

# Goods and Services Tax (GST) In India – CA Pritam Mahure



## E-book

The book is a compilation of GST related key draft legal provisions, reports and articles.

Readers can also view our videos on GST topic by visiting [youtube.com](http://youtube.com) and searching the term 'Pritam Mahure'. For feedback mail to [capritam@gmail.com](mailto:capritam@gmail.com)

**5 December 2015**  
**1st Edition**

# Goods and Services Tax (GST) in India

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## 1. About the book and author

### About the book

The book is a compilation of GST related key draft legal provisions, reports and articles. Readers can also view our videos on GST topic by visiting [youtube.com](https://www.youtube.com) and searching the term 'Pritam Mahure'. For feedback mail to [capritam@gmail.com](mailto:capritam@gmail.com)

This being a compilation of all key GST related provisions, reader can easily perform search in the document.

The Author is thankful to CA Shankar Rochlani, CA Vaishali Kharde, CA Umesh Agrawal, CA Aakansha Garg and Gaurav Suryawanshi for their assistance for the book.

### About the Author



- CA Pritam Mahure works in the field of Indirect Taxes (Service Tax, Excise and Goods and Service Tax) since more than a decade. Pritam has also worked with leading multinational consulting organisations.
- Pritam has authored books on "Service Tax" and "GST" for Bharat Publication and CII.
- Pritam has authored more than 100 articles in Economic Times, Business Standard, Deccan Herald, Taxmann, Taxindiaonline etc.
- Pritam has addressed more than 75 conferences/seminars and 10,000 professionals on GST and Service Tax for CII, ASSOCHAM, NASSCOM, MCCIA, DCCIA, ICAI, DGST and Government officers across India.
- Pritam is conducting GST Awareness Campaign for CII IIL by addressing seminars on GST all across India.
- Pritam is also assisting State Governments with respect to proposed GST.

## 2. Analysis of various aspects of GST

### 2.1 Ten Things you must know about GST

#### 1. GST applicable on 'supply'

In GST regime, all 'supply' such as sale, transfer, barter, lease, import of services etc of goods and/ or services **made for a consideration** will attract CGST (to be levied by Centre) and SGST (to be levied by State). As GST will be applicable on 'supply' the erstwhile taxable events such as 'manufacture', 'sale', 'provision of services' etc. will lose their relevance.

Further, certain supplies, even if made **without consideration**, such as permanent transfer of business assets, **self-supply** of goods or services, assets retained after deregistration etc will attract GST. Interestingly, even a '**barter**' of goods transaction which were hitherto un-taxed in VAT regime, will attract GST.

#### 2. GST payable as per time of supply

The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. In this regard, separate provisions prescribe what will time of supply for goods and services. The provisions contemplate payment of GST at the earliest for

- a. 'Goods'- Removal of goods or receipt of payment or issuance of invoice or date on which buyer shows receipt of goods
- b. 'Service's- Issuance of invoice or receipt of payment or date on which recipient shows receipt of services

It can be observed that there are **many parameters** in determining 'time' of supply. Thus, determining the 'time' of supply and further maintaining reconciliation between revenue as per financials and as per GST rules could be a major challenge to meet.

#### 3. Determining Place of Supply could be the key

At present inter-State supply of goods attract Central Sales Tax. Now, it provides that an inter-State supply of **goods** and/ or **services** will attract IGST ((i.e. CGST plus SGST). Thus, it would be crucial to determine whether a transaction is a 'intra-State' or 'Inter-State' as taxes will be applicable accordingly. In this regard, the draft GST law provides separate provisions which will help an assessee determine the place of supply for goods and services.

Typically for 'goods' the place of supply would be location where the good are **delivered**. Whereas for 'services' the place of supply would be **location of recipient**. However, there are multiple scenarios such as supply of services in relation to immovable property etc wherein this generic principle will not be applicable and specific rule will determine the place of supply. Thus, the business will have to scroll through all the place of supply provisions before determining the place of supply.

#### 4. Valuation in GST

GST would be payable on the 'transaction value'. Transaction value is the **price actually paid or payable** for the said supply of goods and/or services between un-related parties. The transaction value is also said to include all expenses in relation to sale such as packing, commission etc. Even **subsidies** linked to supply will be includable. As regards **discounts/ incentives**, it will form part of 'transaction value' if it is allowed **after** supply is effected. However, discounts/ incentives given **before or at the time** of supply will be permissible as deduction from transaction value.

The law also provides for Valuation Rules to help determine value in certain cases. The Valuation Rules appear to be drafted by taking few provisions from current Valuation provisions in vague in Excise (for e.g. concept of 'transaction value'), Service Tax (for e.g. concept of 'pure agent') and Customs (for e.g. concept of 'goods of like kind and quality').

#### 5. Input tax credit in GST

Current CENVAT Credit regime disallows CENVAT Credit on various services such as motor vehicle related services, **catering services, employee**

**insurance, construction** of civil structure etc. Similarly, State VAT laws restrict input tax credit in respect of construction, motor vehicle etc. Current, this denial of credits leads to un-necessary cost burden on assessee.

It was expected that in GST regime, seamless credit will be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use than official use (something similar to United Kingdom VAT law).

However, surprisingly, *inter-alia*, aforesaid credit would continue to be not available (in respect of both goods or services). Further, credit is proposed to be denied on goods and/or services used for private or **personal consumption**, to the extent they are so consumed. This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher than the current rate of service tax!). Also, another round of litigation as interpretation issues will crop up while determining eligibility or otherwise of GST paid on personal consumptions such as business lunch with clients.

## **6. Inter-State supply of goods for consideration to attract additional tax**

Draft GST law provides that an additional tax upto 1% will be levied by Centre on inter-State supply of **goods** (and not on services) made for consideration. Thus, effectively inter-State branch transfers will not attract this 1% additional Tax. This additional tax will be assigned to States from where the supply of goods originates. This additional tax will be applicable for a period of two years and could be extended further by GST Council.

The credit of this additional levy will not be available as thus it will be a cost in the supply chain.

## **7. There would be 33 GST laws in India**

In GST regime, there will be one CGST law and 31 SGST law for each of the States including two Union Territories and one IGST law governing inter-State supplies of goods and services.

## 8. Rate of GST is not yet specified in the draft GST law

The rate of GST is **not specified** in draft GST law. However, various News reports suggest that the Revenue Neutral Rate (RNR) as proposed by the Chief Economic Advisor Shri. Arvind Subramanian could be 17%-18%. Further, there could be lower rate (of 12%-14%) for concessional goods and higher rate (upto 40%) for luxury goods (such as luxury cars, tobacco products etc).

## 9. Time limit for show cause notices (SCN)

Time limit for issuance of SCN is generic cases (i.e. other than fraud, suppression etc) would be **three years** and in fraud, suppression etc cases it would be **five** years. Its pertinent to note that the time limit prescribed for issuance of SCN for generic cases is much more than the current time limit prescribe in excise law (i.e. 12 months) and service tax legislation (i.e. 18 months). This will give much leeway to the Authorities while issuing SCN and sleepless night to assesseees for three years!

## 10. Old provisions re-introduced

Most of the current provisions such as reverse charge, tax deduction, pre-deposit, prosecution (!), arrest (!) etc have been continued in the proposed draft GST law.

The new GST law seems to be a new wine in old bottle as most of the current in-efficiencies has been continued in the proposed GST law.



## 2.2 Analysis of four Reports on GST processes

The Government's determination to introduce GST is palpable from the fact that in the month of October 2015, the Government has placed in the public domain **four reports** on key business processes i.e. registration, payment, refunds and returns in GST regime. From these four reports one can fairly gauge the broad structure and process in GST regime.

This article analyses these reports in detail in the following paras.

### 1. Report on returns in GST regime

Every registered assessee will be required to file returns (including **NIL returns**). However, persons exclusively dealing in exempted / Nin-rated or non-GST goods or services would neither obtain registration nor file returns. It is pertinent to note that there could be 8 GST returns as under:

- 3 returns - Outward supplies (GSTR 1), Inward supplies (GSTR 2) and Monthly return (GSTR 3)
- Return for compounding dealers (GSTR 4)
- Return by non-resident tax payer (GSTR 5)
- Input Service Distributor (ISD) return (GSTR 6)
- Tax deducted at Source (GSTR 7)
- Annual return (GSTR 8)

It is pertinent to note that GSTR-3 would be entirely **auto-populated** through GSTR-1 (of counterparty suppliers), own GSTR-2, ISD return (GSTR-6) (of Input Service Distributor), TDS return (GSTR-7) (of counterparty deductor), own ITC Ledger, own cash ledger, own Tax Liability ledger. However, the taxpayer may fill the missing details to begin with.

As there are multiple returns, for most of the organisations, in GST regime, compliances are expected to increase dramatically. Take example of a service tax assessee, who currently files 2 returns on an annual basis. Now, in GST regime, Service tax assessee could be required to file as many as **61 returns** (5 returns per month plus 1 annual return)!!! Thus, in Human Resource (HR)

department and Chartered Accountants will have to anticipate the increase (and decrease in certain cases) in the manpower and plan accordingly.

## **2. Report on GST Registration**

This report provides that the taxable person in the GST regime will be required to take State specific single registration for Central GST (CGST), Integrated GST (IGST) and State GST (SGST) purposes (multiple registrations in a State for business verticals would also be permitted) . In GST regime the registration number would be a PAN based 15 digit alpha numeric registration number.

Registration would be granted through common GST portal. Applicant will be required to apply online and within three working days the State and Centre should raise query or reject the application. However, in case any of the authority neither rejects the application nor raises a query during this period, then the registration would be deemed to have been approved by both the authorities and the GST Common Portal will automatically generate the registration certificate.

It appears from the report that there will be specific provisions for migration of existing registrations to GST regime. This migration process is expected to start sufficiently in advance to ensure smooth transition.

As regards effective date for registration the report states that the date of registration will be the date of application in case the registration is obtained within time limit prescribed by GST law. In case there is a delay in applying for registration, the same could result in denying of GST credits on procurements prior to registration.

Report also suggests that voluntary registration permissible and casual dealers (for conducting a business for a limited period in a State) will have to obtain registration and pay taxes. Further, irrespective of turnover, a person engaged in inter-State supplies or a person liable to GST under reverse charge would be require to compulsory obtain registration.

The current concept of Input Service Distributor is also expected to continue for distributing the credit of GST paid on 'services' proposed to be used at multiple locations which are separately registered. The report recommends that the GST law drafting committee to consider similar provisions for distributing credits on 'inputs'.

The report also provides copy of GST registration application form which contains 21 fields requiring various details from the applicant. Interestingly, in the form has listed out 15 business premises /activities wherein registration could be obtained such as manufacturing, wholesale, retail, leasing, Works contract, Special Economic Zone (SEZ) etc.

### **3. Report on GST Payments**

This report provides that the taxable person will be required to make payment of CGST, SGST, IGST and Additional Tax through internet banking. Over the counter (OTC) payment could be permissible only for payments up to Rs. 10,000/- per challan.

For making e-payment of GST taxpayer will be required to access Goods and Services Tax Network (GSTN) for generation of the Challan where basic details (such as name, address, email, mobile number and GST registration number) of the tax payer will be auto populated in the challan. Once the taxpayer chooses a particular bank for payment of taxes, GSTN will direct him to the website of the selected bank wherein taxpayer will make the payment using the USER ID and Password provided by the bank to enter into the secured e-banking area of his bank.

In the challan the taxpayer will have to use separate accounting codes for making payment of CGST, SGST, IGST or Additional Tax. Further, accounting codes will also be provided for interest, penalty, fees or others payments.

Interestingly, it is specifically provided that the payment of GST could be made by tax payer himself or by his Authorised representative on his behalf.

### **4. Report on GST refunds**

This report provides that in ten situations such as exports, excess payment by mistake, refund of pre-deposit, refund to international tourists etc wherein the taxpayer can claim refund of GST paid.

For export of goods, the report suggests that the exporter should procure the goods on payment of appropriate GST and then claim refund of the same from respective Governments. It is also recommended that the option to procure duty free inputs for exported goods should not be available in the GST regime. As regards, deemed exports, the report suggests that deemed exports should be treated at par with exports.

The report also suggests that refund form should be electronic format and refunds should be granted in a time bound manner and delay in processing of refund should enable assessee claim refund for such delay.

### **Way forward**

The aforesaid reports also suggest continuation of reverse charge mechanism (including partial reverse charge), pre-deposit, proportionate credit in case of mixed supplies (taxable and exempt) etc. Thus, the taxpayer should be rest assured for nostalgic feelings and goose bumps if they stumble upon few re-produced excise and service tax provisions in GST regime as well!

However, this step of the Government to invite comments from the public at large, is commendable and shows Governments conscious efforts for introducing GST. So, in days to come, India can hope for a Good and Simple Tax regime!

## 2.3 All you wanted to know about Constitutional Amendment Bill

One of the MOST important step for introduction of Goods and Service Tax (GST) i.e. the 122nd Constitutional Amendment Bill (CAB) for introduction of GST is taken up for discussion in Lok Sabha on 24.02.2015.

In the past, to amend the Constitution, 115<sup>th</sup> CAB was introduced by the UPA Government in March 2011. However, this 115<sup>th</sup> CAB lapsed.

The rationale for introduction of CAB is that, currently, the Constitution of India does not provide for a parallel levy of indirect taxes by Centre and State which is a pre-requisite for GST. To address this, CAB was introduced in Lok Sabha.

The CAB is a starter for the approaching GST regime. In the following paragraphs let us understand in detail the key facets of CAB.

### 1. CAB – Enables introduction of GST

The CAB enables the Centre and State Government (including Union Territories) to introduce law for levying GST on supply of goods or services or both.

Thus, in GST regime, there will be one CGST law and one SGST law each for the States (including Union Territories).

### 2. 'GST' defined

The term 'GST' is defined in Article 366 (12A) to mean "*any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption*".

Thus, all supply of goods or services or both will attract CGST (to be levied by Centre) and SGST (to be levied by State) unless kept out of purview of GST.

GST will be applicable even when the transaction involves supply of both

(goods and services). In effect, works contracts will also attract GST. As GST will be applicable on 'supply' the erstwhile taxable events such as 'manufacture', 'sale', 'provision of services' etc. will lose their relevance.

It may be noted that the term 'supply' is not defined or elaborated or qualified (such as supply for a consideration etc). Thus, it needs to be seen whether even free supply will attract GST.

### **3. 'Service' defined**

It may be recalled that earlier 115<sup>th</sup> CAB did not provide for definition of the term 'service'. Now, this 122<sup>nd</sup> CAB specifically provides that '*services means anything other than goods*' [refer Article 366 (26A)]. This broad definition of the term 'service' will altogether remove the disputes on the aspect whether something is goods or services (unless Government proposes different rates for GST on goods or services or both).

### **4. IGST**

At present inter-State supply of goods attract Central Sales Tax. Now, CAB provides that an inter-State supply of **goods** or **services** will attract IGST ((i.e. CGST plus SGST) [refer Article 269A].

It may be noted that IGST will be levied and collected by the Centre and proceeds of IGST will be shared amongst the Centre and the States.

### **5. Inter-State sale of goods to attract additional tax**

CAB provides that an additional tax upto 1% will be levied by Centre on inter-State supply of **goods** (and not on services). This additional tax will be assigned to States from where the supply of goods originates. This additional tax seems to be a new version of CST.

This additional tax will be applicable for a period of two years and could be extended further by GST Council.

However, CAB is silent on the aspect whether credit of this additional levy will be available or it will be a cost in the supply chain. If it will be a cost then it

appears that the tax cascading will continue in the GST regime too.

## **6. Import of goods or services**

At present, import of goods attracts Basic Customs duty (BCD), Additional Customs Duty (ACD) and Special Additional Customs Duty (SAD). As regards services, it attracts Service Tax (or Research and Development cess in few instances).

CAB provides that the import of goods or services will be *deemed* as supply of goods or services or both in the course of inter-State trade or commerce and thus it will attract IGST (i.e. CGST plus SGST). Thus, import of goods will attract BCD and IGST. It may be noted that import of services, as against service tax at present, in GST regime, will attract IGST.

## **7. Alcohol for human consumption**

It appears that 'alcohol for human consumption' will be kept outside the GST regime. As only 'alcohol for human consumption' is excluded as a corollary it can be stated that all other sectors / goods are intended to be included in GST.

Exclusion of alcohol sector could mean that the companies manufacturing alcohol may not be in a position to avail credit of GST paid by them on their procurements.

## **8. Petroleum products and tobacco**

Petroleum products and tobacco will continue to attract duty of excise.

However, CAB specifically provides that the petroleum products may not attract GST, however, at a later stage, GST Council may decide to levy on petroleum products.

## **9. Role of GST Council**

The CAB is silent on the key aspects of GST such as -

- How the model GST law would be?
- Which taxes, cesses, surcharges will be subsumed in GST?
- Which goods and services are subject to or exempt from GST?

- What will be the rate of GST including floor rates?
- What will be the threshold limit of GST?

However, to address the aforesaid issues, CAB provides that 'GST Council' will be formulated. The GST Council will consist of Union Finance Minister, Union Minister of State and State Finance Minister. On the aforesaid issues, GST Council will have the power to make recommendations to Centre and States.

It may be recalled that earlier 115<sup>th</sup> CAB also provided for a Dispute Settlement Authority to settle disputes between States or between States and Centre with regard to GST. However, in this CAB the GST Council has been given the authority to determine the modalities to resolve disputes arising out of its recommendations.

#### **10. Compensation to States**

It may be noted that earlier 115<sup>th</sup> CAB did not provide for compensation to States. However, this CAB specifically provides that Parliament by law, on recommendation of GST Council, provide for compensation to the States for loss of revenue arising out of implementation of GST upto 5 years.

By providing for compensation in the Constitution itself, the Centre seems to have addressed the concerns raised by the State regarding fear of loss of revenue.

#### **Way forward**

Though, the CAB may have an easy passage through Lok Sabha it will be interesting to see how Government passes hurdle of Rajya Sabha. Also, to become a law, CAB will have to be approved by more than half of the States.



## 2.4 Five steps to be GST ready

Though, the Government was able to pass the 122nd Constitutional Amendment Bill, 2014 (GST Bill) in Lok Sabha, which will eventually pave the way for Goods and Services Tax (GST) in India, currently the GST Bill is awaiting passage in Rajya Sabha.

However, the Government's determination to introduce GST is palpable from the fact that in the month of October 2015, the Government has placed in the public domain four reports on key business processes i.e. registration, payment, refunds and returns in GST regime. From these four reports one can fairly gauge the a broad structure and process in GST regime.

Given the aforesaid, it's imperative for the business organisations to gear up (well in advance!) for this biggest tax reform since independence. In the following paras, the author discusses on the possible steps which an organisation could take to be GST Ready.

### **1. Sensitise the business eco-system**

It is an accepted fact that GST is not merely a tax change but a business change as it will impact all functions of an organisation such as finance, product pricing, supply chain, information technology, contracts, commercials etc. Thus, its imperative that all these functional teams should be aware about the GST. But the underlying question is what should these team members read/ refer for GST?

In this regard, its pertinent to note that most of the key aspects of the proposed GST regime are already in public domain through various dsuch as

- a. Draft GST law
- b. 122nd Constitutional Amendment Bill, 2014 ('GST Bill')
- c. Rajya Sabha Select Committee Report on GST Bill
- d. First Discussion Paper (issued by the Empowered Committee)
- e. Task Force Report on GST (issued by the 13th Finance Commission)
- f. Reports on registration, payment, refunds and returns etc.

Thus, based on the aforesaid knowledge available in public domain the organisation may consider sensitising its employees.

The organisation can consider sensitising its entire business eco-system i.e. not only the employees but also vendors (such as Tier-1, Tier-2 vendors etc) and key customers of the organisation. An early initiation of training will give the concerned employees, vendors and customers a sense of involvement in discussion much before GST legislation it is put in public domain.

## **2. Understand GST Impact on operations**

GST may provide opportunities but at the same time it could bring threats. Given this, an organisation may consider carrying out an exercise to identify how its operations will get impacted because of GST. For GST Impact Analysis exercise, the respective department heads such as finance, supply chain, product pricing, human resource etc should be involved to ensure that they provide their inputs and suggestions.

Going one step forward, organisations can also identify possible cost savings which key suppliers / vendors could be entitled to in the proposed GST regime. Based on the possible cost savings to suppliers / vendors, the organisations can have discussion with its vendors for passing of benefits by way of cost reduction in the coming years (i.e. after GST is introduced). Early discussion and engaging with vendors for GST will ensure maximum possible benefit to be passed on to the organisation.

Organisations will also have to take into consideration the increase (most likely!) or decrease (least likely!) in tax compliances. For most of the organisations, in GST regime, compliances are expected to increase dramatically. Take example of a service tax assessee, who currently files 2 returns on an annual basis. Now, in GST regime, Service tax assessee could be required to file as many as 61 returns (5 returns per month plus 1 annual return)!!! Thus, in human resource department will have to be informed about the GST regime so that they can anticipate the increase (and decrease in certain cases) in the manpower.

### **3. Gear up for transition of Information Technology (IT) systems**

Information Technology is a key area for business organisations as irrespective of the fact whether the organisation is ready or not, on the very first day GST is introduced, the information technology system of an organisation has to be ready and running else it will bring the entire business to standstill.

Take example of a retailer having multi-state presence. Currently, his IT system generates invoice/ bill with applicable respective VAT or CST. In GST regime, the IT System should generate invoice/ bill with applicable CGST and SGST or IGST (and additional 1% tax, if applicable!). For a service provider, there could be more challenges as applicability of CGST and SGST or IGST will depend on the Place of Supply Rules (to determine whether the transaction is intra-State or Inter-State). Thus, embedding the Place of Supply Rules (which are yet to be put in public domain!) in the IT system could pose a major challenge.

Given this, to avoid the threat of disruption of business, it is advisable that early study should be carried out to understand how the systems migration for GST could be done.

### **4. Design Alternate Business Strategies**

To gear up for GST regime, the organisation may identify alternate efficient business strategies to ensure smooth transition to GST. Even, supply chain strategies is expected to undergo a major change as entire India will become one market and there may not be any tax cost involved for intra-State vis-à-vis inter-State procurement of goods. An organisation will have to re-visit their pricing strategies as business competitors may well reduce prices of their product to pass on the GST benefits.

However, while forming alternate business strategies, it goes without saying that the organisation should take into consideration the commercial feasibility of alternate business strategies before these strategies are recommended.

### **5. Make representation before the Government**

Introduction of GST regime could affect negatively (than positively!) to few industries/ sectors. Thus, efforts should be made by the organisation to identify the possible issues for which appropriate representation could be made before the Government through various trade chambers and forums.

