If they felt that they needed to go to the market to raise loan, they will go to the market to raise the loan. All these things will be accounted. Once compensation cess was collected by extending beyond five years, whether they will continue to pay the States again for five years is a different question altogether. The learned AG has clearly said that cess revenue can be collected even after five years. So, let those cess revenues be collected and be utilized to pay back to banks and RBI. He was of the opinion that the losses should be bifurcated and States should be told about their loss on account of GST implementation. If there was a certain loss on account of national calamities, then there was a constitutional provision on how to manage and provide for it. The GST law is clear on this. The Chairperson had convened this meeting to discuss this issue and it was gracious of her that she was looking after States well in the COVID-19 situation and he again emphasized without her, they would not have been able to pay salaries. Today they are doing that. Even after the Revenue Deficit grant was finished, she again reappropirated and started paying to States. These things history will record. Some people were trying to project as if the States were not being looked after by Centre but history and records will say otherwise that Centre has gone out of way to help the States in this crisis. Clearly, there were two losses, one on account of GST implementation and other on account of COVID-19 pandemic. He requested that for GST implementation loss, the Central Government can borrow and the GST council will pay back to Central Government or RBI from the cess that will be collected even after five years or at the enhanced rates whenever they are in a position to raise the rates. On the COVID-19 related loss, the States imposed lockdown and managing the State was their responsibility fully knowing that there will be loss. On that count, his humble suggestion was that certain fiscal space and borrowing limit may be given and if they felt the need to borrow, they will otherwise they will not. He would not be one among those who would hold the Central Government morally and legally responsible for COVID-19 loss.

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17. Hon'ble Member from Kerala stated that the provision of payment of compensation in the constitution or any other law was unconditional. There was no reference whatsoever to the reason or causes for shortfall in the revenue. There is no earthly way of distinguishing between or factoring the loss due to Centre action or State action or some other reason. Therefore, he thought it should be kept straight and simple as it was in the law that payment of compensation for any shortfall below 14% growth is unconditional. Now, he also wanted to make a point that the pandemic had certainly aggravated the revenue buoyancy of GST. He hoped that all the members remember that during the 37th GST Council Meeting at Goa, much before the COVID came to the scene, half session was spent in discussing about the possibility of future revenues of GST not keeping up with 14% growth which was untenable etc. therefore, he would argue that there is some structurally inherent problem in the GST rates, administration etc. which he would like to revisit. Now may not be the appropriate time to revisit the rates but he would like to revisit. They all would look in to the need for extending the compensation beyond 5-year period. There were suggestions regarding changing rate structure. He did not want to enter into those issues at this point of time. He wanted to flag that these issues have to be revisited. He wanted to state that he would fully agree with Punjab, Telangana, Tamil Nadu, Andhra Pradesh, Delhi, Chattisgarh and so on who have made it very clear that if the deliberations of the Council were looked at, ever since the compensation issue was discussed and debated, the whole spirit was not what learned AG gave in his opinion. Maybe it was a legal position. From a comprehensive reading of the debate and discussions would reveal a different picture. As Hon'ble Members from Telangana and Delhi mentioned regarding the way compensation fund was handled. If there was an excess balance, it went into the Consolidated Fund of India and the undistributed IGST also went in the Consolidated Fund of India. If there was a shortfall, how can the Centre shy away from addressing the problem? He hoped that they would take it in the spirit. But for the time being, he agreed that the GST Council had sought the opinion of the learned Attorney General and they would have to work within the framework of his opinion. He did not want to state what learned AG had said but he would fully agree with Dy. CM, Bihar that there was only one option at the current juncture, for reasons he had elaborated that, borrowing was the only solution. Now, what would be the agency to do this borrowing? There are three agencies, Central Government, State Government and the GST Council itself. The initial presentation by the Revenue Secretary seemed to have hinted that the it would be more appropriate for the States to borrow. Hon'ble Member

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from Andhra Pradesh had elaborated the difficulties involved. One is the FRBM Act, the other is that the cost of borrowing would be much higher, and the third is that there is no particular macroeconomic merit in making States to borrow. As far as fiscal deficit is concerned, when the Centre borrows, Centre's fiscal deficit goes up and when the State borrows, State's fiscal deficit goes up. But for any macroeconomic analysis or for rating agencies' optics, the combined fiscal deficit of States and Centre is relevant. So, it did not matter whether it was Centre or State. Borrowing by the Centre had certain advantages which were already elaborated by many Members and therefore he would pray that there is a simple solution. Even if the Centre had no legal responsibility to pay, given the spirit of discussion and also the fact that the way the present fund was managed or undistributed IGST was maintained, the best and simple solution was that the Central Government borrowed which would be repaid within a year or two or three by the extension of compensation cess. It is a simple thing and the whole thing will be solved. Any macroeconomic expert will tell that this is the way to proceed. It does not matter and they need not worry about fiscal deficit increasing by another 1% because of this exercise. This was his position and if for some reason it was not possible then the GST Council should be empowered to borrow. Now, GST Council could make a recommendation under Article 279A(4)(h) on any other matter relating to GST to the Central Government and State Government and change in the law can be implemented so that GST Council directly borrows. That should be a last resort. The simplest and appropriate method would be for the Central Government to borrow and provide money to GST compensation fund and in another two to three years it will be paid back. So, he hoped that they would have the good sense to reach the settlement from the house today itself and not postpone this decision for future time for the simple reason that the States needed money. The States were in dire situation even to pay salaries and therefore savage cuts were being made in the welfare schemes and development activities etc. These being done by the State Governments which account for 60% of total governmental spending in India was utterly aggravating the crisis. So, he hoped that a decision would be reached in the current GST Council Meeting itself and not postponed any further. Even if some more discussions had to be made, even if the Central Government did not take the responsibility for future, he would plead that temporary accommodation may be provided for GST compensation fund and the payment may be made to the States for the first two months of the current financial year so that normal functioning of the State Governments is possible. Other issues would be taken up in the upcoming meeting on 19th September 2020.

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18. Hon'ble Member from Himachal Pradesh stated that he had carefully listened to the thoughts of various Hon'ble Members. They had focussed on the option of raising loan. He agreed with the suggestion of Dy.CM, Bihar that the States would be in a position to take a loan on account of GST compensation only if loan burden in any form did not fall on them. Himachal Pradesh is a unique State and this had to be kept in mind when making any kind of decision. It was his hope that if there was a necessity for the State to take a loan on account of GST compensation then in the current circumstances there should not be any negative effect on the borrowing limit of State. The revenue gap of the State was steadily increasing while the return compliance of the State was better than the national average. In the end, he also wanted to state that the even after borrowing limit of the State was increased from 3% to 5% of GSDP, still there was revenue gap of about Rs 4,500 crore. If a loan had to be raised to fund the compensation cess they looked forward to cooperation from Central Government. He agreed with few suggestions from States like raising the rate of compensation cess and rationalizing the GST rates. He requested the Hon'ble Union Finance Minister that while making a decision, the unique circumstances of Himachal Pradesh may be kept in mind.

19. Hon'ble Member from Karnataka thanked the Chairperson for conducting a special meeting on the issue of compensation. This showed that she was a person who would take the issues head on and she called the meeting to get the views of the States, position of the law as well as get some concrete solution to the unparalleled problems which he appreciated. He stated that Karnataka was one the fastest progressing States and in terms of revenue collections also it does well. In the last four months, in spite of and despite COVID they were trying their best to have the same growth as in the same period in the previous financial year. They had almost achieved 13.9% tax growth when compared to the same period in the last financial year. That showed the effort Government of Karnataka was trying to put in spite of COVID. He felt that COVID was a major stumbling block but that should not be the dead end of the road. They can overcome it. With will power and ways and means to think something different they can see bright sunshine at the end of the tunnel. Their efforts started very earnestly at the beginning. However, the distress in the total revenue continues. They had envisaged Rs 1.8 lakh crores but they estimated tax revenues (GST and other taxes) to Rs 1.2 lakh crore. The difference is about Rs 60,000 crore. Compensation which was not paid in the last four months had added another Rs 13,764 crore. At the end of the year, it will be around Rs

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30,000 crore. Therefore, the compensation was very important factor as far as State finances are concerned. The entire country is going through difficult phase. Not only States but Centre was also facing problems. Therefore, joint effort had to be made to come out of this situation. India, as one country, believing in the strength of the people, they are very optimistic to come out this situation. This problem was temporary. However, this problem also gave opportunity to think together, act together and solve together. That must be the spirit. The constitution provides certain law and regulation. However, the market doesn't only go by law. Sometimes it goes beyond law, sometimes along with law and sometimes indifferent to law. GST Council is a moderator between the market and the law. Therefore, very proactive thinking had to be done in this situation as a moderator. Apart from taking the letter and spirit of constitution, the market spirit should also be considered. Therefore, putting the economic wagon back on the rail is of the highest priority of the States and Centre. To put the economy on track finances, investment, capital expenditure without gaps are required for Centre and States. Decisions of any kind which reduce the capital expenditure of the States will certainly harm not only the States but also Centre. He emphasized that this was a testing time and it was not only the monetary aspect to be considered but the very foundation of the federal structure. The cooperative federalism which was proposed and propagated by Hon'ble Prime Minister has to be taken forward. He felt that they have to come out with a solution in the current meeting or next meeting itself without wasting time. Having said this, he stated that the position of law was well known which he did not want to repeat. The law provides that what should be done in these circumstances. One of the solutions which had been deliberated in the 8th GST Council Meeting, which was the sum and substance of the entire discussion, is that the then Chairman mentioned "*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*". He thought that this could be compensated with the cess collection in the 6th year or subsequent years. This will sum up the whole thing and lead the way forward. The question was who will borrow. Ultimately, as some Hon'ble Members have addressed it, even if the State or Centre borrows, from macroeconomic point of view, the combined fiscal deficit will count. Sovereign debt counts ultimately. All the compensation cess funds are accounted in the compensation cess account with the Government of India. Since all compensation cess levied on the items go into this account and which can be used for repayment in further years. Since

