

Minutes of the 10th GST Council Meeting held on 18 February 2017

The tenth meeting of the GST Council (hereinafter referred to as 'the Council') was held on 18 February 2017 in Hotel Radisson Blu, Udaipur, Rajasthan, under the Chairpersonship of the Hon'ble Union Finance Minister, Shri Arun Jaitley. The list of the Hon'ble Members of the Council who attended the meeting is at Annexure 1. The list of officers of the Centre (including the Ministry of Law), the States, the GST Council and the Goods and Services Tax Network (GSTN) who attended the meeting is at Annexure 2.

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

1. Confirmation of the Minutes of the 9th GST Council Meeting held on 16 January 2017
2. Approval of the Draft Compensation Law as modified in accordance with the decisions of the GST Council and as vetted by the Ministry of Law & Justice, Government of India
3. Approval of the legal provisions in the Model GST Law as per suggestions of the GST Council and vetted by the Union Ministry of Law
4. Date of the next meeting of the GST Council
5. Any other agenda item with the permission of the Chairperson

3. In his opening remarks, the Hon'ble Chairperson welcomed all the Members. He also expressed his deep appreciation of the arrangements for the 10th Council Meeting at Udaipur and the warm hospitality extended by the Government of Rajasthan and the Hon'ble Finance Minister of Rajasthan to the delegates of the 10th Council meeting. All Members of the Council gave a loud applause to this. Thereafter, he opened the discussion on the various Agenda items.

Discussion on Agenda Items

Agenda Item 1: Confirmation of the Minutes of the 9th GST Council Meeting held on 16 January, 2017:

4. The Hon'ble Chairperson invited comments of the Members on the draft Minutes of the 9th Council Meeting (hereinafter called the 'Minutes') held on 16 January 2017 before its confirmation.

4.1 The Secretary to the Council (hereinafter referred to as 'Secretary') informed that a letter had been received from the Government of Odisha suggesting that the version of Shri Tuhin Kanta Pandey, Principal Secretary (Finance), Odisha recorded in paragraph 21 of the Minutes be replaced with the following version – "Shri Tuhin Kanta Pandey, Principal Secretary (Finance), Odisha stated that there should be no diffused accountability except for

enforcement and that a fixed proportion of dealers should be assigned to the Central and the State tax administrations. He added that option may also be made available to any State if it wishes to be allocated 100% taxpayers below the turnover of Rs 1.5 crore subject to the overall share/proportion of dealers allocated to a State.” The Council agreed to replace the version of the Principal Secretary (Finance), Odisha in paragraph 21 as suggested above.

4.2. The Hon’ble Minister from West Bengal stated that in paragraph 28(ii), the following explanation should be added to clarify the scope of the expression ‘administrative control’: ‘administrative control means all administrative and statutory work in respect of taxpayer excluding enforcement action covered under paragraph 28(ix)’ or alternatively, the word ‘all’ be added before the expression ‘administrative control’. The Hon’ble Minister from Telangana also suggested to add the word ‘all’ before the expression ‘administrative control’ in the decision recorded in paragraph 28(ii). The Secretary observed that the change suggested by the Hon’ble Minister from West Bengal was not needed as it was implicit in the decision recorded in paragraph 28(i) that there shall be a vertical division of taxpayers between the Central and State tax administrations for all administrative purposes. The Hon’ble Minister from West Bengal stated that it would be appropriate to insert the word ‘all’ before the expression ‘administrative control’ in paragraph 28(ii) of the Minutes as was done in paragraph 28(i). The Hon’ble Minister from Telangana suggested to add the word ‘all’ before the expression ‘administrative control’ in paragraph 28(iii) of the Minutes as well. The Council agreed to the suggested changes in the Minutes.

4.3. The Chairman, Central Board of Excise and Customs (CBEC) stated that the Council’s decision in its 9th Meeting to vest administrative control of 90% of taxpayers having turnover below Rs. 1.5 crore with the States (recorded in paragraph 28(ii) of the Minutes) led to a highly skewed distribution of work and that there was a perception that this distribution was loaded against the Centre. He informed that this had led to unease and concern in the CBEC cadre and requested that either the distribution percentage might be revisited or State-specific solutions could be explored. The Hon’ble Minister from West Bengal objected to this suggestion and observed that presently, the discussion was only on the Minutes and that the decision on the issue of administrative control could not be revisited at this stage.

4.4. The Hon’ble Minister from West Bengal observed that the decision recorded in paragraph 28(iv) of the Minutes, namely, that those States wanting a different basis of division could do so in consultation with the Centre was erroneous as no such decision had been arrived at. He added that several Members had made many different proposals but finally no such conclusion was reached as recorded in the Minutes. The Hon’ble Minister from Punjab stated that this clause could be retained as it would be a matter between the Centre and a particular State and therefore, this clause did not go against any State. The Hon’ble Minister from West Bengal observed that if all States decided to adopt their own model of distribution of work, then there was no point in deciding the issue in the Council and that if each State decided to have its own arrangement, then there would be chaos. The Hon’ble Minister from Punjab responded that the principle of 90%:10% division between the States and the Centre respectively, as decided by the Council, shall remain valid and

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there could be a deviation only when a State agreed for the same. The Hon'ble Minister from West Bengal cautioned that no such window should be kept open.

4.5. The Hon'ble Minister from Kerala stated that the Minutes should reflect the decision of the Council and any new issues could be discussed later. He observed that in the 9th Meeting of the Council, it was agreed that States would have control over 90% of the taxpayers having turnover below Rs. 1.5 crore for audit purpose and that there was no decision in respect of the points recorded in paragraph 28(iv) ('those States wanting a different basis of division could do so in consultation with the Centre'); 28(v) ('the division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed'); and 28(vi) ('the new registrants shall be divided equally between the Centre and the States'). He observed that these issues could be raised and decided in a Council meeting but not in the manner done presently. The Secretary observed that division of taxpayers by computer on the basis of stratified random sampling was discussed as also the issue of geographical location, as the Central Government's presence might not be there in certain areas. He added that a separate arrangement for administrative division was also discussed by several States and that many States wanted a lower workload as the number of taxpayers below the turnover of Rs. 1.5 crore was very large but the revenue yield was not much. This arrangement only gave flexibility to States. The Hon'ble Minister from Bihar stated that such a relaxation was not desirable and it went against the vision of one country, one model, one tax. The Hon'ble Minister from Karnataka stated that the Hon'ble Deputy Chief Minister of Gujarat had suggested in the 9th meeting of the Council that different models for distribution of work between the Centre and the States be kept but this was not agreed upon. He stated that the understanding was that the number of taxpayers to be distributed between the Centre and the States for taxpayers with turnover below Rs. 1.5 crore would be worked out on the basis of the formula of 90%:10% and those above the turnover of Rs. 1.5 crore on the basis of the formula of 50%:50% and that the sum total of this number shall remain fixed. The pattern of distribution of taxpayers between the Central and State tax administration in a State could be varied keeping this number constant subject to mutual agreement between the two. The Hon'ble Minister from Bihar observed that the model should be the same as decided by the Council but some relaxation could be given in its implementation.

4.6. The Hon'ble Chairperson observed that some States might decide not to spend more energy on smaller taxpayers and prefer to give a larger share of smaller taxpayers to the Centre and in return, negotiate to have with them a larger share of taxpayers with turnover above Rs. 1.5 crore. He observed that such flexibility could be permitted in the administrative arrangement in different States while the GST law would remain the same throughout India. The Hon'ble Minister from West Bengal stated that the decision at paragraph 28(v) gave methodology regarding division of taxpayer and the flexibility mentioned in this regard was acceptable but the taxpayer distribution in the ratio of 90%:10% was a firm decision and it should not be altered. The Hon'ble Minister from Bihar also stated that the ratio of 90%:10% should not be changed. The Hon'ble Chairperson observed that change in the ratio of distribution for taxpayers with turnover below Rs. 1.5

crore and the corresponding change in distribution of taxpayers with turnover above Rs. 1.5 crore was a flexibility which a State could exercise only upon its consent and in its absence, the distribution ratio of 90%:10% would prevail. The Hon'ble Minister from Jammu & Kashmir suggested that in order to give flexibility in distribution of taxpayers, in paragraph 28(v), after the expression 'stratified random sampling', the following could be added: "or if the State so decides, on a negotiated basis, . . ." The Hon'ble Minister from Bihar observed that once numbers were decided, no flexibility should be allowed.

4.7. The Hon'ble Minister from Telangana observed that the tax administrations of the Centre and the States needed to work together and proposed that the Council's decision should be applied uniformly as otherwise, it would lead to difficulties and there could be different practices in different States. The Hon'ble Chief Minister of Puducherry observed that the decision in paragraph 28(iv) of the Minutes had been inserted due to pressure of CBEC on the Central Government and informed that the CBEC officers had also met him in this regard. He stated that flexibility be allowed without disturbing the percentages already agreed upon and that the decision should not be changed. The Secretary stated that in regard to the observation of the Hon'ble Minister from Bihar that there should be no deviation from the notion of 'One Nation, One Model, One Tax', it needed to be kept in mind that the administrative division of work would not be put in the law and that it would only be part of the Minutes. He further stated that India was a diverse country and some smaller States might not have the wherewithal to cope with increased workload and they could use this flexibility to give a larger number of smaller taxpayers to the Central tax administration. He also observed that such a flexibility could help assuage the feeling of the CBEC cadre and that it was not desirable that one set of bureaucracy remained very unhappy with the distribution of work. He added that any change in work distribution would be subject to agreement by the State and therefore such a flexibility be allowed to the States. The Hon'ble Minister from Kerala observed that if there were practical difficulties at the time of implementation, the decision could be revisited but it could not be inserted into the Minutes in this manner. The Hon'ble Minister from Telangana observed that both the Central and the State administrations needed to work together to increase the revenue and that not much revenue came from the taxpayers below the turnover of Rs. 1.5 crore.

4.8. The Hon'ble Deputy Chief Minister of Delhi informed that officers from the Central Government had met him in regard to distribution of work and stated that in the long run, there was a need to have a common cadre of tax administration, but, at this stage, the decision on the distribution ratio of 90%:10% should not be changed. The Hon'ble Chairperson observed that some States had specifically raised the issue that they needed to focus more attention on taxpayers with turnover above Rs. 1.5 crore and if some such States wanted to give up a certain percentage of smaller taxpayers in return for having a larger percent of taxpayers with turnover above Rs. 1.5 crore under their control, then such flexibility needed to be looked into. The Hon'ble Minister from Bihar stated that as implementation of GST progressed, many difficulties would arise which would require change in law, however, no loophole should be kept for possible deviation in one State as it would lead to agitation in different States. He emphasized the need for uniformity across the

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country. The Hon'ble Chairperson stated that law would be uniform but States could have flexibility in the administrative arrangement.