In next few days, the Government is expected to put the draft GST law in public domain. Given this, while current economic situation is characterised by volatile economic conditions, introduction of GST remains a ray of hope, thus early initiation of aforesaid steps can surely help the organisations gain most of the proposed GST regime.

## 2.5 Chronology on GST – Past, Present and the Future

Date	Event
1974	Report of L K Jha committee suggested moving to Value Added Tax (VAT) regime
1986	Introduction of Modified Value Added Tax (MODVAT)
1991	Chelliah Committee recommends VAT/Goods and Service Tax (GST)
1 July 1994	Service tax is introduced in India
1999	'Empowered Committee' comprising of representatives of 29 States is formed for the purpose introduction of State VAT
2000	Implementation of uniform State sales tax rates (1%, 4%, 8%, 12%)
2002	Introduction of input credit against services of same category
1 April 2003	Harayana was the first State to introduce VAT. Subsequently, other States introduced VAT (20 States in 2005, 5 States in 2006, Tamil Nadu in 2007 and lastly, Uttar Pradesh in 2008).
1 September 2004	Central level taxes integrated by introduction of 'CENVAT'
January 2005	White Paper, a policy document indicating basic policies of 'State VAT' was released by the 'Empowered Committee'
1 April 2005	Value Added Tax introduced in 20 States
February 2006	Finance Minister Mr. P. Chidambaram comments in the Budget Speech that there is a large consensus that the country must move towards a national level GST that must be shared between the Center and States. He proposes 1 April 2010 as the date for introducing GST.
1 April 2006	VAT implemented in 5 more States
1 January 2007	VAT implemented in Tamil Nadu
April 2007	Central Sales Tax phase out initiated (4% → 2%)
May 2007	Empowered Committee (EC) of State Finance Ministers in consultation

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with Central Government, constituted a Joint Working Group (JWG), consisting of officers of Central and State Governments to examine various models and options for GST and to give their assessment of the same to the EC.

November 2007 Joint Working Group (JWG) presented its report on the GST to the EC.  
The EC accepted the report on GST submitted by the JWG

1 January 2008 VAT implemented in Uttar Pradesh

April 2008 Empowered Committee finalises the overall strategy for GST introduction in India

November 2009 'First Discussion Paper' on GST is released by EC

December 2009 Task Force submits its report on GST to 13<sup>th</sup> Finance Commission

January 2009 Department of Revenue releases its comments on 'First Discussion Paper' on GST

February 2011 IT strategy (by Mr Nandan Nilekani) for GST released

March 2011 115th Constitution Amendment Bill introduced in Parliament.  
However, this 115<sup>th</sup> CAB was lapsed (in May 2014) with change of Government at Center.

1 April 2011 Point of Taxation Rules, 2011 introduced

1 July 2012 - Negative List of Services Regime introduced  
- Place of Provision of Services Rules, 2012 introduced

July 2014 Union Finance Minister states in the Budget Speech 2014 that "I do hope we are able to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST"

19 December The 122<sup>nd</sup> Constitutional Amendment Bill (hereafter referred as CAB)

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2014	was introduced in Lok Sabha
6 May 2015	The 122 <sup>nd</sup> CAB passed in Lok Sabha
6 May 2015	122 <sup>nd</sup> CAB introduced in Rajya Sabha. 122 <sup>nd</sup> CAB was referred to Select Committee of Rajya Sabha
22 July 2015	Rajya Sabha Select Committee tabled its report
October 2015	the Government has placed in the public domain four reports on key business processes i.e. registration, payment, refunds and returns in GST regime.
December 2015	Draft GST law made available (( <a href="http://comtax.up.nic.in/GST/ModeloftheFINAL_GST_DRAFT_ACT.pdf">http://comtax.up.nic.in/GST/ModeloftheFINAL_GST_DRAFT_ACT.pdf</a> )
<i>Next possible steps</i>	<ul style="list-style-type: none"> <li>- Rajya Sabha to vote on Constitutional Amendment Bill (To pass the bill, specified majority is required)</li> <li>- Later, the State Assemblies need to ratify the Constitutional Amendment Bill (here also majority is required)</li> <li>- Final GST law to be tabled in Parliament</li> </ul>

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## 2.6 What is GST?

GST is abbreviation for Goods and Service Tax. GST is also known as Value Added Tax (VAT) in few countries.

GST / VAT is a consumption based tax wherein the basic principle is to tax the value addition at the each business stage. To achieve this, tax paid on purchases is allowed as a set off/ credit against liability on output/income.

GST is levied on all transaction of goods and services. Thus, in principle, GST should not differentiate between 'goods' and 'services'.

Internationally, GST was first introduced in France and now more than 150 countries have introduced GST. Most of the countries, depending on their own socio-economic formation, have introduced National level GST or Dual GST.

GST is different from the current tax structure in many ways. Currently, taxes treat goods and services differently. As mentioned above, 'goods' attract Excise at manufacturing level and VAT at the time of sale. In contrast, services attract only one levy i.e. Services tax on provision of taxable services.

This distinction, in GST regime, would loose its importance as both goods and services would be treated as par for taxing purposes. A transaction in goods and services for a consideration would attract CGST and SGST. Also, the State Government now gets the power to tax services and Central Government gets the power to levy tax at the distribution and retail level.

GST may resolve, not all, but surely, most of the current issues such as the classification, valuation, double taxation disputes etc. On a positive note, most of the credit which is not available will be available in GST regime such as the service provider will be eligible to avail credit of VAT, Luxury tax, Entertainment Tax etc. The compliances are also expected to reduce drastically.



## 2.7 GST in India

**Structure:** India is proposing to implement 'dual GST'. In 'dual GST' regime, all the transactions of goods and services made for a consideration would attract two levies i.e. CGST (Central GST) and SGST (State GST).

**Taxes that will be subsumed in GST:** GST would be levied on all the transactions of goods and services made for a consideration. This new levy would replace almost all of the indirect taxes. In particular, it would replace the following indirect taxes:

### **At Central level**

- Central Excise Duty (including Additional Duties of Excise)
- Service Tax
- CVD (levied on imports in lieu of Excise duty)
- SACD (levied on imports in lieu of VAT)
- Central Sales Tax
- Excise Duty levied on Medicinal and Toiletries preparations,
- Surcharges and cesses

### **At State level**

- VAT/Sales tax
- Entertainment tax (unless it is levied by the local bodies)
- Luxury Tax
- Taxes on lottery, betting and gambling
- Entry tax not in lieu of Octroi
- Cesses and Surcharges

However, certain items / sectors would be outside the GST regime. Products such as alcohol, petroleum products would remain outside GST regime. Further, Land and properties may remain outside since they are neither goods nor services.

Looking at the international practices on GST, it would be advisable that the products outside GST regime should be minimum as allowing parallel levies will only add to cascading effect than any good to industry/economy.

**Administration:** CGST and IGST will be administered by 'Central Government' and SGST will administered by the respective State Governments.

**Law relating to GST:** In GST regime, there will be one CGST law and 31 SGST law for each of the States including two Union Territories and one IGST law governing inter-State supplies of goods and services.

**Mechanism of input tax credit in GST:** Input tax credit of CGST would be available for payment of CGST and input tax credit of SGST would be available for payment of SGST. However, cross utilization of tax credit between the Central GST and the State GST would be allowed in the case of inter-State supply of goods and services under the IGST model.

**Interstate transactions in GST:** All the inter-State transactions of goods and services would attract IGST (which would be CGST plus SGST). The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST.

**Inter-State supply of goods for consideration to attract additional tax:** Draft GST law provides that an additional tax upto 1% will be levied by Centre on inter-State supply of **goods** (and not on services) made for consideration. Thus, effectively inter-State branch transfers will not attract this 1% additional Tax. This additional tax will be assigned to States from where the supply of goods originates. This additional tax will be applicable for a period of two years and could be extended further by GST Council. The credit of this additional levy will not be available as thus it will be a cost in the supply chain.

**Composition scheme:** There would be option available to tax payers having turnover less than Rs. 50 lacs can *opt* for Composition scheme wherein they need to discharge tax at a floor rate of 1%.

**Exports and SEZ:** Exports would be zero rated, as currently they are. In case of SEZ, if the supply of goods or services is for consumption in processing zone then it would be zero rated by refund mechanism.

**Imports:** Even under GST regime, Customs duty would be levied on import of goods in India. Currently, import of 'goods' suffers CVD (in lieu of Excise duty) and SACD (in lieu of VAT). On import of taxable services, Service tax is attracted. In GST regime, both CGST and SGST would be levied on import of goods and services.

**Special Area Schemes:** The exemptions available under Special Industrial Area Schemes would continue up to legitimate expiry time both for the Centre and the States. Later, after the introduction of GST, the tax exemptions, remissions etc. related to industrial incentives would be converted, if at all needed, into cash refund schemes.

## 2.8 Rate of GST

Rate of GST is one of the most important and contentious issues. Before we understand what could be the rate of proposed GST, let's understand the current rates of indirect taxes on goods and services.

The different rates of taxes on goods and services is tabulated below:

<b>Particulars</b>	<b>Goods</b>	<b>Services</b>
Excise duty	12.50%/ 6% / 2%	-
VAT	12.50% / 13.50% / 14%	-
CST	2% (against Form C)	-
Local Body Tax	0.10% to 8%	-
Service Tax	-	14%

From the press release dated 4 December 2015, the Revenue Neutral Rate (RNR) as proposed by the Chief Economic Advisor Shri. Arvind Subramanian indicated the following GST rate structure:

<b>Particulars</b>	<b>Concessional</b>	<b>Standard</b>	<b>Luxury goods</b>
<b>GST rate</b>	12%	17%-18%	40%

Further, it appears that the Government may review the existing exemptions so that the list of goods exempt from CGST is aligned to the SGST list and most of items currently exempt from VAT may be exempt from both components of GST.

It is worth noting that the proposed cumulative rate of GST is much higher than the Revenue Neutral Rate suggested by the Thirteenth Finance Commission (TFC). TFC had suggested a rate of 5% CGST and 7% SGST.

## 2.9 Supply Chain and GST

### **Warehouses – CST has been a major rationale for setting up of warehouses in past**

An inter-State sale of goods is liable to Central Sales Tax @ 2% (subject to declaration forms). CST paid on purchase of goods is not available as set-off. Thus, it results in cost in the supply chain transaction.

Given this, to avoid the applicable CST of 2%, most of the Companies have set up branches /warehouses in different States. It has been observed that some of the Companies have more than 30 branches /warehouses in the Country only to save CST cost<sup>1</sup>.

However, in GST regime, an Inter-State transaction in 'goods' will attract Integrated Goods and Service Tax (IGST). Credit of IGST paid on purchase would be available against output GST liability.

Given the above, the current rationale (i.e. to save CST) for setting up branches/ warehouses in various States will become redundant. In view of this, many Companies which have set up branches/ warehouses in different States only to save CST may reconsider their decision and may consolidate their branches/ warehouses.

### **Area based incentives<sup>2</sup>**

Most of area based incentives are approaching their legitimate expiry time. In GST regime, the tax exemptions, remissions etc. related to industrial incentives, if at all needed, would be converted into cash refund schemes.

In GST regime (post expiry of area based incentives schemes), the Companies may re-consider shifting their factories to other locations.

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<sup>1</sup> However, many States (such as Maharashtra, Gujarat) have introduced provisions for reduction in input tax credit of VAT for stock transfers. This also results in loss of tax credits to businesses.

<sup>2</sup> Area Based Incentives are offered by the Governments to promote investment in a particular State/location such as Baddi (Himachal Pradesh), Kutch (Gujarat) etc

### **Availment of credit**

Currently there are restrictions on **availment of credit** for a service provider. A logistic service provider cannot avail credit of VAT paid on inputs procured. This becomes a cost in the supply chain.

Further, a trader or retailers or malls cannot avail credit of Service tax and excise duty paid on their purchases. Currently, a retail mall owner will not be able to avail credit of Service tax charged by a logistic service provider and thus it becomes a cost in the transaction. In GST the aforesaid will change to a certain extent (discussed in detail in later chapters).

### **An opportunity**

In GST regime, in view of removal CST on inter-State sales, the warehousing decisions will be based on business needs than tax considerations.

Also, expiry of Area Based Exemptions may lead to change in current manufacturing locations to another locations based on business needs than tax considerations.

Cumulatively, the aforesaid will open an window of opportunity to logistic and warehousing companies as the there would be centralization of warehouses and manufacturing locations.

We have reproduced below some of the **news reports/articles** on how the Companies are strategically responding to introduction of proposed GST:

Source	News article
<a href="http://www.wrd.mydigitalfc.com/news/feature-group-">http://www.wrd.mydigitalfc.com/news/feature-group-</a>	Nagpur is the geographical centre of India and has therefore been the focus of many transport firms looking to set up a national base once a unified national <b>Goods and Service Tax</b> regime comes into play.

**arm-cuts-**  
**logistics-**  
**costs-445**

"We are restructuring warehouse operations nationally for better efficiency, higher fill rates, more throughputs. The consolidation will also ensure faster processing, better inventory and cost reduction," said Biyani. In addition to taking care of the needs of Kishore Biyani-led Future group, Future Supply Chain Solution has over 350 customers across different sectors.

As part of the consolidation, the company will set up two warehouses in Nagpur. "The company is looking to add 6.5 lakh square feet space across two warehouses in Nagpur," said Biyani.

Future group has reduced stock points in all warehouses to cut inventory costs and reduce obsolescence risk. At present, Future Supply Chain has a warehousing space of five million square feet with an additional nine million square feet being planned by 2014

**<http://www.expresspharmaonline.com/20120315/management01.shtml>**

**'The phasing out of CST with the advent of GST could do away with the perennial issue of credit leakage on this front ' - N R Munjal, Vice President cum Managing Director, Ind-Swift Laboratories**

...Another evident impact of **GST** would be a definite re-look and review of the present warehousing strategies followed by the pharma Industry. As it stands on date, most pharma manufacturers maintain warehouses in different states to facilitate movement of goods from one warehouse to another so as to save on CST. Also, quite a few entities have set up warehouses at hitherto attractive locations like Pondicherry or Daman as the CST rate in these locations were previously lower than the rates prevalent in other states. Warehouses across various states and movement of goods thereof have been a nightmare for the pharma industry from the logistics perspective – not to mention the increased compliance requirements and transaction costs. ...

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## 2.10 When will GST be introduced in India?

In the past, the Government quite a few times announced the date to introduce GST and the said date has been postponed again and again. Earlier, the date for introduction of GST was April 2010 then it became April 2011 and then April 2012 and so.

Today, even an astrologer can't answer the question on date of introduction of GST!

Having said the above, following important steps show Government is actively working on GST :

- a. 122<sup>nd</sup> Constitutional Amendment for GST is already passed by Lok Sabha and pending in Rajya Sabha
- b. Contract to manage IT infrastructure already awarded to Infosys
- c. GST law is already drafted and available in public domain

Our Prime Minister Shri. Narendra Modi and Finance Minister Mr Arun Jetley has repeatedly assured that the new proposed date i.e. 1 April 2016 will be followed.

The aforesaid surely shows that the Government is committed to introduction of GST. In view of the aforesaid discussion, in case the date of introduction of GST is postponed, still looking at the commitment level, one cannot rule out introduction of GST in near future say 1 July 2016 or October 2016.

Also, one may not be surprised if the Government hurriedly introduces GST (as it introduced Negative List of services approach without giving sufficient time to industry).



### 3 Draft Statutory Provisions<sup>3</sup>

#### CHAPTER I PRELIMINARY

##### 1. Short title, extent and commencement

(1) This Act may be called the Central / State Goods and Services Tax Act, 2016.

(2) It extends to the whole of India / State's name.

(3) It shall come into force on such date as the Central or a State Government may by notification in the Official Gazette, appoint in this behalf.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

##### 2. Definitions

In this Act, unless the context otherwise requires,-

(1) "**actionable claim**" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;

(2) "**address on record**" means the address of the recipient as available in the records of the supplier;

(3) "**adjudicating authority**" means any authority competent to pass any order or decision under this Act, but does not include the Board, the Commissioner (Appeals) and the Appellate Tribunal;

(4) "**agriculture**" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, the raising of crops, grass or garden produce

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<sup>3</sup> At the time of going to publication, 46 GST draft law was available on UP Tax Department website ([http://comtax.up.nic.in/GST/ModeloftheFINAL\\_GST\\_DRAFT\\_ACT\\_addl.pdf](http://comtax.up.nic.in/GST/ModeloftheFINAL_GST_DRAFT_ACT_addl.pdf)); however, there could be no assurance that the final GST law shall not contain any contrary provisions or the aforesaid draft law is authenticate/final version

and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants:

Explanation – For the purpose of this clause, the expression 'forest' means the forest to which the Indian Forest Act, 1927 applies.

(5) "**agriculturist**" means a person who cultivates land personally, for the purpose of agriculture;

(6) "**agricultural extension**" means application of scientific research and knowledge to agricultural practices through farmer education or training;

(7) "**agricultural produce**" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

(8) "**Appellate Tribunal**" means the National Goods and Services Tax Appellate Tribunal constituted under section . . .of this Act;

(9) "**appointed day**" means the date on which section 1 of this Act comes into effect;

(10) "**assessment**" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment and best judgement assessment;

(11) "**associated enterprise**" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961;

(12) "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

(13) "**business**" includes –

- (a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any transaction in connection with or incidental or ancillary to (a) above;
- (c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members as the case may be;
- (f) admission, for a consideration, of persons to any premises; and
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation; but does not include agriculture;

(14) "**capital assets**" shall have the meaning as assigned to it in the Income Tax Act, 1961 (43 of 1961) but the said expression shall not include jewellery held for personal use or property not connected with the business;

(15) "**capital goods**" means plant, machinery and equipment used directly or indirectly in the course of manufacture, trade, commerce, profession, vocation or any other similar activity;

(16) "**casual taxable person**" means a person who occasionally undertakes transactions involving supply or acquisition of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;

(17) "**chartered accountant**" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949);

(18) "**Commissioner**" means the Commissioner of Central Goods and Services Tax /Commissioner of State Goods and Services Tax appointed under section 4 of the Central/State Goods and Services Tax Act, 2016;

(19) "**composite supply**" means a supply consisting of -

(a) two or more goods;

(b) two or more services; or

(c) a combination of goods and services

provided in the course or furtherance of business, whether or not the same can be segregated;

(20) "**consideration**" in relation to the supply of goods and/or services to any person, includes

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the person or by any other person;

(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

(21) "**continuous supply of goods**" means a supply involving goods which is provided, or agreed to be provided, continuously or on recurrent basis whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis;

(22) "**continuous supply of services**" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such service as the Central or a State Government may, whether or not subject to any condition, by notification, specify;

(23) "**cost accountant**" means a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959);

(24) "**Council**" means the Goods and Services Tax Council established under Article 279A of the Constitution;

(25) "**declared service**" means

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or **before its first occupation, whichever is earlier.**

Explanation. For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) works contract;

(26) "**document**" includes written or printed record of any sort and electronic record as defined in Information Technology Act, 2000 [21 of 2000];

(27) "**earlier law**" means any of the following laws, that is to say,

(a) . . .

(b) . . .

(c) . . .

as amended from time to time and includes enactments which have validated anything done or omitted to be done under any of the above mentioned laws and also any law repealed by the earlier laws but continued in force under any provisions of the above enumerated laws;

(28) "**exempt supply**" means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/or services

which are specified in Schedule . . . of the Act or which may be exempt from tax under section 10.

(29) "**export**" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(30) "**fund**" means the Consumer Welfare Fund established under section \_\_\_\_;

(31) "**goods**" means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

(32) "**government**" means Central Government and its departments, a State Government and its departments and a Union territory and its departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;

(33) "**import**" with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(34) "**IGST**" means the tax levied under the Integrated Goods and Services Tax Act;

(35) "**India**" means,-

(a) the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(36) "**input tax**" in relation to a taxable person, means the {IGST, CGST or SGST}/{IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are to be used, in the course or furtherance of his business;

(37) "**input tax credit**" means credit of 'input tax' as defined in section 2(36) of this Act;

(38) "**intangible property**" is any property other than tangible property and includes such things as contractual rights, options, intellectual property rights in relation to goods that are not in possession;

(39) "**invoice**" means a document raised by a supplier indicating, inter-alia, details of goods and/or services supplied, their value and tax charged thereon, if any;

(40) "**legal representative**" means any person who stands in place of, and represents the interests of another and includes the executor, administrator of an estate and a court appointed guardian of a minor;

(41) "**local authority**" means

(a) a "Panchayat" as defined in clause (d) of Article 243 of the Constitution:

(b) a "Municipality" as defined in clause (e) of Article 243P of the Constitution

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other



authority legally entitled to, or entrusted by the Central or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under Article 371 of the Constitution; or

(g) a Regional Council constituted under Article 371A of the Constitution;

(42) **"location of service provider"** means:

(i) where a supply is made from a business establishment for which registration has been obtained, the location of such establishment;

(ii) where a supply is made from a place other than the business establishment for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(iii) where a supply is made from more than one establishment, whether business or fixed, the location of the establishment most directly concerned with the provision of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the person;

(43) **"location of service receiver"** means:

(i) where a supply is received at a business establishment for which registration has been obtained, the location of such establishment;

(ii) where a supply is received at a place other than the business establishment for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(iii) where a supply is received at more than one establishment, whether business or fixed, the location of the establishment most directly concerned with the receipt of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the person;

(44) "**market value**" shall mean the full amount which a recipient of a supply is

required to pay in order to obtain the goods and/or services of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;

(45) "**money**" means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

(46) "**non-resident taxable person**" means a taxable person who occasionally undertakes transactions involving supply or acquisition of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;

(47) "**non-taxable territory**" means the territory which is outside the taxable territory;

(48) "**notification**" means notification published in the Official Gazette and the

expressions 'notify' and 'notified' shall be construed accordingly;

(49) "**output tax**" in relation to a taxable person, means the IGST/CGST/SGST chargeable under this Act on taxable supply of goods and/or services by him and includes tax payable by him on reverse charge basis;

(50) "**person**" includes—

- (a) an individual;
- (b) a Hindu undivided family;
- (c) a company;
- (d) a firm;
- (e) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (f) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 2013);
- (g) any body corporate incorporated by or under the laws of a country outside India;
- (h) a co-operative society registered under any law relating to cooperative societies;
- (i) a local authority;
- (j) government;
- (k) society as defined under the Societies Registration Act, 1860;
- (l) trust; and
- (m) every artificial juridical person, not falling within any of the preceding sub-clauses;

(51) "**place of business**" includes

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or
- (b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent,  
by  
whatever name called;

(52) "**prescribed**" means prescribed by the rules, regulations or by any  
notification issued under this Act;

(53) "**proper officer**" in relation to any function to be performed under this  
Act,  
means the officer of goods and services tax who is assigned those functions by  
the Board/Commissioner of SGST;

(54) "**property**" means any property, whether real or personal, movable or  
immovable, corporeal or incorporeal, tangible or intangible, and includes a  
right or interest of any kind, but does not include money, actionable claims or  
negotiable instruments;

(55) persons shall be deemed to be "**related persons**" if only -

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds five per cent or  
more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related;

(56) "**removal**", in relation to goods, means -

(a) dispatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier, or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

(57) "**reverse charge**" means the liability to pay tax by the person receiving services instead of the person supplying the services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify;

(58) "**schedule**" means a schedule appended to this Act;

(59) "**services**" mean anything other than goods;

(60) "**SGST**" means the tax levied under the State Goods and Services Tax Act;

(61) "**supply**" shall have the meaning as assigned to it in section 3 of this Act;

(62) "**tangible property**" means any property other than incorporeal property;

(63) "**tax**" means goods and services tax levied on the supply of goods and/or services except on the supply of alcoholic liquor for human consumption;

(64) "**taxable person**" shall have the meaning as assigned to it in section 9 of this Act;

(65) "**tax period**" means the period for which the tax return is required to be filed;

(66) "**taxable supply**" means a supply of goods and/or services which is chargeable to tax under this Act;

(67) "**tax return preparer**" means any individual who has been authorised to act as goods and services tax return preparer under this Act;

(68) "**taxable territory**" means the territory to which the provisions of this Act apply;

(69) "**telecommunication service**" means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes—

(i) voice mail, data services, audio tex services, video tex services, radio paging;

(ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;

(iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;

(iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;

(v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;

(vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;

(vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(viii) communication through facsimile, pager, telegraph and telex, but does not include service provided by-

(a) any person in relation to on-line information and database access or retrieval; and

(b) a broadcasting agency or organisation in relation to broadcasting;

(70) "**time of supply of goods**" shall have the meaning as assigned to it in section 11 of this Act;

(71) "**time of supply of services**" shall have the meaning as assigned to it in section 12 of this Act;

(72) "**to cultivate personally**" means to carry on any agricultural operation 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 (but not in crop share) or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

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

Explanation 2. In the case of a Hindu Undivided Family, land shall be deemed to be

cultivated personally, if it is cultivated by any member of such family;

(73) "**turnover**" means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports, of goods and/or services, to be computed on all India basis and excludes taxes, if any, charged under this Act;

(74) "**Special Economic Zone**" shall have the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 [28 of 2005];

(75) "**works contract**" means an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any immovable property;

(76) "**year**" means the financial year; and



(77) “**zero-rated supply**” means a supply of any goods and/or services on which no tax is payable but credit of the input tax related to that supply is admissible;

Explanation: Exports shall be treated as zero-rated supply.