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the payment goes there, borrowing by the State would make it bit difficult in terms of transfer and payment of funds. He felt that conscious decision had to be taken by the GST Council. Since Centre was also part of the GST Council, everyone should unanimously think of borrowing at one place where the cess was collected and accounted for i.e. with the Government of India on the advice of the GST Council. If this could be done, it would be the way forward and multi-pronged approach was necessary. It is not only the market borrowing, like few Hon'ble Members have suggested, rationalization of GST rates and at least increase in the tax rates for luxury items which were earlier reduced. The rates on certain luxury items should be rethought without affecting the economic stimulation. Rates on Tobacco, Pan Masala etc have to be relooked and revenue generation had to be considered. Staggering of payments, extension of compensation period, market borrowings could be looked into. Comprehensive solution to this complex problem should be done since GST Council had collective responsibility to find a solution for compensation crisis. This was not just a small problem but they were going through a crisis. This was testing time for everyone. Everyone had to stand united and there was no question of distributing the onus of responsibility. Karnataka being a progressive State, they were always with the Government of India in any reforms which can bring economic change and economic stimulation. One point he wanted to make as far as Karnataka was concerned, since they are almost growing at 14% (targeting 13.9%) efficiency should not be punished. If not rewarded it should not be punished. Therefore, looking into all these views and increase of borrowing limits since they had come out with certain reforms, it might take some time; SBI in its reports had said the day before the previous day that only eight States were capable of borrowing and other States find it difficult to borrow. This aspect also had to be relooked into so that State Finances must be reserved. He thought that with the Chairperson at the helm of affairs who had been one of the experienced persons in handling finances as well as she had been advocating the States' cause for a lot of time, he felt that under the leadership of the Chairperson, Statesman like decision had to be taken by the GST Council. That means that almost three fourth of the responsibilities of the States. They had to strive to increase the revenues, they had to contribute to Central pool which was their duty. At the same time, the compensation issue should not be withered away between the Centre and State. That's why careful balance is also necessary. He once again pleaded that multipronged solution was necessary and Karnataka was in a dire state. They needed compensation and since it was one of the highest revenue earning States, with some help from Government of India, they would

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certainly recontribute their revenues to the Government of India's kitty. Therefore, looking into the performance of their State, he pleased for timely compensation and help from Government of India through GST Council, if need be, the amendment of law could be looked into. This can be debated in the Parliament and permanent solution can be found out so that in future such crises could be avoided. When excess cess was collected, it was accounted with the Consolidated Fund of India and now since there was a deficit, at least by borrowing, the Government of India could come to their rescue. He strongly pitched about Karnataka's plight and wanted to impress upon her the need for compensation. She had already deliberated the issue and he was sure that she would come up with a solution for this which will be a win-win situation for both Centre and State. Ultimately it would be a victory for cooperative federalism.

20. Hon'ble Member from Gujarat thanked the Chairperson for calling the meeting for a big decision. Due to the Corona pandemic, there was an economic slowdown in the entire country and the income of the Centre and States was decreasing. Businesses, Trade, employment, service sector etc. were facing slowdown. During the lockdown everything was shut down and therefore neither the Centre nor the State earned any income. In such a situation, for keeping up the financial stability of the States, the decision of the earlier GST Council regarding which the Parliament discussions and former Chairman's words recorded in the Minutes were heard by everyone. The important issue in the thoughts of various Members who presented their views in the GST Council was that all States were in dire necessity for liquidity. All States were requesting Government of India's help and GST Council's help in one form or another for meeting their expenditure. The GST compensation till now which had to be compulsorily given to the States by law, all Hon'ble Members had discussed on how the payment has to be made. He felt that it was not right to hold something or someone as the cause for these circumstances. Only the circumstances have turned out like this. They all had to only think about how to get out of this situation with the help of Government of India. He requested that they all should think on the simplest and fastest way to meet the compensation needs and the liquidity needs of the States. Just as Dy.CM, Bihar stated that there was only one option. When they earlier discussed about the compensation issue, the Corona pandemic was not present. At that time, there were balance dues of compensation of States. At that time their thoughts were expressed and were also recorded in the minutes that, if possible, Government of India or GST Council would take a loan and pay the respective amounts

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to the States and the create mechanism for repayment through cess collections. Till the repayment was done, the burden of interest should not fall on the States. He made this suggestion when corona was not present. The situation had worsened now and payment of around Rs 3 lakh crore demand of States was required. As the presentation stated, Rs 12 lakh crore would be arranged by loan by the Government of India, it was the responsibility of the Centre to think about how to raise loan for this issue. Gujarat was to be paid a compensation of Rs 12,000 crore and this situation will continue in the future. It cannot be expected that market will rise suddenly and the economy would reach the earlier levels. They understood and accepted that it will not happen in the near future. He felt that the Government of India, GST Council and all State Governments together should work together and create a loan structure so that the compensation demand of the States for present and future were taken care of since the GST Council did not have income by which the States could be paid. He requested that the for the current financial year, demand of the States may be met immediately by a mechanism created by Government of India, GST Council and States together. This mechanism could be through RBI or other bank or borrowing from any other source and the amounts should be given to States as early as possible. The interest burden for the borrowings should not fall on States at any point of time. Compensation payment would only be for 5 years but cess can be collected beyond 5 years also. The cess should be collected till the loan was repaid and future needs were met. The financial condition of the States would improve, Central Government would not be burdened. Many Hon'ble Members had spoken on the system and earlier meetings' minutes were quoted. It was not necessary since this was not a man-made crisis but natural crisis. They all should come together to face this and prevail. His suggestion was if the loan was taken by the Central Government or a mechanism may be created for paying the States and a moratorium period may also be created. The Central Government need not pay this immediately. Two or three years moratorium may be given to the States after which the interest burden should not be shifted to the States and repayment must be made from the income of the cess. According to him, there would not be an issue even if the cess period is increased for five years. The Centre-State relations would flourish. The financial problems of Centre and States would be solved. The primary objective of the GST Act was 'One Nation One Tax' would be successfully met. The GST Act would be successful and the conviction of the States in the law and in the GST Council should remain firm. Suitable mechanisms for this should be created. His request was that, if possible, a committee consisting of five to seven secretaries/commissioners

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from States may be constituted urgently and they should submit a report on how to raise a loan, how to implement this mechanism, who will take the loan, when the payments will be made etc. within seven to ten days. It was necessary that payments were made as early as possible. If there were delays then the troubles of States would multiply. States were not in a position to pay salaries also. Plans and development activities in States had stopped. These had to be taken forward and Atma Nirbhar Bharat also had to be implemented by them. To do these, financial situation of the States had to be strengthened. A committee of officers as mentioned above may be constituted with inputs from the States and a mechanism/formula may be created. The States should express their thoughts on the proposed formula then the path will become easy. The decision on implementation of this cannot be taken by video conference but if the committee gave the suggestion and the States gave their suggestions on it then the implementation would be easy.

21. Hon'ble Member from West Bengal submitted that the empowered committee had met in Kolkata where the question was of Section 18 of 101st Constitutional Amendment. He recalled that the proposal made by the Centre was that the Parliament 'may' compensate. The Finance Ministers of States were present and he was helping out the Chairperson then. They all decided that 'may' was not okay and it was replaced with 'shall' compensate. He was happy to state that the then Chairperson agreed to 'shall'. Then the question came up regarding the payment 'upto five years'. All the Finance Ministers, irrespective of political parties, said it should be 'five years' and not 'upto five years' because of the experience of CST before. Central Sales Tax was cut after three years by the previous Government. This was accepted and therefore the amendment happened. Therefore, having experienced that whole process, his first submission was that, the spirit of what they were doing were giving up 70% of their power to tax. An internationally benchmarked reform, the whole world will say tomorrow that that India had done something important and novel. The States agreed because of the fact that their revenues were protected. Some Members had said that there was moral responsibility and Dy.CM, Bihar was quoted by the media, rightly or wrongly, that it was the moral responsibility of the Centre and Hon'ble Member from Punjab cited the earlier Council discussions. He did not want to waste time by going there. He would like to emphasize that it was not just a moral responsibility but also the trust factor the States and Centre worked marvellously. They do not do any politics and went by merit in this forum. Trust factor has been a crucial part of this. So moral responsibility and trust factor were two

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key things that he would like to humbly submit to the Chairperson. Coming to the practical part question to answer was how to they manage this. They fully understood the COVID situation; the situation of the Central Government and Centre should understand their situation. There were two options. One is to increase the GST rates and through various mechanisms collect more cess etc. which would be for the long term. As per RBI and studies by different agencies, GDP may fall this year from 4-9%. If it falls even by 2%, it will shrink. In this situation, if the GST rates & cess are increased, cesses on sin goods are hiked; it would be impractical and not doable in the current times. So, the second option is borrowing. Who is going to borrow is the question. Capacity to borrow is one of the usual criteria for borrowing. Capacity to borrow of the States is in a precarious condition. Hon'ble Member from Karnataka cited the SBI report that only eight States were in a state to borrow. The fact is that nobody is in a state where they can borrow and build up debt which they have to service. So, his first point is that capacity to borrow lies with the Centre. The Centre had already given Rs ten lakh crore stimulus. It would probably be Rs twelve or thirteen lakh crore in reality of which the RBI is perhaps a 70-80% partner. The Centre can monetize its fiscal deficit but the States cannot. The States cannot monetize their fiscal deficit and ask for money. The Centre can do it, essentially it means to print money. Capacity to borrow is a critical point and his humble submission was that the Centre becomes the eligible entity because of their capacity to borrow. Second point he made was the rate of borrowing. Today the States did not have capacity which was said by eleven-twelve States and others agreed. The Centre borrows at 1.5 to 2% less than the States. Hon'ble Member from Telangana stated that every State will have its own borrowing which would be a complete mess. Third is the debt servicing capacity. When the State or Centre borrows, they will have to service the debt. West Bengal was servicing massive debt like all other States. They cannot go back on it and sovereign bonds were issued by the State. His third point is that debt servicing capacity lies with the Centre. He reminded the Chairperson that on 14th March 2020, he quoted from the Minutes that the Chairperson was kind to say, in the context of cess and compensation, he quoted "*the Centre is duty bound to give compensation to the States*". That was in a good and positive spirit from the Chair. Today it had come to the point of practical solution. His earnest suggestion was that Centre had the capacity to borrow unlike the States, Centre had a lower rate of borrowing unlike States which also had differential rates, Centre had the debt servicing capacity. He felt from his heart that Central Government has many constraints in this COVID situation with the GDP