4.9. The Hon'ble Minister from Karnataka stated that his State agreed with the flexibility proposed by the Hon'ble Chairperson but that the Secretary's proposal was different. The Hon'ble Chairperson observed that the Secretary's proposal was made from a different point of view. The Hon'ble Minister from Jammu & Kashmir wondered why the Centre was keen to give this flexibility to the States when the States were not keen to have such flexibility. The Hon'ble Chairperson responded that this was to allow flexibility to those States that wanted more taxpayers with turnover above Rs. 1.5 crore in their jurisdiction. The Hon'ble Minister from Jammu & Kashmir suggested that in that case, the formulation that he had suggested earlier could be added to paragraph 28(v) and the decision as recorded in paragraph 28(iv) could be deleted. The Hon'ble Minister from Kerala observed that as there was no decision on this subject, it should not be put in the Minutes. The Hon'ble Chief Minister of Puducherry stated that the Council should go ahead with the decision taken earlier and it could be changed later, if so needed. The Secretary reiterated that CBEC wanted this flexibility and stated that perception issue was also important. He urged that the Council should allow such flexibility and should not make the decision so inflexible that there was no role of negotiation and mutual understanding. He stated that the Council was deciding on a new taxation regime and it was not desirable to adopt an adversarial position on a matter which was not hurting the States.

4.10. The Hon'ble Deputy Chief Minister of Delhi stated that the proposed flexibility would leave space for arm-twisting by the Centre and that there could be political misuse of this flexibility. The Hon'ble Chairperson observed that such an apprehension was not correct as even he would not be able to persuade about ten to twelve ministers belonging to his party to change the ratio of distribution for taxpayers with turnover below Rs. 1.5 crore from 90%:10% to 50%:50%. He observed that some States might genuinely not want to focus on smaller taxpayers and they could use such flexibility. The Hon'ble Minister from Kerala observed that it was not so decided in the last Meeting. He informed that the Central Government officers met him in a delegation. He expressed an apprehension that such flexibility would lead to State-level negotiations leading to wrangling. He suggested that GST should be implemented first and based on experience, decisions could be modified and that the final goal should be how to maximise revenue. The Hon'ble Minister from Punjab stated that for modifying a decision, flexibility was needed. He suggested that another alternative could be that for one year, the ratio as decided in the last Meeting of the Council could be kept and thereafter, States could negotiate a different ratio with the Centre. As there was no consensus on this issue, the Council agreed to delete the decision recorded in paragraph 28(iv) of the Minutes, namely that those States wanting a different basis of division could do so in consultation with the Centre.

4.11. The Hon'ble Minister from West Bengal stated that the decision recorded in paragraph 28(vi) ('the new registrants shall be divided equally between the Centre and the States') was not discussed. The Secretary pointed out that this issue was discussed and that the discussion was recorded in paragraph 27 of the Minutes. The Hon'ble Chairperson enquired

as to what would be the basis for distribution of a new taxpayer as its turnover would not be known. The Hon'ble Minister from West Bengal stated that a new registrant would declare its estimated turnover at the time of taking registration. He added that most new registrants would fall in the category of taxpayers with turnover below Rs. 1.5 crore. The Hon'ble Minister from Telangana stated that a new registrant would normally know his turnover at the time of starting his business. The Hon'ble Chairperson stated that it would be more practical that when a new registrant came in the tax-fold, he should be allocated to the Centre and the States in the ratio of 50%:50% and at the end of the year, if its turnover was below Rs. 1.5 crore, its allocation to the Central and State administration would be as per the 90%:10% formula and if its turnover was above Rs.1.5 crore, the allocation would be on the basis of 50%:50% formula. He suggested that the Minutes be modified suitably to reflect this arrangement. The Hon'ble Minister from West Bengal supported this suggestion. The Council agreed to the suggestion.

4.12. The Hon'ble Minister from West Bengal stated that the decisions recorded in paragraph 28(vii) ('The division of the taxpayers may be switched between the Centre and the States at such interval as may be decided by the Council') and in paragraph 28(viii) ('The above arrangement shall be reviewed by the Council from time to time') were not decided in the last Meeting of the Council. The Hon'ble Chairperson observed that the decision at paragraph 28(vii) was discussed and it was decided that where taxpayers were allocated in the ratio of 50%:50%, there could be a permanent division or the Council could collectively decide to switch the taxpayers. He observed that similarly for the taxpayers with turnover below Rs. 1.5 crore, the Council could decide when the 10% of the taxpayers under the administrative control of the Centre be switched to the States and a new 10% of taxpayers could come under the administrative control of the Centre. The Hon'ble Deputy Chief Minister of Delhi observed that this clause appeared to be undesirable and enquired as to what benefit could be derived out of such switching. The Hon'ble Chairperson stated that vested interests could be created if there was a permanent division. He added that the Council could possibly decide to switch the administrative control of the taxpayers after three years and that this decision would rest with the Council. The Secretary stated that the switching over could be in three years or from time to time as decided by the Council. The Hon'ble Minister from West Bengal stated that switching could take place within the agreed formula. He stated that if a period of time was to be specified for switching or for reviewing the ratio of distribution of the taxpayers between the Centre and the States, it should be three years and not one year as suggested by the Hon'ble Minister from Punjab. The Hon'ble Minister from Bihar stated that the period for switching or for reviewing the distribution of taxpayers between the Centre and the States should not be specified as the Council had the power to review its decisions. The Hon'ble Minister from Telangana suggested to insert the words 'three years' in the decision recorded in paragraph 28(vii) of the Minutes. The Hon'ble Chairperson stated that the Council should have the flexibility to revisit the issue as it gained experience without binding itself to a fixed time-period. The Council agreed to this suggestion and to retain the decision recorded in paragraph 28(vii) of the Minutes.

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4.13. The Hon'ble Minister from Telangana suggested to add the words 'and horizontal' after the word 'vertical' in the decision recorded in paragraph 28(i) of the Minutes. The Secretary clarified that the term 'horizontal division' was discussed in the context of a division where taxpayers were to be divided only for audit purposes and that the term 'vertical division' meant that the taxpayers were divided between the Central and State tax administrations for all administrative purposes. The Secretary suggested that since the expression 'all administrative purposes' was used in the decision recorded in paragraph 28(i), the word 'vertical' used in this paragraph could be deleted. The Council agreed to this suggestion.

4.14. The Hon'ble Minister from West Bengal stated that in the previous Meeting of the Council, the decision was only with regard to carve-out for 'place of supply' issues under the Integrated Goods and Services Tax (IGST) Act for the Central administration and that the decision recorded in paragraph 28(x) of the Minutes regarding carve-out relating to import or export of goods or services was not correct. The Hon'ble Chairperson stated that the Customs domain was out of the States' purview and that while one concession had already been agreed upon in regard to supplies in territorial waters, it would not be possible to agree to another concession regarding delegation of functions under the Customs Act like refund, etc. to the State administration. The Hon'ble Minister from Karnataka pointed out that even today, State administrations were deciding on export-related issues and that excluding the States from this function would not be proper. He recalled that the Central administration always emphasized that its jurisdiction should not be ousted from any particular activity and that the same argument held good in respect of State administrations on this issue.

4.15. The Hon'ble Deputy Chief Minister of Delhi stated that whether a VAT (Value Added Tax) officer should have the power to decide a particular activity to be export or not needed to be discussed separately before arriving at a decision. The Hon'ble Ministers from Telangana and West Bengal also stated that this issue needed to be discussed separately and then decided. The Hon'ble Chief Minister of Puducherry also stated that this issue should be discussed and concluded separately. The Secretary stated that this issue was part of the CBEC paper circulated during the 9th Meeting of the Council and the same was recorded in paragraph 14 of the Minutes. The Hon'ble Deputy Chief Minister of Delhi reiterated that this issue needed to be discussed separately and should not be taken as concluded. The Hon'ble Chairperson read out the text of paragraph 14 of the Minutes and pointed out that all import and export-related functions were included in the paper circulated by CBEC. Shri Upender Gupta, Commissioner (GST Policy Wing), CBEC pointed out that presently, the VAT administrations decided the issue of export only up to the penultimate stage of export and not when goods were actually exported from a port.

4.16. The Hon'ble Minister from West Bengal pointed out that in paragraph 22 of the Minutes, while summing up the possible solutions for the agenda item relating to provisions for cross-empowerment to ensure single interface under GST, the Hon'ble Chairperson had indicated that IGST be cross-empowered either under law or under Article 258 of the Constitution with a carve-out for the Central tax administration in relation to place of supply

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issues. He stated that this summing up should be reflected in the decision too. The Hon'ble Chairperson stated that for Customs issues, no delegation of power could be given. He stated that one of the considerations for conceding to the States' demand to delegate the power to collect tax in the territorial waters was that historically, States had been collecting VAT in territorial waters but Customs administration was never with the States. The Hon'ble Minister from West Bengal stated that as there was a reverse charge issue involved, it needed further discussion. The Hon'ble Chairperson stated that as the paper circulated by CBEC during the last Meeting of the Council had covered this subject, it need not be kept pending for decision.

4.17. Dr. P.D. Vaghela, Commissioner, Commercial Taxes (CCT), Gujarat stated that States were not initially agreeable to allow only IGST to be paid on export and it was accepted subsequently with the understanding that States would also be empowered to administer IGST on exports. He pointed out that for refunding the tax on export, the certification would continue to come from the Customs department which would be accepted by the State administration. He also pointed out that if input tax credit (ITC) was used for paying IGST on export, the State administration would need to examine the input-output ratio for utilization of such ITC. He added that the States had agreed to treat supplies to Special Economic Zones (SEZs) as inter-State supplies on the understanding that the States would have the power to examine such supplies. The Hon'ble Chairperson stated that the CCT, Gujarat could suggest a formulation which would not disturb the powers vested under the Customs Act. Shri Ritvik Pandey, CCT, Karnataka stated that the Customs Department would continue to administer the activity of import and export but tax refund on export would also include SGST and therefore, this would need to be administered also by the State administration. He added that States would not be interested in examining other issues like valuation or time of supply in relation to imports and exports. He also pointed out that import of services was covered under the IGST Act and not the Customs Act and therefore, this could not be carved out for the Central administration alone. He informed that activities like import of software services took place in a highly decentralized manner and States needed to have power to administer them. He further pointed out that the provisions relating to import of goods had already been carved out of the IGST Act. He stated that the issue was essentially one of cross-empowerment where certain issues such as valuation, time and place of import, import under bond, etc. could be excluded from the jurisdiction of the State tax administration but issues like refund of tax on export could not be carved out exclusively for the Central tax administration.

4.18. The Hon'ble Minister from West Bengal suggested that this issue could be discussed more thoroughly when the IGST Act was taken up for discussion. Shri Somesh Kumar, Principal Secretary (Finance), Telangana stated that there was large-scale export of pharmaceuticals from his State which involved refund of State VAT of approximately Rs. 350 crore in a year. He stated that the State administration would need the power to examine whether exports had taken place as these medicines could be easily diverted into the local market. He added that as this issue was not discussed, the phrase 'any issue relating to import or export of goods or services' recorded in paragraph 28(x) of the Minutes should be deleted. The Hon'ble Chairperson observed that there should be a

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formulation under which there should be no encroachment on the powers of the Customs authority or to carry out an investigation involving the Customs Act. The Principal Secretary (Finance), Telangana observed that State administrations must have power to examine whether a supply declared as export was genuine. Shri J. Syamala Rao, CCT, Andhra Pradesh suggested that the Law Committee of officers should examine this issue before the Council decided on it. Shri Rajiv Jalota, CCT, Maharashtra stated that his State gave approximately Rs. 6,000 crore of refund on exports and that his State VAT administration had a well laid-out procedure for verification. He suggested that CBEC could list out as to what functions could not be carried out by the State administration but a blanket ban was not desirable as it would lead to dual administration.