### **3. Meaning and scope of supply**

(1) Supply of goods and/or services includes all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal, and importation of services\*, made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes a supply specified in Schedule I, made or agreed to be made without a consideration.

(2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(3) Subject to sub-section(2), the Central or a State Government may, upon recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (i) a supply of goods and not as a supply of services; or
- (ii) a supply of services and not as a supply of goods; or
- (iii) neither a supply of goods nor a supply of services.

## **CHAPTER II**

### **ADMINISTRATION**

#### **4. Classes of officers under the Central Goods and Services Tax Act**

(1) There shall be the following classes of officers under the Central Goods and Services Tax Act, namely;

(a) Principal Chief Commissioners of CGST or  
Principal Directors General of CGST,

(b) Chief Commissioners of CGST or  
Directors General of CGST,

(c) Principal Commissioners of CGST or  
Principal Additional Directors General of CGST,

(d) Commissioners of CGST or  
Additional Directors General of CGST,

(e) Commissioner of CGST (Appeals)

(f) Additional Commissioners of CGST or  
Additional Directors of CGST,

(g) Joint Commissioners of CGST or  
Joint Directors of CGST,

(h) Deputy Commissioners of CGST or  
Deputy Directors of CGST,

(i) Assistant Commissioners of CGST or  
Assistant Directors of CGST, and

(j) such other class of officers as may be appointed for the purposes of this  
Act.

#### **4. Classes of officers under the State Goods and Services Tax Act**

(1) There shall be the following classes of officers and persons under the State  
Goods and Services Tax Act namely.

a) Commissioner of SGST,

b) Special Commissioners of SGST,

c) Additional Commissioners of SGST,

d) Joint Commissioners of SGST,

e) Deputy Commissioners of SGST,

f) Assistant Commissioners of SGST, and

g) such other class of officers and persons as may be appointed for the purposes of this Act. [List is indicative]

(2) The Commissioner shall have jurisdiction over the whole of the State (...). All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

## **5. Appointment of officers under the Central Goods and Services Tax Act**

(1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.

## **6. Powers of officers under the Central Goods and Services Tax Act**

(1) Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services Tax who is subordinate to him.

(3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in .....of this Act.

### **CHAPTER III**

#### **LEVY AND COLLECTION OF TAX**

#### **7. Levy and Collection of Central/State Goods and Services Tax**

(1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

(3) The Central/State Government may, by notification, specify categories of supply of services the tax on which is payable on reverse charge basis and all the provisions of this Act shall apply *mutatis mutandis* for collection of such tax.

#### **8. Compounded Levy**

(1) Notwithstanding anything to the contrary contained in the Act, the Central or a State Government may, subject to such conditions and restrictions as

may be prescribed, permit a registered taxable person, whose turnover in a financial year does not exceed fifty lacs of rupees, to pay, in lieu of the tax payable by him, an amount calculated at such rate, not less than one percent, of the turnover during the year:

Provided that no such permission shall be granted to a taxable person who effects any inter-state supplies of goods and/or services or to a person who is liable to pay tax under sub-section (3) of section 7 of this Act.

(2) A taxable person to whom the provisions of sub-section (1) apply shall not charge any tax on supplies made by him nor shall he be entitled to any credit of input tax.

(3) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty equivalent to the amount of tax payable as aforesaid:

Provided that no penalty shall be imposed without affording a reasonable opportunity of being heard to the person proceeded against.

(4) Notwithstanding anything to the contrary contained in the Act, the Central or a State Government may, subject to such conditions, restrictions and limitations as may be prescribed in this behalf, permit a registered taxable person engaged in providing a specified category of taxable service to pay, in lieu of the tax payable by him, an amount calculated at such rate not exceeding . . . percent, as may be notified by the Central or a State Government on the recommendation of the Council.

## **9. Taxable person**

(1) Taxable Person means a person who carries on any business at any place in India/State of \_\_\_\_\_ and who is registered or required to be registered under Schedule III of this Act for payment of tax.

(2) The Central or a State Government may, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

(3) The Central Government, a State Government or any local authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions which may be exempted, by notification, by the Central or a State Government, on the recommendation of the Council.

(4) Any person who provides services as an employee to his employer in the course of, or in relation to his employment, or by any other legal ties creating the relationship of employer and employee as regards working conditions, remunerations and employer's liability, shall not be considered as a taxable person.

#### **10. Power to grant exemption from tax**

(1) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon.

Explanation: Where an exemption under sub-section (1) in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

(2) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

(3) The Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette;

(b) also be made available in the official website of the department of the Central or a State Government.

## **11. Time of supply of goods**

(1) The liability to pay CGST / SGST on the goods shall arise at the time of supply as determined in terms of the provisions of this section.

(2) The time of supply of goods shall be the earliest of the following dates, namely,-

(a) (i) the date on which the goods are removed by the supplier for supply to the buyer, in a case where the goods are required to be removed and

(ii) the date on which the goods are made available to the buyer, in a case where the goods are not required to be removed; or

(b) the date on which the supplier issues the invoice with respect to the supply; or

(c) the date on which the supplier receives the payment with respect to the supply; or

(d) the date on which the buyer shows the receipt of the goods in his books of account.

Explanation 1: The provisions of sub-clause (ii) of clause (a) shall apply in cases where the goods

- (a) are physically not capable of being moved; or
- (b) are supplied in assembled or installed form; or
- (c) are supplied by the supplier to himself or to his agent or his principal.

Explanation 2: For the purposes of sub-clause (ii) of clause (a), the expression 'made available to the buyer' shall mean when the goods are placed at the disposal of the buyer.

Explanation 3: For the purposes of clauses (b) and (c) of sub-section (2), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

(3) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate. If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply.

(4) For the purposes of sub section (3) above, the Central or a State Government may specify, by notification, the goods that shall be treated as continuous supply of goods;

(5) If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes known that the supply has taken place or twelve months from the date of removal, whichever is earlier.

(6) In case it is not possible to determine the time of supply under the provisions of subsection (2), (3) or (5), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return

is to be filed, or

(b) in any other case, be the date on which the CGST/SGST is paid.



## **12. Time of supply of services**

(1) The liability to pay CGST/SGST on services shall arise at the time of supply, as determined in terms of the provisions of this section.

(2) The time of supply of services shall be :-

(a) the date of issue of invoice or the date of receipt of payment, whichever is earlier, if the invoice is issued within the prescribed period; or

(b) the date of completion of the provision of service or the date of receipt of payment, whichever is earlier, if the invoice is not issued within the prescribed period; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or (b) do not apply.

Explanation: For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

(3) In case of continuous supply of services, the time of supply shall be –

(a) where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the service receiver, whether or not any invoice has been issued or any payment has been received by the service provider;

(b) where the due date of payment is not ascertainable from the contract, each such time when the service provider receives the payment, or issues an invoice, whichever is earlier;

(c) where the payment is linked to the completion of an event, the time of completion of that event;

(4) For the purposes of sub section (3) above, the Central or a State Government may specify, by notification, the services that shall be treated as continuous supply of services;

(5) In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely-

(a) the date of receipt of services, or

(b) the date on which the payment is made, or

(c) the date of receipt of invoice, or

(d) the date of debit in the books of accounts.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases.

(7) Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3), (5) and (6), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the CGST/SGST is paid.

### **13. Change in rate of tax in respect of supply of services**

(1) Notwithstanding anything contained in section 12, the time of supply, in cases where there is a change in the effective rate of tax in respect of services, shall be determined in the following manner, namely:-

(a) in case the taxable service has been provided before the change in effective rate of tax –

(i) where the invoice for the same has been issued and the payment is also received after the change in effective rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment is received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the taxable service has been provided after the change in effective rate of tax -

(i) where the payment is received after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and the payment is received before the change in effective rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in effective rate of tax but the payment is received before the change in effective rate of tax, the time of supply shall be the date of issue of invoice.

#### **14. Nature of supply**

(1) Subject to the provisions contained in section 15 of this Act, a supply of goods shall be -

(a) an inter-State supply if the supply involves the movement of goods from one State to another.

Explanation: Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

(b) an intra-State supply if the goods remain within the same State.

(2) Subject to the provisions contained in section 16 of this Act, a supply of services shall be -

(a) an inter-State supply if the service provider and the service recipient are located in different States,

(b) an intra-State supply if the service provider and the service recipient are located in the same State.

### **15. Place of supply of goods**

(1) The provisions of this section shall apply to determine the place of supply of goods.

(2) Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver.

Explanation—The expression "distance supply" shall mean a supply of goods which satisfies the following conditions:-

(a) the goods are supplied to a buyer located in another State,

(b) the supplier arranges the transport of goods.

(3) Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the receiver.

(4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

(5) Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(6) Where the place of supply of goods cannot be determined in terms of subsection (2), (3), (4) and (5), the same shall be determined by law made by the Parliament in accordance with the recommendations of the Council.

## **16. Place of supply of services**

(1) The provisions of this section shall apply to determine the place of supply of services.

(2) The place of supply of all services, except those services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to a registered person shall be the location of the service receiver.

(3) The place of supply of all services, except those services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to any person other than a registered person shall be the location of the service provider.

(4) The place of supply of services,-

(a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or

(b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property,

shall be the location at which the immovable property or boat or vessel is located

or intended to be located.

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(5) The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of—

(a) admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place, or

(b) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or

(c) services ancillary to such admission to or organization of any of the above events or services, or

(d) assigning of sponsorship of any of the above events, shall be the place where the event is actually held.

Explanation: Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(7) The place of supply of services by way of transportation of goods, including by

mail or courier to,

- (a) a registered person, shall be the location of such service receiver;
- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(8) The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation: For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(9) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(10) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the service receiver on record of the service provider;

(c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the service receiver on record of the service provider shall be the place of supply of such service.

(11) The place of supply of banking and other financial services including stock broking services to any person shall be the location of the service receiver on the records of the service provider:

Provided that if the service is not linked to the account of the receiver, the place of supply shall be location of the service provider.

(12) The place of supply of insurance services shall:

- (a) to a registered person, be the location of the service receiver; and
- (b) to a person other than a registered person, be the location of the service receiver on the records of the service provider.

Provided that for all general insurance services related to an immovable property, the place of supply of services shall be the location of the property.

(13) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

## **17. Value of taxable supply**

(1) The value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods



and/or services where the supplier and recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The transaction value under sub-section(1) shall include:

(a) any amount that the supplier is liable to pay but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;

(b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable;

(c) royalties and licence fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) any taxes, duties, fees and charges levied under any Statute other than the SGST Act or the CGST Act or the IGST Act;

(e) incidental expenses such as commission, packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, provision of the services;

(f) subsidies provided in any form or manner, linked to the supply;

(g) any discount or incentive that may be allowed after the supply has been effected.

(3) The transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.

(4) The value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.

(i) the consideration, whether paid or payable, is not money, wholly or partly;

(ii) the supplier and the recipient of the supply are related;

(iii) there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;

(iv) business transactions in the nature of pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;

(v) such other supplies as may be notified by the Central or a State Government in this behalf.

(5) Notwithstanding anything to the contrary contained in the Act or in any contract, the value of a supply of goods made by a taxable person to any person other than a taxable person shall be deemed to be the retail sale price less the tax leviable under this Act on such goods, in a case where such price is required to be declared on the package thereof under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force.

Explanation 1 — For the purposes of this sub-section, "retail sale price" means the maximum price at which the goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:

Explanation 2 — For the purposes of this sub-section, -

(a) where on the package of any goods more than one retail sale price is declared, the highest of such retail sale prices shall be deemed to be the retail sale price;

(b) where the retail sale price, declared on the package of any goods at the time of its supply, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;

(c) where different retail sale prices are declared on different packages for the sale of

(c) any goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the goods intended to be sold in the area to which the retail sale price relates.

## **CHAPTER IV**

### **INPUT TAX CREDIT**

#### **18. Manner of taking input tax credit and utilization thereof**

(1) Every taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax and may deduct the amount of admissible credit in respect of a tax period from the output tax for the same period and pay the remaining amount, if any, to the credit of the appropriate Government within such time and in such manner, as may be prescribed.

Explanation: For the purposes of this section, "appropriate Government" means the Central Government in case of the IGST and the CGST, and the State Government in case of the SGST.

(2) Where the goods and/or services are used by the taxable person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(3) Where the goods, other than capital goods, or services are used by the taxable person partly for effecting taxable supplies and partly for effecting

non-taxable supplies, including exempt supplies but excluding zero-rated supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero-rated supplies.

(4) The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the credit referred to in sub-sections (2) and (3) above may be attributed.

(5)(a) The input tax credit on account of IGST during a tax period shall first be utilised towards payment of IGST; the amount remaining, if any, shall be utilized towards the payment of CGST and SGST, in that order.

(b) The input tax credit on account of CGST during a tax period shall first be utilised towards payment of CGST; the amount remaining, if any, shall be utilized towards the payment of IGST.

(c) The input tax credit on account of SGST during a tax period shall first be utilised towards payment of SGST; the amount remaining, if any, shall be utilized towards the payment of IGST.

(d) No input tax credit on account of CGST shall be utilized towards payment of SGST.

(e) No input tax credit on account of SGST shall be utilized towards payment of CGST.

(6) Where the input tax credit in respect of a tax period exceeds the output tax for the same period, such excess credit may be carried forward for adjustment against the output tax of the subsequent tax period. The amount of input tax credit so carried forward shall be utilised in the order and in the manner specified in sub-section (5):

Provided that where a claim for refund of unadjusted credit is made in terms of subsection (7), the said amount of unadjusted credit shall not be carried forward.

(7) Subject to the provisions of sub-section (8), any unadjusted input tax credit at the end of any tax period may be refunded in accordance with the provisions of section 22 of this Act:

Provided that no refund of unadjusted input tax credit shall be allowed in cases other than exports or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs:

Provided further that no refund of unadjusted input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

(8) Notwithstanding anything contained in sub-section (7), where any refund is due under the said sub-section to a taxable person who has defaulted in furnishing any return or who is required to pay any tax or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has submitted the return or paid the tax or penalty, as the case may be;

(b) deduct from the refund due, any tax or penalty which the taxable person is liable to pay but which remains unpaid.

Explanation: For the purposes of this sub-section the expression "specified date" shall mean—

(a) the last date for filing an appeal under this Act, in a case where no appeal has been filed

(b) thirty days after the last date for filing an appeal under this Act, in a case where an appeal has been filed.

(9) Notwithstanding anything contained in sub-section (1), input tax credit shall not be available in respect of the following:

(a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—

- (i) transportation of passengers,
- (ii) transportation of goods,
- (iii) imparting training on motor driving skills;

(b) high speed diesel oil, motor spirit (commonly known as petrol), aviation turbine fuel, petroleum crude oil and aviation gasoline;][the goods not liable to pay GST ?]

(c) goods or services provided in relation to **outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits** extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;

(d) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;

(e) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;

(f) goods and/or services on which tax has been paid under section 8 of the Act; and

(g) goods and/or services used for private or personal consumption, to the extent they are so consumed.

(10) Notwithstanding anything contained in this section, no taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless

(a) he is in possession of a tax invoice, issued by a supplier registered under this Act or the IGST Act; and

(b) the tax charged in respect of such supply has been paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.

(11) Where there is a change in the constitution of a taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said taxable person shall be allowed to transfer the input tax credit that remains unadjusted in its books of accounts to such transferred, sold, merged, demerged, leased or amalgamated business in the manner prescribed.

(12) Where credit has been taken wrongly, the same shall be recovered from the taxable person in the manner as may be prescribed in this behalf.

## **CHAPTER V REMISSION OF TAX**

### **19. Remission of tax on supplies found deficient in quantity**

(1) The Central or a State Government may, by rules made under this sub-section, provide for remission of tax on such supplies which are found to be deficient in quantity due to any natural causes.

(2) Any rules made under sub-section (1) may, having regard to the nature of the supply fix the limit or limits of percentage beyond which no such remission shall be allowed.

## **PART – VI DEMANDS AND REFUNDS**

## **Sec. 20 Recovery of tax not paid or short paid or erroneously refunded**

*A. Recovery of tax not paid or short paid or erroneously refunded for any reason other than fraud or any wilful misstatement or suppression of facts*

(1) Where any tax has not been paid or short paid or erroneously refunded, for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, the proper officer shall, within three years from the relevant date, serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(2) Where a notice has been issued for any period under sub-section (1), the proper officer may serve, within one year from the date of service of the said notice, a statement, containing the details of tax not paid or short paid or erroneously refunded for the subsequent period, on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice.

(3) The person chargeable with tax may, before service of notice under sub-section (1) or sub-section (2), pay the amount of tax along with interest payable thereon under section 21 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.

(4) Where the proper officer is of the opinion that the amount paid under sub-section (3) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which



falls short of the amount actually payable within one year from the date of receipt of information under subsection (3).

(5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax alongwith interest payable under section 21 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said tax shall be deemed to be concluded.

(6) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty not exceeding ten percent of tax or five thousand rupees, whichever is higher, due from such person and issue an order.

(7)The proper officer shall issue the order within one year from the date of issue of notice under sub-section (1) or, as the case may be, sub-section (4) or statement under sub-section (2).

*B. Recovery of tax not paid or short paid or erroneously refunded by reason of fraud or any wilful misstatement or suppression of facts*

(1) Where any tax has not been paid or short paid or erroneously refunded by reason of fraud, or any willful misstatement or suppression of facts to evade tax, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 21 and a penalty equivalent to the tax specified in the notice.

(2) Where a notice has been issued for any period under sub-section (1), the proper officer may serve, within one year from the date of service of the said notice, a statement, containing the details of tax not paid or short paid or erroneously refunded for the subsequent period, on the person chargeable with tax. The service of such statement shall be deemed to be service of notice

on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice.

(3) The person chargeable with tax may, before service of notice under sub-section (1) or sub-section (2), pay the amount of tax along with interest payable under section 21 and a penalty equivalent to fifteen per cent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.

(4) Where the proper officer is of the opinion that the amount paid under sub-section (3) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable within one year from the date of receipt of information under subsection (3).

(5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax along with interest payable under section 21 and a penalty equivalent to twenty five per cent of such tax within thirty days of communication of the notice, all proceedings in respect of the said tax shall be deemed to be concluded.

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order within a period of eighteen months from the date of issue of the notice under sub-section (1) or statement under sub-section (2).

(8) Where any person served with an order issued under sub-section (6) pays the tax along with interest payable thereon under section 21 and a penalty

equivalent to fifty percent of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded.

*C. General provisions relating to demand of tax*

(1) Where the service of notice is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year, three years or five years, as the case may be.

(2) Where any Appellate Authority or Tribunal or Court concludes that the notice issued under sub-section B(1) or B(2) is not sustainable for the reason that the charges of fraud or any wilful mis-statement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person for the period of three years, deeming as if the notice were issued under sub-section A(1) or A(2).

(3) An opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(4) The adjudicating authority shall, if sufficient cause is shown by the person chargeable with tax, grant time, from time to time, to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a person during the proceeding.

(5) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(6) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on grounds other than the grounds specified in the notice.

(7) Where the Appellate Authority or Tribunal or Court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(8) Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(9) The officer issuing the order under sub-section A(6) or under sub-section B(6) shall be different from the officer who issued the notice to show cause.

(10) The adjudication proceedings shall be deemed to be concluded if the notice to show cause is not decided within one year as provided for in sub-section A(7) or within eighteen months as provided for in sub-section B(7).