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shrinking. The actual percentage of shrinkage will be seen in the third or fourth quarter of the fiscal year. Despite the fact that both Centre and States were in bad shape, relatively speaking, the Centre had capacity to monetize the fiscal deficit, Centre had the capacity to borrow, better rate of borrowing and debt servicing capacity. In practical terms, his earnest submission was that the practical solution for the short term, the Centre borrowed and as the former Chairman had given the idea that maybe after the 5-year period was over, the cesses could continue in the sixth or seventh year. If they talk about the legal part that was started by the discussion, legal things can be interpreted in many different ways. What cannot be interpreted is what happened in the Kolkata meeting of the Empowered Committee. The States gave up their rights because they wanted a big fiscal jump which the world would remember. With the spirit, on one condition, that for 5 years and no more than 5 years, the Centre compensates the States. Due to COVID lockdown which was initiated by the Hon'ble Prime Minister and later on States also imposed lockdown, citing all the data that Hon'ble Member from Punjab started with, Hon'ble Dy.CM, Delhi expressed the same sentiment, Hon'ble Member from Kerala brought in the question of rating agency where it doesn't matter whether the Centre or State borrows since it will be counted as fiscal deficit and it will affect the rating agencies, he earnestly submitted that since Centre had the capacity to borrow, can borrow at right rate and had the debt servicing capacity this may be considered objectively. With it, the Chairperson can put in place a long-term strategy with the GST Council that they will rejig the rates, especially the cesses and particularly the sin goods. Those could be in the long run when the economy had recovered. Some more headroom would be obtained. Then of course, they would bring in reforms without much revenue loss. If done today, the revenue would fall due to elasticity of demand. The present elasticity of demand says if the rates are increased, the revenue will shrink because of the current condition of the economy. He concluded humbly that the Centre may take this on and do what had been done for the stimulating the economy, though it had not been cash which was his earnest submission, 70-80% was taken by RBI as partner and 20% may be taken by Centre with 1-2% of fiscal outgo. The RBI helped in loans. He requested for the RBI to be brought in. He had seen in the news that RBI had done only 44% of total payment to the Centre so they have got some headroom. She could work with them as a partner and bring this about. His earnest submission is the Chairperson could consider this. For the long term, she could come bring back to the GST Council, if this were to continue then how it would be managed in terms of cess adjustment and GST adjustment.

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22. Hon'ble Member from Rajasthan stated that Section 18 of the 101st Constitutional Amendment made a clear provision that by a Parliamentary law the States would be paid compensation for 5 years. Rajasthan is yet to be paid Rs 6,990 crore GST compensation. It was known that due to COVID the income of the States had drastically fallen to almost 40% compared to earlier figures. In these situations, they were not in a position to pay salaries, pension and fund developmental activities. They were not to able make payments for last five to six months to various institutions. In these situations, when the Central Government brought in GST, on one hand the State's power to tax was centralized. It is a federal structure and they all are dependent on the Centre. Therefore, the States should get timely payments of GST Compensation. The Chairperson in the previous meeting stated that "*the States are entitled to it and there is no question of them asking the Centre for it. It was the solemn commitment to the States. The Centre is duty bound to give compensation to the States*". The question rises on how to give the compensation. For this, before him, various Hon'ble Members had given solutions based on their experiences that RBI's help may be taken, Centre can help by printing more money, NABARD has a lot of money which belongs to the Central Government in the form of corpus fund which can be used to pay compensation to States. It was also true that the capacity of States to borrow is finished. They were a victim of indebtedness. Hence, for this reason, they would not take huge loans and if they took, they have to face huge interest burden. When the Central Government takes loan from related sources or institutions, they get it for lesser rate of interest. In these circumstances, the Central Government had to find out a way and pay the compensation for which the Central Government was committed to. He also reminded that their Hon'ble Chief Minister, who is also the Finance Minister, wrote a letter requesting extension of the cess period for five more years. Due to COVID, the income of all States had fallen and nobody could predict till when this situation will be present and when things will be back to normal. For this reason, the cess period should be extended. With a federal structure mechanism, for the States, the Central Government may also raise funds by raising loans from IMF, World Bank and other institutions and pay compensation to the States. The responsibility to pay compensation is with the Central Government. Due to COVID, the expenses of the State had increased. This is a global pandemic. The Central Government had to bear the expenses of this pandemic. Due to COVID, their expenses have increased and revenues had fallen. Therefore, their legitimate demand for compensation, which the Government had promised in accordance with Constitution should be definitely met. Along with this, he also wanted to draw

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attention to the fact that changes were brought in the Centrally Sponsored Schemes. Taking the example of Rajasthan, he stated that, before 2013, the Central Government used to give 90% grant for drinking water schemes but after 2013, the Central Government had changed the ratio to 50:50. In Jal Jeevan Mission, 50% fund contribution from the Central Government and 50% contribution from Rajasthan Government. Their contribution to the Centrally Sponsored Schemes was increased which they found difficult to meet. Hon'ble Prime Minister wanted to deliver water to every home in the entire country within five years. For this, Rajasthan which is the largest State in India required Rs 1 lakh crore out of which the Government of Rajasthan had to contribute Rs 50,000 crore. In the current situation, they could not make such contribution. Therefore, even in Centrally Sponsored Schemes, where there are deserts, mountains, semi-arid and arid zones, where they used to get 90% contribution, they should again get 90% contribution. He had full faith that keeping in mind the situation of the States, the Chairperson will make timely payments of GST compensation to all States which are due. He wanted to repeat that Rajasthan which was yet to be paid Rs 6,990 crore, should be paid immediately so that they can timely pay salaries, pension and meet State's contribution to the much required Centrally Sponsored Schemes. They were not able to meet the promises made in State budgets and their development had stalled. In these circumstances, the GST Council should take a decision immediately and pay compensation to the States.

23. Hon'ble Member from Uttar Pradesh thanked the Chairperson for arranging a special meeting on compensation. The Government of Uttar Pradesh gave highest priority to the realization of expected revenues. They always used to put in efforts to keep the revenue shortfall (which is projected minus actual revenue) to the minimum. Effective steps had been taken to ensure highest filing of returns and for preventive action. Uttar Pradesh required less compensation. However, due to situation caused by COVID-19, the State's requirement for compensation increased as compared to previous years. In these testing times of Corona, for taking care of States, the compensation for the month of February 2020 was paid and Uttar Pradesh received Rs 3,943 crore for which he specially thanked the Chairperson. However, Uttar Pradesh still had to get Rs 11,876 crore compensation. He impressed this on priority that balance Rs 11,876 crore should be given to Uttar Pradesh due to the current testing times. If they calculated the compensation amount for the next two years, then they would get a figure of Rs 60,000 crore. In the

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exclusive meeting on GST compensation, there were two options before them. First was that their resources and other means may be increased and the second is that, to deal with the current circumstances, borrowings may be resorted to and take a loan in some form. He wanted to attract attention to the fact that during the lockdown period premium segment video on demand service aggregators like Netflix, Amazon Prime, Hotstar, Zee Five had grown faster and the effect of this on the GST revenues from cinema halls and multiplex is natural. The tax slab for these should be increased from 18% to 28% and based on viewership bringing these under the ambit of compensation cess may be considered. Apart from this, cess also should be imposed on horse racing, gambling. It also had to be deliberated that from 15th November 2017, 178 items were moved from 28% slab to 18%. In first phase GST rates should be increased from 18% to 20% on items used by high income group by which the revenues of Centre and States will increase and the requirement of compensation will decrease. The problem which they had in the current times; this can also be one option. He wanted to especially state that when the talk of responsibility happens they say that the Chair is responsible or the Central Government is responsible, time and again it was seen that certain decisions of the GST Council taken were keeping in the interest of individual States, the respective Members stated that it was not the proper time to enhance rates. They had to look at the issue in toto to come out of this situation. Another thing that he wanted to focus on is that brand owners of packed food grains announce giving up their actionable claims and avail benefit of tax exemption. Benefit of reduction in rate of food grains of these brands is neither available to the farmer nor consumer but only to the marketers. Slaughtering services, premium segment services like child care services, pet care, day care services may also be brought within the ambit of GST from the point of view of revenue. Earlier also he had emphasized on it and he would repeat that agricultural produce, Mentha oil, cashew, tendu leaves, silk yarn, raw cotton should be brought within the ambit of RCM. Uttar Pradesh had made the requests to GST Council on these issues. It is pending with Fitment and Law Committee. There is a necessity for brining Mentha Oil within the ambit of RCM on priority. He drew the attention of the Chairperson to the fact that time limits have to be imposed for matters referred to Fitment Committee and Law Committee. They have to present their reports within 30 to 60 days. Decisions which bring in revenue should not be delayed. He personally also made these requests earlier. His humble submission was that matters involving revenue, if referred to Fitment Committee and Law Committee, then strict timelines should be imposed for them. They should take decisions between two GST

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Council Meetings so that they can be put up to the GST Council in the subsequent meeting for final decision to be taken for the benefit of States. Hence, he wanted to emphasize this issue. Along with this, Uttar Pradesh had requested GST Council for capacity based special compensation scheme for brick kiln, pan masala, this was referred to the joint meeting of Fitment Committee and Law Committee but this matter is still undecided. Hence, they wanted to attract the attention of the Chairperson to this issue. Revenue realization from advertisements shown on Facebook, YouTube, Google is negligible. If a mechanism was devised to share data then their revenues could increase. Finance Secretary at the beginning had focussed on how to deal with the current situation and Hon'ble Member from Gujarat stated that borrowing had to be done, whether the Centre, GST Council or the States. In this matter, they are completely with the GST Council and Central Government in case they take a decision for reforms. Hon'ble Member from Gujarat stated that committee may be formed and in five to ten days they deliberate on all the issues and options. Thoughts were expressed on what the situation will be if the Central Government borrows and if the State Government borrows. Their issues like rate of interest, FRBM limits, conditions for loans and other issues of the State Government are known to the Chairperson. If such a committee is formed, then Uttar Pradesh should be given representation in it. This committee should deliberate on all issues and should submit its report in a maximum of ten days so that it would be easy for the Chairperson to decide. The spirit of announcement of compensation was that compensation was a grant which would be available to the States in case of deficiency. The nature of compensation should remain as such and interest and other burdens should not fall on the States. He thanked for the opportunity to present his thoughts and stated that Government of Uttar Pradesh was with the Chairperson for any decision that may be taken in the GST Council.

24. Hon'ble Member from Odisha stated that they all appreciate that COVID-19 had affected the functioning of economy causing undue hardship to everyone, particularly to the poorest of the poor in entire country. Though revenues of both States and Centre were adversely affected, the State Government being at the forefront of the fighting the COVID pandemic, their requirement was higher and increased spending by them would go a long way in supporting their economy. They also understood that the revenues of the Central Government were not adequate to compensate the States but it is also a fact that Centre is in a better position to borrow against future receipts of compensation cess and provide assured compensation to the States as was the agreement arrived at the time of

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introduction of GST. Therefore, they propose that GST Council should recommend the Central Government to borrow against future compensation cess.