4.19. Shri Manish Kumar Sinha, Commissioner, GST Council stated that when exports took place, the VAT portion of refund was administered by the State tax authorities but the moot point was whether refund of IGST could also be granted by the State tax authorities or whether it should be administered only by the Central tax administration. The Hon'ble Minister from West Bengal stated that this issue related to IGST and that refunds on exports would also impact the States and therefore, this issue needed to be examined. The Secretary stated that the objection of the Members related to the expression 'any issue' used in paragraph 28(x) of the Minutes and suggested that this could be replaced by the expression 'such issues of export and import as may be discussed in the Law Committee of officers and brought back to the Council for decision.' The Council agreed to this suggestion.

4.20. The Secretary clarified that the third entry in paragraph 28(x) of the Minutes was discussed in the last Meeting of the Council and it was agreed that where one of the two States which was a party to a dispute regarding the nature of supply (whether inter-State or intra-State) requested the Central administration to adjudicate this dispute, then the Central administration would take up adjudication of such issue. The Council agreed to retain the phrase 'or when an affected State requests that the case be adjudicated by the CGST authority' recorded in paragraph 28(x) of the Minutes.

4.21. The Hon'ble Minister from West Bengal suggested that in respect of the decision recorded in paragraph 28(xi) of the Minutes, a clause regarding deeming fiction should be added as was done in the Model GST Law in respect of supplies made to the Special Economic Zones (SEZs). The Hon'ble Chairperson observed that by a deeming fiction, a Central Government territory would not become a State territory and that the idea behind the decision recorded in paragraph 28(xi) of the Minutes was to enable States to collect GST in territorial waters. The Hon'ble Minister from Karnataka stated that, at this stage, they did not want to define the territorial waters as a State territory but only wanted to incorporate a formulation in the Minutes to deem supplies to territorial waters as intra-State supply on the same basis as the supplies to SEZs had been deemed as inter-State supplies. The Hon'ble Chairperson observed that the Law Committee and the Union Ministry of Law should be given the flexibility to suitably draft a text to give effect to the decision recorded in paragraph 28(xi) of the Minutes. The Council agreed to this suggestion.

4.22. The Hon'ble Minister from West Bengal stated that no State officers were involved in the process of drafting the Minutes of the Meetings of the Council and suggested to

constitute a Minutes drafting committee in which some State officers should also be inducted. The Hon'ble Chairperson observed that the Minutes were not adopted without discussion. The Hon'ble Minister from West Bengal stated that keeping State officials in the Minutes drafting committee would give more comfort to the States and would avoid lengthy discussion on the Minutes as it happened this time. The Secretary observed that this would not be a correct procedure as Minutes were approved by the Council. He added that a distrust against officials drafting the Minutes would demotivate them. The Hon'ble Chairperson observed that only a few corrections were involved in the Minutes and that nothing ever went into the Minutes where there was no unanimity amongst the Members.

5. In view of the above discussions, for Agenda item 1, the Council decided to adopt the Minutes of the 9th Meeting of the Council with the changes as recorded below:

5.1. To replace the version of the Principal Secretary (Finance) Odisha recorded in paragraph 21 of the Minutes with the following: 'Shri Tuhin Kanta Pandey, Principal Secretary (Finance), Odisha stated that there should be no diffused accountability except for enforcement and that a fixed proportion of dealers should be assigned to the Central and the State tax administrations. He added that option may also be made available to any State if it wishes to be allocated 100% taxpayers below the turnover of Rs 1.5 crore subject to the overall share/proportion of dealers allocated to a State.'

5.2. To delete the word 'vertical' in paragraph 28(i) of the Minutes.

5.3 To add the word 'all' before the expression 'administrative control' in paragraphs 28(ii) and 28(iii) of the Minutes.

5.4. To delete the decision recorded in paragraph 28(iv) of the Minutes, which reads as follows: "Those States wanting a different basis of division could do so in consultation with the Centre."

5.5. To replace the decision recorded in paragraph 28(vi) of the Minutes with the following: 'The new registrants shall be initially divided one each between the Central and the State tax administration and at the end of the year, once the turnover of such new registrants was ascertained, those units with turnover below Rs. 1.5 crore shall be divided in the ratio of 90% for the State tax administration and 10% for the Central tax administration and those units above the turnover of Rs.1.5 crore shall be divided in the ratio of 50% each for the State and the Central tax administration.'

5.6. To replace the decision recorded in paragraph 28(x) of the Minutes with the following: 'Powers under the Integrated Goods and Services Tax (IGST) Act shall be cross-empowered to the State tax administration on the same basis as under the CGST and the SGST Acts either under law or under Article 258 of the Constitution but with the exception that the Central tax administration shall alone have the power to adjudicate a case where the disputed issue relates to place of supply; or when an affected State requests that the case be adjudicated by the CGST authority; *and for such issues of export and import as may be discussed in the Law Committee of officers and brought back to the Council for decision.*'



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Agenda Item 2: Approval of the Draft Compensation Law as modified in accordance with the decisions of the GST Council and as vetted by the Union Ministry of Law

6. Introducing this agenda item, the Secretary stated that the draft Compensation Law that was shared with the States as the agenda note to agenda item 2 had been vetted by both the Department of Legal Affairs and the Legislative Department of the Union Law Ministry. He informed that he had taken a meeting of the Central and State Government officials in Udaipur on 17 February 2017 during which the legally vetted draft Compensation Law was discussed. He stated that during this meeting, certain suggestions were made by the State Government officials and based on this, some changes were made to the draft Compensation Law circulated earlier to the States and that this revised text was placed before the Members for consideration. He stated that the changes shown in red colour in the draft text were those suggested by the Law Ministry and those shown in blue colour were based on the suggestions of the State officials.

6.1. The changes made to the draft Compensation Law based on the discussions in the Officers' Meeting on 17 February 2017 at Udaipur are recorded below:

- i. **Section 2(d) (Definition of "Compensation")**: The Section number referred to in the definition was corrected from Section 0 to Section 7.
- ii. **Section 2(j) (Definition of "Prescribed")**: The word 'under' was added before the expression 'this Act'.
- iii. **Section 2(k) (Definition of "Projected Growth Rate")**: The Section number referred to in the definition was corrected from Section 0 to Section 3.
- iv. **Section 2(l) (Definition of "State")**: The definition of State in sub-section (ii) was modified as shown in italics –
 (l) "State" shall include –
 (i) ...
 (ii) for the purposes of sections 8, 9, 10 and 11 the States as defined under the Central Goods and Services Tax Act, and *Union territories defined under the Union Territories Goods and Services Tax Act*;
- v. **Section 2(r) (Definition of "Union Territories Goods and Services Act")**: A new definition was added which reads as follows –
 (r) "Union Territories Goods and Services Tax Act" means the Union Territories Goods and Services Tax Act, 2017;
- vi. **Section 5(1), Proviso (b) (Base Year Revenue)**: The expression "any taxes" was replaced with the word "tax".
- vii. **Section 7(1) (Calculation and Release of Compensation)**: A new sub-section (1) was added which reads as follows –
 (1) Compensation shall be payable to any State for the transition period.
- viii. **Section 7(3)(a) [earlier Section 7(2)(a)] (Calculation and Release of Compensation)**: The Section number mentioned in the sub-section was corrected from Section 0 to Section 6.
- ix. **Section 7(3)(b) (Calculation and Release of Compensation)**: The portion indicated in italics was added in Section 7(3)(b) –

(b) the actual revenue collected by a State in any financial year during the transition period would be the actual revenue from State tax collected by the State and net of refunds given by the said State under Chapters XI and XXVII of the State Goods and Services Tax Act, the integrated goods and services tax apportioned to that State, *and any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refunds of such taxes*, as certified by the Comptroller and Auditor General of India;

x. **Section 7(4)(b) (Calculation and Release of Compensation)**: The portion indicated in italics was added in Section 7(4)(b) –

(b) the actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period would be the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XXVII of the State Goods and Services Tax Act, the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Excise and Customs, *and any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refunds of such taxes*;

xi. **Explanation to Section 7 (Calculation and Release of Compensation)**: In view of correction made at (ix) above, the following explanation at the end of Section 7 was deleted: “Explanation.— For the purposes of this section, the actual revenue collected would include the collection on account of State tax, net of refunds of such tax given by the State under Chapter XI of the concerned State Goods and Services Tax Act, and any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refunds of such taxes.”

xii. **Section 10(1) (Crediting proceeds of cess to Fund)**: The portion indicated in italics was added in Section 10(1) –

(1) The proceeds of the cess leviable under section 8 and such other revenues 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 utilized for purposes specified in the said section.

xiii. **Section 10(3) (Crediting proceeds of cess to Fund)**: The portion indicated in italics was added in Section 10(3) –

(3) Fifty per cent of the amount remaining unutilized in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India, as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax *or the Union territory goods and services tax, as the case may be*, in the last year of the transition period.



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- xiv. **Section 12 (Power to make rules):** The portion indicated in italics was added in Section 12(1) –

(1) The Central Government shall, *on the recommendations of the Council*, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

- xv. **Section 14 (Power to remove difficulties):** The portion indicated in italics was added in Section 14(1) –

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

6.2. The Hon'ble Chairperson explained that under Section 12 of the Draft Compensation Law, the Rules to implement this law would be made by the Central Government on the recommendation of the Council but, in order to exercise Parliamentary control over subordinate legislation, such Rules would have to be placed before the Parliament and that the Members of Parliament could seek modification of the Rules within a period of 30 working days from the date on which the Rules were tabled in the Parliament. The Hon'ble Minister from West Bengal observed that this could potentially be a problem as the Rules would have earlier been approved by the Council. The Hon'ble Chairperson stated that while sovereignty would be pooled in the GST regime, and the Parliament would approve the law as recommended by the Council, the Rules would also have to be placed before the Parliament as part of the legislative requirement, and that the Rules could theoretically be amended on the basis of a motion introduced in the Parliament. He further observed that a similar procedure would be followed in respect of a legislation passed by the State Legislature. He 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.

6.3. The Hon'ble Minister from Telangana stated that the Compensation Law should provide that if money fell short in the Compensation Fund, it could be raised from other sources. The Secretary stated that Section 8(1) of the draft Compensation Law provided that cess could be collected for a period of five years or such period as may be prescribed on the recommendation of the Council. He 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. He stated that the other decisions including the possibility of market borrowing for payment of compensation was part of the Minutes of the 8th Meeting of the Council (held on 3rd and 4th January, 2017) and need not be incorporated in the Law. The Council agreed to this suggestion.

6.4. The Hon'ble Deputy Chief Minister of Delhi enquired as to why there were two definitions of "State" in Section 2(1) of the draft Compensation Law. He further observed that the definition of "State" was not incorporated in the Central Goods and Services Tax (CGST) Act. The Secretary clarified that the first definition of "State" related to

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compensation to be paid to the States and the Union Territories with Legislature and that the second definition related to the levy and collection of cess which would be applicable to the entire country and therefore, this definition was to be adopted from the CGST Act. He informed that while the definition of 'State' in the CGST Act was still under discussion, it was mentioned in the Compensation Act in order to give a final shape to this Act. He added that there would be a Union Territory GST Legislation for Union Territories without Legislature. The Hon'ble Deputy Chief Minister of Delhi observed that multiplicity of definition of 'State' should be avoided to which the Secretary clarified that two different definitions were needed as no compensation was to be paid to the Union Territories without Legislature.