D (1) The provisions of sub-section A, B, C above shall apply, *mutatis mutandis*, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

Explanation: For the purposes of this section, "relevant date" means,—

(i) in the case of goods and/or services in respect of which tax has not been paid or

short-paid:

a) the date of filing of return under this Act, in a case where a return has been filed;

b) the date on which the return was due to be filed under this Act, in a case where no return has been filed;

c) in cases other than (a) and (b), the date on which the tax is required to be paid under this Act or the rules made thereunder;

(ii) in a case where the tax is provisionally assessed under this Act or the rules made

thereunder, the date of adjustment of tax after the final assessment thereof;

(iii) in a case where any sum relating to tax has erroneously been refunded, the date of such refund.

## **21. Interest on delayed payment of tax**

(1) Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified by the Central or a State Government.

(2) The interest under sub-section (1) shall be calculated from the first day such tax was due to be paid.

## **22. Refund of tax**

(1) Any person claiming refund of any tax and interest, if any, paid on such tax may make an application in that regard to the proper officer of IGST/CGST/SGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed.

Provided that the limitation of two years shall not apply where such tax or interest has been paid under protest.

(2) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant, and

(b) such documentary or other evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax in

relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on by him to any other person.

(3) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund.

(4) The proper officer shall issue the order under sub-section (3) within

(a) sixty days from the date of receipt of application in case of refund arising from export of goods;

(b) ninety days from the date of receipt of application in case of refund arising from export of services;

(c) forty five days from the date of receipt of application in case of refund of unadjusted input tax credit under sub-section (7) of section 18;

(d) sixty days from the date of receipt of application in case of refund arising on account of a judgement, decree, order or direction of the Appellate Authority or Tribunal or any Court; and

(e) ninety days from the date of receipt of application for refund in any other case.

Explanation. The application for the purpose of this sub-section shall mean complete application containing all information as may be prescribed.

(5) Notwithstanding anything contained in sub-section (3), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) refund of tax on goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India;

(b) refund of unadjusted input tax credit under sub-section (7) of section 18 of the Act;

(c) the tax and interest, if any, paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person;

(d) the tax or interest borne by such other class of applicants as the Central or a State Government may, by notification, specify.

(6) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except as provided in sub-section (5).

Explanation — For the purposes of this section -

(A) "refund" includes refund of tax on goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India, or refund of unadjusted input tax credit as provided under sub-section (7) of section 18 of this Act;

(B) "relevant date" means -

(a) in the case of goods and/or services exported out of India where a refund of tax paid is available in respect of the goods and/or services themselves or, as the case may be, the inputs used in such goods and/or services, the date on which the return relating to such export of goods and/or services is filed;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process in any place of business, the date of entry into the place of business for the purposes aforesaid;

(c) in case where the tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unadjusted input tax credit under sub-section (7) of section 18, the end of the financial year in which such claim for refund arises; and

(f) in any other case, the date of payment of tax.

### **23. Interest on delayed refunds**

If any tax refundable under section 22 to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, interest at such rate as may be specified in the notification issued by the Central or a State Government shall be payable in respect of such refund from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such tax.

Explanation: Where any order of refund is made by an Appellate Authority, Tribunal or any Court against an order of the proper officer under sub-section (3) of section 22, the order passed by the Appellate Authority, Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (3) for the purposes of this section.

### **24. Tax collected but not deposited with the Central or a State Government**

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Tribunal or Court or in any other provision of this Act or the rules made thereunder or any other law, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Central or a State Government, shall forthwith deposit the said amount to the credit of the



Central or a State Government, regardless of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the credit of the Central or a State Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause why the said amount as specified in the notice, should not be paid by him to the credit of the Central or a State Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or (3), as the case may be, also be liable to pay interest thereon at the prescribed rate from the date such amount was collected by him to the date such amount is paid by him to the credit of the Central or a State Government.

(5) An opportunity for personal hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(8) The person who has ultimately borne the incidence of the amount referred to in sub-section (1) and (3), may apply for the refund of the same and for such refund, the provisions of section 22 shall apply *mutatis mutandis*.

## **25. Recovery of tax**

(1) Where any amount payable by a person to the credit of the Central or a State Government under any of the provisions of this Act or of the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the modes mentioned below: -

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer.

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer.

(c)(i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under this section has been issued, fails to make the payment in pursuance thereof to the Central or a State Government, he shall be deemed to be a defaulter in respect of the amount

specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time or from time to time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the appropriate Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (1) shall be personally liable to the Central or a State Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.

(vii) where a person on whom a notice is served under sub-clause (1) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the credit of the appropriate Government any such money or part thereof, as the case may be.

(d) the proper officer may, on an authorisation by the competent authority and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property,

remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

## **PART – VII REGISTRATION**

### **26. Registration**

(1) Every person who is liable to be registered under Schedule III of this Act shall get himself registered within thirty days from the date on which he became liable to registration in such manner as may be prescribed.

(2) A person having multiple business verticals in a State may obtain a separate registration for each business vertical in the State, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under Schedule III, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

(4) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under subsection (1), (2) or (3).

(5) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may proceed to register such person in the manner as may be prescribed.

(6) Any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Board / Commissioner, shall obtain a Unique Identity Number, in the manner prescribed, for the purpose(s) notified, including refund of taxes on the notified supplies received by them.

(7) The registration shall be granted after due verification in the manner and within such period as may be prescribed.

(8) A registration shall be deemed to have been granted after the prescribed period, if no deficiency has been communicated to the applicant by the proper officer within that period.

(9) Notwithstanding anything contained in sub-section (7), any rejection of application for registration under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act.

## **27. Amendment of registration**

(1) Every registered taxable person shall inform to the proper officer of any changes in the information furnished at the time of registration, or that furnished subsequently, in the manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, and after making such inquiry as he may deem fit, approve amendments in the registration particulars:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.

(3) Any rejection of amendments under the CGST Act/SGST Act shall be deemed to be a rejection of amendments under the SGST Act/CGST Act.

## **28. Cancellation of registration**

(1) The proper officer may, either on his own motion or on an application filed, in the prescribed manner, by the registered taxable person or by his legal heirs, in case of death of such person, cancel the registration from such date, including any anterior date, as he may deem fit, having regard to the circumstances where, -

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, other than the person registered under sub-section (3) of section 26, is no longer liable to be registered under Schedule III.

(2) The proper officer may, in the manner as may be prescribed, cancel the registration of taxable person from such date, including any anterior date, as he may deem fit, where, -

(a) the registered taxable person has contravened the provisions of the Act or the rules made thereunder as may be prescribed; or

(b) the taxable person has not filed the return for a continuous period of six months;

or

(c) any person who has taken voluntary registration under sub-section (3) of section 26 has not commenced business operations within six months from the date of registration.

(3) The proper officer shall not cancel the registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The cancellation of registration under this section shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(5) The cancellation of registration under the CGST Act/SGST Act shall be deemed to be a cancellation of registration under the SGST Act/CGST Act.

(6) Every registered taxable person whose registration is cancelled shall pay, in respect of all goods held in stock on the date of cancellation, an amount equal to the input tax credit availed of on such goods or the output tax payable on

Provided that in case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the percentage points as may be specified in this behalf.

## **29. Revocation of cancellation of registration**

(1) Subject to such conditions and in such circumstances as may be prescribed, any registered taxable person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation

of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(2) The proper officer may, by way of an order, to be passed within thirty days, either revoke cancellation of the registration or reject the application for revocation for good and sufficient reasons after providing the applicant an opportunity of being heard.

(3) Revocation of cancellation of registration under the CGST Act / SGST Act shall be deemed to be a revocation of cancellation of registration under the SGST Act / CGST Act.

### **Suggestions in respect of Schedule III of the report of the Sub-Committee-I**

In Schedule III, after item (iii) of paragraph 5, the following items may be added:

(iv) non-resident taxable persons;

(v) persons who are required to deduct tax under section 48;

(vi) persons who supply goods and/or services on behalf of other persons whether as

an agent or otherwise ; and

(vii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

## **PART - VIII ACCOUNTS AND RECORDS**

### **30. Tax invoice**



A registered taxable person supplying taxable goods and/or services shall issue, at the time of the supply, a tax invoice showing the amount of tax which will form part of the price at which such goods and/or services are supplied and such other particulars as may be prescribed:

Provided that a registered taxable person supplying non-taxable goods and/or services or paying tax under the provisions of section 8 of this Act shall issue, instead of a tax invoice, a bill of supply containing such particulars as may be prescribed.

### **31. Credit and debit notes**

(1) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to exceed the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, may issue to the recipient a credit note containing such particulars as may be prescribed on or before the thirtieth day of September following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

(2) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, shall issue to the recipient a debit note containing such particulars as may be prescribed on or before the thirtieth day of November following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

(3) Any registered taxable person who issues or receives a credit or debit note in relation to a supply of goods and/or services shall declare the details of such credit or debit note, as the case may be, in the return for the month during which such credit or debit note has been issued or received or in the return for

any subsequent month but not later than September or November, as the case may be, following the end of financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act.

### **32. Accounts and other records**

(1) Every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned.

(2) The [Commissioner/Chief Commissioner] may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified.

(3) Where the [Commissioner/ Chief Commissioner] considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in the manner as may be prescribed.

(4) Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts, the reconciliation statement under sub-section (2) of section 43 and such other documents in the form and manner as may be prescribed in this behalf.

### **33. Period of retention of accounts**

(1) Every registered taxable person required to keep and maintain books of account or other records under sub-section (1) of section 32 shall retain them until the expiry of sixty months from the date of filing of Annual Return for the year pertaining to such accounts and records:

Provided that a taxable person, who is a party to an appeal [or revision] or any other proceeding before any Appellate Authority or Tribunal or Court, whether filed by him or by the department, shall retain the books of account and other records pertaining to the subject matter of such appeal [or revision] or proceeding for a period of one year after final disposal of such appeal [or revision] or proceeding, or for the period specified under sub-section (1), whichever is later.

## **PART - IX RETURNS**

### **34. Furnishing details of outward supplies**

(1) Every registered taxable person, other than a person paying tax under the provisions of section 8 of this Act, shall furnish, electronically, the details of outward supplies of taxable goods and/or services effected, including outward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes issued in respect of such supplies during a tax period on or before the tenth day of the month succeeding the tax period in the manner and format as may be prescribed:

Provided that the Board / Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details.

(2) The details of outward supplies furnished under sub-section (1) shall be communicated, in the manner prescribed, to the registered taxable persons receiving such supplies within the period prescribed for furnishing the details of inward supplies under sub-section (2) of section 35.

(3) The details of credit or debit notes issued by the supplier and furnished under subsection

(1) shall be communicated, in the manner prescribed, to the corresponding registered taxable person receiving such supplies within the period prescribed for furnishing the details under sub-section (2) of section 35.

(4) Any registered taxable person, who has furnished the details under sub-section (1) for any tax period, shall, upon discovery of any error therein relating to tax paid by him or input tax credit availed of by the recipient but remaining unmatched under section 38, rectify such error in the tax period during which such error is noticed and shall pay the tax and interest, if any, in case there was a short payment of tax on account of such error, in the return to be furnished for such tax period:

Provided that no rectification of error in respect of outward supply or a debit note issued by the supplier shall be allowed after filing of the return under section 36 for the month of November following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier:

Provided further that no rectification of error in respect of a credit note issued by the supplier shall be allowed after filing of the return under section 36 for the month of September following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier.

### **35. Furnishing details of inward supplies**

(1) Every registered taxable person, including a person paying tax under the provisions of section 8 of this Act, shall verify, validate, modify or, if required, delete the outward supplies and credit or debit notes communicated under sub-section (2) or under sub-section (3) of section 34, as the case may be, to prepare details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes

received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 34.

(2) Every registered taxable person shall furnish, electronically, the details of inward supplies of taxable goods and/or services, including inward supplies of services on which the tax is payable on reverse charge basis under this Act and inward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes received in respect of such supplies during a tax period on or before the fifteenth day of the month succeeding the tax period in the manner and format as may be prescribed:

Provided that the Board/Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details.

(3) Any registered taxable person, who has furnished the details under sub-section (2) for any tax period, shall, upon discovery of any error therein relating to input tax credit availed of by him or tax paid by the supplier but remaining unmatched under section 38, rectify such error in the tax period during which such error is noticed and shall pay the tax and interest, if any, in case there was a short payment of tax on account of such error, in the return to be furnished for such tax period:

Provided that no rectification of error in respect of inward supply or a debit note received by him shall be allowed after filing of the return under section 36 for the month of September following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier:

Provided further that no rectification of error in respect of a credit note received by him shall be allowed after filing of the return under section 36 for the month of November following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier.

## **36. Returns**

(1) Every registered taxable person shall, for every tax period, furnish a return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within twenty days after the end of such tax period:

Provided that a registered taxable person paying tax under the provisions of section 8 of this Act shall furnish a return for each quarter, electronically, in such form and in such manner as may be prescribed, within eighteen days after the end of such quarter:

Provided further that a registered taxable person shall not be allowed to furnish return for a tax period if return for any previous tax period has not been furnished by him.

(2) Every taxable person, who is required to furnish a return under sub-section (1), shall pay to the credit of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(3) A return furnished under sub-section (1) by a taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.

(4) Every registered taxable person shall furnish a return for every tax period under in sub-section (1), whether or not any supplies of goods and/or services have been effected during such tax period.

(5) Every person required to deduct tax at source shall furnish a return, electronically, in such form and in such manner as may be prescribed, for the month in which such deductions have been made along with the payment of tax so deducted, within ten days after the end of such month.

(6) If any taxable person after furnishing a return under sub-section (1) discovers any omission or incorrect particulars therein, other than as a result of audit, inspection or enforcement activity by the tax authorities, he shall

rectify such omission or incorrect particulars in the return to be filed for the month or quarter, as the case may be, during which such omission or incorrect particulars are noticed, subject to payment of interest, where applicable and as specified in the Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for filing of return for the month of November or any earlier month mentioned in section 34 or 35 or second quarter, as the case may be, following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier.

### **37. Claim of input tax credit and provisional acceptance thereof**

(1) Every taxable person may claim the input tax credit in the return furnished under section 36.

(2) On filing of the return, the claim of input tax credit under sub-section (1) shall be provisionally allowed and credited to the input tax credit ledger of such taxable person.

[Note. States of Karnataka and Tamil Nadu strongly felt that credit of ITC should not be allowed on provisional basis in the event of short payment of tax. However, States of Bihar, Madhya Pradesh, Delhi and Maharashtra felt that credit of ITC should be allowed provisionally even if there was a short payment of tax].

### **38. Matching of input tax credit claimed by the recipient and tax paid by the Supplier**

(1) After expiry of the due date for furnishing of return for a tax period, the input tax credit claimed by a taxable person and credited to his input tax credit ledger in respect of each inward supply and/or debit note received by him shall be verified to check if there is any duplication of claims and shall be matched with the corresponding outward supply and/or debit note declared by the supplier in his valid return for the same or any previous tax period.

(2) The input tax credit claimed by a taxable person in respect of goods imported by him shall be matched with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on such goods.

(3) Where the input tax credit claimed by a taxable person in his return in respect of inward supply and/or debit note received matches with the tax paid on the corresponding outward supply and/or debit note declared by the supplier in his valid return, or the additional duty of customs paid by him in case of imported goods, the claim shall be deemed to have been finally accepted and such acceptance shall be communicated to the taxable person claiming the input tax credit:

Provided that no claim for input tax credit shall be deemed to have been finally accepted if the goods and/or services are not eligible for such credit under sub-section (9) of section 18.

(4) After the claim for input tax credit has been accepted under sub-section (3), the taxable person making the outward supply shall not be allowed to reduce the amount of tax payable in respect of such supply except where the taxable person issues a credit note for such supply.

(5) In case the input tax credit claimed by a taxable person in respect of a supply is in excess of the tax paid by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be notified to both such taxable persons in the manner prescribed.

### **39. Reversal of input tax credit allowed provisionally for a supply**

(1) Where the input tax credit provisionally allowed under sub-section (2) of section 37 is found, upon verification under sub-section (1) of section 38, to be a duplication of claims, the excess credit so claimed shall be reduced in the input tax credit ledger of the taxable person during the month in which the verification is carried out.



(2) Where the taxable person making the outward supply does not rectify the discrepancy communicated under sub-section (5) of section 38 in his valid return for the tax period succeeding the period in which the input tax credit was claimed by the recipient, the input tax credit provisionally allowed earlier shall stand reduced to the extent of discrepancy in the input tax credit ledger of the recipient.

(3) Where input tax credit is reduced under sub-section (1) on account of duplication of claims or under sub-section (2) on account of failure to rectify the discrepancy, the taxable person claiming the input tax credit shall be informed in the manner prescribed.

(4) On being informed, the taxable person shall pay an amount equal to the input tax credit reduced along with applicable interest in the return for the tax period in which the reduction is communicated under sub-section (3).

#### **40. Matching of credit note issued by a supplier and reduction in input tax credit by the recipient**

(1) After expiry of the due date for furnishing of return for a tax period, the reduction of tax liability in respect of outward supplies by a taxable person on account of inclusion of a credit note in the details furnished under sub-section (1) of section 34 shall be verified to check if there is any duplication of claims and matched with the reduction in input tax credit claimed by the recipient of such supplies in his valid return for the same or any previous tax period.

(2) Where the reduction of tax liability in respect of outward supplies by a taxable person matches with the reduction in input tax credit claimed by the recipient, such reduction in the tax liability shall be deemed to have been finally accepted and such acceptance shall be communicated to the supplier.

(3) Where the reduction of tax liability in respect of outward supplies by a taxable person is in excess of the reduction in the input tax credit claimed by

the recipient in his valid return or the corresponding credit note is not declared by the recipient under subsection (1) of section 35, the discrepancy shall be notified to both such taxable persons in the manner prescribed.

#### **41. Reversal of reduction in tax liability**

(1) Where any reduction in output tax liability is found, upon verification under subsection (1) of section 40, to be on account of duplication of claims, the tax liability of the supplier shall be enhanced to the extent of such duplicate claim during the month in which the verification is carried out.

(2) Where a taxable person, on being notified under sub-section (3) of section 40 in respect of his inward supplies, does not rectify the discrepancy and reduce his input tax credit claim in his valid return, to be furnished within the due date, for the tax period in which the discrepancy was notified, the tax liability of the supplier shall be enhanced to the extent of the discrepancy.

(3) Where the tax liability of the supplier is enhanced under sub-section (1) on account of duplication of claims or under sub-section (2) for failure of the recipient to rectify the discrepancy, the supplier shall be informed in the manner prescribed.

(4) On being informed, the supplier shall pay an amount equal to the tax liability enhanced along with applicable interest in the return for the tax period in which the enhancement is communicated under sub-section (3).

#### **42. Reclaim of input tax credit and reduction in tax liability after its reversal**

(1) A taxable person shall be eligible to reclaim the input tax credit reversed under section 39 only after the concerned supplier has furnished the details of the invoice and/or debit note in his valid return:

Provided that where the concerned supplier has not furnished the details of the invoice and/or debit note in his valid return, the input tax credit so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest at such rate as may be specified in the same tax period.

(2) A taxable person shall be eligible to reclaim the reduction in tax liability reversed under section 41 only after the concerned recipient has furnished the details of the credit note in his valid return:

Provided that where the concerned recipient has not furnished the details of the credit note in his valid return, the reduction in tax liability so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest at such rate as may be specified in the same tax period.

(3) After successful reclaim under sub-section (1) and (2), the interest paid by the taxable person as per sub-section (4) of section 39 and sub-section (4) of section 41 shall be refunded by crediting to the corresponding head in the cash ledger of the such taxable person:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the taxable person.

(4) No reclaim under sub-section (1) and (2) shall be allowed after the due date for filing of the return for the tax period of September following the end of the financial year or the date of filing of relevant annual return, whichever is earlier.

### **43. Annual return**

(1) Every registered taxable person, other than a casual or non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and in such manner as may be prescribed on or before the thirty first day of December following the end of such financial year.

(2) Every taxable person who is required to get his accounts audited under subsection (4) of section 32 shall furnish, electronically, the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the returns furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed.

#### **44. Final return**

Every registered taxable person who applies for cancellation of registration shall furnish a final return along with the application for cancellation of registration in such form and in such manner as may be prescribed.

#### **45. Levy of late fee**

Any registered taxable person who fails to furnish the details of outward or inward supplies or return required under this Act by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of rupees five thousand.

#### **46. Submission of returns through Tax Return Preparers**

(1) A registered taxable person may, in the manner prescribed, authorise an approved Tax Return Preparer to furnish the details of outward supplies under section 34, the details of inward supplies under section 35 and the return under section 36, 43 or section 44, as the case may be, and such other tasks as are prescribed in the rules.

(2) The appropriate Government may, by rules, prescribe the manner of approval of Tax Return Preparers, their eligibility conditions, duties and obligations, manner of removal and such other conditions as may be relevant for their functioning as a Tax Return Preparer.

(3) Notwithstanding anything contained in sub-section (1), the responsibility for correctness of any particulars furnished in the return and other details filed

by the Tax Return Preparer shall continue to rest with the registered taxable person on whose behalf such return and details are filed.

## **PART-X**

### **PAYMENT OF TAX**

#### **47. Payment of tax, penalty, interest and other amounts**

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by any of the prescribed modes shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(3) The tax, interest, penalty, fee or any other amount payable under the provisions of the Act or the rules made there under shall be paid by debiting the electronic cash or credit ledger in such manner and subject to such conditions and limitations and within such time as may be prescribed.

(4) After fully utilizing the balance in the electronic [cash and] credit ledgers under this Act, the balance available in the credit ledger under IGST Act may be utilized to pay the tax dues under this Act.

[(4B) Subject to the conditions and limitations specified under sub-section (7) of section 18, the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the Rules made thereunder shall belong to the taxable person. Such balance shall represent the amount not due to the appropriate government and not be construed as a part of the consolidated fund of the State/India.]

(5) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic register as may be prescribed.

(6) Where the amount available in the electronic cash or the credit ledger falls short of the aggregate of tax, interest, penalty, fee or any other amount due, the said amount shall be liable to be debited in the following order:

(a) interest liability related to returns of previous tax periods;

(b) tax liability related to returns of previous tax periods;

(c) tax liability of the current tax period; and

(d) any other amount payable under the Act including the demand determined under section 20.

(7) A taxable person, after fully discharging his liability under this Act, may utilize the balance or any part thereof available in his electronic credit ledger under sub-section (2) for discharging his tax dues under the IGST Act in the manner prescribed.

(8) Where input tax credit availed of under the CGST Act is utilised for payment of tax dues under the IGST Act as per sub-section (7) above, the Central Government shall transfer to the IGST account, in the manner prescribed, an amount equal to the credit so utilised.

**Note. CGST Act**

(8) Where input tax credit availed of under the SGST Act is utilised for payment of tax dues under the IGST Act as per sub-section (7) above, the State Government shall pay to the Central Government, in the manner prescribed, an amount equal to the credit so utilised.