25. Hon'ble Member from Uttarakhand extended his gratitude for calling an exclusive meeting of GST Council to discuss the compensation issue. They were a tourism dependent State and it was the most important sector of their State's economy but the subsequent lockdown due to COVID-19 had severely crippled the State's tourism sector. The Chairperson knows that their population was 1.25 crores and 7 crore tourists visit the State. The sector was demolished and it will take years to correct. Apart from this other sectors also faced losses. They were a small Himalayan State. Before they transitioned from VAT to GST, they were growing at 17% but the Centre fixed a growth of 14% which was also a loss they faced. As far as borrowing was concerned, in the current situation, their borrowing capacity was 3% and they are already paying a big amount of Rs 5,800 crore as interest which is 2.1% of their GSDP. The total loan liability for their State was Rs 71,500 crore which is 24.36% of GSDP. Hon'ble Member from Jharkhand stated that their liability was Rs 45,000 crore. In spite of being a small State, they have a liability of Rs 71,500 crore. There were not in a position to borrow further. His humble request was that it was preferable for the Centre to take the loan and pay to the States.

26. Hon'ble Member from Madhya Pradesh stated that during the Corona times, due to economic slowdown State tax revenues fell by 40%. From April to July 2020, including the dues from earlier period, Madhya Pradesh was yet to receive compensation of Rs 6,000 crore. His request was that this may be paid immediately and they received a compensation of Rs 2,600 in the current year for which he thanked the Chairperson. Hon'ble Member from Gujarat spoke on many issues and he agreed with him. Other Hon'ble Members have spoken quite extensively as well and he would not speak much further. He requested that the compensation may be paid immediately.

27. Finance Secretary stated that an estimate was made regarding the shortfall in compensation, taking into account the SGST, CGST, IGST collections in last four months and the trend of how the economy is picking up. He further stated that as the Union Finance Secretary, the aspects of Union's revenue sources and further devolution to the States also needed to be considered. He explained that in case of indirect taxes, the revenue falls in proportion to the fall in the transactions. In case of GST or excise duty, if the transactions are down by 30%, the tax revenue also reduces by 30%. However, in

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case of income tax, corporate income tax, which makes up for about 50% of the Union's revenue, if the transaction or turnover reduces by 10% the fall in revenue will not be 10% but much more. If a company whose turnover reduces because of Covid-19 or any such issue, by 10%, it does not mean that the company will pay only 10% less in income tax or corporate tax, as the company may go into loss and pay zero tax in present year and even setoff the loss against the profit in next year also. With respect to Personal Income Tax, people have lost jobs, salary growth is reduced, so massive impact is foreseen in income tax collections. While it was stated in the meeting that the States have surrendered 70% taxing rights in GST and that the Union has only surrendered 30%, the fall would be much higher in the rest 70% of Union's tax base which is outside of GST. Customs duty and Excise Duty collections are also impacted. Dividends which the Centre gets from various Public Sector Units and other units will also be falling disproportionately. Disinvestments in this scenario will also be a difficult proposition. Other non-GST revenues will also be impacted and much more than the GST revenues.

27.1. He further stated that the Union already needs to incur a heavy borrowing, Further the Union's commitments on defence, internal security, various welfare programmes like food subsidy, rations also need to be taken into account as unless these responsibilities are met, the problems in economy may become more serious. However, as the States are also facing issues, there is a need to take a collective view. He further stated that compensation gap for only the first four months of the current Financial Year is Rs. 1,50,000 crore compared to what used to be the compensation gap for an entire year, around 1,00,000 crore. Then, he requested the Joint Secretary (DoR) to present the estimates on shortfall.

27.2. Joint Secretary (DoR), presented the estimates on shortfall. He stated that it was an indicative estimate as it was difficult to estimate the shortfall depends on how the recovery would take place. Even if it is assumed that there would be recovery in the coming few months, estimates suggest that there would be a shortfall of around Rs. 3,00,000 crore for the year against the protected revenue. For April-July, the shortfall is around Rs. 1,50,000 Crore. Shortfall has been divided into how much of is it because of Covid, and how much is the shortfall even if Covid was not there. If Covid was not there, around 10% growth rate would have been registered in post settlement SGST revenue over 2019-20. The gap between protected revenue and revenue of 2020-21 as estimated in the above manner, would have been the gap even if Covid was not there. The rest of

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the gap is because of Covid. For the estimation, only revenues from April till January are taken as the compensation for February and March becomes payable in the next Financial Year, as is the case every year. The protected Revenue for the period from April to January would be Rs. 6,38,339 Crore. Post settlement SGST collection during the same period last year was Rs. 4,30,147 Crore. Therefore, it is estimated that, with 10% increase, if Covid had not been there, collection would have been Rs. 4,73,161 Crore. Thus, a shortfall of Rs. 1,65,718 Crore is expected for ten months compared to the shortfall of Rs. 1,75,000 Crore for the entire year of 2019-20.

27.3. Finance Secretary intervened to state that this year was extraordinary with once-in-a-century Covid situation. If Covid had not happened and had the revenue grown in normal manner, that is around 10%, the gap between the protected revenue and the normal growth, would be because of GST implementation.

27.4. Joint Secretary (DoR) stated that the total revenue gap for the 10-month period (2020-21), which is attributable to the implementation of GST would be around Rs, 1,65,178 Crore. As Rs, 11,438 Crore is available in the Compensation Cess fund as on 31.07.2020, and an estimated Rs. 57,266 Crore would be collected from August to March, a total of Rs. 68,700 Crore would be available against the gap of Rs. 1,65,178 Crore resulting in an estimated shortfall of Rs. 96,477 Crore. Further, Statewise estimates would have variation as this is a net figure of adjusting one against the other. Thus, this shortfall of Rs. 96,477 Crore would arise even if one considers only the gap attributable to implementation of GST.

27.5. Finance Secretary summarized the presentation by Joint Secretary (DoR) by stating that total compensation requirement would be around Rs. 3,00,000 Crore out of which Rs. 1,65,000 Crore would be because of implementation of GST and the remainder Rs. 1,35,000 Crore would be because of the Covid situation. Thus, a view could be taken considering the shortfall being divided into these two buckets.

28. Hon'ble Member from Delhi stated that these are the projected facts which are presented and the figures presented may also change. On the basis of either the Centre's proposal or from any of the proposals floated during the discussions, a decision or view point could be made.

29. Hon'ble Member from Kerala suggested that the spirit of discussion in the Council should be understood and that apportionment of shortfall into loss from Covid and loss

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from implementation of GST should not be done as the Constitution does not make such distinction. It is a false direction of discussion as there is no distinction made in legal terms. He suggested that the Council should instead discuss how this entire loss could be met.

30. Hon'ble Member from Assam stated that the differentiation between implementation of GST and other reasons is inherent in the Constitution and not technical in nature. He further stated as per Section 18 of the 101st Constitution Amendment Act, Parliament shall, by law, on the recommendation of Goods and Services Tax Council provide for compensation to the States for loss of revenue *arising on account of implementation of* Goods and Service Tax for a period of five years. Thus, distinction is inherent. GST implementation loss should be met from Compensation kitty, but to say that it is the moral responsibility of the Centre to compensate for any loss accrued because of Covid-19 also, is not a proper inference of the Act. Supposing if any State faces flood situation in future, it cannot be suggested that Centre should compensate for the loss of revenue in such situation also. He further stated that though he was not opposed to Centre supporting the States, it could only be done for the loss arising out of implementation of GST. Regarding Covid situation, it can only be requested to the Centre to help the States which Centre is any way doing, but not as responsibility of the Centre.

31. Hon'ble Member from Puducherry stated that the distinction between Covid and normal growth situation should not have been made as the Act only talks about the loss of revenue of the State during the implementation of GST law. Covid situation was not foreseen during the drafting of the law. It is a solemn assurance given to the States by the Government of India to compensate any deficit in the 14% growth in any circumstance, whether normal or otherwise. Taking umbrage under the reasoning that, States have to bear the loss which is occurring because of Covid situation, is not a fair argument. States would have to be compensated for the 14% growth rate from the revenue arising out of GST compensation and if it did not happen, according to the discussions in 7th, 8th and 10th GST Council meetings under the erstwhile Finance Minister as the Chairman of the Council, the Government of India should compensate the States. There was also discussion in the Goa meeting regarding the borrowings from market. Thus, any kind of calamity should not prevent the States from getting the assured compensation. It is not a proper argument to say that States would have to bear the loss occurring due to the Covid

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situation. The solemn assurance of the Government of India, at the time of implementation of GST, must be honoured by the Government of India.

32. Hon'ble Member from Assam stated that there was no solemn assurance from anyone to compensate for the revenue loss arising from anything other than GST implementation. States could only request the Centre to support them in Covid situation but the Minutes of the earlier GST Council meetings cannot be misinterpreted to mean that Centre would compensate the States in any other situation. Neither legal nor moral responsibility exists on the Centre to compensate the loss that occurs because of Covid. Instead, only a request can be made to the Centre. He further stated that in this regard, he had a strong disagreement with the Hon'ble Member from Puducherry.

33. Hon'ble Chairperson stated that while all the suggestions from all the States are welcome, and the Council would be enriched from the healthy debate. She further suggested that instead of a debate about the interpretation of the Act, or the Minutes, the States may present their views on the suggestions made.

34. Hon'ble Member from Punjab stated that a clarification may be given from the Government of India on the IGST amount which was wrongly credited to the Consolidated Fund of India. He further stated that an entry of about Rs. 34,000 Crore was reversed, but a clarification was needed about the rest of the money. If the rest of the amount Rs. 54,000 Crore was also reversed, it would help ease the compensation shortfall situation. He further stated that he would hate to see the day when the States feel pressurized by citizens to breach the spirit of GST just because basic commitments not being met, as *hungry stomach knows no law*. Compensation was supposed tobe an exception and it was thought that by 2022, most of the States would not need compensation. He requested that the Centre may persuade the XV Finance Commission to make revenue deficit grants to the States which have large deficit. Punjab was looking at the deficit of almost 65% by 2022 because the State had been uniquely disturbed by GST as 25% of the State's revenue was subsumed on account of not being able to tax food grains under GST. Post-2022, when there is no assured compensation, Punjab would be in a precarious situation.