6.5. The Hon'ble Minister from Karnataka pointed out that in Section 10(1) of the Compensation Law, there was a reference to 'such other revenues', and if borrowing was not defined as 'revenue', it would be more appropriate to use the word 'receipt' instead of the word 'revenue'. CCT, Karnataka stated that another alternative could be to use the word 'amount' instead of the word 'revenue'. The Secretary suggested to use the expression 'such other amounts' or 'such other proceeds' instead of the expression 'such other revenues'. Dr. G. Narayana Raju, Secretary Legislative Department, Union of India pointed out that in Article 266 of the Constitution of India, the term 'revenues' as also 'loans' was used. CCT, Karnataka stated that this supported their point of view as even the Constitution made a distinction between the expressions 'revenues' and 'loans'. The Hon'ble Minister from Karnataka suggested that the Law Committee of officers could look into it. After discussion, the Council agreed to replace the words 'such other revenues' in Section 10(1) of the Compensation Law by the words 'such other amounts'. 6.6. The Hon'ble Minister from Karnataka stated that they had requested for greater comfort in the formulation of Section 7(1) [in the current text renumbered as Section 7(2)] and recalled that in this regard, the Hon'ble Chief Minister of Karnataka had also addressed a letter to the Hon'ble Chairperson suggesting a formulation that Section 7(1) should begin with the phrase 'notwithstanding anything contained in Section 8 or Section 10'. He observed that this formulation was not reflected in the draft Compensation Law. The Hon'ble Chairperson stated that the sum and substance of the provision was clear, namely that compensation would be paid to the States on the basis of base year revenue of 2015-16 plus 14% annual rate of growth and observed that no further change to the text was required. The Council agreed to this suggestion.

6.6. The Hon'ble Minister from Kerala observed that collection of cess on GST contradicted the principle of GST. He observed that as per the deliberations, after five years of implementation of GST, cess was to be integrated with the GST rate structure and that cess was to be levied only for compensation purpose. He raised a question whether this understanding should be reflected in the Compensation Law. The Secretary stated that the Compensation Law had broadly two elements: firstly, it created a Compensation Fund which was defined to consist of amount collected as cess or such other amount as might be recommended by the Council; and secondly, it empowered the Central Government to levy cess and Section 8(1) provided that cess could also be levied for a period beyond five years.

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Shri K. Gnanasekaran, Additional Commissioner, Commercial Taxes, Tamil Nadu stated that Section 10(3) of the draft Compensation Law provided that fifty per cent of the amount remaining unutilised in the Compensation Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of the Central Government and raised a question as to whether this amount would be available for devolution to the States. The Hon'ble Chairperson stated that if this amount formed part of the devolvable pool, then devolution would apply and not otherwise. He added that the Compensation Law could not provide for the principle of devolution.

6.7. The CCT, Gujarat raised the issue of cross-empowerment under the Compensation Act. The Secretary stated that the amount of cess paid in the returns of the taxpayers falling under the administrative control of the State Tax Administration shall be examined by them. Shri Tuhin Kanta Pandey, Principal Secretary (Finance), Odisha stated that the transition period of five years for compensation should be counted from the date when GST was implemented as it would now be implemented in the middle of the financial year. The Secretary stated that suitable change had already been done by incorporating a new Section 7(1) in the revised draft Compensation Law circulated to the Members just before the start of the Council meeting.

6.8. The Hon'ble Minister from Karnataka stated that in the 8th Meeting of the Council (held on 3 and 4 January, 2017), the Council had decided to examine whether cess should be levied at single point, instead of the presently proposed multi-stage levy and that this aspect was missing in the Compensation Law. He pointed out that aerated beverages and cigarettes on which cess was likely to be levied passed through several retail agents before being finally sold from small retail kiosks and a multi-stage levy would mean that all suppliers in the retail chain would need to comply with the provisions of the Cess Act in addition to the CGST and SGST Acts. He stated that if a single point cess was levied on these two products, it would promote ease of collection and compliance and would curb revenue leakage. The Secretary to the Council stated that while this approach presented the benefit of easy compliance, it also led to the disadvantage of not taxing the entire value chain in respect of goods like cigarettes and aerated drinks, which moved through five or six levels of retailers. He also pointed out that in the GST regime, tax on cigarettes and aerated drinks was to be charged on the entire value chain and cess was only an additional levy. He further added if the turnover of a small kiosk was below Rs. 20 lakh per annum, it would be automatically out of the GST net. He also pointed out that similar situation existed for many other consumer items like toothpaste which was also sold from small kiosks and value addition on all such sales was ignored if the kiosk's annual turnover was less than Rs. 20 lakh. He added that the only change made in the Compensation Law was to provide for a power to levy cess at a specific rate and that presently too, tax on cigarettes was charged at specific as well as *ad valorem* rate.

6.9. CCT, Karnataka stated that aerated drinks and cigarettes were mostly sold on the basis of Maximum Retail Price and therefore loss of revenue was not likely. He further added that a single point cess would help in delinking cess from the return filed by all taxpayers under GST where 90% of the taxpayers would need to file a nil entry for cess. Shri Udai Singh

Kumawat, Joint Secretary, Department of Revenue stated that the computer software could take care of this aspect. The Hon'ble Minister from Karnataka stated that only for two commodities, namely cigarettes and aerated drinks, the small *kirana* shop owner would need to maintain a ledger for cess. He suggested that the Law Committee should examine this issue thoroughly as this would ease compliance. The Secretary stated that GST was in the nature of a value added tax, and a single point taxation should be avoided. CCT, Karnataka pointed out that cess was to be levied not on the amount of GST payable but on the entire value of consideration. The Secretary stated that this problem would need to be addressed for all types of supplies. The Hon'ble Chief Minister of Puducherry stated that for suppliers with turnover above Rs. 20 lakh, the same principle of taxation should apply and that no separate principle be adopted for cess. The Council agreed that the cess would be collected for the entire value chain and not on the first point of sale.

7. The Council approved the draft Compensation Law as presented to the Members on 18 February, 2017 with the changes suggested by the Union Ministry of Law (indicated in red font) and those suggested in the meeting of the officers in Udaipur on 17 February, 2017 (indicated in blue font and listed out in paragraph 6.1 above) and also approved other drafting changes that might be required to bring the draft Compensation Law in congruence with the other GST related laws. The Council also agreed to replace the words 'such other revenues' in Section 10(1) of the Compensation Law by the words 'such other amounts'.

7.1. The Hon'ble Chairperson thanked the Council for approving the draft Compensation Law and stated that after the approval of the Union Cabinet, it would be introduced in the Parliament in the session starting from 9 March, 2017.

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

8. Introducing this agenda item, the Secretary stated that the entire legally vetted Model GST Law could not be presented before the Council in this meeting because the Union Law Ministry could not take up its vetting before 1 February 2017 due to its preoccupation with the preparations for the Union Budget. He added that the vetted draft had many changes and the Law Committee of officers felt that they needed more time to understand the changes made by the Legislative Department of the Union Law Ministry and would also need to have a joint meeting with them. He stated that on this account, the agenda note for agenda item 3 of the 10th Meeting of the Council (circulated as part of Volume 2 of the Agenda Note) contained only 7 issues relating to provisions of Model GST Law which the Council had earlier asked the Law Committee of officers to re-examine. He stated that these were being presented for discussion and decision by the Council. He further added that the Council, during its 5th, 6th and 7th Meeting, had suggested certain changes to the Model GST Law which had been suitably incorporated and vetted by the Union Law Ministry. He stated that these were 54 issues listed in Annexure-I to the aforesaid Volume 2 of the Agenda Note and that these were being presented to the Council for information and discussion, where so required. He further informed that the changes suggested in blue font were those based on the decision of the Council and the changes suggested in red font were those suggested by

the Law Committee of officers and the texts in green font were those which were to be incorporated in the SGST Law only. Thereafter, the issues contained in agenda note for agenda item 3 were discussed individually and the important points discussed in respect of these issues are recorded as below—

8.1. Issue No. 1 (Provisions relating to Tribunal – Section 104 – Section 121): A presentation on the provisions of the Appellate Tribunal for GST as prepared by GST Policy Wing, CBEC was circulated to all States on 17 February 2017. During the Meeting, the Members expressed that they had gone through the presentation and therefore it need not be made in the Council meeting. Thereafter, discussion on the draft legal provisions took place.

8.1.1. The Hon'ble Deputy Chief Minister of Delhi stated that the provisions contained in Section 106(1)(d) of the Model GST Law regarding three years' experience in tax administration for appointment of Technical Member (State) of the Tribunal would be problematic as his State did not have a cadre for tax administration and the officers from the cadre of the Indian Administrative Service (IAS) and the Delhi, Andaman and Nicobar Islands Civil Service (DANICS) posted in the tax administration might not have the requisite experience of three years in tax administration. The Secretary stated that the requirement of three years of experience in tax administration was in course of the entire career of an officer and not in the grade of Additional Commissioner. He expressed an apprehension that if the number of years of qualifying experience was reduced, it could adversely affect the quality of the Tribunal Members. The Hon'ble Chairperson suggested that in addition to the criterion of three years of experience in tax administration for selection as Member (Technical) (State), an additional qualifying criterion could be incorporated that officers having special knowledge of finance and taxation matters could also qualify for appointment to the Tribunal so that officers from non-tax cadres like the IAS could also be selected as a Tribunal Member. He observed that the pool of selection for Tribunal Members should be kept as wide as possible so that officers of high integrity and calibre could be selected. He further suggested that going by the present experience of difficulties faced in getting suitable judges for different tax tribunals, it would be desirable that the retirement age for the Presidents of the National and State Benches of the Tribunal was kept as 70 years instead of the presently proposed 68 years. The Council agreed to both these proposals.

8.1.2. The Hon'ble Minister from West Bengal suggested to delete the provision of Section 106(1)(b)(iii) providing for eligibility of an officer of the Indian Legal Service holding a post not less than Additional Secretary for three years to become Member (Judicial) of the Tribunal. He stated that a similar demand could be made by officers of the State legal services. Ms. Reeta Vasishta, Additional Secretary, Legislative Department, Union Ministry of Law pointed out that the present law also had a provision for appointment of a member of the Indian Legal Service with similar qualifications as Member (Judicial) in the Tribunal and that it should be continued in the GST regime. She added that there was no State Judicial Service and that the Law Secretary in a State was drawn from the judiciary and was of the level of a District Judge. Shri Sanjeev Kaushal, Additional Chief Secretary, Haryana stated that in his State, below the Law Secretary, there was an officer of the level of

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Additional District Judge and altogether, almost ten persons worked in the State Law Department. The Secretary observed that in the States, officers of sufficient seniority might not be available to be appointed as Member (Judicial) of the Appellate Tribunal. Shri Suresh Chandra, Secretary, Department of Legal Affairs, Union Ministry of Law pointed out that the Chief Justices of the Supreme Court and of the relevant High Court would need to be consulted for appointment of the President of the National Bench and the State Benches but the same might not be required for appointment of Judicial Members as appointment to Tribunals was part of the executive function and Article 50 of the Constitution provided for separation of the judiciary from the executive in the public services of the State. On a query from the Hon'ble Chairperson, the Secretary clarified that presently the Judicial Members of the Customs, Excise and the Service Tax Appellate Tribunal (CESTAT) were appointed in consultation with the judiciary. The CCT, Gujarat stated that Judicial Members of the Gujarat VAT Tribunal were appointed in consultation with the Chief Justice of the Gujarat High Court. The Hon'ble Chairperson stated that a Judicial Member had the flavour of judicial representation and therefore, the High Court of the States should be involved in the selection of Judicial Members.