**Note. SGST Act**

(9) On an application filed by a taxable person, the [Commissioner/Chief Commissioner] may, for reasons to be recorded in writing, extend the time for

payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twelve, subject to payment of interest under section 21 with such restrictions and conditions as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

#### **48. Tax deduction at source**

(1) Notwithstanding anything contained to the contrary in this Act, the Central or a State Government may mandate, -

(a) a department of the Central or State Government, or

(b) Local authority,

(c) Governmental agencies, or

(d) such category of entities as may be notified, by the Central or a State Government on the recommendations of the Council,

[hereinafter referred to in this section as the deductor], to deduct tax at the rate of one percent from the payment made or credited to the supplier [hereinafter referred to in this section as the deductee] of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees ten lakhs.

Explanation – For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the tax indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the credit of the appropriate Government by the deductor within ten days after the end of the month in which such deduction is made, in the manner prescribed.

(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf.

(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the appropriate Government, the deductor shall be liable to pay, by way of a late fee, a sum of rupees one hundred per day from the specified period until the failure is rectified:

Provided that the amount of fee payable under this sub-section shall not exceed rupees five thousand.

(5) The deductee shall claim credit, in his cash ledger, of the tax deducted and reflected in the return of the deductor filed under sub-section (7), in the manner prescribed.

(6) Every deductor responsible for making deduction of tax under this section shall obtain a registration within the time specified and in the manner prescribed:

Provided that where the deductor is already registered under this Act, no separate registration is required.

(7) Every deductor shall, within the period specified, furnish a return in the form and manner prescribed.

(8) Any deductor who fails to comply with the requirement under sub-section (6) and (7) shall be liable to pay a late fee of rupees one hundred per day from the day on which such requirement arose until the failure is rectified:



Provided that the amount of late fee payable under this sub-section shall not exceed rupees five thousand.

(9) If any deductor fails to pay to the credit of the appropriate Government the amount deducted as tax under sub-section (1), he shall be liable to pay interest in accordance with the provisions of section 21 of the Act, in addition to the amount of tax deducted.

(10) Recovery of the amount in default under this section shall be made in the manner specified in section 20 of this Act.

(11) Refund to the deductor, arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 22 of this Act.

## **PART – XI**

### **ASSESSMENT AND AUDIT**

#### **49. Self-Assessment**

Every registered taxable person shall himself assess the taxes payable under this Act and furnish a return for each tax period as specified under section 36.

#### **50. Scrutiny of returns**

(1) The proper officer may scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return in such manner as may be prescribed.

(2) The proper officer shall inform the taxable person of the discrepancies noticed, if any, after such scrutiny in such manner as may be prescribed and seek his explanation

thereto.

(3) In case the explanation is found acceptable, the taxable person shall be informed accordingly and no further action shall be taken in this regard.

(4) In case no explanation is furnished or the explanation furnished is not found satisfactory or the taxable person fails to take the corrective measure after accepting the discrepancies, the proper officer may initiate appropriate action including those under section 54, 55 or section 68, or proceed to determine the tax and other dues under subsection (6) of section 20A or under sub-section (6) of section 20B of this Act.

### **51. Assessment of non-filers of returns**

(1) Where a registered taxable person fails to furnish his periodical or final return even after issue of a notice to do so, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order.

(2) Where the taxable person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the proper officer may withdraw the said assessment order.

### **52. Assessment of unregistered persons**

Where a taxable person fails to obtain registration even though liable to do so, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order:

Provided that no such assessment order shall be passed without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

### **53. Summary assessment in certain special cases**

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with previous permission of [Additional/Joint Commissioner], proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue:

Provided that no such assessment order shall be issued without complying with the principles of natural justice:

Provided further that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due under this section.

### **54. Audit**

(1) The [Commissioner of CGST/Commissioner of SGST] or any officer authorised by him, by way of a general or a specific order, may undertake audit of the business transactions of any taxable person for such period, at such frequency and in such manner as may be prescribed.

(2) The tax authorities referred to in sub-section (1) may conduct audit at the place of business of the taxable person and/or in their office.

(3) The taxable person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, prior to the conduct of audit in the manner prescribed.

(4) The audit under sub-section (1) shall be carried out in a transparent manner and completed within a period of three months from the date of commencement of audit:

Provided that where the [Commissioner] is satisfied that audit in respect of such taxable person cannot be completed within three months from the date of commencement of audit, he may, upon giving the taxable person an opportunity of being heard and for the reasons to be recorded in writing, extend the period for another three months.

Explanation. For the purposes of this sub-section, 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the taxable person or the actual institution of audit at the place of business, whichever is earlier.

(5) During the course of audit, the authorised officer may require the taxable person,

(i) to afford him the necessary facility to verify the books of account or other documents as he may require and which may be available at such place,

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall without delay notify the taxable person, whose records are audited, of the findings, the taxable person's rights and obligations and the reasons for the findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit erroneously availed, the proper officer may initiate action under section 20 of the Act.

## **55. Special audit**

(1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/Assistant Commissioner] having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the [Commissioner], direct such taxable person by notice in writing to get his records including books of account examined and audited by a chartered

accountant or a cost accountant as may be nominated by the [Commissioner] in this behalf.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said [Deputy/Assistant Commissioner] mentioning therein such other particulars as may be specified:

Provided that the proper officer may, on an application made to him in this behalf by the taxable person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by another ninety days.

(3) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the taxable person have been audited under any other provision of this Act or any other law for the time being in force or otherwise.

(4) The taxable person shall be given an opportunity of being heard in respect of any material gathered on the basis of audit under sub-section (1) which is proposed to be used in any proceedings under this Act or rules made there under.

(5) The expenses of, and incidental to, the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the [Commissioner] and that such determination shall be final.

## **CHAPTER – XII**

### **OFFENCES AND PENALTIES**

#### **56. Offences and penalties**

(1) Where a taxable person who -

(i) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(v) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;

(vi) obtains fraudulently refund under this Act;

(vii) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(viii) is liable to be registered under this Act but fails to obtain registration;

(ix) furnishes any false information with regard to particulars specified as mandatory, either at the time of applying for registration, or subsequently;

(x) obstructs or prevents any officer in discharge of his duties under the Act;

(xi) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xii) suppresses his turnover leading to evasion of tax under this Act;

(xiii) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xiv) fails to furnish information and/or documents called for by a CGST/SGST officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information and/or documents during any proceedings under this Act;

(xv) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

(xvi) issues any invoice or document by using the identification number of another taxable person;

(xvii) tampers with, or destroys any material evidence;

(xviii) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

shall be liable to a penalty of rupees ten thousand or an amount equivalent to the tax evaded or input tax credit availed of or passed on irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.

(2) Any registered taxable person who repeatedly makes short payment of tax shall be liable to a penalty of rupees ten thousand or ten percent of the tax short paid, whichever is higher;

Explanation.- For the purposes of this sub-section, a taxable person shall be deemed to have made short payments 'repeatedly', if there were short payments in three returns during any six consecutive tax periods;

(3) Any person who

(a) aids or abets any of the offences specified in clauses (i) to (xviii) of sub-section (1) above;

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the CGST/SGST officer, when issued with a summon for appearance to give evidence or produce a document in an enquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account;

shall be liable to a penalty which may extend to rupees twenty five thousand.

### **57. General penalty**

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a

penalty which may extend to rupees twenty five thousand.

### **58. General disciplines related to penalty**

(1) No tax authority shall impose substantial penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

Explanation. For the purpose of this sub-section –

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than rupees five thousand.



(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on record.

(2) The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any taxable person without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The tax authority shall ensure that when a penalty is imposed in an order for a breach of the laws, regulations or procedural requirements, an explanation is provided therein to the persons upon whom the penalty is imposed, specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

(5) When a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when establishing a penalty for that person.

(6) The provisions of this section will not apply in such cases where the penalty prescribed under the Act is either a fixed sum or expressed as a fixed percentage.

## **59. Detention of goods and levy of penalty**

(1) Where any person –

(i) transports any goods or stores such goods while they are in transit in violation of the provisions of this Act; or

(ii) stores or keeps in stock goods or supplies goods which have not been accounted for in the books or records maintained by him in the manner

required by this Act; all such goods shall be liable to detention, in the manner prescribed, by the proper officer and shall be released only after payment of applicable tax, interest and penalty leviable thereon or upon furnishing a security, in such form as may be prescribed, equivalent to the amount of the applicable tax, interest and penalty.

(2) No tax, interest or penalty shall be determined under sub-section (1) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

## **60. Confiscation of goods and levy of penalty**

(1) If any person –

- (i) supplies any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax; or
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for the registration; or
- (iv) contravenes any of the provisions of this Act or rules made thereunder with intent to evade payment of tax, then, all such goods shall be liable to confiscation and the person shall be liable to penalty under section 56 of the Act.

(2) Whenever confiscation of any goods is authorized by this Act, the CGST/SGST officer adjudging it shall give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that such fine shall not exceed the market price of the goods confiscated, less the tax chargeable thereon.

(3) Where any fine in lieu of confiscation of goods is imposed under sub-section (2), the owner of such goods or the person referred to in sub-section

(1), shall, in addition, be liable to any tax and charges payable in respect of such goods.

(4) No order of confiscation of goods and/or imposition of penalty shall be issued without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(5) Where any goods are confiscated under this Act, the title of such goods shall thereupon vest in the appropriate Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every Officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

#### **61. Confiscation of conveyances**

Any conveyance used as a means of transport for carriage of taxable goods without the cover of documents as may be prescribed in this behalf shall be liable to confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance:

Provided that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

#### **62. Confiscation or penalty not to interfere with other punishments**

No confiscation made or penalty imposed under the provisions of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

### **63. Prosecution**

(1) Whoever commits any of the following offences, namely—

(a) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(b) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder;

(c) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(d) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(e) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;

(f) fraudulently obtains refund of any CGST/SGST;

(g) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(h) who obstructs or prevents any officer in the discharge of his duties under this Act;

(i) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;

(j) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) to (k) of this section;

shall be punishable –

(i) in cases where the amount of tax evaded exceeds two hundred and fifty lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded exceeds fifty lakh rupees but does not exceed two hundred and fifty lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded exceeds twenty five lakh rupees but does not exceed fifty lakh rupees, with imprisonment for a term which may extend to one year and with fine.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the imprisonment referred to in sub-sections (1) and (2) shall not be for a term of less than six months.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (4) shall be non-cognizable and bailable.

(4) The offences relating to taxable goods and/or services where the amount of tax evaded exceeds two hundred and fifty lakh rupees shall be cognizable and non-bailable.

(5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority.

#### **64. Cognizance of offences**

No Court shall take cognizance of any offence punishable except with the previous sanction of the [competent authority], and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

#### **65. Presumption of culpable mental state**

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. — In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

#### **66. Relevancy of statements under certain circumstances**

(1) A statement made and signed by a person before any gazetted officer of CGST/IGST/SGST during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

## **67. Offences by Companies and certain other persons**

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee, as the case may be, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall apply mutatis mutandis to such persons.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

## **PART - XIII**

### **INSPECTION, SEARCH, SEIZURE AND ARREST**

#### **68. Power of inspection, search and seizure**

(1) Where the CGST/SGST officer, not below the rank of Joint Commissioner, has reasons to believe that -

(a) a taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorize in writing any other officer of CGST/SGST to inspect any places of business of the taxable person or the persons engaged in the business of



transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the CGST/SGST officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other CGST/SGST officer to search and seize or may himself search and seize such goods, documents or books or things:

Provided that the goods, documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(3) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, box or receptacle is denied.

(4) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of CGST/SGST.

(5) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within sixty days of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of sixty days may, on sufficient cause being shown, be extended by the [competent authority] for a further period not exceeding sixty days at a time subject to a maximum of six months.

(6) The Central or a State Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with

the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central or a State Government may determine.

(7) Where any goods, being goods specified under sub-section (5), have been seized by a proper officer under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed in this behalf.

(8) The provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words [Principal Commissioner/Commissioner of CGST/Commissioner of SGST] were substituted.

## **69. Power to arrest**

(1) If the [Commissioner of CGST or the Commissioner of SGST] has reason to believe that any person has committed an offence punishable under clause (i) or (ii) of sub-section (1) or under sub-section (2) of section 63, he may, by order, authorise any CGST/SGST officer to arrest such person.

(2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty four hours.

(3) In the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner of CGST/SGST, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.

(4) All arrests made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

## **70. Power to summon persons to give evidence and produce documents in inquiries under this Act**

(1) Any [CGST/SGST officer], duly authorised by the competent authority in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

## **71. Access to business premises**

(1) Any CGST/SGST officer authorized by the [Additional/Joint Commissioner of CGST or SGST] shall have access to any business premises to inspect books

of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require and which may be available at such premises, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of premises referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the Additional/Joint Commissioner of CGST or SGST or the Comptroller and Auditor General of India or a cost accountant or chartered accountant nominated under section 55 of the Act, as the case may be,-

(i) the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer as may be prescribed;

(ii) trial balance or its equivalent;

(iii) Statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and

(v) any other relevant record, for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, as the case may be, within a reasonable time, not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.

## **72. Officers required to assist CGST/SGST officers**

(1) All officers of Police, Customs and those of State/Central Government engaged in collection of goods and services tax and all officers of State/Central

Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the CGST/SGST Officers in the execution of this Act.

(2) The [Board/Commissioner of SGST] may, by notification, empower and require any other class of officers to assist the CGST/SGST Officers in the execution of this Act.

## **PART – XIV MISCELLANEOUS**

### **73. GST compliance rating**

(1) Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act.

(2) The GST compliance rating score shall be determined on the basis of parameters to be prescribed in this behalf.

(3) The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain in the manner prescribed.

### **74. Inspection of goods in movement**

(1) With a view to improving tax compliance, the Central or a State Government may, by notification, require the person in charge of a goods vehicle or a boat, ship or similar vessel to carry with him such documents and in respect of such goods as may be notified in this behalf.

(2) Where any vehicle referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said vehicle to produce such documents for verification and the said person shall be liable to produce the documents.

## **75. Obligation to furnish information return**

(1) Any person, being—

(a) a registered taxable person; or

(b) a local authority or other public body or association; or

(c) any authority of the State Government responsible for the collection of value added tax or sales tax; or

(d) an income tax authority appointed under the provisions of the Income-tax Act, 1961;

or

(e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or

(f) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or

(g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or

(h) a Registrar within the meaning of the Companies Act, 2013; or

(i) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or

(j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or

(k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or

(l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or

(m) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property, under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form (including electronic form) and manner, to such authority or agency as may be prescribed.

(2) Where the prescribed authority considers that the information submitted in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed authority may allow and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such information return shall be treated as not submitted and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the prescribed authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

## **76. Penalty for failure to furnish information return**

If a person who is required to furnish an information return under section 75 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

## **77. Presumption that the incidence of tax has been passed on to the buyer**

Every person who has paid the tax on goods and/or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the buyer of such goods and/or services.

(1) There shall be established by the Central or a State Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

(a) the amount of tax referred to in sub-section (3) of section 22; and

(b) any income from investment of the amount credited to the Fund and any other monies received by the Central or a State Government for the purposes of this Fund.

## **79. Powers of CGST/SGST officers**

A CGST/SGST officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other CGST/SGST officer who is subordinate to him.



## **80. Test purchase of goods and/or services**

The [Commissioner] of CGST/SGST or an officer authorized by him may cause purchase of any goods and/or services by any person authorized by him from the business premises of any taxable person, to check issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount paid towards the goods after cancelling any tax invoice or bill of supply issued.

## **81. Drawal of samples**

The [Commissioner] of CGST/SGST or an officer authorized by him may take samples of goods from the possession of any taxable persons, where he considers it necessary, and provide a receipt for any samples so taken.

## **PART – XV APPEALS AND REVIEW**

## **82. First Appeals to First Appellate Authority—**

(1) Any person aggrieved by any decision or order passed under this Act by an adjudicating authority<sup>4,5</sup> may appeal to the First Appellate Authority.

(2) The Commissioner of GST may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any GST Officer subordinate to him to apply to the first appellate authority for

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<sup>4</sup> To be defined by sub-committee I in the definitions section

<sup>5</sup> As informed by CCT Gujarat (on 5th August), after the last full committee meeting on 22nd – 23rd

July, some states (Karnataka, Kerala etc.) want to retain the reassessment / revision model. Subject

to a final decision on this issue, the words adjudicating authority in this provision would be defined

appropriately.

the determination of such points arising out of the said decision or order as may be specified by the Commissioner of GST in his order<sup>6</sup>

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the first appellate authority, such application shall be dealt with by the first appellate authority as if it were an appeal made against the decision or order of the GST Officer and the provisions of this Act relating to appeals shall, so far as may be, apply to such application.

(4) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the other party preferring the appeal.

PROVIDED that the first appellate authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

(6) No appeal shall be filed under sub-section (1) unless the appellant has deposited an amount of ten percent of the amount in dispute in pursuance of the decision or order sought to be appealed against.

Explanation: For the purposes of this sub-section, the expression "amount in dispute" shall include –

- i. amount determined under section -----(*the section relating to demands*)
- ii. amount of erroneous or irregular input tax credit
- iii. amount payable under rule-----of the GST Credit Rules 201...
- iv. amount of penalty imposed

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<sup>6</sup> Depending on the decision regarding the issue in footnote 2 above, this review provision may have  
to be deleted / amended/ supplemented with revision.

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the first appellate authority for ordering a higher amount of predeposit in a case which is considered by the Commissioner of GST to be a "serious case".

Explanation :- For the purpose of this proviso, the expression "serious case" shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

(7) The First Appellate Authority shall give an opportunity to the appellant to be heard, if he so desires.

(8) The First Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(9) The First Appellate Authority may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the First Appellate Authority is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

(10) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against, or may (for reasons to be recorded) refer the case back to the adjudicating authority with such directions as the First Appellate Authority may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

PROVIDED that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

PROVIDE FURTHER that where the First Appellate Authority is of the opinion that any tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay such tax shall be passed unless the appellant is given notice within the time limit specified in section -----<sup>7</sup> to show cause against the proposed order.

(11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(12) The First Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year<sup>8</sup> from the date on which it is filed.

(13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.

(14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST (or the authority designated by him in this behalf) and the jurisdictional Commissioner of SGST (or the authority designated by him in this behalf)<sup>9</sup>.

### **83. Constitution of the National Appellate Tribunal**

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<sup>7</sup> From sub-committee I/II

<sup>8</sup> There was a view that it is preferable to put fixed time limit here in line with the fixed time limits for the initial adjudication adopted by the sub-committee I in section 20 of their draft.

<sup>9</sup> The reference to the phrase "designated authority" was added in view of the apprehensions expressed by the states about the infeasibility of the Commissioner receiving a copy of each appellate order, considering that states have only one Commissioner.

(1) The Central Government shall on the recommendation of the GST Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the appellate tribunal)<sup>10</sup>.

(2) The Appellate Tribunal shall be headed by a National President.

(3) The Appellate Tribunal shall have one branch at every place where a High Court has a Bench, which shall be called as the State GST Tribunal.

(4) Every State GST Tribunal will be headed by a State President.

(5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

**This sub-committee has therefore kept only the basic minimum provisions in this draft so that the other questions can be decided at the appropriate levels separately.**

(6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members shall be as may be prescribed.

(7) The powers and functions of the National President and the State Presidents shall be as may be prescribed

(8) On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

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<sup>10</sup> While finalizing this section and the related statutory provisions regarding appointment etc., the federal constitutional independence of the Centre and the States will need to be kept in mind.

## **84. Second Appeals to the Appellate Tribunal**

(1) Any person aggrieved by an order passed by the first appellate authority under sub-section (10) of section 82 may appeal to the Appellate Tribunal against such order.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax involved or the difference in tax involved or the amount of fine or penalty determined by such order, does not exceed two lakh rupees.

(3) The Board\*\* (*\*\*or the corresponding body in the states*) may by order constitute such Committees as may be necessary for the purposes of filing appeals against the orders of the first Appellate Authority. Every such Committee shall consist of two designated officers<sup>11</sup> of GST.

(4) The Committee of designated officers of GST may, if it is of the opinion that an order passed by the first Appellate Authority under sub-section (10) of section 82, is not legal or proper, direct any GST Officer authorized by it in this behalf to apply to the Appellate Tribunal for the determination of such points arising out of the order passed by the first Appellate Authority as may be specified by the Committee in its order.

PROVIDED that where the Committee of designated officers of GST differs in its opinion, it shall be deemed that the Committee has formed the opinion that the order under review is not legal or proper.

(5) Where in pursuance of an order under sub-section (4) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the first Appellate Authority and the provisions of this Act shall, so far as may be, apply to such application, as they apply in relation to appeals filed under sub-section (1).

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<sup>11</sup> For reasons of difficulties of the States as mentioned earlier

(6) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the other party preferring the appeal.

(7) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (6).

(8) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section (6) or sub-section (7) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.

(9) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee. PROVIDED that no such fee shall be payable in the case of an appeal referred to in subsection (5) or a memorandum of cross-objections referred to in sub-section (7).

(10)(a) No appeal shall be filed under sub-section (1) unless the appellant has deposited an amount of ten percent of the amount in dispute in pursuance of the decision or order sought to be appealed against (in addition to the amounts deposited under sub-section (6) of section 82).

Explanation: For the purposes of this sub-section, the expression "amount in dispute" shall include –

- i. amount determined under section -----(*the section relating to demands*).
- ii. amount of erroneous or irregular input tax credit
- iii. amount payable under rule-----of the GST Credit Rules 201...

iv. amount of penalty imposed

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the appellate tribunal for ordering a higher amount of pre-deposit in a case which is considered by the Committee of designated officers of GST to be a "serious case".

Explanation :- For the purpose of this proviso, the expression "serious case" shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Committee of designated officers of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

(b) The provisions of clause (a) shall also apply mutatis mutandis to cross objections filed under sub-section (7).

(11) Every application made before the Appellate Tribunal, —

(a) in an appeal for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a prescribed fee :

PROVIDED that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of GST under this sub-section.

## **85. Orders of Appellate Tribunal**

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the First Appellate Authority who passed the decision or order appealed against, or to the original adjudicating authority, with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.



(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any mistake apparent from the record, if such mistake is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order:

PROVIDED that no amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(4) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate Authority against whose order the appeal was filed, the appellant (or where the appeal was filed by the Department, then the respondent), the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.

(6) Save as provided in section 89 or section 90, orders passed by the Appellate Tribunal on an appeal shall be final.

## **86. Procedure of Appellate Tribunal**

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one Member (Judicial), one Member (Technical - CGST) and one Member (Technical - SGST).