35. Hon'ble Member from Goa stated that there has to be a distinction between the loss arising on account of implementation of GST and other reasons. Covid situation was not foreseen by anyone. In all international laws, agreements there is always a *force*

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majeure clause, which is used in unexpected cases as in an *act of God*. As both States and Centre are facing the shortfall, the situation needs proper application of mind to make good the shortfall especially considering the situation of the Centre losing much more, as explained by the Finance Secretary. He further stated that in case of Kerala, in spite of much opposition, after much deliberation, due to a *force majeure* or *act of God* clause, the Council allowed the State of Kerala to impose a special Cess to come out of the flood situation. A similar solution can be thought of in the present scenario including where the Cess rates need to be increased on few goods without impacting the common man and raise some revenue in GST. He further suggested that proposals should be put up by the Members of the Council. He stressed that all Members were party to all decisions taken in the Council right from the beginning, and it was not a time to score points. As the economy is going through a grave crisis, all the States would have to participate, contribute and come out with a solution instead of blaming the Centre. He further stated that the Centre had always reached out, even when the State of Goa's revenues dropped by more than 75% and continuing to drop. He stressed that there should be no debate about a distinction being made between the normal course of growth and Covid related shortfall.

36. Hon'ble Member from Delhi stated that he agreed with the Finance Secretary about the loss of revenue to the Centre in non-GST taxes such as Excise duties, Corporate tax, Income tax, yet, States have also suffered losses in VAT, Excise, Property tax, Vehicle tax, Registration etc., because of Covid. The distinction between shortfall from GST implementation and from Covid is difficult to make and may be wrong also. While no national disaster like Covid was observed, there have been many disasters at the State level. If any State faces such disaster, it would not be right to divide the shortfall into being caused by GST implementation and by disaster. While it seemed to be a consensus view that a borrowing must be done to tackle the shortfall situation, the question is whether Centre or the States need to take this loan. He further stated that even if the States take loan at different interest rates, according to the Section 10 (1) of the GST (Compensation to States) Act, all amounts need to be credited to the Public Account of India, and need to be redistributed among the States which makes it a difficult and complex proposition. He stated that Centre should instead take the loan, and it could be paid back from the Cess collections in subsequent years.

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37. Hon'ble Member from Bihar stated that in the last three years, the shortfall was never divided into arising from economic slowdown, or from any disaster and that any shortfall was compensated. He stated that while it was good to understand this distinction, it may not be the proper time for this as the States require money at present. He stated that the basic questions at hand were to decide who should borrow and how to borrow. He further stated that because of the distinction, the amount of compensation to be released to the States stands reduced and while it is good to understand, it may not be the appropriate time for this differentiation. He stated that whatever be the loss, it should be compensated, from borrowing by either the Centre or the States. He suggested that the States may be allowed to borrow but with conditions such as FRBM relaxation, same rate of interest for all States, repayment responsibility lying with the Centre.

38. Finance Secretary stated that the distinction between shortfall on account of GST implementation, Covid related shortfall had to be made as the current crisis was going to be a prolonged one unlike the local disasters that occurred in the past. The sources of revenue of the Centre are impacted much more than GST in the current situation. There could be multiple options to handle the present situation. One view could be to borrow the entire shortfall amount, but the combined borrowing by the Centre and the States will have adverse impact on the economy in terms of macroeconomic stability, increase in interest rates, bond yield rate which would affect the investment and working capital availability to the industry at an affordable interest rate which help the economy recover faster. Even the currency fluctuation, sovereign rating of the economy needs to be looked at as the drying up of foreign exchange and flight of capital would affect the economy greatly. Thus, an overall view needs to be taken about the level of borrowing which the economy (Centre and States together) can sustain in the present time.

39. Hon'ble Member from Tamil Nadu stated that the distinction between GST implementation loss and Covid induced loss is not correct and is unacceptable. He stated that the States were promised compensation for shortfall and that no mention was made about the reasons in the Compensation Act and thus the issue of *force majeure* does not arise. He further requested that the opinion of the Learned Attorney General may be shared with all the States.

40. Hon'ble Member from Kerala strongly disagreed with the assessment made by the Finance Secretary in dealing with the situation. He stated that barring one or two

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states all others who spoke, said that the center should do the borrowing. Having felt the sense of the house, this aspect should be discussed first and he took strong exception to the discussions centering on covid related revenue loss and non-covid related revenue loss. When the economy is in recession, or in contraction, the theory suggests that the Government should expand the expenditure. He suggested that States were not asking for a stimulus package but are asking to maintain the existing expenditure. He suggested that the interest rate at present was one of the lowest and borrowing will not have much impact. He suggested that a part of the Centre borrowing may be monetized instead, to not affect the interest rate. He stated that during the preliminary discussion, all the Hon'ble Members except one or two Hon'ble Members expressed their opinion that States are in need of compensation because of the current situation. He stated that proposal should be put forward that embodies the spirit of the discussion in the Council meeting. He stated that if the Centre proceeds with the present line, it may lead to a dispute between the Centre and the States. He further stated that the plea was not to expand the expenditure and create panic in the economy, but instead, to allow the States to maintain the present level of expenditure.

41. Hon'ble Member from Assam stated that the presentation of the Finance Secretary regarding the impact of combined borrowing on the economy must be taken in the right spirit. He stated that the Centre and the States are bound to act by the Constitution which states that the compensation may be done only for the loss arising on account of GST implementation. He stated that Centre's borrowing of the entire amount of Rs. 3,00,000 Crore would affect the borrowing programme of the States by driving the interest rates up. He stated that Assam planned to borrow Rs. 15,000 Crore from the market and if the Centre also borrows during this time, it might increase the interest rate by around two percentage points from the present level of 7% for which no compensation can be paid to the State.

42. Hon'ble Member from Uttar Pradesh stated that a call may be taken as most of the States had put forward their views.

43. Hon'ble Member from Telangana stated that States like Telangana would have much to lose as they contribute most in the form of Compensation Cess and receive very little in terms of compensation. In the first year, the State of Telangana took meagre amount of compensation, almost Nil in second year and comparatively less in the third

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year also. He further stated that Telangana was in need of compensation for the first time this year because of Covid situation and if a distinction is made between Covid induced loss and shortfall because of GST implementation, the State of Telangana would lose. He suggested that as more money is pumped into the market, money circulation would increase and the economy would improve. As the shortfall is not being met from the Centre's kitty, but from the Cess collection from the States, Centre needed to support the States in the present situation. He pointed out that Telangana was in need of compensation for the first time, whereas several other States which were affected by natural calamities or were being handled badly were provided with compensation earlier, leaving better performing States disincentivized. He further stated that the allocations made by the XIV and XV Finance Commissions were also skewed against the better performing States like Telangana. He stated that, while he agreed with the support being given by the Finance Commission to the low performing States, States like Telangana lost much more. Similar treatment was happening with the disbursal of GST Compensation also. He requested that instead of making a distinction between shortfall from GST implementation and Covid induced loss, entire shortfall amount may be given by the Centre and let it be repaid by extending the Compensation levy for a further period.

44. Hon'ble Member from Karnataka stated that the law was very clear and he agreed with the perspective shared by the Finance Secretary regarding the identification of actual shortfall from Covid and non-Covid reasons. He further stated that he shared the views of the Hon'ble Members from Assam and Goa that the losses should be understood in a comprehensive way and that there is nothing wrong in projecting the revenue loss regarding shortfall due to implementation of GST, and due to Covid situation. He further stated that since all the States need compensation, the debt load of the shortfall may be eased by spacing out of the Compensation to one or two years beyond the prescribed transition period. He further stated the both the Centre and the States must together face the situation.

45. Hon'ble Member from West Bengal that the ultimate crux of the discussion was to decide whether the Centre or the States or the GST Council would borrow with a sovereign guarantee from the Centre. He stated that the borrowing by GST Council with a guarantee from the Centre would be the same as borrowing by the Centre and further borrowing by GST Council may attract higher interest rate as the Centre commanded lower interest rate as it is a bulk borrower. He further stated that the States were not in a

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position to borrow as the State Bank of India report suggested. He stated that the argument presented by the Finance Secretary with respect to the fiscal deficit would be a red herring, as it would not matter whether States or the Centre borrows because the credit agencies consider the collective deficit of the States and Centre put together. He further stated that of the three borrowing possibilities, the States have suggested that the Centre should borrow to be repaid from extended Cess for two years beyond the prescribed transition period. He stated that a conclusion can be made that the Centre would borrow and the debt would be serviced from the Cess collections after making necessary amendments in the Act.

46. Hon'ble Chairperson thanked all the Members for attending the Council Meeting on the single agenda of Compensation which is being discussed since February. She stated that an extraordinary situation is prevailing which no lawmaker could have foreseen and therefore the present meeting was called to resolve the pending issues. She stated that there was never a second thought on Centre being duty bound to give compensation to the States. She further stated that since the meetings of the Empowered Committee of Finance Ministers and later the GST Council Meetings, there was a never a situation of Centre versus the States. The difference if any were always discussed and thrashed out to speak collectively for federal India. At present, federal India needed extraordinary solutions urgently to help the States which are at the forefront of fighting Covid. She reminded that she had to take the opinion of the learned Attorney General as she had committed in an earlier Council Meeting because the Cess collection was not proving adequate for meeting the requirement. She reminded that she answered in the Parliament also regarding the delay in payment of compensation which was a challenge in itself. She further stated that regarding few Members' comment that the surplus in Cess collection was kept in the Consolidated Fund of India, it was not done with any vicarious interest, and it was drawn to give to the States though with a delay caused by procedural matter as it required appropriation through the Parliament. She further stated that regarding the issue of IGST settlement, the issue was resolved but the mechanism of adjustment among the States is being examined by the Group of Ministers headed by the Hon'ble Member from Bihar which the GoM would be able to do after submission of the report by the Department of Revenue officials. She stated that the approach had been to resolve the issues as early as possible, not to keep any issue pending. She stated that any question of mistrust is not warranted in the Council as efforts were always made to clear the long

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pending dues of the States at the earliest. She further stated that it was understood that the Centre and the States borrowing are added to arrive at the Debt-to-GDP ratio and it was suggested not to worry about the fiscal deficit and expand expenditure by the Government. She pointed out that this was the principle behind Aatma Nirbhar Bharat package whether it is through RBI or Ministry of Finance, or investing in the National Infrastructure pipeline. She mentioned that the spending shall continue through the year. She then presented the proposal before the Council as Option 1 which is derived from the discussion earlier. She mentioned that she was in constant engagement with the Reserve Bank of India so that Centre and States do not rush to the market to crowd out and harden up the yield in the market. She stated that she was discussing with the RBI to see the possibility of a Special Window through which borrowing can be made with interest rate being pegged close to the G-Sec and compensation being paid to the States in a bi-monthly manner. She further stated that this amount would be paid back on the assumption that the Council would approve extension of Cess for the next three-four years after the compensation period is over. She stated that the opinion of the learned Attorney General confirmed the feasibility of such an arrangement and Cess collection would be used to repay the borrowed amount and thus the States were not going to be burdened as it is the Cess collection that would pay back the amount borrowed. She further stated that it was inappropriate time to discuss the increasing of tax or cess rate. She clarified that the Option 1 was worked out from the point of view of shortfall arising out of GST implementation only, which is about Rs, 96,477 Crore. She further stated that, as second part of Option 1, a relaxation of 0.5% in States' FRBM limit may be worked out and RBI would also be approached to offer a reasonable yield for this part also commensurate to the number of years. She stated that the States need not individually approach the RBI, instead the Centre can facilitate with the RBI so that same rate can prevail for all the States. She further stated that any excess collection of Cess after paying back the borrowed amount through RBI, will be given to the States which can also help in the repayment of States borrowing from the market under relaxed 0.5% FRBM limit.