8.1.3. Shri R.K.Tiwari, Additional Chief Secretary, Uttar Pradesh stated that as the proposed Appellate Tribunal was to consist of three Members, a significantly larger number of Judicial Members would be required and the provision of Section 106(1)(b)(ii) might be reconsidered and that an Additional District Judge should also be considered for appointment to the GST Tribunal. He added that members of the State Judicial Services should also be considered for appointment to the Tribunal. The Hon'ble Minister from West Bengal stated that the officers of the Indian Legal Service did not exercise quasi-judicial functions. The Hon'ble Chairperson observed that for reaching the level of Additional Secretary in the Ministry of Law, an officer would have worked for 25-30 years and so he would have been trained on legal matters. The Hon'ble Minister from West Bengal observed that he would still not have the experience of court proceedings. The Secretary, Legal Affairs stated that the cadre of Indian Legal Service was relatively small and it had advocates with experience of seven years or more and sometimes even District Judges joined as an officer of the Indian Legal Service. He added that officers in the rank of Additional Secretary in the Indian Legal Service were also discharging quasi-judicial functions as Members of several Tribunals and also working as arbitrators. The Hon'ble Minister from West Bengal stated that his State did not have a strong position on this issue. The Hon'ble Chairperson suggested to retain the provision in the draft Model GST Law that the President and the Judicial Members of the National and State Benches would be appointed in consultation with the Chief Justice of the Supreme Court and the High Court, as the case may be, and that the Technical Members would be appointed by the Central and the State Governments. The Council agreed to this suggestion. The Secretary informed that the existing law was drafted on the same principle as enunciated by the Hon'ble Chairperson.

8.1.4. The Hon'ble Minister from Chhattisgarh stated that the retirement age of the Member (Technical) should be increased from 63 years to 65 years. The Secretary informed that in many States, the retirement age of the Tribunal Member was 58 years and a high retirement


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age would deprive the younger officers an opportunity to serve in the Appellate Tribunal. The Hon'ble Chairperson observed that appointment to Tribunal was different from entry into a service at a young age where such opportunity was to be provided. He stated that for Tribunal, it was important to have intake of persons of competence, integrity and good health and that keeping this in mind, the pool for selection of Members of the Tribunal should be kept wide and they should also be kept in the service for a longer period of time. He therefore suggested to accept the proposal to keep the age of retirement for Technical Members as 65 years. The Council agreed to this suggestion.

8.1.5. The Hon'ble Minister from West Bengal stated that in Section 106(1)(d), there should also be a provision for appointment of retired officers as a Technical Member (State) of the Tribunal. The Hon'ble Chairperson agreed with the suggestion and observed that retired officers should also be made eligible for appointment as Technical Member (State) as it would give a chance to good, conscientious retired officers to serve as Technical Member (State) in a Tribunal. The Council agreed to this suggestion.

8.1.6. The Additional Chief Secretary, Uttar Pradesh stated that some officers could become Member (Technical) of the Tribunal at the age of 55 years and could then continue up to 65 years, thus denying a chance to more deserving junior officers to become a Member (Technical) of the Tribunal. The Hon'ble Minister from West Bengal suggested to keep a provision that a Member (Technical) shall serve up to the age of 65 years or for 5 years, whichever was earlier. The Hon'ble Chairperson observed that if a younger officer went to the Tribunal, he could keep a lien for 5 years in his parent cadre. The Secretary observed that it was not desirable to allow a Member of the Tribunal to come back to his parent Department as this could affect his functional independence. CCT, Karnataka stated that the provisions relating to Appellate Tribunal as it stood today, did not prohibit a Member (Technical) to come back to his parent Department. The Secretary reiterated that allowing a Member (Technical) to come back to his parent Department would compromise the independence of the Appellate Tribunal and instead, he might be allowed to work in the Appellate Tribunal for a period of 5 years or up to the age of 65 years, whichever was earlier. The Council agreed to this suggestion.

8.1.7. The Additional Chief Secretary, Uttar Pradesh suggested that there should be an age limit for a retired officer to be appointed to the Appellate Tribunal and suggested that he should have a minimum of 2 to 3 years of residuary tenure. The Council did not agree to this suggestion.

8.1.8. The Hon'ble Minister from West Bengal stated that proviso to Section 105(4) was problematic as once the GST Council recommended to constitute a certain number of Area Benches, the Central Government should not have the power to alter this number. He therefore suggested to remove the phrase "as it deems fit" in the proviso. The Additional Secretary, Legislative Department stated that this phrase was used in reference to the Council and not in reference to the Central Government. The Hon'ble Chairperson stated that the drafting of this provision should be suitably modified to reflect this understanding. The Council agreed to this suggestion.

8.1.9. The Hon'ble Chairperson suggested that the Council could consider having a provision in the GST Law that a State Bench of Appellate Tribunal could have jurisdiction over more than one State. He stated that there was a possibility that some States, particularly those in the North-East, might not have adequate work to justify creation of an independent Bench and incur expenditure on the same. The Hon'ble Minister from West Bengal stated that it would not be desirable for a taxpayer of one State to go to another State for redressal of his appeal. The Hon'ble Chairperson observed that such a Bench could hold hearing in different States over which it had jurisdiction on a rotating basis at fixed intervals. The Council agreed to the suggestion of the Hon'ble Chairperson.

8.1.10. The Hon'ble Chief Minister of Puducherry observed that in Section 116(2), the presently proposed limit for not admitting an appeal before the Appellate Tribunal was a case where the tax or input tax credit involved was up to Rs. 1 lakh. He observed that this limit was very high for smaller States where the amount of tax involved in a dispute might be relatively small. He suggested that this amount should be reduced to Rs. 50,000. The Council agreed to the suggestion.

8.1.11. The Hon'ble Minister from West Bengal observed that Section 108 (2) had a provision that the senior most Member of the National Bench shall discharge the functions of the President of the National Bench for a temporary period in case the office of the President fell vacant due to reasons like death or resignation of the President and suggested that a similar provision should be provided in respect of the State Tribunals. The Council agreed to this suggestion.

8.1.12. The Hon'ble Minister from West Bengal raised a question that if place of supply issue was only one of the issues in a dispute and there were other issues in the dispute like valuation or eligibility of input tax credit, then how can the taxpayer segregate the dispute and file one appeal before the National Bench for place of supply issue and another appeal to the jurisdictional State Bench for the other issues. He suggested that in this view, National Bench or Regional Bench might not be needed and appeal could be filed only before the State Bench. The Secretary stated that an appeal could not be bifurcated in such a manner and that any appeal which involved a dispute on place of supply as an issue, then all issues in that appeal would be heard and disposed of by the National Bench. He added that where an appeal did not involve an issue relating to place of supply, then it would be heard by the relevant State Bench. The Council agreed to this suggestion. The Hon'ble Minister from West Bengal also raised the issue whether Regional Benches of the National Bench was required. The Secretary stated that the provision under Section 105(3) was an enabling provision to be used only when needed.

8.1.13. The Council approved the provisions of the Model GST Law relating to Appellate Tribunal (contained in Sections 104 to 121), subject to the modifications as recorded above.

8.2. Issue No. 2 (Reconciliation of Sections 4 & 5 of Model GST Law): CCT, Gujarat stated that in the 7th Meeting of the Council (held on 22-23 December, 2016), at the suggestion of the Hon'ble Minister from West Bengal, the Council had decided to address the contradiction between Section 4(2) and Section 5(2) of the Model GST Law in respect



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of the authority (State Government or the Commissioner) that would specify the jurisdiction of officers other than of the Commissioner, and that in accordance with this decision, the Law Committee had revised the text of Section 5(2) of the SGST Law and proposed deletion of the erstwhile Section 4(2) of the SGST Law. He explained that by this amendment the Commissioner had been authorised to decide the jurisdiction of the VAT officers of the rank below the Additional Commissioner. The Council agreed to the proposed amendment.

8.3. Issue No. 3 (Power to waive penalty – Section 87A): The Secretary to the Council explained that in the 7th Meeting of the Council (held on 22-23 December, 2016), CBEC had proposed a provision regarding power to waive penalty, and after discussion, the Council had decided that the officers of the Law Committee would redraft Section 87A of the Model GST Law in a manner so as not to give discretion to the officers for levying penalty. He informed that as per these directions, a revised draft was prepared by CBEC but no consensus could be reached on this draft in the Law Committee of officers. He explained that this provision only gave an enabling power to the Council to waive penalty provided under Sections 85 and 86 of the Model GST Law to such class of taxpayers, under such mitigating circumstances, as may be notified by the Central and State Government in this regard on the recommendation of the Council. The Secretary pointed out that in the initial period of implementation of GST, there could be issues like return not being filed within the prescribed period and such an enabling power could be used to waive penalty for certain class of taxpayers, but only on the recommendation of the Council. The Hon'ble Chairperson observed that the revised provision had kept an enabling power for waiver of penalty for a class of people and this could be approved. The Hon'ble Minister from West Bengal and the Hon'ble Deputy Chief Minister of Delhi supported the revised formulation. The Hon'ble Minister from Rajasthan suggested that this provision should also provide for a waiver of interest and fine. CCT, Gujarat stated that under VAT Law, the State Government had the power not to collect penalty or interest under a '*samadhan yojana*'. The Secretary observed that in the GST regime there could be no '*samadhan yojana*' without the approval of the Council. CCT, Karnataka observed that the proposed provision was very wide as it provided for waiver of penalty for all types of offences, including for making supplies without issuing invoice. The Secretary observed that the Council would decide regarding the types of offences for which waiver from penalty could be given. He suggested that interest should not be included for waiver but late fee could be included. The Council approved the proposed Section 87A.

8.4. Issues No. 4 & 5 (Issues relating to Supply read with Schedules II and IV – Section 3): Commissioner (GST Policy Wing), CBEC explained that it was decided in the 7th Meeting of the Council (held on 22-23 December 2016) that the Law Committee would examine Schedule IV and suggest a draft formulation through which the services mentioned in Schedule IV (except those mentioned in Clause 4) would be exempted through a notification and that such notification shall be issued on the recommendation of the Council. He stated that the Law Committee had proposed that all the clauses including Clause 4 (dealing with services provided by the Government towards diplomatic or consular activities; citizenship, naturalization and aliens; admission into, and emigration and

expulsion from India; currency, coinage and legal tender, foreign exchange; trade and commerce with foreign countries, import and export across customs frontiers, inter-State trade and commerce; and maintenance of public order) of Schedule IV could be deleted and be dealt through a notification. He said that keeping this in view, the Law Committee had suggested a draft formulation making amendments in Section 3(2)(b) of the Model GST Law shown in blue colour in the agenda note. He further explained that in the 5th Meeting of the Council (held on 2-3 December 2016), it was decided to incorporate supplies of works contract (paragraph 5(f) of Schedule-II) and restaurant (paragraph 5(h) of Schedule-II) as composite supply on which all provisions relating to services shall apply. He informed that in view of this decision, a new clause 6 (indicated in blue colour in the agenda note) had been added in Schedule II for the consideration of the Council. He further informed that the revised drafts relating to Section 3 and Schedule II had been vetted by the Union Ministry of Law.