(3) The National President or a State President, or any other member of the Appellate Tribunal authorized in this behalf by the National President or a State President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member, where in any disputed case, the tax involved or the difference in tax involved or the amount of fine or penalty involved, does not exceed fifty lakh rupees.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the National President or the State President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

a) discovery and inspection;

- b) enforcing the attendance of any person and examining him on oath;
- c) compelling the production of books of account and other documents; and
- d) Issuing commissions.

(7) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

### **87. Interest on delayed refund of pre-deposit**

Where an amount deposited by the appellant under sub-section (6) of section 82 or under sub-section (10) of section 84 is required to be refunded consequent upon the order of first Appellate Authority or of the Appellate Tribunal, as the case may be, there shall be paid to the appellant interest at such rate, not below five percent per annum and not exceeding thirty-six percent per annum, as is for the time being fixed by the Central Government (or the state government), on the recommendation of the GST Council, by notification in the Official Gazette, on such amount from the date of payment of the amount till the date of refund of such amount.

### **88. Appearance by authorised representative**

(1) Any person who is entitled or required to appear before a GST Officer or the Appellate Tribunal in connection with any proceedings under the Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

- (a) his relative or regular employee; or

(b) any legal practitioner who is entitled to practise in any civil court in India;  
or

(c) any person who has acquired such qualifications as the Central  
Government

(or the state government) may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was serving in the indirect tax departments of the Government of India or of any State Government, and has retired or resigned from such service after having served for not less than three years as a Gazetted officer in that department shall be entitled to appear as an authorised representative in any proceedings before a GST Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person, —

a) who has been dismissed or removed from government service; or

b) who is convicted of an offence connected with any proceeding under this Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act 1994 (25 of 2014) or under any of the Acts passed by a state legislature dealing with the imposition of taxes on sale of goods or supply of goods and services, or

c) who has become an insolvent, shall be qualified to represent any person under sub-section (1) --

(i) for all times in the case of a person referred to in clause (a),

(ii) for such time as the Commissioner of GST or the competent authority under the Acts referred to in clause (b) may, by order, determine in the case of a person referred to in clause (b), and

(iii) for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person, —

(a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to

appear before a GST Officer or the Appellate Tribunal as it has in relation to his right to practice as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of misconduct by the prescribed authority in connection with any proceedings under this Act or under any of the Acts referred to in clause (b) of sub-section (4), the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under subsection (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of subsection (5) shall be subject to the following conditions, namely:—

- a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;
- b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and
- c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

### **89. Appeal to the High Court**

(1) The Commissioner of GST or the other party aggrieved by any order passed by the Appellate Tribunal under section 104 may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

(2) Notwithstanding the provisions of sub section (1), no appeal shall lie to High Court against an order passed by the appellate tribunal under section 85 if such order relates, among other things, to:-

- i) a matter where two or more states, or a state and center, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or
- ii) a matter where two or more states, or a state and center, have a difference of views regarding place of supply.

(3) An appeal under sub-section (1) shall be -

- a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of GST or the other party;
- b) accompanied by a prescribed fee ;
- c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(4) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.

(5) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(6) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

PROVIDED that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(7) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(8) The High Court may determine any issue which -

- a) has not been determined by the Appellate Tribunal; or
- b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1) or subsection (6).

(9) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(10) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(11) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(12) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

## **90. Appeal to the Supreme Court**

(1) An appeal shall lie to the Supreme Court from any judgment or order passed by the High Court in an appeal made under section 89, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) An appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal under section 85 where such order is of the nature referred to in sub section (2) of section 89.

## **91. Hearing before Supreme Court**

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of

appeals under section 109 as they apply in the case of appeals from decrees of a High Court :

PROVIDED that nothing in this sub-section shall be deemed to affect the provisions of section 92.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 89 in the case of a judgment of the High Court.

### **92. Sums due to be paid notwithstanding appeal etc.**

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Appellate Tribunal under sub-section (1) of section 85 or an order passed by the High Court under section 89, as the case may be, shall be payable in accordance with the order so passed.

### **93. Exclusion of time taken for copy**

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

### **94. Appeal not to be filed in certain cases**

(1) The Board or the State Government may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the GST officer under the provisions of this Chapter.



(2) Where, in pursuance of the orders or instructions or directions, issued under subsection (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the GST Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

#### **95. Non Appealable decisions and orders:**

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters:-

- a) An order of the Commissioner or other competent authority for transfer of proceeding from one officer to another officer;
- b) An order pertaining to the seizure or retention of books of account, register and other documents; or
- c) An order sanctioning prosecution under the Act.

#### **96. Exclusion of time taken for copy. —**

In computing the period of limitation prescribed for an appeal or application under the Act, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished

with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

## **97. Definitions**

In this Chapter —

“High Court” means, —

- (i) in relation to any State, the High Court for that State;
- (ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;
- (iii) in relation to the Union Territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay;
- (iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

## **PART – XVI ADVANCE RULING**

**98. Definitions.** — In this Chapter, unless the context otherwise requires, -

- (a) “advance ruling” means the determination, by the authority of a question specified in sub-section (2) of section 120 in an application regarding the liability of an applicant to pay tax in relation to the supply of goods or services or both proposed to be undertaken or being undertaken by the applicant;
- (b) “applicant” means any person registered or desirous of obtaining registration under the Act.
- (c) “application” means an application made to the Authority under sub-section (1) of section 120;
- (d) “Authority” means the Authority for Advance Ruling, constituted under section 118 of the Act;

## **99. The Authority for Advance Ruling-**

(1) The Authority shall have as many benches as may be prescribed.

(2) Each bench shall comprise one member CGST and one member SGST to be appointed respectively by the Central Government and the State Government.

(3) The qualifications, eligibility conditions, method and the process of appointment of the members shall be as may be prescribed.

**100. Vacancies, etc., not to invalidate proceedings –**

No proceeding before the Authority (including the pronouncement of advance ruling) under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

**101. Application for advance ruling. –**

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of,

(a) classification of any goods or services or both under the Act;

(b) applicability of a notification issued under provisions of the Act having a bearing on the rate of tax;

(c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of the Act;

(d) notifications issued, in respect of tax under the Act;

(e) admissibility of input tax credit of tax paid or deemed to have been paid;

(f) determination of the liability to pay tax on any goods or services or both under the Act;

(g) whether applicant is required to be registered under the Act;

(h) whether any particular thing done by applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

(3) The application shall be accompanied by a fee as may be prescribed.

**102. Procedure on receipt of application.-**

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the officers as may be prescribed and, if necessary, call upon him to furnish the relevant records:

PROVIDED that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said prescribed officers.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or authorized representative of the applicant as well as the authorized representative of the prescribed officers, by order, either admit or reject the application:

PROVIDED that the Authority shall not admit the application where the question raised in the application is, -

(a) already pending in the applicant's case before any Appellate authority, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the Appellate Tribunal or any Court;

(c) the same as in a matter already pending in any proceedings in the applicant's case under any of the provision of the Act;

(d) the same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable.

PROVIDE FURTHER that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

PROVIDED also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the prescribed officers.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or authorized representative of the applicant as well as to the authorized representative of the prescribed officers, pronounce its advance ruling on the question specified in the application.

**Explanation.** - For the purposes of this sub-section, "authorized representative" shall have the meaning assigned to it in sub-section

.....

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point of difference which shall be referred to another member of the Authority and the final decision shall be as per the majority.

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the prescribed officers, as soon as may be, after such pronouncement.

**103. Applicability of advance ruling. –**

(1) The advance ruling pronounced by the Authority under this chapter shall be binding only -

(a) on the applicant who had sought it in respect of any matter referred to in subsection

(2) of Section 101 of the application for advance ruling;

(b) on the jurisdictional tax authorities in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

**104. Advance ruling to be void in certain circumstances.-**

(1) Where the Authority finds that advance ruling pronounced by it under sub-section 4 or 5 of section 102 has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of the Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

PROVIDED that no order shall be passed under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the prescribed officers.

**105. Powers of Authority.—**

(1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

**106. Procedure of Authority:—**

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under the Act.

**PART XVII  
SETTLEMENT OF CASES**

*In the full Committee Meeting held on 22nd& 23rd July 2015 at New Delhi, majority of the States were of the view that in the GST regime, settlement provision may not be there as it creates discrimination. Presently, very few States have such provisions (Odisha, UP, Kerala). In the Centre, there is a robust Settlement Commission mechanism*

*After discussion, it was decided in that meeting that for the purpose of drafting the model law, we may not keep the settlement provision. The issue can be revisited later.*

**PART XVIII  
COMPOUNDING OF OFFENCES**

## **107. Compounding of offences.**

(1) Any offence under the Act may, either before or after the institution of prosecution, be compounded by the Competent Authority on payment, by the person accused of the offence to the Central Government or the State Government as the case be, of such compounding amount and in such manner of compounding as may be prescribed:

PROVIDED that nothing contained in this section shall apply to ---

(a) a person who has been allowed to compound once in respect of any of the following offences;

(i) ..... of the CGST Act

(ii) ..... of the SGST Act of the State

(iii).....of the IGST Act

(b) a person who has been allowed to compound once in respect of any offence (other than those in clause (a)) under the Act or under the provisions of any other SGST Act or IGST Act in relation to supplies of value exceeding rupees one crore;

(c) a person who has been accused of committing an offence under the Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of 1985), the Foreign Exchange Management Act, 1999 (42 of 1999) or any other Act;

(d) any other class of persons or offences as may be prescribed.

PROVIDE FURTHER that any compounding allowed under the provision of this section shall not affect the proceedings if any, instituted under any other law.

PROVIDED also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.



(2) The fees for compounding of offences under this section shall be as may be prescribed under the rules to be made under sub-section (1), subject to the minimum fee not being less than rupees ten thousand or fifty per cent of the tax involved, whichever is greater, and the maximum fee not being more than rupees thirty thousand or one hundred and fifty per cent of the tax, whichever is greater.

(3) On payment of such sum as may be determined by the prescribed authority, no further proceedings shall be initiated under the Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

## **PART XVIII**

### **MISCELLANEOUS PROVISIONS**

#### **108. Burden of Proof:-**

If any person claims that he is not liable to pay tax under the Act in respect of any supply of goods or services or both, or that he is eligible for a tax credit under ....., or that he ....., the burden of proving such claim or claims shall lie on him.

#### **109. Power to collect statistics.**

(1) The competent authority, if it considers that for the purposes of the better administration of the Act, it is necessary so to do, may by notification, direct that statistics be collected relating to any matter dealt with, by or in connection with to the Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.

(3) The form in which the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be as may be specified.

**110. Disclosure of information required under section 128:-**

(1) No information of any individual return or part thereof, with respect to any matter given for the purposes of section **128** shall, without the previous consent in writing of the taxpayer or person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular taxpayer and no such information shall be used for the purpose of any proceedings under the provisions of the Act.

(2) Except for the purposes of prosecution under the Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in that section.

(3) If any person required to furnish any information or return under section **128,-**

(a) without reasonable cause fails to furnish such information or return as may by that section be required, or

(b) willfully furnishes or causes to furnish any information or return which he knows to be false, he shall, on conviction, be punished with fine which may extend to one hundred rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of one thousand rupees. 9

(4) If any person engaged in connection with the collection of statistics under section 109 or compilation or computerization thereof wilfully discloses any information or the contents of any return given or made under that section,

otherwise than in execution of his duties under that section or for the purposes of the prosecution of an offence under the Act or under any other Act, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

PROVIDED that, no prosecution shall be instituted under the subsection, except with the previous sanction of the Central Government or State Government.

(5) Nothing in this section shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

**111. Persons discharging functions under the Act shall be deemed to be public**

**servants.**— All persons discharging functions under the Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

**112. Indemnity:**

No legal proceedings shall lie against any goods and services tax officer, for anything which is done or intended to be done in good faith under the Act or the rules.

**113. Disclosure of information by a public servant:-**

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or in any record of any proceedings under the Act shall, save as provided in subsection (3), be treated as confidential;

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall save as aforesaid, be entitled to require any GST officer to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).

(3) Save as provided in sub-section (4), if any GST officer discloses any of the particulars referred to in sub-section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both:

PROVIDED that, no prosecution shall be instituted under this section except with the previous sanction of the Central Government or the State Government, as the case may be.

(4) Nothing contained in this section shall apply to the disclosure of<sup>12</sup>, -

(a) any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code (45 of 1860) or the Prevention of Corruption Act, 1988 (49 of 1988), or the Act, or any other law for the time being in force; or

(b) any such particulars to the Central Government or the State Government or to any person acting in the execution of this Act, for verification of such particulars or for the purpose of carrying out the object of the Act; or

(c) any such particulars when such disclosure is occasioned by the lawful employment under the Act of any process for the service of any notice or the recovery of any demand; or

(d) any such particulars to a Civil Court or Tribunal constituted under any Central law in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of

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<sup>12</sup> This provision needs to be shifted to the chapter relating to offences and penalties being drafted by  
the Sub-Committee II.

any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or

(e) any such particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or

(f) any such particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or

(g) such facts to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or

(h) any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or

(i) any such particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, cost accountant, chartered accountant or company secretary, as the case may be; or

(j) any such particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

(k) any such particulars to an officer of the Central Government or any State Government as may be necessary for the purposes of any other law in force in India; and

(l) any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

**114. Publication of information respecting persons in certain cases.**

(1) If the Competent Authority is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under the Act until the time for presenting an appeal to the first appellate authority under section 101 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation. – In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Competent Authority, circumstances of the case justify it.

**115. Assessment proceedings, etc. not to be invalid on certain grounds.—**

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of the Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings is/are in substance

and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

**116. Bar of Jurisdiction of civil courts.**

(i) Save as provided by section 89 and 90, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act;

**(ii)** ..... *(to see if any specific protections need to be provided to the taxpayer/citizen for being able to approach a civil court for valid reasons)*

**117. Levy of fees.**

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed, which may include a fee for such application also.

**118. Power of Central (or State) Government to make rules:**

(1) The Central Government (or the State Government) may make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may —

1) provide for the date for determination of rate of tax and the place of supply of goods or services or both;

2) having regard to the normal practice in the supply of goods or services, define or specify the kinds of trade discount to be excluded from the value under section----- including the circumstances in which and the conditions subject to which such discount is to be so excluded;

3) provide for determining the value of taxable supplies in the situations mentioned under section----- ;

**4)** provide, subject to such conditions as may be prescribed, for the grant of input tax credit of tax paid on the input supplies of goods or services used in or in relation to the providing of the output taxable supplies of goods or services, and the manner of utilization of such credit.

5) provide for the lapsing of input tax credit lying unutilized, in the circumstances as may be specified in the rules;

6) provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of input tax credit) on taxable person or suspension or revocation of registration of taxable person, for dealing with evasion of tax or misuse of input tax credit;

7) provide, subject to such conditions as may be prescribed, for the carrying forward<sup>10</sup> of the unutilized balances of cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT credit rules) lying with the taxable persons on the date of their switching over to GST;

8) provide for the remission of tax leviable on any taxable supplies, which due to any natural causes are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall



be allowed and the different limit or limits of percentage for different varieties of the same taxable supply or for different areas or for different seasons;

9) specify the persons who shall get themselves registered under section ----- and the time, manner and form in which application for registration shall be made;

10) provide for the manner of verification of application and issue of registration under the Act and the fees, if any, to be charged therefor ;

11) provide for the situations and manner of grant of deemed registration under the Act;

12) provide for the manner of migration, amendment, surrender, revocation, suspension, cancellation of registration under the Act ;

13) provide for the assessment and collection of tax, the authorities by whom functions under the Act are to be discharged, the issue of notices requiring payment, the manner in which tax shall be payable, and the recovery of tax not paid;

14) impose on taxable persons or other persons as may be specified, the duty of furnishing information, maintaining records and filing returns, and may also prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified<sup>13</sup>;

15) provide for the form, manner and frequency of the returns to be furnished and  
the late fee for delayed furnishing of return under relevant section ;

16) provide for charging or payment of interest under the various provisions of the

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<sup>13</sup> This is added for the purposes of transition

Act;

17) provide for the detention or attachment of goods, plant, machinery or material and other movable or immovable properties for the purpose of exacting the tax on taxable supplies in respect of which breaches of the Act or rules made thereunder have been committed and the disposal of things so detained or attached or confiscated;

18) authorise and regulate the composition of offences against, or liabilities incurred under the Act or the rules made thereunder;

19) provide for the amount to be paid for compounding and the manner of compounding of offences under sub-section (----) of section-----;

20) provide for publication, subject to such conditions as may be specified, the names and other particulars of persons found guilty of contravention of any provision of the Act or of any rule made thereunder;

21) provide for the manner of recovery of any amount due to the Central Government (or state government) under section --- ;

22) authorise and regulate the inspection and audit of business premises and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale, supply or transport of goods, and so far as such inspection or search is essential for the proper levy and collection of the tax imposed by the Act, of any other taxable supply of goods or services;

23) specify the form and manner in which application for refund shall be made under section ----- ;

24) provide for the manner in which amounts shall be credited to the Consumer Welfare Fund, their utilization, and the form in which the accounts and records relating to the Fund shall be maintained;

25) specify the forms in which appeals, applications and memoranda of cross objections shall be filed and verified under Chapter----- of the Act;

26) provide for the qualifications and the manner of appointment of the National President, the State President, and the Members of the Appellate Tribunal under section.....of the Act, and other matters related or incidental thereto;

27) provide for the settlement of cases, in accordance with Chapter ----- of this Act;

28) regulate in such manner as the Central Government / State Government thinks fit, the movement of supplies from any part of India to any other part thereof;

29) regulate the removal of taxable supplies of goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a registered person, or a bonded warehouse, or to a market;

30) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed for entry of goods into such warehouses and clearance of goods therefrom;

31) provide for the distinguishing of supply of goods which have been manufactured after registration, of materials which have been imported, and of supply of goods on which tax has been paid, or which are exempt

from tax under this Act, or any other class of goods as may be specified in such rules;

32) require that taxable supplies of specified goods shall not be made except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

33) provide for the grant of a rebate of the tax paid on supply of goods or services which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;

34) provide for rebate of tax paid or payable on the taxable supply of services used as input services in the supply of goods or services exported out of India under section -----;

*(Comment: It appears that sub-Committee I has in section 22 of the draft report used the generic word "refund" to also refer to rebate on export. Accordingly, whether the word rebate or refund is to be used may be decided later on)*

35) provide for the charging of fees for the examination of goods intended for export out of India and for rendering any other service by a GST Officer under this Act or the rules made thereunder;

36) authorise the Board (or competent authority) or officers of GST, as the case may be, appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government (or the State Government) under this section;

37) provide for the manner of provisional attachment of property under section -----;

38) make provisions for determining export of taxable supply of services;

39) provide for grant of exemption to, or rebate of tax paid on, taxable supply of services which are exported out of India;

40) provide for manner of administering of payment of taxes under the compounding of tax

41) provide for dealing with situations where goods are returned

42) provide for specifying the details to be given in the invoices, the maintenance of accounts, the furnishing of audit reports, and matters related thereto;

43) provide for the qualifications and the manner of appointment of the Advance Ruling authority under section.....of the Act, and other matters related to functioning of the authority;

44) provide for the qualifications of tax return preparers, tax practitioners and authorized representatives under various provisions of the Act, the manner of their selection or appointment or nomination, their codes of conduct, and other matters related or incidental thereto;

45) provide for matters relating to tax deducted at source;

46) provides for matters covered by section 149

47) any other matter related to administering or enforcing the provisions of the Act.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.

(4) In making rules under this section, the Central Government (or State Government) may provide that any person committing a breach of any rule shall, where no other penalty is provided by the Act, be liable to a penalty not exceeding ten thousand rupees.

**119. Delegation of powers. –**

The Competent Authority may, by notification in the Official Gazette direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under the Act may be exercisable also by another authority or officer as may be specified in such notification.

**120. Instructions to GST Officers. –**

The Competent Authority may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, issue such orders, instructions or directions to the GST Officers as it may deem fit, and thereupon all GST officers and all other persons employed in the execution of the Act shall observe and follow such orders, instructions or directions.

PROVIDED that no such orders, instructions or directions shall be issued—

- a) so as to require any GST Officer to make a particular assessment or to dispose of a particular case in a particular manner; or
- b) so as to interfere with the discretion of the first appellate authority in the exercise of his appellate functions.

**121. Removal of difficulties:-**

(1) If any difficulty arises in giving effect to any provision of the Act, the Central Government / State Government may, by general or special order published in the Official Gazette, do anything not inconsistent with the provisions of the Act which appears to it to be necessary or expedient for the purpose of removing the difficulty.

PROVIDED that no such order shall be made after the expiry of a period of two years from the date of effect of the provision giving rise to the difficulty.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before Parliament / State Legislature.

## **122. Service of Notice in certain circumstances.**

(1) Any decision, order, summons, notice or other communication under the Act or the rules made thereunder shall be served by any one of the following methods, namely: -

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxpayer or to his manager or to agent duly authorized or an advocate or a tax practitioner holding authority to appear in the proceeding on behalf of the taxpayer or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxpayer, or

(b) by post or courier with acknowledgement due, to the person for whom it is intended or his authorised agent, if any at his last known place of business or residence, or

(c) by facsimile message, if such address is furnished, or

(d) by sending an authenticated communication to his e-mail address, or

(e) on **dashboard** of the taxpayer if available on the web-site, or

(f) by sending a message on his registered mobile number, or

(g) by publication in a newspaper circulating in the locality in which the taxpayer or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain, or

(h) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence, or

(i) if the mode prescribed under (h) is also not practicable for any reason, then by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by a registered letter in transit unless the contrary is proved.

### **123. Rounding off of tax etc.-**

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of the Act shall be rounded off **to the nearest rupee** and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased **to one rupee** and if such part is less than fifty paise it shall be ignored.

### **124. Effect of amendments, etc., of rules, notifications or orders. —**



Where any rule, notification or order made or issued under the Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not -

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

**125. Publication of rules and notifications and laying of rules before Parliament / State Legislature. —**

(1) All rules made and notifications issued under the Act shall be published in the Official Gazette.