47. Hon'ble Chairperson then presented the Option 2, that total Compensation requirement for the year of 2020-21 being around Rs. 3,00,000 Crore and the estimated collection of Rs. 70,000 Crore, the borrowing needs to be around Rs. 2,30,000 Crore which is about 1.15% of GDP. For this Option also, Centre will allow the borrowing by the States through the RBI and pay back from the arrears of compensation released

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beyond the transition period. She further stated that the compensation requirement would be around Rs. 3,50,000 Crore for the year of 2021-22, the last of the 5-year transition period, and estimated collection would be around Rs. 90,000 Crore requiring around Rs. 2,40,000 Crore to be borrowed. She suggested that the arrangements may be done only for the current year and review the compensation situation next year after considering the revival of the economy. She stated that for both the options, the repayment would have to be done from the Cess collections from the extended period beyond the transition period.

48. Hon'ble Member from West Bengal stated that Option 2 for a limited period of the present year where the Centre borrows Rs, 2,30,000 Crore to be repaid from the Cess collections from extended period would be agreeable to him.

49. Hon'ble Chairperson clarified that the Centre would only facilitate the borrowing through the RBI but the borrowing would be in the name of the States as the Centre already had borrowings upsetting the FRBM.

50. Hon'ble Member from West Bengal stated that it was his understanding that the States would not be burdened with debt or with the interest payment requirements.

51. Hon'ble Chairperson clarified that States would not burdened with repayment of debt as the borrowed amount would be paid back with the collections from the Cess beyond the transition period.

52. Hon'ble Member from Tamil Nadu stated that his State would go with Option 2 for 2020-21 and consider 2021-22 requirement later. He further stated that the entire compensation amount may be borrowed by the Government of India and the mechanism can be clearly outlined separately.

53. Hon'ble Member from Puducherry stated that Puducherry would go with Option 2 but they have to approach the Home Ministry to approve the borrowing.

54. Hon'ble Chairperson suggested that Ministry of Finance would work with the Ministry of Home Affairs to facilitate the borrowing by Puducherry.

55. Hon'ble Member from Puducherry stated that a deemed approval may be given, as Puducherry is considered to be a State under GST law which will allow Puducherry to borrow similar to other States.

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56. Finance Secretary stated that Ministry of Finance would work with the Ministry of Home Affairs and take all the permissions needed.

57. Hon'ble Member from Puducherry reiterated that under the GST law, Puducherry is equated with a State, therefore going through the Home Ministry for the compensation amount is not legally tenable and Puducherry along with the other States may borrow money with the facilitation made by the Chairperson. He stated that the condition of going to the Home Ministry may be dispensed with, for going to the Reserve Bank.

58. Hon'ble Member from Rajasthan stated that his State's fiscal deficit is already beyond the limit prescribed by FRBM Act and debt-to-GDP ratio is already 33% as against 25% suggested by FRBM Act. He further stated that if the loan is being paid for by the Cess, the Centre should borrow and recover from the cess as States have already crossed the FRBM limits and such option would be welcomed by all States.

59. Hon'ble Member from Kerala stated that the best course of action would be to give some time to the States to examine the options.

60. Hon'ble Member from Assam stated that a time of seven days may be given to communicate their decision in writing. He further stated that if Option 1 is given, the State may or may not go for further market borrowing depending on the requirement but in Option 2 means that such borrowing will certainly take place.

61. Hon'ble Chairperson clarified that even in the Option 2, the borrowing would be done in the name of the States.

62. Hon'ble Member from West Bengal supported the proposal made by the Hon'ble Minister from Assam and suggested that a detailed proposal may be sent by the Finance Secretary to allow the States to consider the options as it is difficult to ascertain the effect of borrowing on the States' debt burden. He requested for time of seven working days to come back with reply and State's submissions and refinements if any.

63. Hon'ble Chairperson stated that a Note detailing both the options would be sent to all the States and within seven working days, States may communicate their decision.

64. Hon'ble Member from Delhi stated that Delhi is not entitled to take a loan under the present legal position and the Centre needs to take the loan on behalf of Delhi.

CHAIRMAN'S INITIALS

65. Hon'ble Chairperson stated that the States may communicate their option within seven working days after sending the note.

66. The meeting ended with the Finance Secretary thanking the Chairperson, Chief Minister, Deputy Chief Ministers, Finance Ministers of the States, officers from the Government of India and officers who helped in organizing the meeting.

(Ms. Nirmala Sitharaman)
Chairperson, GST Council

CHAIRMAN'S INITIALS

CHAIRMAN'S INITIALS

Annexure 1

List of Hon'ble Ministers who have attended the 41st GST Council Meeting on 27th August 2020			
Sl No	**State/Centre**	**Name of Hon'ble Minister**	**Charge**
1	Govt of India	Ms. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendra Nath	Minister for Finance, Planning and Legislative Affairs
4	Assam	Dr. Himanta Biswa Sarma	Finance Minister
5	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
6	Chhattisgarh	Shri T.S. Singh Deo	Minister, Commercial Tax
7	Delhi	Shri Manish Sisodia	Deputy Chief Minister
8	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
9	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
10	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
11	Himachal Pradesh	Shri Bikram Singh	Minister for Industries & Transport
12	Jammu and Kashmir	Shri K. K. Sharma	Advisor to Lt. Governor
13	Jharkhand	Dr. Rameshwar Oraon	Minister - Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
14	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs
15	Kerala	Dr. T. M. Thomas Isaac	Minister for Finance
16	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Statistics and Planning
17	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister
18	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
19	Meghalaya	Shri James K. Sangma	Taxation Minister
20	Odisha	Shri Niranjan Pujari	Finance & Excise Minister
21	Puducherry	Shri V. Narayanasamy	Chief Minister
22	Punjab	Shri Manpreet Singh Badal	Finance Minister
23	Rajasthan	Shri Bulaki Das Kalla	Minister for Energy, Public Health and Engineering, Ground Water, Art and Literature, Culture and Archaeology
24	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
25	Telangana	Shri T. Harish Rao	Finance Minister
26	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
27	Uttarakhand	Shri Subodh Uniyal	Minister Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
28	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister Finance, Parliamentary Affairs, Medical Education
29	West Bengal	Dr. Amit Mitra	Finance Minister

Annexure 2

List of officials who have attended the 41st GST Council Meeting on 27.08.2020			
Sl No	**State/Centre**	**Name of the Officer**	**Charge**
1	Govt. of India	Dr. A B Pandey	Finance Secretary
2	Govt. of India	Dr Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri Sandeep M Bhatnagar	Member (Inv), CBIC
5	Govt. of India	Shri Vivek Johiri	Member (GST, IT, Tax Policy), CBIC
6	Govt. of India	Shri Ritvik Pandey	Joint Secretary, DoR
7	GSTN	Shri Manish Kumar Sinha	EVP
8	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU I, DoR
9	Govt. of India	Shri Yogendra Garg	Pr. Commissioner (GST), CBIC
10	Govt. of India	Shri Sanjay Mangal	Commissioner (GST), CBIC
11	Govt. of India	Shri Vipul Bansal	PS to Union Finance Minister
12	GST Council	Shri Amitabh Kumar	Joint Secretary
13	GST Council	Shri S.K. Rahman	Joint Secretary
14	GST Council	Ms Ashima Bansal	Joint Secretary
15	Govt. of India	Shri Rajesh Malhotra	DG (M&C)
16	Govt. of India	Shri Astik Sinha	PS to MoS (Finance)
17	GST Council	Shri Rajesh Agarwal	Director
18	GST Council	Shri G.S. Sinha	Director
19	GST Council	Shri Jagmohan	Director
20	GST Council	Ms. Ujjaini Datta	Director
21	Govt. of India	Shri N Gandhi Kumar	Director, DoR
22	Govt. of India	Shri Amaresh Kumar	Addl. Comm., GST Policy Wing
23	Govt. of India	Ms Nisha Gupta	Joint Commissioner, GST Policy Wing
24	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
25	Govt. of India	Shri Vikash Kumar	DC, GST Policy Wing

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26	Govt. of India	Shri Kumar Asim Anand	DC, GST Policy Wing
27	GST Council	Shri Arjun Meena	Under Secretary
28	GST Council	Shri Rakesh Agarwal	Under Secretary
29	GST Council	Shri Nitin Deepak Agarwal	Under Secretary
30	GST Council	Shri Mahesh Singarapu	Under Secretary
31	GST Council	Shri Krishna Koundinya	Under Secretary
32	GST Council	Shri Naveen Agrawal	Under Secretary
33	GST Council	Shri Karan Choudhary	Under Secretary
34	GST Council	Shri Sarib Sahran	Superintendent
35	GST Council	Shri Krishan Kumar Verma	Superintendent
36	GST Council	Ms Chanchal Soni	Superintendent
37	GST Council	Shri Abhishek Kumar	Superintendent
38	GST Council	Shri Rakesh Joshi	Inspector
39	GST Council	Shri Pankaj Bharadwaj	Inspector
40	GST Council	Shri Vijay Malik	Inspector
41	Govt. of India	Shri Nishith Goyal	Chief Commissioner, Patna, Ranchi Zone
42	Govt. of India	Ms Vandana K. Jain	Principal Commissioner, Chandigarh Zone
43	Govt. of India	Shri Bijoy Bihari Mohapatra	Pr. Commissioner, Raipur, Bhopal Zone
44	Andhra Pradesh	Dr Rajath Bhargav	Special Chief Secretary, Revenue
45	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner (State Tax)
46	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Special Chief Secretary
47	Andhra Pradesh	Shri S. Shekhar	Additional Commissioner State Tax
48	Arunachal Pradesh	Shri Anirudh Singh	Secretary
49	Arunachal Pradesh	Shri Kanki Darang	Commissioner
50	Arunachal Pradesh	Shri Telly Ngumdir	Assistant Commissioner
51	Arunachal Pradesh	Shri Nakut Padung	Superintendent
52	Arunachal Pradesh	Shri Kenmi Zirdo	Superintendent
53	Arunachal Pradesh	Ms Tadu Lily	DA