8.4.1. The Secretary informed that in the officers' meeting held on 17 February, 2017, an officer from Maharashtra had raised the issue of a potential conflict between Article 366(29A) under which works contract and restaurant had been treated as "tax on the sale or purchase of goods" and Schedule II of the Model GST Law, which treated these two categories of supply as services. He stated that the Union Law Ministry needed to examine this issue. The Secretary, Legal Affairs stated that if there was no double taxation on a supply, then there was no objection in retaining the formulation as proposed in clause 6 of Schedule II of the Model GST Law. The Hon'ble Chairperson observed that Article 366 of the Constitution started with the expression "In this Constitution, unless the context otherwise required, the following expressions have the meanings hereby respectively assigned to them..." and observed that it therefore followed, that if the context was otherwise, there could be no legal challenge to the definition proposed in Schedule II of the Model GST Law.

8.4.2. The Principal Secretary (Finance), Odisha stated that Section 3(2)(b) provided for notifying activities or transactions undertaken by the Central Government, State Government or any local authority as may be notified by the Central/State Government on the recommendation of the Council and suggested that this Section should also include 'any statutory regulatory or Constitutional authority' to cover the activities of regulators like Securities and Exchange Board of India (SEBI) and Telecom Regulatory Authority of India (TRAI). The Commissioner (GST Policy Wing), CBEC stated that the activities of the statutory regulators could be handled through specific exemptions. The Principal Secretary (Finance), Odisha stated that statutory regulatory authorities and Constitutional authorities were extension of the Government and therefore should be exempt under the law itself. The Secretary stated that such bodies should not be exempted from registration and that the Council should retain the power to tax them and only specific bodies could be given exemption. He informed that there were many statutory authorities and not all of them were presently exempted from Service tax like the Airport Authority of India. CCT, Karnataka supported the proposal of the Principal Secretary (Finance), Odisha and stated that without exemption in the law, entities like the Supreme Court, the High Courts, the School Examination Boards, Union Public Service Commission, etc. which charged fees for certain

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services, could come under the tax net. Shri Amitabh Kumar, Joint Secretary, TRU stated that Courts were already exempt from registration under GST regime as they were included in Schedule III (activities or transactions which shall be treated neither as a supply of goods nor a supply of services) of the Model GST Law. He further stated that these entities should not be kept out of the input tax credit chain and that the Council should be given an option to either tax or exempt statutory regulatory authorities. The Council did not agree to the proposed addition of statutory regulatory authorities or Constitutional authorities in Section 3(2)(b) of the Model GST Law.

8.4.3. The Hon'ble Minister from Karnataka stated that the proposed insertion of clause 6 in Schedule II relating to 'works contract' and 'restaurant', treating them as services would make them ineligible for benefit of the Composition scheme and that this would adversely affect small restaurants and cafés whose annual turnover was below Rs. 50 lakh and who purchased their inputs like masala, etc. mostly from small, unregistered suppliers. The Hon'ble Minister from West Bengal stated that the restaurants should have the benefit of the Composition scheme. The Secretary stated that an exception could be provided to the restaurants in the Composition scheme. CCT, Karnataka stated that the same problem existed in respect of the works contractors. The Secretary observed that most works contractors would have turnover of above Rs. 50 lakh and therefore no special dispensation was needed for them. The Secretary suggested that the Law Committee should examine an exception for restaurants, being a supplier of services, to be allowed the benefit of Composition scheme and to also consider the rate of tax that might be applied for them under the Composition scheme. The Council agreed to this suggestion.

8.5. Issue No. 6 [Power of Comptroller and Auditor General of India (CAG) – Section 65]: The Secretary to the Council stated that in the 6th Meeting of the Council (held on 11 December 2016), it was decided to delete Section 65 (Power of CAG to call for information for audit) and to inform the CAG that the Council was not in favour of keeping this provision. He stated that subsequently, the Comptroller and Auditor General of India had discussed this issue with the Hon'ble Chairperson and had explained that while CAG had power under its Act [CAG's (Duties, Powers and Conditions of Services) Act, 1971] to call for information, the officers under the GST Law were bound to give the information to CAG and where such information was not available with the tax authorities, they must have power under the GST Law to call for such information from the taxpayers. He stated that CAG's advice was to take this enabling power under the GST Law in order to enable GST officers to discharge their obligations *vis-à-vis* the CAG.

8.5.1. The Hon'ble Deputy Chief Minister of Delhi did not support the proposal and stated that by agreeing to this provision, CAG would be given power over GST officers. The Hon'ble Minister from Bihar stated that CAG derived its power from the Constitution and they should use the same instead of seeking additional power under the GST Law. The Hon'ble Deputy Chief Minister of Delhi also observed that CAG could take necessary powers under its own Act. The Secretary explained that CAG already had power over the GST Administration and they were suggesting that the tax department should empower itself to provide information to CAG. The Hon'ble Deputy Chief Minister of Delhi

reiterated that CAG should take such powers in its own law. The Hon'ble Chairperson stated that in case of a big tax fraud, CAG might call for documents and the tax authorities should have the power to obtain such documents from the taxpayers. The Hon'ble Minister from Bihar wondered how CAG was doing audit now without such powers under the VAT Acts. He observed that documents were being given to CAG officers without such powers under the VAT laws. The Hon'ble Minister from West Bengal supported the views of the Deputy Chief Minister of Delhi and the Hon'ble Minister from Bihar. He observed that CAG currently carried out audit without these powers. He stated that this issue had already been decided in the 6th Meeting of the Council (held on 11 December, 2016) and should not be reopened. The Hon'ble Minister from Kerala stated that having such a provision under GST Law could create problems. The Hon'ble Deputy Chief Minister of Gujarat stated that CAG did not go to taxpayers of any State for auditing. The Additional Chief Secretary, Uttar Pradesh stated that this provision did not give power to the GST officers to get documents from the taxpayers. He observed that this was a very open ended and sweeping provision and could potentially lead to truckloads of documents being called for which would be physically impossible to comply with. The Hon'ble Chairperson observed that it appeared that majority of the States were not in favour of this provision and that the same might have to be dropped. He stated that he would convey the views of the Council to CAG. The Council agreed to this suggestion.

8.6. Issue No. 7 (Definition of 'Agriculture' – Section 2(7) read with Section 23): Introducing this agenda, the Secretary explained that in the GST law, there would be some category of persons who would not be required to take registration and one such category was 'agriculturist'. He stated that the definition of 'agriculture' and 'agriculturist' was essentially required to provide clarity that the persons engaged in agriculture would not be required to take registration under the GST regime. He recalled that in the 5th Meeting of the Council (held on 2-3 December, 2016) when the definition of 'agriculture' was discussed, Members suggested to add many more activities in the definition of 'agriculture' like pisciculture, poultry, etc. He stated that such a broad definition of agriculture would lead to loss of power *ab initio* to tax such sectors even if these activities were being carried out by some big companies. He stated that exemption to the various sectors of agriculture was to be decided separately and that the proposed definition of 'agriculture' would have denied power to the Council to decide exemptions in the agricultural sector. He recalled that keeping this in view, in the 7th Meeting of the Council (held on 3-4 January 2017), it was decided that Officers of the Law Committee would examine whether or not definition of 'agriculture' and 'agriculturist' was needed in the GST Law. He informed that while working on the revised formulation, the Law Committee took note of the suggestions made in the 7th Meeting of the Council that the definition of 'agriculture' in GST Law should follow the same approach as in the Income Tax Act, which did not define the word 'agriculture' and only defined the phrase "agricultural income" as the Income Tax Act was concerned only with agricultural income and not with agriculture in general. He explained that the salient feature of the definition under the Income Tax Act was that it was agricultural land based and was linked to cultivation and related activities. He observed that under the GST law, the main purpose was to keep the 'agriculturist' out of the registration

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liability and therefore, following the approach of the Income Tax Act, the focus should be on defining 'agriculturist' and not 'agriculture'. He further added that the definition of 'agriculturist' should be restricted to cultivation of land, broadly on the lines of the Income Tax Act. He informed that keeping these aspects in mind, the Law Committee had recommended that the definitions of 'agriculture' and 'to cultivate personally' be deleted from the Model GST Law and that only a revised definition of 'agriculturist' be incorporated and that the Law Committee had also suggested a consequential change in the provision relating to registration. He further explained that as most of the primary agricultural and allied products were likely to be exempted, anyone dealing with only exempted items, or having a turnover of less than Rs. 20 lakh would not be required to take registration under GST Law. He added that a person cultivating cash crops like cotton, groundnuts, sugarcane etc., which might not be exempted as they attracted VAT in some States, would be covered by the new definition of the 'agriculturist' and would be exempted from taking registration. He stated that in such a case, GST on supply of these crops by a farmer to a buyer registered under the GST Law would be collected from the registered buyer on reverse charge basis. He also informed that the Union Ministry of Law had vetted the new formulation presented in the agenda note.

8.6.1. The Hon'ble Deputy Chief Minister of Delhi expressed his agreement with the new formulation. The Hon'ble Minister from Punjab stated that earlier he had raised an issue regarding co-operative societies in which individual families were allotted land for cultivation but the land was not in their own names. CCT, Karnataka stated that all those who cultivated land by their own labour would be exempt from registration. The Hon'ble Minister from West Bengal raised a question whether a share-cropper would be covered under the definition of 'agriculturist'. The CCT, Karnataka pointed out that this category would be covered under the provision of cultivation of land on one's own account by servants on wages payable in cash or kind. The Hon'ble Minister from Punjab suggested to delete the phrase 'individual or a Hindu Undivided Family' in the definition. The Secretary stated that if this phrase was deleted, then even companies would be covered under the definition of 'agriculturist' and would become exempt from registration. The CCT, Gujarat stated that other entities should get registered, if they were cultivating commercial crops. As an alternative, the Hon'ble Minister from Punjab suggested to use the word 'any person'. The CCT, Gujarat stated that this term would also cover a company. The Hon'ble Minister from Haryana stated that in his State, the size of land was limited due to the Land Ceiling Act and therefore a company would also have a limited land holding for cultivation. He suggested to adopt a formula for considering a slab based turnover of company for registration under GST as done under the Income Tax Act for applying the rate of income tax. The Hon'ble Minister from Punjab stated that the definition of 'agriculturist' should not be limited in such a manner that co-operative societies got left out of its scope. The CCT, Karnataka stated that if a co-operative society was involved in cultivation of an exempt agricultural product, it would not be required to take registration. He added that the revised definition essentially kept cultivators of taxable agricultural commodities such as cash crops like tea, coffee or pepper out of the ambit of registration. He added that a company or a co-operative society growing tea, coffee or pepper would be required to take registration if these products were liable to tax under GST but it would not be required to take registration

if it was growing rice, vegetables, etc. as these products would most likely be exempt from GST.