(2) Every rule made under the Act, every notification issued under section ---- -, section ----, section ----- and section ----- (*depending on the final full draft*) and every order made under section -----, section ----, section ----- and section ----- (*depending on the final full draft*), other than an order relating to goods or services or both of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before Parliament / State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Parliament / State Legislature agree in making any modification in the rule or notification or order, or Parliament / State Legislature agree that the rule should not be made or notification or order should not be issued or made, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

## **PART XIX**

### **PRESUMPTION AS TO DOCUMENTS**

#### **126. Presumption as to documents in certain cases: -**

Where any document-

(i) is produced by any person under the Act or any other law, or

(ii) has been seized from the custody or control of any person under the Act or any other law, or

(iii) has been received from any place within or outside India in the course of any proceedings under the Act or any other law and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall-

(a) unless the contrary is proved by such person, presume —

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

**127. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence. —**

(1) Notwithstanding anything contained in any other law for the time being in force, —

a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

b) a facsimile copy of a document; or

c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question; or

d) any information stored electronically in any device or media, including any hard

copies made of such information shall be deemed to be also a document for the purposes of the Act and the rules made there under and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall

be the following, namely:—

a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause

(a) of sub-section (2) was regularly performed by computers, whether —

a) by a combination of computers operating over that period; or

b) by different computers operating in succession over that period; or

c) by different combinations of computers operating in succession over that period;

or

d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of

computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

- a) identifying the document containing the statement and describing the manner in which it was produced;
- b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

- a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and includes the hard disc thereof or a mirror image of hard disc thereof; and

b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

## **PART XX**

### **TRANSITIONAL PROVISIONS**

#### **128. Repeal and saving:-**

(1) From the date of commencement of the Act, the (State) General Sales Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84 and entry 54 of the Union List and the State List of the Schedule VII to the Constitution of India.

PROVIDED that the aforesaid restriction of the application of the statutes referred above shall not—

(a) Revive anything not in force or existing at the time at which the restriction takes effect; or

(b) Affect the previous operation of the unrestricted Acts or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the unrestricted Acts; or

(d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the unrestricted Acts; or  
(e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so restricted.

(2) The following Acts are hereby repealed, to the extent mentioned hereunder, namely:-(*as per the taxes subsumed under GST .....*)

- (a) The Entry Tax Act,.....
- (b) The Entertainment Tax, .....
- (c) The Luxury Tax Act, .....
- (d) Duty of Excise on Medicinal and Toilet Preparation Act, .....
- (e) Chapter V of the Finance Act, 1994.

*(Comments: Presently, under the provisions of the Central Sales Tax Act, 1956, a deeming fiction has been created empowering the adoption of VAT Statutes and machinery for the purpose of collection/administration of CST under the State law. The officers drafting the IGST Act would need to see as to in what manner the repealing of the CST Act is to be drafted and in what manner and to what extent the savings are to be provided)*

(3) The repeals referred to in sub-section (2) shall not—

- (a) Revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) Affect the previous operation of the repealed Acts or anything duly done or suffered thereunder; or
- (c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred

under the repealed Acts; or

(d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Acts; or

(e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been enacted.

### **129. Transitional provisions.**

Notwithstanding anything contained elsewhere in the Act and until specifically so or otherwise prescribed or notified or done in accordance with the provisions of the Act,

(a) All persons appointed by the respective Governments for discharging various functions under the Central/State laws relating to taxes on goods or services (which are being subsumed in GST) and continuing in office on the appointed day, shall be deemed to have been appointed as GST officers/Competent Authorities under the respective provisions of the Act.

(b) The continuation or otherwise of any incentive schemes (including deferment schemes) under which any assessee or dealer may be operating on the appointed day, shall be decided in the manner as may be prescribed.

(c) The migration of the existing registration to the registration under the GST laws shall be done as may be prescribed.



(d) The Central Government (or the State Government) may issue orders or make rules consistent with the need for smooth transition to GST including the need to take care of matters not specifically covered hereinbefore so long as such matters are not in conflict with the purposes of the Act.

### **130. Tax credit for stock on 31st March, 20....**

The taxable person may carry forward the unutilized balances of cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT Act / rules) lying with him on the date of his switching over to GST in such manner as may be prescribed.

#### **Suggestions of Sub-Committee-II on section 21 drafted by Sub-Committee-I**

In case a taxable person makes an undue or excess claim of input tax credit, he shall be liable to pay interest on such undue or excess claim at the prescribed rate for the period computed in the manner prescribed.

#### **Suggestions of Sub-Committee-II to include additional definitions**

**“address of delivery”** means the address of the recipient of goods and/or services indicated on the tax invoice issued by a taxable person for delivery of such goods and/or services;

**“Audit”** means detailed examination of records, returns and other documents maintained or furnished by the taxable person under this Act or rules made there under or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made there under;

**“business vertical”** shall have the meaning assigned to a ‘business segment’ in Accounting Standard 17 issued by the Institute of Chartered Accountants of India;

**“credit note”** means a document issued by a taxable person as referred to in subsection (1) of section 31 of this Act;

**“debit note”** means a document issued by a taxable person as referred to in subsection (2) of section 31 of this Act;

**“return”** means any return prescribed or otherwise required to be furnished by or under this Act;

**“tax invoice”** shall have the meaning as assigned to it under section 30 of this Act;

**“Tax Return Preparer”** means any person who has been approved to act as a Tax Return Preparer under the Scheme framed under section 46 of this Act;

**“valid return”** shall have the meaning assigned to it under sub-section (3) of section 36.

## **SCHEDULE I**

### **MATTERS TO BE TREATED AS SUPPLY WITHOUT CONSIDERATION**

1. Permanent transfer/disposal of business assets.
2. Temporary application of business assets to a private or non-business use.
3. Services put to a private or non-business use.
4. Self supply of goods and/or services.
5. Assets retained after deregistration.

## **SCHEDULE II**

### **MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES**

## 1. Transfer

(1) Any transfer of the title in goods is a supply of goods.

(2) Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.

(3) Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a supply of goods.

## 2. Land and Building

(1) Any lease, tenancy, easement, licence to occupy land is a supply of services.

(2) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

## 3. Treatment or process

Any treatment or process which is being applied to another person's goods is a supply of services.

## 4. Transfer of business assets

(1) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

(2) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.

(3) Where any goods, forming part of the business assets of a taxable person, are sold by any other person who has the power to do so to recover any debt owed by the taxable person, the goods shall be deemed to be supplied by the taxable person in the course or furtherance of his business.

(4) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

- (a) the business is transferred as a going concern to another person; or
- (b) the business is carried on by a personal representative who is deemed to be a taxable person.

...

### **SCHEDULE III**

#### **LIABILITY TO BE REGISTERED**

1. Every person who, on the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the said day.

2. Every person to whom the provisions of paragraph 1 above do not apply, shall be liable to be registered under this Act if his turnover in a financial year exceeds the [taxable threshold].

Explanation 1: For the purposes of this Schedule, the taxable threshold shall be such amount as may be specified in the notification issued in this behalf by the Central or a State Government on the recommendations of the Council.

Explanation 2: The taxable threshold shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

3. Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

4. Notwithstanding anything contained in paragraph 1 and 2 above, in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

5. Notwithstanding anything contained in paragraph 1 and 2 above, the following categories of persons shall be required to be registered under this Act:

- (i) persons making any inter-State supply, irrespective of the taxable threshold specified under paragraph 2;
- (ii) casual taxable persons; and
- (iii) persons who are required to pay tax under reverse charge.

### **GST Valuation (Determination of the Value of Supply of Goods and Services)**

#### **Rules, 2016**

1. Short title, commencement and application.

(1) These rules may be called the GST Valuation (Determination of Value of Supply of

Goods and Services) Rules, 2016.

(2) These Rules shall come into force on the day the Act comes into force.

(3) They shall apply to the supply of goods and/or services under the IGST/CGST/SGST Act.

2. Definitions—(1) In these rules, unless the context otherwise requires:

- (a) "Act" means the IGST Act or the CGST Act or, as the case may be, the SGST Act;
- (b) "goods of like kind and quality" means goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued and supplied by the same person or by a different person;
- (c) "services of like kind and quality" means services which are identical or similar in nature, quality and reputation as the services being valued and supplied by the same person or by a different person; and
- (d) "transaction value" means the value of goods and/or services within the meaning of section 17 of the IGST / CGST / SGST Act.
- (2) Words, expressions and terms not defined in these Rules shall have the same meaning as is assigned to them in the Act.

### 3. Methods of determination of value—

- (1) Subject to rule 7, the value of goods and/or services shall be the transaction value.
- (2) The "transaction value" shall be the value determined in monetary terms.
- (3) Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.

(4) The transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.

(5) Where goods are transferred from—

(a) one place of business to another place of the same business,

(b) the principal to an agent or from an agent to the principal, whether or not situated in the same State, the value of such supply shall be the transaction value.

(6) The value of supplies specified in sub-section (4) of section 17 of the Act shall be determined by proceeding sequentially through rules 4 to 6.

4. Determination of value of supply by comparison—

(1) Where the value of a supply cannot be determined under rule 3, the value shall be determined on the basis of the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including

(a) difference in the dates of supply,

(b) difference in commercial levels and quantity levels,

(c) difference in composition, quality and design between the goods and/or services being valued and the goods and/or services with which they are compared,

(d) difference in freight and insurance charges depending on the place of supply.

5. Computed value method—

If the value cannot be determined under rule 4, it shall be based on a computed value which shall include the following:-

(a) the cost of production, manufacture or processing of the goods or, the cost of provision of the services;

(b) charges, if any, for the design or brand;

(c) an amount towards profit and general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

#### 6. Residual method—

Where the value of the goods and/or services cannot be determined under the provisions of rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

#### 7. Rejection of declared value—

(1)(a) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.

(b) The reasons to doubt the truth or accuracy of the value of the supply declared by the supplier shall include, but not be limited to the following:



(i) the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(ii) the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quality at the time of supply; or

(iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.

(2) The proper officer shall intimate the supplier in writing the grounds for doubting the truth or accuracy of the value declared in relation to the supply of goods and/or services by such supplier and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

(3) If after hearing the supplier as aforesaid, the proper officer is, for reasons to be recorded in writing, not satisfied with the value declared, he shall proceed to determine the value in accordance with the provisions of rule 4 or rule 5 or rule 6, proceeding sequentially.

Explanation: For removal of doubts, it is hereby declared that this rule by itself does not provide a method for determination of value. It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value.

## 8. Valuation in certain cases

### (1) Pure Agent

(a) Notwithstanding anything contained in these rules, the expenditure or costs incurred by the service provider as a pure agent of the recipient of

service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

(i) the service provider acts as a pure agent of the recipient of service when he makes

payment to third party for the goods and/or services procured;

(ii) the recipient of service receives and uses the goods and/or services so procured by

the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and/or services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods and/or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation: For the purposes of this sub-rule, "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of service to act as his pure

agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods and/or services so procured

or provided as pure agent of the recipient of service;

(c) does not use such goods and/or services so procured; and

(d) receives only the actual amount incurred to procure such goods and/or services.

## (2) Money Changer

The value of taxable service provided for the services in so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

# **THE INTEGRATED GOODS AND SERVICES TAX ACT, 2016**

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**PART- I**

**PRELIMINARY**

**1. Short title, extent and commencement**

**2.**

(1) This Act may be called the Integrated Goods and Services Tax Act, 2016.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

**2. Definitions**

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

(2)

(a) "**appropriate State**" means -

(i) in relation to a taxable person who has one or more places of business situated in one State, that State;

(ii) in relation to a taxable person who has places of business situated in more than one State, every such State with respect to the place or places of business situated within its territory.

Explanation: For the purpose of this Act, "State" includes Union Territory with Legislature.

(b) "**Government**" means the Central Government;

(c) "**IGST**" means tax levied under this Act on the supply of any goods and/or services in the course of inter-State trade or commerce.

Explanation: A supply of goods and/or services in the course of import into the territory of India shall be deemed to be a supply of goods and/or services in the course of inter- State trade or commerce.

(d) "**input tax**" in relation to a taxable person, means the IGST charged on any supply of goods and/or services to him which are used, or are to be used, in the course or furtherance of his business;

(e) "**supply of goods and/or services**" includes all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal, and importation of services\*, made or agreed to be made, whether or not for a consideration, by a person in the course or furtherance of business.

(2) Words and expressions not defined in this Act shall have the meaning assigned to them in the Central Goods and Service Tax Act, 2016.

## **PART - II**

### **PRINCIPLES FOR DETERMINING SUPPLY OF GOODS AND/OR SERVICES IN THE COURSE OF INTER-STATE TRADE OR COMMERCE**

### **3. Supplies of goods and/or services in the course of inter-State trade or commerce**

(1) Subject to the provisions of section 5, a supply of goods shall be deemed to take place in the course of inter-State trade or commerce if the location of the supplier and the place of such supply are in different States.

(2) Subject to the provisions of section 6, a supply of services shall be deemed to take place in the course of inter-State trade or commerce if the location of the service provider and the place of supply of service are in different States.

## **PART- III LEVY AND COLLECTION OF TAX**

### **4. Charge of tax**

(1) There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed.

(2) The Integrated Goods and Service Tax shall be paid by every taxable person in accordance with the provisions of this Act.

(3) The Central Government may, by notification, specify categories of supply of services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such service in such manner as may be prescribed at the rate specified in sub-section (1) and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such service.

(4) Notwithstanding anything contained in this Act but subject to such conditions as may be notified in this behalf, no tax under this Act shall be

payable by any taxable person in respect of such supplies of goods and/or services as are specified in Schedule to the Act.

**PART - IV**  
**PLACE OF SUPPLY OF GOODS AND/OR SERVICES**

**5. Place of supply of goods**

(1) The provisions of this section shall apply to determine the place of supply of goods.

(2) Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver.

Explanation: The expression 'distance supply' shall mean a supply of goods which satisfies the following conditions:-

- (a) the goods are supplied to a recipient located in another State, and
- (b) the supplier arranges the transport of goods.

(3) Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the receiver.

(4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

(5) Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(6) The place of supply of gas shall be the location at which the gas is used and consumed.

**6. Place of supply of services**



(1) The provisions of this section shall apply to determine the place of supply of services.

(2) The place of supply of all services, except those services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to a registered taxable person shall be the location of the service receiver.

(3) The place of supply of all services, except those services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to any person other than a registered taxable person shall be the location of the service provider.

(4) The place of supply of services, -

(a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or

(b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, shall be the location at which the immovable property or boat or vessel is located or intended to be located.

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(5) The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of—

(a) admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place, or

(b) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or

(c) services ancillary to such admission to or organization of any of the above events or services, or

(d) assigning of sponsorship of any of the above events, shall be the place where the event is actually held.

Explanation: Where the event is held in more than one State and a consolidated amount

is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(7) The place of supply of services by way of transportation of goods, including by mail or courier to,

(a) a registered person, shall be the location of such service receiver;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(8) The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation: For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(9) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(10) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the service receiver on record of the service provider;

(c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of

the service receiver on record of the service provider shall be the place of supply of such service.

(11) The place of supply of banking and other financial services including stock broking services to any person shall be the location of the service receiver on the records of the service provider:

Provided that if the service is not linked to the account of the receiver, the place of supply shall be location of the service provider.

(12) The place of supply of insurance services shall:

(a) to a registered person, be the location of the service receiver; and

(b) to a person other than a registered person, be the location of the service receiver available on the records of the service provider:

Provided that for all general insurance services related to an immovable property, the place of supply of services shall be the location of such immovable property.

(13) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

[Note. It is the view of the Centre that in the context of B2B supplies, the primary factor for determining the place of supply would be the location of the recipient subject to specified exceptions.]

**PART -V**  
**PAYMENT OF TAX**

**7. Payment of Tax**

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by any of the prescribed modes shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(3) The tax, interest, penalty, fee or any other amount payable under the provisions of this Act or the rules made there under shall be paid to the IGST account of the Central Government by debiting the electronic cash or credit ledger under this Act in such manner and subject to such conditions and limitations and within such time as may be prescribed:

Provided that after fully utilizing the balance in the electronic [cash or] credit ledger under this Act, the balance available in the credit ledger under the CGST Act may be utilized to pay the tax under this Act:

Provided further that after fully utilizing the balance in the electronic [cash or] credit ledgers under this Act and in the credit ledger under the CGST Act, the balance available in the credit ledger under the SGST Act may be utilized to pay the tax under this Act.

**PART - VI**  
**INPUT TAX CREDIT**

## **8. Manner of taking input tax credit and utilization thereof**

(1) Every taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(2) A taxable person, after fully discharging his tax dues under this Act, may utilize the balance or any part thereof available in his electronic credit ledger for discharging his tax dues under the CGST Act in the manner as may be prescribed.

(3) A taxable person, after fully discharging his tax dues under this Act and the CGST Act, may utilize the balance or any part thereof available in his electronic credit ledger for discharging his tax dues under the SGST Act in the manner as may be prescribed.

Explanation: For the purpose of this section, 'tax dues' shall mean the tax payable under this Act and does not include interest, fee or penalty.

## **9. Transfer of input tax credit**

(1) On utilization of input tax credit under this Act for payment of tax dues under the CGST Act as per sub-section (2) of section 8, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to the CGST account in the manner and time as may be prescribed.

(2) On utilization of input tax credit under this Act for payment of tax dues under the SGST Act as per sub-section (3) of section 8, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to the SGST account of the appropriate State Government in the manner and time as may be prescribed.

## **APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS**

### **10. Apportionment of tax collected under the Act and settlement of funds**

(1) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services to an unregistered person or to a taxable person paying tax under section 8 of the CGST Act, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.

(2) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services made in a year to a registered taxable person, where the supply is either not eligible for input tax credit or where the recipient does not avail of the said credit within the specified period and thus remains in the IGST account after expiry of the due date for filing of annual return for such year in which the supply was made, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.

(3) Out of the IGST paid to the Central Government in respect of import of goods by an unregistered person, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.

(4) The balance tax remaining in the IGST account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1), (2) or (3) shall be apportioned, in the manner and time as may be prescribed, to the State where such supply takes place as per section 5 or 6.

## **MISCELLANEOUS**

### **11. Application of certain provisions of the CGST Act, 2016**

The provisions relating to registration, valuation, time of supply of goods, time of supply of services, change in rate of tax in respect of supply of services, exemption from payment of tax, input tax credit and utilization thereof, accounts and records, payment, return, audit, assessment, adjudication, demands, refunds, interest, recovery of tax, offences and penalties, inspection, search and seizure, prosecution and power to arrest, appeals, review, advance ruling and compounding shall apply, so far as may be, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016.

### **12. Power to make rules**

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

### **13. Levy of interest**

Every person, liable to pay the tax in accordance with the provisions of section . . . or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate as may be specified, by Notification, for the period by which such crediting of the tax or any part thereof is delayed.

## **PART - IX ADMINISTRATION**



**14. Classes of officers under the Integrated Goods and Services Tax Act, 2016**

(1) There shall be the following classes of officers under the Integrated Goods and Services Tax Act, 2016 namely;

(a) Principal Chief Commissioners of IGST or Principal Directors General of IGST,

(b) Chief Commissioners of IGST or Directors General of IGST,

(c) Principal Commissioners of IGST or Principal Additional Directors General of IGST,

(d) Commissioners of IGST or Additional Directors General of IGST,

(e) Commissioner of IGST (Appeals)

(f) Additional Commissioners of IGST or Additional Directors of IGST,

(g) Joint Commissioners of IGST or Joint Directors of IGST,

(h) Deputy Commissioners of IGST or Deputy Directors of IGST,

(i) Assistant Commissioners of IGST or Assistant Directors of IGST, and

such other class of officers as may be appointed for the purposes of this Act.

## **15. Appointment of officers under the Integrated Goods and Services Tax Act, 2016**

(1) The Board may appoint such persons as it may think fit to be officers under the Integrated Goods and Services Tax Act, 2016.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Integrated Goods and Services Tax below the rank of Assistant Commissioner of Integrated Goods and Services Tax Act, 2016.

[Note. It is the view of the States that certain powers under the IGST Act such as i) audit, ii) enforcement and iii) inspection should also be exercised by the officials of the State Government. Likewise, the powers under the SGST Act relating to the above subjects should be exercised by the officials of the Central Government.]

## **ADDITIONAL TAX ON CERTAIN INTER-STATE SUPPLIES**

### **Levy of Additional Tax**

(1) Notwithstanding anything contained in this Act, there shall be levied a tax called

'additional tax' on any supply of taxable goods made in the course of inter-State trade or commerce by a taxable person at a rate not exceeding one per cent and for a period of two years or such other period, as may be notified by the Central Government on the recommendation of the Council, and collected in such manner as may be prescribed.

Explanation: For the purposes of this sub-section, 'supply' shall mean all forms of supply made for a consideration.

(2) Every taxable person liable to pay tax under sub-section (1), shall furnish a return declaring the taxable value of the supplies made during a tax period and shall pay tax due thereon in the manner and time as may be prescribed.

(3) The Additional Tax paid under this section shall not be claimed as input tax credit under this Act or under any law for the time being in force.

(4) The amount of Additional Tax paid under this section, except such amount attributable to the Union Territories, shall not form part of the Consolidated Fund of India and shall be assigned to the State from where the supply of goods originates.

(5) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of the additional tax leviable thereof.

## 4 Reports on GST

### 5.1 Report on Rate (Summary)

#### Press Information Bureau

#### Government of India Ministry of Finance

04-December-2015 18:32 IST

**Committee headed by the Chief Economic Adviser Dr. Arvind Subramanian on Possible Tax rates under GST submits its Report to the Finance Minister; On the Revenue Neutral Rate (RNR), the Committee recommends the same in the range between 15 percent and 15.5 percent (Centre and states combined) with a preference for the lower end of that range based on the analysis made in the Report**

Committee headed by the Chief Economic Adviser Dr. Arvind Subramanian on Possible Tax rates under GST submitted its Report to the Finance Minister here today. The Committee in its concluding observations has stated that this is a historic opportunity for India to implement a game-changing tax reform. Domestically, it will help improve governance, strengthen tax institutions, facilitate "Make in India by Making One India," and impart buoyancy to the tax base. It will also set the global standard for a value-added tax (VAT) in large federal systems in the years to come.

Following are the highlights of the Executive Summary of the Report submitted today:

The GST has been an initiative that has commanded broad consensus across the political spectrum. It has also been a model of cooperative federalism in practice with the Centre and states coming together as partners in embracing growth and employment-enhancing reforms. It is a reform that is long awaited and its implementation will validate expectations of important government actions and effective political will that have, to some extent, already been "priced in."

Getting the design of the GST right is, therefore, critical. Specifically, the GST should aim at tax rates that protect revenue, simplify administration, encourage compliance, avoid adding to inflationary pressures, and keep India in the range of countries with reasonable levels of indirect taxes.