CHAIRMAN'S INITIALS

54	Assam	Shri Anurag Goel	Commissioner Taxes
55	Assam	Shri Shakeel Saadullah	Joint Commissioner of Taxes
56	Assam	Shri Bedabrata Saikia	Inspector of Taxes
57	Bihar	Dr Pratima	Commisssioner cum Secretary
58	Bihar	Shri Arun Kumar Mishra	Special Secretary
59	Chhattisgarh	Ms Maninder Kaur Dwivedi	Principal Secretary (Commercial Tax)
60	Chhattisgarh	Ms Ranu Sahu	Commissioner of State Tax
61	Delhi	Shri Sandeep Kumar	Secretary, Finance
62	Delhi	Shri Vivek Pandey	Commissioner, State Tax
63	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
64	Delhi	Shri C. Arvind	Secretary to Dy CM
65	Goa	Shri Hemant Kumar	Commissioner, ST
66	Gujarat	Shri Pankaj Joshi	Additional Chief Secretary
67	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
68	Haryana	Shri Anurag Rastogi	Principal Secretary, Excise & Taxation
69	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
70	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
71	Himachal Pradesh	Shri Jagdish Chander Sharma	Principal Secretary (Excise & Taxation)
72	Himachal Pradesh	Shri Rohan Chand Thakur	Commissioner of State Tax and Excise
73	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
74	Jammu and Kashmir	Dr. A. K. Mehta	Financial Commissioner, Finance
75	Jammu and Kashmir	Shri P. K. Bhat	Commissioner, State Taxes
76	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
77	Jharkhand	Ms Vandana Dadel	Secretary, Commercial Tax
78	Jharkhand	Ms Akansha Ranjan	Commissioner, CTD
79	Jharkhand	Shri Santosh Kumar Vatsa	Special Secretary, CTD
80	Jharkhand	Shri Brajesh Kumar	State Tax Officer
81	Karnataka	Shri. M. S. Srikar	Commissioner, CT

CHAIRMAN'S INITIALS

82	Karnataka	Shri Padmakar Kulkarni	Additional Commissioner
83	Karnataka	Dr. Raviprasad	Additional Commissioner
84	Kerala	Shri Anand Singh	Commissioner, State Tax
85	Kerala	Dr. Karthikeyan	Special Commissioner, State Tax
86	Kerala	Shri Abraham Renn	Additional Commissioner, State Tax
87	Kerala	Shri Mansur M. I.	Joint Commissioner, State Tax
88	Madhya Pradesh	Ms Dipali Rastogi	PS, Commercial Tax Department
89	Madhya Pradesh	Shri Raghwendra Kumar Singh	CCT
90	Madhya Pradesh	Shri Sudip Gupta	Jt. CCT
91	Maharashtra	Shri Manoj Saunik	ACS Finance
92	Maharashtra	Shri Rajgopal Devra	Principal Secretary, Finance
93	Maharashtra	Shri Sanjeev Kumar	Commissioner, State Taxes
94	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, State Taxes
95	Maharashtra	Shri Kiran Shinde	Deputy Commissioner, State Taxes
96	Manipur	Shri Charchit Gaur	Commissioner of Taxes
97	Manipur	Shri Yumnam Indrakumar Singh	State GST Nodal Officer
98	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Excise, Registration, Taxation & Stamps
99	Meghalaya	Shri Arunkumar Khembavi	Commissioner of Taxes
100	Meghalaya	Shri L. Khongsit	Additional Commissioner of State Tax
101	Meghalaya	Shri K. War	Deputy Commissioner of State Tax
102	Mizoram	Shri Vanlalchhuanga	Commissioner & Secretary Taxation
103	Mizoram	Shri HK Lalhawngliana	Joint Commissioner, State Taxes
104	Nagaland	Shri Kesonyu Yhome	Commissioner of State Taxes
105	Nagaland	Shri Y Mhathung Murry	Additional Commissioner of State Taxes
106	Nagaland	Shri Wochamo Odyuo	Additional Commissioner of State Taxes
107	Nagaland	Shri C. Lima Imsong	Deputy Commissioner of State Taxes
108	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance

CHAIRMAN'S INITIALS

109	Odisha	Shri Sushil Kumar Lohani	Commissioner, CT & GST
110	Puducherry	Shri Shurbhir Singh	Secretary (Finance)
111	Puducherry	Shri L. Kumar	Commissioner (CT)
112	Puducherry	Shri K. Sridhar	Deputy Commissioner
113	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to Chief Minister
114	Punjab	Shri A. Venu Prashad	Financial Commissioner (Taxation)
115	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
116	Punjab	Shri Ravneet Khurana	Additional Commissioner (Audit)
117	Rajasthan	Shri Niranjan Kumar Arya	Additional Chief Secretary (Finance)
118	Rajasthan	Dr. Prithvi Raj	Secretary, Finance (Revenue)
119	Rajasthan	Shri Abhishek Bhagotia	Chief Commissioner, State Taxes
120	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
121	Sikkim	Shri Jigme Dorjee Bhutia	Secretary cum Commissioner, CT
122	Tamil Nadu	Shri S. Krishnan	ACS Finance
123	Tamil Nadu	Shri M . A. Siddique	Principal Secretary/Commissioner Commercial taxes
124	Telangana	Shri Somesh Kumar	Chief Secretary
125	Telangana	Ms Neetu Prasad	Commissioner, CT
126	Telangana	Shri Laxmi Narayan Jannu	Additional CCT
127	Telangana	Shri N. Sai Kishore	Joint CCT
128	Tripura	Ms Tanushree Deb Barma	Secretary, Finance
129	Tripura	Dr. Vishal Kumar	Joint Secretary, Finance
130	Tripura	Dr. Sudip Bhowmik	Deputy Commissioner of Taxes
131	Tripura	Shri Badal Baidya	Assistant Commissioner of Taxes
132	Tripura	Shri Ashin Barman	Nodal Officer, GST
133	Uttarakhand	Shri Vipin Chandra	Additional Commissioner
134	Uttarakhand	Dr Sunita Pandey	Joint Commissioner
135	Uttarakhand	Shri Anurag Mishra	Joint Commissioner
136	Uttarakhand	Shri Pramod Joshi	Joint Commissioner

CHAIRMAN'S INITIALS

137	Uttarakhand	Shri S. S. Tiruwa	Deputy Commissioner
138	Uttar Pradesh	Shri Alok Sinha	Additional Chief Secretary, Commercial Tax
139	Uttar Pradesh	Ms Amrita Soni	Commissioner, CT
140	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, CTD
141	Uttar Pradesh	Shri Anil Kanaujia	Deputy Commissioner, CT
142	Uttar Pradesh	Shri Paritosh Kumar Mishra	Assistant Commissioner, CT
143	Uttar Pradesh	Ms Nidhi Srivastava	Assistant Commissioner, CT
144	West Bengal	Shri H K Dwivedi	ACS Finance
145	West Bengal	Shri Rajsekhar Bandyopadhyay	Additional Secretary, Finance
146	West Bengal	Shri Devi Prasad Karanam	Commissioner, CT
147	West Bengal	Shri Khalid Aizaz Anwar	Joint Secretary, Finance

CHAIRMAN'S INITIALS

Annexure 3

GST Compensation

STATUS AND OPTIONS

Compensation Fund Account

₹ crore

	2017-18	2018-19	2019-20	2020-21	Total
Cess Collected	62,612	95,081	95,444	21,355 (till July'21)	2,74,492
Compensation released	41,146	69,275	1,20,498 (till Nov'19)	65,546 (till Mar'20)	2,96,465
Balance	**21,466**	**25,806**	**(-25,054)**	**(-44,191)**	**(-21,973)**

Taking into account the amount ₹ 33,412 crore transferred from the Consolidated Fund of India to Compensation Cess Fund as a part of an exercise to apportion balance of IGST pertaining to 2017-18, the cess balance available in CFI as on 31st July, 2020 is **₹ 11,438 crore**

2

CHAIRMAN'S INITIALS

Challenges in meeting the requirement

The protected revenue continues to grow at rate of 14% over previous year

The GST revenues are expected to be adversely impacted due to economic impact of COVID-19

Widened gap between protected revenue and actual collections

Less than normal cess collection due to economic impact of COVID-19

3

Discussions in the GST Council

The issue relating to what will happen if cess collections fall short of compensation requirement has been deliberated in Council in detail.

In seventh GST Council Meeting held on 22-23 December, 2016, the then Chairman of the Council stated

> the demand for payment of compensation from the Consolidated Fund of India essentially meant funding compensation from Income Tax or non-tax revenues of the Central Government, which would be a challenge as the Central Government also had its own committed expenditure. He said that based on these considerations, certain principles had been agreed upon, namely that the compensation would be funded out of the cess mechanism, which would have a pool of revenue and if there was any shortfall in this pool, it could be supplemented by some mechanism that the Council might decide.

4

CHAIRMAN'S INITIALS

Discussions in the GST Council

In eighth GST Council Meeting held on 3-4 January, 2017, the then Chairman of the Council stated

> 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 intent was to have a dedicated revenue stream in form of cess, to be credited to the fund, for the purposes of payment of compensation to States and not to have compensation paid from CFI

5

Discussions in the Parliament

The issue of payment of compensation from consolidated fund of India instead from the cess proceeds out of the compensation fund was also discussed in the Parliament.

Shri. K.C. Venugopal (Alappuzha) also moved the following amendment

> The compensation to the States for loss of revenue arising on account of implementation of the Goods and Service tax **shall be paid from the Consolidated Fund of India.**

This amendment was rejected by the Parliament clearly displaying the legislative intent

6

CHAIRMAN'S INITIALS

Legal Provisions – Constitution

Section 18 of the Constitution (One Hundred and First Amendment) Act, 2016

18. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, **provide for compensation** to the States **for loss of revenue arising on account of implementation of the goods and services tax** for a period of five years.