8.6.2. The Hon'ble Minister from Haryana stated that a provision could be made that a company would take registration under GST on its own volition and to limit this provision to non-commercial crops. The Secretary responded that such a provision would not be advisable and that if a company was producing a taxable commodity, it should take registration. The CCT, Gujarat reminded that this definition was formulated on the basis of Income Tax Act and that it had also been vetted by the Union Ministry of Law.

8.6.3. The Hon'ble Minister from Karnataka raised a question whether share cropping and leasing of land for agriculture would be covered under clause (c) of Section 7 (proposed definition of 'agriculturist'). He observed that this provision dealt with cultivation of land by servants on wages in cash or kind and wondered whether share-cropping was a contractual or a master-servant relationship. The Hon'ble Chairperson observed that a share-cropper should be covered under clause (a) i.e. cultivation of land by one's own labour. The CCT, Gujarat stated that a share-cropper would take land on lease and would cultivate it on his own account and would thus be covered under the definition of 'agriculturist'. The Hon'ble Minister from West Bengal stated that they would send a definition of share-cropper for vetting by the Union Ministry of Law.

8.6.4. After discussion, the Council approved the proposed definition of 'agriculturist' and the consequential change in the provision relating to registration and agreed to delete the definitions of 'agriculture' and 'to cultivate personally'.

9. The following issues were discussed in respect of Annexure-I of the Agenda Note relating to Agenda Item 3:

9.1. **Sl. No. 12, 13 & 14 (Section 9 - Composition Levy)** The Secretary suggested that in order to retain greater flexibility with the Council, it could decide to fix a higher turnover ceiling of Rs. one crore for eligibility to avail the Composition scheme under Section 9 of the Model GST Law and the Council could agree to have a lower turnover threshold of Rs. 50 lakh for a unit to avail the benefit of the Composition scheme. The Council agreed to the suggestion.

9.2. **Sl. No. 18 (Section 16- Eligibility and conditions for taking input tax credit):** The Hon'ble Minister from Kerala stated that the definition of 'capital goods' under Section 16(1) was too wide and needed to be looked into again. He stated that in the VAT law, there was a clear negative list of goods on which input tax credit was not permitted. The Commissioner (GST Policy Wing), CBEC explained that the Council in its 7th Meeting (held on 22-23 December, 2016) had decided not to extend the benefit of input tax credit on pipelines and telecom towers and the deletion of the proviso to Section 16(1) and the Explanation to Section 16(4) was carried out to give effect to this decision. Shri Rajan Khobragade, CCT, Kerala stated that even after deleting the words 'pipelines' and 'telecom towers' in Section 16, there could still be an interpretation that input tax credit on these two items could be taken. CCT, Gujarat explained that the presently drafted definition of capital

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goods in the Model GST Law needed re-examination as the present explanation below Section 16(4) of the Model GST Law made any apparatus, equipment or machinery fixed to the earth and used for making outward supply of goods or services eligible for input tax credit and this could potentially cover pipelines and telecom towers. Shri P. K. Mohanty, Consultant (GST), CBEC stated that the concern of the States was that the definition of the term 'plant and machinery' was very wide and observed that one way to address this concern was to restrict the meaning of 'plant and machinery' to certain specified chapters of the Harmonised System of Nomenclature (HSN), namely chapters 84 (mechanical machinery), 85 (electrical machinery) and 90 (apparatus and equipment) on which the benefit of input tax credit could be given and by this method, input tax credit to a product like pipeline falling under chapter 73 of the HSN would not be available. The Secretary stated that another option could be to specifically exclude pipelines and telecom towers from the definition of capital goods. CCT, Gujarat stated that even railway tracks and road could get covered in the definition of capital goods as they were fixed to earth and used for supply of goods or services. The Secretary stated that railway tracks should not be excluded from the definition of capital goods and that the major issue was the telecom towers.

9.2.1. Commissioner, GST Council stated that it was difficult to define plant and machinery and that in most of the VAT laws of the world, the terms machinery, equipment, and apparatus were used. He explained that the difficulty in giving a chapter wise listing of capital goods eligible for input tax credit would be that the list would become too long. He further stated that in case input tax credit was allowed only for goods falling under certain specified chapters of HSN, then many goods used as plant and machinery but not falling within those specified chapters would become ineligible for input tax credit. He therefore suggested to use generic expression and to list out the items on which input tax credit was not to be given. The Council agreed that the Law Committee of officers should re-examine the definition of 'capital goods'.

9.2.2. The Hon'ble Minister from Kerala raised a further issue that there should be a provision in the Model GST Law that the annual GST return of a taxpayer should be matched with its annual income tax return. He observed that this could greatly improve compliance under the GST law. The Secretary suggested that the Law Committee of officers could examine a provision in the Model GST Law for matching the annual GST return of a taxpayer with his annual financial statement. The Council agreed to this suggestion.

9.3. **Sl. No. 24 (Section 43- Tax Return Preparers):** The Secretary observed that in Section 43, it was agreed to replace the term 'Tax Return Preparer' by the term 'GST Practitioner' but since these individuals were of relatively modest educational background and were only helping in preparing tax return, a word like 'Practitioner' might be inappropriate and instead suggested to use the expression 'GST Sahayak'. The Hon'ble Minister from Kerala stated that as the word 'Practitioner' was being used for a long time, it should be retained. The Hon'ble Chairperson suggested to call them 'Advisor' to which the Hon'ble Minister from Kerala responded that this appeared to be even more high sounding expression than Tax Practitioner. The Secretary suggested an alternative expression 'GST

Mitra. The Hon'ble Minister from Karnataka stated that the expression 'GST Practitioner' was fine and the same should be retained. The Council agreed to this suggestion.

9.4. Sl. No. 52 (Section 142- Disclosure of information required under section 141): CCT, Gujarat pointed out that amendment proposed was for Section 142(3) but it was wrongly indicated as amendment for Section 142(4). The Council agreed to correct the sub-section number of Section 142.

10. Subject to discussion as above, the changes proposed in Annexure-I of Agenda Note for Agenda Item 3 were approved.

10.1. For agenda item 3, the Council approved the proposed changes to the Model GST Law as recorded below:

10.1.1. Issue No. 1 (Provisions relating to Tribunal – Section 104 – Section 121): The provisions of Section 104 to Section 121 were approved with the following amendments:

(i) Section 106(1)(d) to have an additional qualifying criterion for appointment as Member (Technical) (State) of a State Bench, namely, officers having special knowledge of finance and taxation matters.

(ii) In Section 107(1), the retirement age for the President of the National Bench and the State Benches shall be 70 years instead of the presently proposed 68 years.

(iii) In Section 107(3), the retirement age for the Technical Member (Centre) and the Technical Member (State) of the National Bench and the State Benches shall be 65 years instead of the presently proposed 63 years.

(iv) Retired officers shall be eligible for appointment as Technical Member (State) as well as Technical Member (Centre) in the Appellate Tribunal.

(v) Once an officer joins as a Member (Technical) in the Appellate Tribunal, he shall not be allowed to come back to his parent cadre. He shall serve as a Member (Technical) in the Appellate Tribunal for a period of 5 years or up to the age of 65 years, whichever is earlier.

(vi) Section 105(4) to be suitably modified to reflect the understanding that the phrase "as it deems fit" used in this Section is in reference to the Council and not in reference to the Central Government.

(vii) To have a provision in the GST Law that a State Bench of Appellate Tribunal could have jurisdiction over more than one State.

(viii) Section 116(2) to be amended to reduce the presently proposed monetary limit for not admitting an appeal before the Appellate Tribunal from Rs. 1 lakh to Rs. 50,000.

(ix) To incorporate a provision similar to Section 108 (2) (applicable for the National Tribunal) that the senior most Member of the State Bench shall discharge the functions of the President of the State Bench for a temporary period in case the office of the President fell vacant due to reasons like death or resignation of the President.

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(x) An appeal involving a dispute on place of supply as well as other issues shall not be bifurcated and all issues under dispute shall be heard and disposed of by the National Bench.

10.1.2. Issue No. 2 (Reconciliation of Sections 4 & 5 of Model GST Law): To delete Section 4(2) of the SGST Law and to revise the Section 5(2) of the SGST Law as indicated below in underlined portion in italics and strikethrough:

Section 5(2) (SGST Law): The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner *in respect of all or any of the functions assigned to them*, shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the ~~State Government~~ *Commissioner may, by order, specify.*

10.1.3. Issue No. 3 (Power to waive penalty – Section 87A):

To add the following new Section 87A in the Model GST Law:

Section 87A: Notwithstanding anything contained in the provisions of section 85 or 86 of this Act, any of the penalty referred to in the said sections may be waived in part or full for such class of the taxpayers, under such mitigating circumstances as may be notified by the Central/State Government in this regard, on the recommendation of the Council.

10.1.4. Issues No. 4 & 5 (Issues relating to Supply read with Schedules II and IV – Section 3):

(i) To delete Schedule IV of the Model GST Law and to amend Section 3 of the Model GST Law as follows (as indicated below in underlined portion in italics and strikethrough):

Section 3:

For the purposes of this Act, the expression “supply” includes—

~~(1)~~ (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

~~(b) importation import of services for a consideration whether or not in the course or furtherance of business; and~~

(Note: The clause will be moved to IGST Act)

~~(b)(e) a supply the activities~~ specified in Schedule I, made or agreed to be made without a consideration.

~~(2)~~ (c) The ~~matters~~ *activities* to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section ~~(1)~~, —

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Central/State Government on the recommendation of the Council, as specified in Schedule IV

shall be treated neither as a supply of goods nor a supply of services.

(4) Subject to sub-sections (1) and (2), the Central Government may, upon the recommendation of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods. ~~or~~
- (c) neither a supply of goods nor a supply of services.

(ii) To amend Section 3(2)(b) of the Model GST Law by adding a new Clause 6 in Schedule II (as indicated below in underlined portion in italics) and to delete the existing sub-clauses 5(f) and 5(h) of Schedule II of the Model GST Law:

6. The following composite supplies shall be treated as a supply of services—

(a) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

(iii) The Law Committee of Officers to examine whether restaurants, though categorised as service, should still be extended the benefit of the Composition scheme and, if so, to also consider the rate of tax to be applied for them under the Composition scheme.

10.1.5. Issue No. 6 [Power of Comptroller and Auditor General of India (CAG) – Section 65]: To drop Section 65.

10.1.6. Issue No. 7 (Definition of ‘Agriculture’ – Section 2(7) read with Section 23): To add the following definition of ‘agriculturist’ under Section 2(7) of the Model GST Law and to make consequential change in the provision relating to registration and to delete the definitions of ‘agriculture’ and ‘to cultivate personally’ in the Model GST Law.

Section 2(7): “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land on one’s own account—

(a) by one’s own labour, or

(b) by the labour of one’s family, or

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

Section 23

The following persons shall not be liable to registration, namely: —

(b) an agriculturist, for the purpose of agriculture to the extent of supply of produce out of cultivation of land.

11. The changes to the various Sections of the Model GST Law proposed in Annexure-I of the Agenda Note relating to Agenda Item 3 was approved by the Council subject to the following observations:

(i) **Sl. No. 12, 13 & 14 of Annexure I (Section 9- Composition Levy):** In Section 9 of the Model GST Law, the ceiling of turnover for eligibility for Composition scheme shall be provided as Rs. one crore but presently, the Composition scheme would be available only for units upto a turnover of Rs. 50 lakh.

(ii) **Issue No. 18 (Section 16- Eligibility and conditions for taking input tax credit):** The Law Committee of officers to re-examine the definition of 'capital goods'.

(iii) **Sl. No. 52 (Section 142- Disclosure of information required under section 141):** To correct the sub-section number of Section 142 as (3) instead of (4).

(iv) The Law Committee of officers to examine whether there should be a provision in the Model GST Law for matching of the annual GST return of a taxpayer with his annual financial statement.

Agenda Item 4: Date of the next meeting of the GST Council

12. The Hon'ble Chairperson stated that in order to table the Model GST Law and the IGST Act as approved by the Council, before the Parliament in the Session resuming from 9 March 2017, the Council must meet prior to this date. After discussion, the Council agreed that its next meeting would be held on 4 and 5 March 2017 in New Delhi.

Agenda Item 5: Any other agenda item with the permission of the Chairperson

13. The Hon'ble Deputy Chief Minister of Delhi stated that the stakeholders who had been meeting him, had raised certain grey areas like how stock transfer of services would take place; the matters to be treated as supply; and complications in relation to definition of related party. He suggested that in order to address these grey areas, the Law Committee of officers should meet the stakeholders. The Hon'ble Chairperson stated that these suggestions should be given in writing for the Law Committee to consider.

14. The Hon'ble Chairperson observed that the Minutes of all the Council meetings should be made publicly available at an appropriate time so that it could serve as a ready reference to understand the discussion on various issues in the Council.

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

(Arun Jaitley)

Chairperson, GST Council

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Annexure 1

List of Ministers who attended the 10th GST Council Meeting on 18 February 2017

<u>S No</u>	<u>State/Centre</u>	<u>Name of the Minister</u>	<u>Charge</u>
1	Govt of India	Shri Arun Jaitley	Finance Minister
2	Puducherry	Shri V. Narayanasamy	Chief Minister
3	Delhi	Shri Manish Sisodia	Deputy Chief Minister
4	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
5	Andhra Pradesh	Shri Yanamala Ramakrishnudu	Finance Minister
6	Arunachal Pradesh	Dr. Mahesh Chai	Minister, Art & Culture
7	Bihar	Shri Bijendra Prasad Yadav	Minister, Commercial Taxes
8	Chhattisgarh	Shri Amar Agrawal	Minister, Commercial Taxes
9	Haryana	Captain Abhimanyu	Minister, Excise & Taxation
10	Jammu & Kashmir	Dr. Haseeb Drabu	Finance Minister
11	Jharkhand	Shri C.P. Singh	Minister, Urban Development
12	Karnataka	Shri Krishna Byregowda	Minister, Agriculture
13	Kerala	Dr. Thomas Issac	Finance Minister
14	Punjab	Shri Parminder Singh Dhindsa	Finance Minister
15	Rajasthan	Shri Rajpal Singh Shekhawat	Finance Minister
16	Telangana	Shri Etela Rajender	Finance Minister
17	West Bengal	Dr. Amit Mitra	Finance Minister

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Annexure 2

List of Officers who attended the 10th GST Council Meeting on 18 February 2017

S No	State/Centre	Name of the Officer	Charge
1	Govt of India	Dr. Hasmukh Adhia	Revenue Secretary
2	Ministry of Law	Shri Suresh Chandra	Secretary, Legal Affairs
3	Ministry of Law	Dr. G. Narayana Raju	Secretary, Legislative Department
4	Govt of India	Shri Najib Shah	Chairman, CBEC
5	Govt of India	Ms. Vanaja N. Sarna	Member (P&V), CBEC
6	Govt of India	Shri Ram Tirath	Member (GST), CBEC
7	Govt of India	Shri Mahender Singh	Director General, DG-GST, CBEC
8	Govt of India	Shri P.K. Jain	Principal Commissioner, (AR), CESTAT, CBEC
9	Govt of India	Shri B.N. Sharma	Additional Secretary, Dept. of Revenue
10	Ministry of Law	Dr. Reeta Vasishta	Additional Secretary, Legislative Department
11	Govt of India	Shri P.K. Mohanty	Consultant (GST), CBEC
12	Govt of India	Shri Upender Gupta	Commissioner (GST Policy Wing), CBEC
13	Govt of India	Shri Udai Singh Kumawat	Joint Secretary, Dept. of Revenue
14	Govt of India	Shri Amitabh Kumar	Joint Secretary (TRU), Dept. of Revenue
15	Govt of India	Shri G.D. Lohani	Commissioner, CBEC
16	Govt of India	Shri D.S. Malik	ADG, Press, Ministry of Finance
17	Ministry of Law	Dr. R.J.R. Kasibhatla	Deputy Legal Adviser
18	Govt of India	Ms. Aarti Saxena	Deputy Secretary, Dept. of Revenue
19	Govt of India	Shri Paras Sankhla	OSD to Finance Minister
20	Govt of India	Shri Ravneet Singh Khurana	Deputy Commissioner, (GST Policy Wing), CBEC
21	Govt of India	Shri Siddharth Jain	Assistant Commissioner, (GST Policy Wing), CBEC
22	GST Council	Shri Arun Goyal	Additional Secretary
23	GST Council	Shri Shashank Priya	Commissioner
24	GST Council	Shri Manish K Sinha	Commissioner

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S No	State/Centre	Name of the Officer	Charge
25	GST Council	Shri G.S. Sinha	Joint Commissioner
26	GST Council	Shri Kaushik TG	Assistant Commissioner
27	GST Council	Shri Sandeep Bhutani	Superintendent
28	Andhra Pradesh	Shri J. Syamala Rao	Commissioner, Commercial Taxes
29	Andhra Pradesh	Shri T. Ramesh Babu	Additional Commissioner, Commercial Taxes
30	Arunachal Pradesh	Shri Tapas Dutta	Assistant Commissioner, VAT
31	Arunachal Pradesh	Shri Nakut Padung	Superintendent, VAT
32	Assam	Dr. Ravi Kota	Finance Commissioner
33	Assam	Shri Anurag Goel	Commissioner, Commercial Taxes
34	Bihar	Ms. Sujata Chaturvedi	Principal Secretary & Commissioner, Commercial Taxes
35	Bihar	Shri Arun Kr. Mishra	Addl. Secretary, Commercial Taxes
36	Chhattisgarh	Shri Amitabh Jain	Principal Secretary (Finance)
37	Chhattisgarh	Ms. Sangeetha P	Commissioner, Commercial Taxes
38	Delhi	Shri R.K. Mishra	Special Commissioner
39	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
40	Goa	Shri Dipak Bandekar	Commissioner, Commercial Taxes
41	Gujarat	Dr. P.D. Vaghela	Commissioner, Commercial Taxes
42	Haryana	Shri Sanjeev Kaushal	Additional Chief Secretary
43	Haryana	Shri Shyamal Misra	Commissioner, Excise & Taxation
44	Haryana	Shri Rajeev Chaudhary	Deputy Commissioner, Excise & Taxation
45	Himachal Pradesh	Shri Pushpendra Rajput	Commissioner, Commercial Taxes
46	Jammu & Kashmir	Shri P.I. Khateeb	Commissioner, Commercial Taxes
47	Jammu & Kashmir	Shri P.K. Bhat	Additional Commissioner, Commercial Taxes
48	Jharkhand	Shri Sanjay Kr. Prasad	Joint Commissioner (HQ)
49	Jharkhand	Shri G.S. Kapardar	Assistant Commissioner
50	Karnataka	Shri Ritvik Pandey	Commissioner, Commercial Taxes

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S No	State/Centre	Name of the Officer	Charge
51	Kerala	Shri P. Mara Pandiyan	Additional Chief Secretary (Taxes)
52	Kerala	Dr. Rajan Khobragade	Commissioner, Commercial Taxes
53	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
54	Madhya Pradesh	Shri Sudip Gupta	Deputy Commissioner
55	Maharashtra	Shri Rajiv Jalota	Commissioner, Sales Tax
56	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, Sales Tax
57	Meghalaya	Shri L. Khongsit	Assistant Commissioner, Taxes
58	Mizoram	Shri K. Sanglawma	Commissioner, Taxes
59	Mizoram	Shri Kailiana Ralte	Deputy Commissioner, Taxes
60	Mizoram	Shri R. Zosiamliana	Deputy Commissioner, Taxes
61	Odisha	Shri Tuhin Kanta Pandey	Principal Secretary (Finance)
62	Odisha	Shri Saswat Mishra	Commissioner, Commercial Taxes
63	Odisha	Shri Sahadev Sahu	Joint Commissioner, Commercial Taxes
64	Puducherry	Shri G. Srinivas	Commissioner, Commercial Taxes
65	Punjab	Shri Rajeev Gupta	Advisor (GST), Govt. of Punjab
66	Punjab	Shri Pawan Garg	Deputy Commissioner, Commercial Taxes
67	Rajasthan	Shri Prem Singh Mehra	Principal Secretary Finance
68	Rajasthan	Shri Praveen Gupta	Secretary Finance
69	Rajasthan	Shri Alok Gupta	Commissioner, Commercial Taxes
70	Sikkim	Shri Manoj Rai	Joint Commissioner, Commercial Taxes
71	Tamil Nadu	Shri K. Gnanasekaran	Additional Commissioner, Commercial Taxes
72	Tamil Nadu	Shri D. Soundarajpandian	Joint Commissioner (Taxation)
73	Telangana	Shri Somesh Kumar	Principal Secretary
74	Telangana	Shri Anil Kumar	Commissioner, Commercial Taxes
75	Telangana	Shri Laxminarayan Jannu	Joint Commissioner, Commercial Taxes
76	Tripura	Shri Debapriya Bardhan	Commissioner, Commercial Taxes

MINUTE BOOK

<u>S No</u>	<u>State/Centre</u>	<u>Name of the Officer</u>	<u>Charge</u>
77	Uttarakhand	Shri Piyush Kumar	Addl. Commissioner, Commercial Taxes
78	Uttarakhand	Shri Yashpal Singh	Deputy Commissioner, Commercial Taxes
79	Uttarakhand	Ms. Preeti Manral	Deputy Commissioner, Commercial Taxes
80	Uttar Pradesh	Shri R.K.Tiwari	Additional Chief Secretary
81	Uttar Pradesh	Shri Mukesh Kumar Meshram	Commissioner, Commercial Taxes
82	Uttar Pradesh	Shri Vivek Kumar	Additional Commissioner, Commercial Taxes
83	West Bengal	Shri H.K. Dwivedi	Principal Secretary, Finance
84	West Bengal	Ms. Smaraki Mahapatra	Commissioner, Commercial Taxes
85	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, Commercial Tax
86	GSTN	Shri Prakash Kumar	CEO

**CHAIRMAN'S
INITIALS**