7

Legal Provisions – Compensation Act

Section 10 of the Goods and Services (Compensation to States) Act, 2017

10. Crediting proceeds of cess to Fund.—

(1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) **All amounts payable to the States under section 7 shall be paid out of the Fund.**

8

CHAIRMAN'S INITIALS

AG's opinion

Irrespective of whether cess resources are adequate or not, States are entitled for compensation for the five year period.

There is no express provision in the Compensation Act for the Government of India to bear the liability of making good the shortfall.

It is for the GST Council to decide on any other source from where it may lawfully recommend the credit of the necessary amounts into the GST Compensation Fund

Council can discuss and recommend borrowing to meet compensation gap which can be allowed within overall framework of Article 293.

> *(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.*

9

CHAIRMAN'S INITIALS

Annexure 4

-36-

OFFICE OF THE ATTORNEY GENERAL FOR INDIA

My answers to each of the queries posed for my opinion are as follows:

(i) **In case the balance in the Goods and Services Tax Compensation Fund is not adequate to meet the compensation payable under Section 7, are the States still entitled to receive the full amount of compensation calculated as per the provisions of the Goods and Services Tax (Compensation to States) Act, 2017?**

Section 18 of the Constitution (101st Amendment) Act, 2016, provides thus:

> *"Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years"*

The law passed by Parliament in this regard is the 'Goods and Services Tax (Compensation to States) Act, 2017" [hereinafter 'the Compensation Act']. Section 7(1) of the Compensation Act provides that compensation under the said Act "shall be payable to any State during the transition period". The 'transition period' is defined in Section 2(1)(r) as a period of 5 years from the "transition date". Sub-Section (2) of Section 7 requires that the compensation payable to every State shall be provisionally released "at the end of every two month period", subject to final calculation for every financial year "after receipt of final revenue figures as audited by the Comptroller and Auditor General of India". Section 10(2) provides that all amounts payable to the States under section 7 shall be paid out of the GST Compensation Fund. No express provision appears to have been made in the Compensation Act in regard to a situation of shortfall in the GST Compensation Fund.

It would follow from the above, in my opinion, that the States are entitled to receive the full amount of compensation during the "transition period", in accordance with the provisions of the Act, irrespective of the shortfall.

(ii) **In case the balance in the Goods and Services Tax Compensation Fund is not sufficient, is there an obligation on the Centre to meet the shortfall wholly or partly?**

There is no express provision in the Compensation Act for the Government of India to bear the liability of making good the shortfall. On the other hand, Section 10(2) of the Act states that all amounts payable to the States under Section 7 shall be paid out of the GST Compensation Fund. In terms of Section 10(1), the *"proceeds of the cess leviable under Section 8 and such other amounts as may be recommended by the Council shall be credited"* to the said Fund.

Obviously, this would mean that it is the GST Council which has to decide on making good the shortfall in the GST Compensation Fund, by providing for sufficient amounts to be credited to it. I may mention that under Article

CHAIRMAN'S INITIALS

279A (9), the weightage given to the vote of the Central Government, in the GST Council, is one-third, i.e. around 33%. The remaining two-thirds (i.e. around 67%) would be given to the votes of all the State Governments taken together. However, since all decisions of the GST Council have to be by a 3/4th majority, obviously, 67% votes would not be sufficient for this purpose. In other words, the GST Council would not be in a position to make a recommendation to which the Central Government is opposed. This has to be kept in mind.

(iii) What are the options before the GST Council, Union and States to meet the said shortfall? Can the GST Council recommend extension of period during which the compensation for the transition period can be paid to the States in terms of Section 8?

It may be pointed out that Article 279A (4) of the Constitution, while setting out the powers of the GST Council, authorises it to make recommendations, *inter alia*, on "*any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster*". This provision will directly apply to the present situation, in view of the Covid-19 pandemic, and would indicate one possible solution for making up the shortfall in the GST Compensation Fund. It is for the GST Council to decide on any other source from where it may lawfully recommend the credit of the necessary amounts into the GST Compensation Fund.

No provision exists in the Compensation Act for extending the period of five years for payment of compensation to the States. Section 8(1) would only entitle an extension in regard to the period of the levy and collection of the Cess, beyond the period of five years, if the Council so recommends. This would not permit the extension or deferment of the period of 5 years for the payment of compensation to the States. In my opinion, therefore, it is only in a case where all the States together agree to a deferment or extension in regard to the payment of compensation to them, that one could adopt such a course of action.

(iv) Can the States borrow on the strength of the future receipts from the Compensation Fund to meet the compensation gap either fully or partially?

This query can be answered with reference to Articles 292 and 293 of the Constitution. The entitlement of a State to borrow is set out in Article 293(1). The limitation on such right is found in Clause (3), which prohibits a State from raising any loan, without the consent of the Government of India, "if there is still outstanding any part of a loan which has been made to the State by the Government of India...". Clause (2) of Article 292 authorizes Parliament to make loans to a State, subject to any limit which may have been fixed by law made by Parliament.

It is within these parameters that a State can borrow, even on the strength of future receipts from the compensation fund.

CHAIRMAN'S INITIALS

(v) Can the GST Council recommend or request the Centre to consider allowing States to borrow money to meet the compensation gap either fully or partially?

I have referred earlier to Article 279A of the Constitution which sets out, *inter alia*, the powers and functions of the GST Council. Clause (4) of Article 279A provides that the GST Council "shall make recommendations to the Union and States on" certain specified matters. In addition to the specifically enumerated matters under Sub-Clauses '(a)' – '(g)' of Clause (4), on which the GST Council may make recommendations, Sub-Clause '(h)' of Clause (4) empowers the GST Council to make recommendations in regard to "any other matter <u>relating to the goods and services tax, as the Council may decide</u>" (emphasis supplied).

The Supreme Court of India, in a catena of judgments, has consistently taken the view that the phrase 'in relation to' is a "very broad expression", having the widest import. According to the Court, these are "words of comprehensiveness" and have "to be given full effect to" [See *Thyssen Stahlunion Gmbh v. Steel Authority of India Ltd.* - (1999) 9 SCC *334*, and *Doypack Systems (P) Ltd.* v. *Union of India* – (1988) 2 SCC 299]. The words "relating to", occurring in Article 279A(4)(h), would also, in my view, stand on the same footing.

The implementation of measures to meet the shortfall in the GST Compensation Fund can reasonably be said to be a matter relating to the Goods and Services Tax. Thus, in my view, the GST Council can, in the exercise of its duties under article 279A(4)(h) of the Constitution, recommend to the Central Government to permit the States to borrow money, as a measure for meeting the compensation gap. It would, however, be for the Central Government to take a final decision in the matter, in exercise of its authority under article 293(3) of the Constitution.

(K. K. Venugopal)
Attorney General for India
23.06.2020

File received from Ld. AG's office May kindly see.
23/6

23/6/20

23/6/2020

CHAIRMAN'S INITIALS

Annexure 4A

OFFICE OF THE ATTORNEY GENERAL FOR INDIA

In the light of the facts stated in the file noting referred for my opinion on 25.08.2020, I would proceed to answer the queries set out therein. I am answering the queries in continuation of my earlier opinion dated 23.06.2020, though, I find that it has become necessary to vary a few of the conclusions which I had arrived at.

It would be far more convenient to address the queries conjointly, rather than each one separately.

I may state, by way of introduction, that both the Central Government as well as the State Governments are facing a serious downturn in their GST revenues, owing to the impact of the COvid-19 pandemic. As a result, the balance in the GST Compensation Fund [**'the Fund'**] set up under Section 10 of the GST (Compensation to States) Act, 2017 [**'The Act'**] is inadequate to pay full compensation to the States in terms of the Act.

The question which arises is as to how this issue is to be addressed by the GST Council. I have already opined earlier that each one of the States is entitled, under the Act, to the payment of full compensation during the transition period. There are two provisions which could be said to deal with such a situation, and these are:

(i) Article 279A(4)(f) of the Constitution of India provides that the GST Council may recommend "any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster". It is a matter for the GST Council to decide whether the consumers can bear the burden of an increase in the rates at the present time, and whether an increase in the rates is otherwise appropriate.

(ii) Under Section 10 (3A) of the Act, on the recommendation of the GST Council, an amount remaining unutilized in the fund at any point of time in any financial year during the transition period may be divided between the Centre and the States. The proviso to Section 10(3A) requires that if there is a shortfall in the amount collected in the Fund against the requirement of compensation payable to the States, the amount unutilized could be recovered from the Centre and the States. However, I am told that though a surplus existed in the Fund till the middle of the financial year 2019-20, this has been distributed to the States already.

We come to a third alternative, which arises out of Section 8 of the Act. Section 8 deals with the levy and collection of the GST compensation cess [**'the cess'**] on the supply of goods and services. The proceeds of this cess are credited to the Fund under Section 10. The cess is to be levied and collected for the purpose of payment of compensation to the States for loss of revenue arising on account of implementation of the GST, "for a period of 5 years <u>or for such period as may be prescribed on the recommendations of the Council</u>" (emphasis supplied).

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Two things follow, in my view, from the scheme of the Act:

(i) The compensation under the Act is payable to the States during the transition period (i.e. 5 years); and

(ii) Such payment shall be made from the Fund, into which the proceeds of the cess are credited.

What, then, does Section 8 mean, when it provides for the levy and collection of the cess for a period of 5 years or for such period as may be prescribed on the recommendation of the GST Council? The cess cannot be collected for adding to the general revenues of the Central Government. If this be so, the continued levy and collection of the cess beyond the period of five years could take place only in the event there has been a shortfall in the payment of compensation to the States during the 5 year transition period. If the States are fully compensated during the 5 year transition period, no question of extension of the levy and collection of the cess beyond 5 years would arise. In other words, the GST Council would recommend the continuance of the cess beyond the transition period of 5 years only in a situation of shortfall during the transition period, which would necessitate the raising of funds for paying the compensation to the States after the 5 year period is over.

I cannot see any other reason why such a provision is made in Section 8, permitting an extension in the duration of the levy and collection of the cess. This would necessarily imply that where, on account of extraordinary circumstances causing a steep fall in GST revenues and a shortfall in the Fund, the states cannot be paid full compensation during the transition period, the shortfall in the payment of compensation could be made up even after the transition period of 5 years.

Of course, a recommendation by the GST Council extending the levy and collection of the cess beyond 5 years under Section 8(1) of the Act, would require a decision by a three-fourth majority of the weighted votes. Since all the States are represented in the GST Council, this can only be achieved if the requisite number of States support such a recommendation.

I believe that I have answered the queries posed. I advise accordingly.

K. K. Venugopal
Attorney General for India
26.08.2020

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