There is first a need to clarify terminology. The term revenue neutral rate (RNR) will refer to that single rate, which preserves revenue at desired (current) levels. In practice, there will be a structure of rates, but for the sake of analytical clarity and precision it is appropriate to think of the RNR as a single rate. It is a given single rate that gets converted into a whole rate structure, depending on policy choices about exemptions, what commodities to charge at a lower rate (if at all), and what to charge at a very high rate. The RNR should be distinguished from the "standard" rate defined as that rate in a GST regime which is applied to all goods and services whose taxation is not explicitly specified. Typically, the majority of the base (i.e., majority of goods and services) will be taxed at the standard rate, although this is not always true, and indeed it is not true for the states under the current regime.

Against this background, the Committee drew a few important conclusions.

- Because identifying the exact RNR depends on a number of assumptions and imponderables; because, therefore, this task is as much soft judgement as hard science; and finally also because the prerogative of deciding the precise numbers will be that of the future GST Council, this Committee has chosen to recommend a range for the RNR rather than a specific rate. For the same reason, the Committee has decided to recommend not one but a few conditional rate structures that depend on policy choices made on exemptions, and the taxation of certain commodities such as precious metals.

The summary of recommended options is provided in the table below.

<b>Summary of Recommended Rate Options (in percent)</b>					
<b>RNR</b>	<b>Rate on precious metals</b>	<b>"Low" rate (goods)</b>		<b>"Standard" rate (goods and services)</b>	<b>"High/Demerit" rate or Non-GST excise (goods)</b>
Preferred	15	6	12	16.9	40
		4		17.3	
		2		17.7	

Alternative	15.5	6	12	18.0	40
		4		18.4	
		2		18.9	

All rates are the sum of rates at center and states

- On the RNR, the Committee's view is that the range should be between 15 percent and 15.5 percent (Centre and states combined) but with a preference for the lower end of that range based on the analysis in this report.
- On structure, in line with growing international practice and with a view to facilitating compliance and administration, India should strive toward a one-rate structure as the medium-term goal.
- Meanwhile, the Committee recommends a two-rate structure. In order to ensure that the standard rate is kept close to the RNR, the maximum possible tax base should be taxed at the standard rate. The Committee would recommend that lower rates be kept around 12 per cent (Centre plus states) with standard rates varying between 17 and 18 per cent.
- It is now growing international practice to levy sin/demerit rates—in the form of excises outside the scope of the GST--on goods and services that create negative externalities for the economy. As currently envisaged, such demerit rates—other than for alcohol and petroleum (for the states) and tobacco and petroleum (for the Centre)—will have to be provided for within the structure of the GST. The foregone flexibility for the center and the states is balanced by the greater scrutiny that will be required because such taxes have to be done within the GST context and hence subject to discussions in the GST Council. Accordingly, the Committee recommends that this sin/demerit rate be fixed at about 40 percent (Centre plus states) and apply to luxury cars, aerated beverages, paan masala, and tobacco and tobacco products (for the states).
- This historic opportunity of cleaning up the tax system is necessary in itself but also to support GST rates that facilitate rather than burden compliance. Choices that the GST Council makes regarding exemptions/low taxation (for example, on gold and precious metals, and area-based exemptions) will be critical. The more the exemptions that are retained the higher will be the standard rate. There is no getting away from a simple and powerful reality: the broader the scope of exemptions, the less effective the GST will be. For example, if precious metals continues to enjoy highly concessional rates, the rest of the

economy will have to pay in the form of higher rates on other goods, including essential ones. As the table shows, very low rates on precious metals would lead to a high standard rate closer to 20 percent, distorting the economy and adding to inflationary pressures. On the other hand, moderately higher taxes on precious metals, which would be consistent with the government's efforts to wean consumers away from gold, could lead to a standard rate closer to 17 percent. This example illustrates that the design of the GST cannot afford to cherry pick—for example, keeping a low RNR while not limiting exemptions--because that will risk undermining the objectives of the GST.

- The GST also represents a historic opportunity to rationalize the tax system that is complicated in terms of rates and structures and has become an "Exemptions Raj," rife with opportunities for selectivity and discretion. Tax policy cannot be overly burdened with achieving industrial, regional, and social policy goals; more targeted instruments should be found to meet such goals, for example, easing the costs of doing business, public investment, and direct benefit transfers, respectively; cesses should be reduced and sparingly used. Another problem with exemptions is that, by breaking up the value-added chain, they lead in practice to a multiplicity of rates that is unpredictable, obscured, and distortionary. A rationalization of exemptions under the GST will complement a similar effort already announced for corporate taxes, making for a much cleaner overall tax system.
- The rationalization of exemptions is especially salient for the center, where exemptions have proliferated. Indeed, revenue neutrality for the center can only be achieved if the base for the center is similar to that of the states (which have fewer exemptions—90 products versus 300 for the center). If policy objectives have to be met, instruments other than tax exemptions such as direct transfers could be deployed.
- The Committee's recommendations on rates summarized in the table above are all national rates, comprising the sum of central and state GST rates. How these combined rates are allocated between the center and states will be determined by the GST Council. This allocation must reflect the revenue requirements of the Centre and states so that revenues are protected. For example, a standard rate of 17% would lead to rates at the Centre and states of say 8 percent and 9 percent, respectively. The Committee considers that there are sound reasons not to provide for an administration-complicating "band" of rates, especially given the considerable flexibility and autonomy that states will preserve under the GST (including the ability to tax petroleum, alcohol, and other goods and services).

- Implementing the GST will lead to some uncharted waters, especially in relation to services taxation by the states. Preliminary analysis in this report indicates that there should not be large shifts in the tax base in moving to the GST, implying that overall compensation may not be large. Nevertheless, fair, transparent, and credible compensation will create the conditions for effective implementation by the states and for engendering trust between the Centre and states; The GST also represents a historic opportunity to Make in India by Making One India. Eliminating all taxes on inter-state trade (including the 1 percent additional duty) and replacing them by one GST will be critical to achieving this objective;
- Analysis in the report suggests that the proposed structure of tax rates will have minimal inflationary consequences. But careful monitoring and review will be necessary to ensure that implementing the GST does not create the conditions for anti-competitive behavior;
- Complexity and lags in GST implementation require that any evaluation of the GST—and any consequential decisions—should not be undertaken over short horizons (say months) but over longer periods say 1–2 years. For example, if six months into implementation, revenues are seen to be falling a little short, there should not be a hasty decision to raise rates until such time as it becomes clear that the shortfall is not due to implementation issues. Facilitating easy implementation and taxpayer compliance at an early stage—via low rates and without adding to inflationary pressures--will be critical. In the early stages, if that requires raising other taxes or countenancing a slightly higher deficit--that would be worth considering.
- Finally, the report has presented detailed evidence on effective tax burdens on different commodities which highlights that in some cases they are inconsistent with policy objectives. It would be advisable at an early stage in the future, and taking account of the experience of the GST, to consider bringing fully into the scope of the GST commodities that are proposed to be kept outside, either constitutionally or otherwise. Bringing alcohol and real estate within the scope of the GST would further the government's objectives of improving governance and reducing black money generation without compromising on states' fiscal autonomy. Bringing electricity and petroleum within the scope of the GST could make Indian manufacturing more competitive; and eliminating the exemptions on health and education would make tax policy more consistent with social policy objectives.



There is a legitimate concern that policy should not be changed easily to suit short term ends. But there are enough checks and balances in the parliamentary system and enough pressures of democratic accountability to ensure that. Moreover, since tax design is profoundly political and contingent, it would be unwise to encumber the Constitution with the minutiae of policy that limits the freedom of the political process in the future: the process must retain the choice on what to include in/exclude from the GST (for example, alcohol) and what rates to levy. The credibility of the macroeconomic system as a whole is undermined by constitutionalising a tax rate or a tax exemption. Setting a tax rate or an exemptions policy in stone for all time, regardless of the circumstances that will arise in future, of the macroeconomic conditions, and of national priorities may not be credible or effective in the medium term. This is the reason India—and most credible polities around the world--do not constitutionalise the specifics of tax policy. The GST should be no different.

The nation is on the cusp of executing one of the most ambitious and remarkable tax reforms in its independent history. Implementing a new tax, encompassing both goods and services, to be implemented by the Centre, 29 States And 2 Union Territories, in a large and complex federal system, via a constitutional amendment requiring broad political consensus, affecting potentially 2-2.5 million tax entities, and marshalling the latest technology to use and improve tax implementation capability, is perhaps unprecedented in modern global tax history. The time is ripe to collectively seize this historic opportunity.

## 5.2 Report on Returns

REPORT

OF

THE JOINT COMMITTEE ON BUSINESS PROCESS FOR GST

ON

GST RETURN

Empowered Committee of State Finance Ministers

New Delhi

October, 2015

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# 1. Introduction

1.1 During the Empowered Committee meeting held on 10<sup>th</sup> March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also keep in view the Registration and Return requirements necessary for IGST Model. Accordingly, a Joint Committee, in consultation with the Government of India, was constituted on 7<sup>th</sup> April, 2014.

1.2 The Committee held its deliberations on 28<sup>th</sup> October, 2014, 12<sup>th</sup> November, 2014, 25<sup>th</sup> November, 2014, 22<sup>nd</sup> December, 2014, 2<sup>nd</sup> and 3<sup>rd</sup> February, 2015, 19<sup>th</sup> and 20<sup>th</sup> February, 2015, 16<sup>th</sup> and 17<sup>th</sup> April 2015, 7<sup>th</sup> and 8<sup>th</sup> July, 2015, 22<sup>nd</sup> and 23<sup>rd</sup> July, 2015 and 9<sup>th</sup> October, 2015. The list of the participants of the last meeting of the Committee held on 9<sup>th</sup> October, 2015 is appended. (Annexure-I)

1.3 A return is a statement of specified particulars relating to business activity undertaken by the taxable person during a prescribed period. A taxable person has a legal obligation:

- (i) To declare his tax liability for a given period in the return;
- (ii) Furnish details about the taxes paid in accordance with that return;  
and
- (iii) File correct and complete return within stipulated time frame.

1.4 GST is a self-assessed destination based taxation system. The submission and processing of return is an important link between the taxpayer and tax administration as it is an important tool for:

- (i) Compliance verification program of tax administration;
- (ii) Providing necessary inputs for taking policy decision;
- (iii) Management of audit and anti-evasion programs of tax administration;
- (iv) Finalization of the tax liabilities of the taxpayer within stipulated period of limitation.

1.5 This document lists out the salient aspects of the process related to filing of GST returns.

1.6 There will be common e-return for CGST, SGST, IGST and Additional Tax.

#### Who needs to file Return in GST regime?

1.7 Every registered person is required to file a return for the prescribed tax period. A return needs to be filed even if there is no business activity (i.e. Nil Return) during the said tax period of return.

1.8 UN agencies etc. will have unique GST ID and will file return for the month (in simpler form) during which they make purchases. They would not be required to file regular return. They would submit their purchase statements (without purchase invoices) as per the periodicity prescribed for claim of refund.

1.9 Government entities / PSUs , etc. not dealing in GST supplies or persons exclusively dealing in exempted / Nil rated / non -GST goods or services would neither be required to obtain registration nor required to file returns under the GST law. However, State tax authorities may assign Departmental ID to such government departments/ PSUs / other persons. They will ask the suppliers to quote the Department ID in the supply invoices for all inter-State purchases being made to them. Such supplies will be at par with B2C supplies and will be governed by relevant provisions relating to B2C supplies.

## 2. Periodicity of Return Filing

2.1 Common periodicity of returns for a class of taxpayers would be enforced. There will be different frequency for filing of returns for different class of taxpayers, after payment of due tax, either prior to or at the time of filing return. The return can be filed without payment of self -assessed tax as per the return but such return would be treated as an invalid return and would not be taken into consideration for matching of invoices and for inter-governmental fund settlement among States and the Centre. The periodicity of return for different categories of taxpayers is as follows:

S. No.	Return / Ledger	For	To be filed by
1	GSTR 1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10 <sup>th</sup> of the next month
2	GSTR 2	Inward supplies received by a taxpayer	15 <sup>th</sup> of the next month

		ISD)	
3	GSTR 3	Monthly return (other than	20 <sup>th</sup> of the next month
4	GSTR 4	Quarterly return for compounding Taxpayer	18 <sup>th</sup> of the month next
5	GSTR 5	Periodic return by Non-Resident Foreign Taxpayer	Last day of registration
6	GSTR 6	Return for Input Service Distributor (ISD)	15 <sup>th</sup> of the next month
7	GSTR 7	Return for Tax Deducted at Source	10 <sup>th</sup> of the next month
8	GSTR 8	Annual Return	By 31 <sup>st</sup> December of
9		ITC Ledger of taxpayer	Continuous
10		Cash Ledger of taxpayer	Continuous
11		Tax ledger of taxpayer	Continuous

2.2 Other important points relating to periodicity of return filing are as under: -

- (i) Normal / Regular taxpayers (including casual taxpayers) would have to file GSTR-1 (details of outward supplies) (Annexure-II), GSTR-2 (details of inward supplies) (Annexure-III) and GSTR-3 (monthly Return) (Annexure-IV) for each registration.
- (ii) Normal / Regular taxpayers with multiple registrations (for business verticals) within a State would have to file GSTR-1, GSTR-2 and GSTR-3 for each of the registrations separately.
- (iii) Compounding taxpayers would have to file a quarterly return called GSTR-4 (Annexure-V).
- (iv) Taxpayers otherwise eligible for the compounding scheme can opt against the compounding and file monthly returns and thereby make their supplies eligible for ITC in hands of the purchasers.
- (v) Casual/ Non - Resident Taxpayers (other than foreigners) would have to file GSTR-1, GSTR-2 and GSTR-3 returns for the period for which they have obtained registration. The registration of Casual/Non -Resident taxpayers will be done in the same manner as that of Normal / Regular taxpayers.



- (vi) Non- Resident Taxpayers (foreigners) would be required to file GSTR-5 return for the period for which they have obtained registration within a period of seven days after the date of expiry of registration. In case registration period is for more than one month, monthly return(s) would be filed and thereafter return for remaining period would be filed within a period of seven days as stated earlier. For these taxpayers the registration format to be used will be the same as that for UN Bodies/Embassies (Annexure-VI].
- (vii) Annual return (GSTR-8) (Annexure-IX) will be filed by all normal / regular taxpayers. It will be based on financial records.
- (viii) Compounding taxpayer will also file a simple annual return.
- (ix) Cut-off date for filing of details of outward supplies (GSTR-1), inward supplies (GSTR-2) and Monthly return (GSTR-3) would be 10<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> day respectively of the succeeding month for all Monthly filers.
- (x) Cut-off date for filing of Quarterly return (GSTR-4) by compounding taxpayer would be 18<sup>th</sup> day of the first month of the succeeding quarter.
- (xi) Cut-off date for filing of Input Service Distributor return (GSTR-6) (Annexure-VII) would be 15<sup>th</sup> day of the succeeding month.
- (xii) Cut-off date for filing of TDS (Tax Deducted at Source) return (GSTR-7) (Annexure-VIII) by Tax Deductor would be 10<sup>th</sup> day of the succeeding month.
- (xiii) For Annual return, the cut-off date would be 31<sup>st</sup> December following the end of the financial year for which it is filed.
- (xiv) The filing of return would be only through online mode although the facility of offline generation and preparation of returns would be provided. The returns prepared in offline mode would have to be uploaded.

3. Monthly Return: There would be separate returns for the outward supplies, inward supplies and a consolidated return based on these two returns. Besides that, there would be separate returns for the Input Service Distributors, non-resident taxpayers (foreigners) and Tax Deductors. The components of each of these returns is being discussed hereunder:

3.1. Components of valid GST Return for Outward Supplies made by the Taxpayer (GSTR-1):

3.1.1 This return form would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Gross Turnover of the Taxpayer in the previous Financial Year. This information would be submitted by the taxpayers only in the first year and will be auto-populated in subsequent years.
4. Final invoice -level supply information pertaining to the tax period separately for goods and services:
  - (i) For all B2B supplies (whether inter-state or intra-state), invoice level specified details will be uploaded.
  - (ii) For all inter-state B2C supplies (including to non-registered Government entities, Consumer / person dealing in exempted / NIL rated / non GST goods or services), the suppliers will upload invoice level details in respect of every invoice whose value is more than Rs. 2,50,000/-. For invoices below this value, State-wise summary of supply statement will be filed covering those invoices where there is

address on record. The address of the buyer has to be mandatorily reflected in every invoice having a value of Rs. 50,000/- or more. (Model GST Law may provide for such a provision). Invoices for a value less than Rs. 50,000/- that do not have address on record will be treated as intra-state supply. In other words, State-wise summary of inter-State supply would be filed covering (a) those invoices value of which is less than Rs. 50000/- and where address is on record and (b) those invoices whose value is between Rs. 50000/- to Rs. 250000/-.

(iii) The recommendation of the Committee on IGST and GST on Imports with respect to the details about HSN code for goods and Accounting code for services to be captured in an invoice have been accepted with certain modifications. The details proposed by this Committee are as follows:-

- a) HSN code (4-digit) for Goods and Accounting Codes for Services will be mandatory initially for all taxpayers with turnover in the preceding financial year above Rs. 5 Crore (For the first year of operations of GST, self-declaration of turnover of previous financial year will be taken as the basis as all India turnover data will not be available in the first year. From the 2<sup>nd</sup> year onwards, turnover of previous financial year under GST will be used for satisfying this condition).
- b) For taxpayers with turnover between Rs 1.5 Crores and Rs 5 Crores in the preceding financial year, HSN codes may be specified only at

2-digit chapter level as an optional exercise to start with. From second year of GST operations, mentioning 2 -digit chapter level HSN Code will be mandatory for all taxpayers with turnover in previous financial year between Rs. 1.5 Crores and Rs. 5.0 Crores.

c) Any taxpayer, irrespective of his turnover, may use HSN code at 6-

digit or 8-digit level if he so desires.

d) To start with, compounding dealers may not be required to specify

HSN at 2-digit level also.

e) Prescribed Accounting code will be mandatory for those services for which Place of Supply Rules are dependent on nature of services to apply the destination principle, irrespective of turnover.

f) HSN Codes at 8-digit level and Accounting Codes for services will be mandatory in case of exports and imports.

(iv) The above parameters with respect to HSN code for goods and

Accounting Code for services will apply for submitting the information in return relating to relevant invoice level information for B2B supplies (both intra-state and inter-state) and inter-state B2C supplies ( where taxable value per invoice is more than Rs. 2.5 lakhs). It is proposed that in the return form the description of goods and services may not be required to be submitted by the taxpayer as the same will be identified through the submission of HSN code for goods and Accounting Code for services. In order to differentiate between the HSN code and the Service Accounting Code (SAC), the latter will be prefixed with "s". The taxpayers who have turnover below the limit of Rs. 1.5 Crore will have

to mention the description of goods/service, as the case may be, wherever applicable.

(v) For all Intra-State B2C supplies (including to non-registered

Government entities, consumer / person dealing in exempted / NIL rated

/ non GST goods or services), consolidated sales (supply) details will be uploaded. However a dealer may at his option furnish invoice wise information in respect of exempted and nil rated supplies also.

(vi) The supply information will also have details relating to the Place of Supply in order to identify the destination state as per the Place of Supply Rules where it is different from the location of the recipient.

(vii) Details relating to supplies attracting Reverse charge will also be submitted

5. Details relating to advance received against a supply to be made in future will be submitted in accordance with the Point of Taxation Rules as framed in the GST law.
6. Details relating to taxes already paid on advance receipts for which invoices are issued in the current tax period will be submitted.
7. Details relating to supplies exported (including deemed exports) both on payment of IGST as well as without payment of IGST would be submitted.
8. There will be a separate table for submitting the details of revisions in relation to the outward supply invoices pertaining to previous tax periods. This will include the details of Credit/Debit Note issued by the suppliers and the differential value impact and the concomitant tax payable or refund/tax credit sought.

9. There will be a separate table for effecting modifications/correcting errors in the returns submitted earlier. The time period for correcting these errors will be provided in the GST Law.
10. There will be a separate table for submitting details in relation to NIL rated, Exempted and Non GST outward supplies to ( both inter -state and intra-state) to registered taxpayers and consumers.

3.1.2 The return (GSTR-1) would be filed by the 10<sup>th</sup> of the succeeding month. Late filing would be permitted on payment of late fees only.

3.2. Components of valid GST Return for Inward Supplies received by the Taxpayer (GSTR-2):

3.2.1 This return form would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Final invoice -level inward supply information pertaining to the tax period for goods and services separately
4. The information submitted in GSTR-1 by the Counterparty Supplier of the taxpayer will be auto populated in the concerned tables of GSTR-2. The same may be modified i.e. added or deleted by the Taxpayer while filing the GSTR-2. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and have received the goods or services.

5. There will be separate tables for submitting details relating to import of Goods/Capital Goods from outside India and for the services received from outside India.

6. The details of inward supplies would be auto-populated in the ITC ledger of

the taxpayer on submission of his return. The taxpayer will select the invoice details regarding the in-eligibility and eligibility of ITC in relation to these inward supplies and the quantum available in a particular tax period.

7. There will be a separate table for submitting details in relation to ITC received

on an invoice on which partial credit has been availed earlier.

8. In respect of capital goods, there will be a field to capture appropriate information regarding availment of ITC over a period (to be prescribed in GST Law in terms of duration and number of installments) from the date of account of capital goods in the taxpayer's books of accounts. [GST Law may provide that Input credit pertaining to Capital Goods will be allowed to be availed over a period of 2 years in two equal installments]

9. In respect of inputs, there can be two situations. If inputs are received in one lot, the ITC will be given in the return period in which the purchase is recorded in the books of accounts. In case inputs covered under one invoice are received in more than one instance/lot, the ITC will be given in the return period in which the last purchase is recorded in the books of accounts. (GST Law to contain appropriate provision in this regard). A note in this regard has been incorporated in the Return form for the guidance of the taxpayer.

10. There will be a separate table for submitting the details of revisions in relation to inward supply invoices pertaining to previous tax periods (including post purchase discounts received). This will include the details of Credit/Debit Note issued by the suppliers and the differential value impact and concomitant tax payable or refund/tax credit sought.

11. There will be a separate table for effecting modifications/correcting errors in the

returns submitted earlier. The time period for correcting these errors will be provided in the GST Law.

12. There will be a separate table for submitting details in relation to NIL rated, Exempted and Non GST inward Supplies ( Both Inter-State and Intra-State) including those received from compounding taxpayers and unregistered dealers.

13. There will be a separate table for the ISD credit received by the taxpayer.

14. There would be a separate table for TDS Credit received by the taxpayer.

3.2.2 Auto Population in this return from GSTR-1 will be done on or after 11<sup>th</sup> of the succeeding month. Addition or Deletion of the invoice by the taxpayer will be permitted between 12<sup>th</sup> and 15<sup>th</sup> of the succeeding month. Adjustments would be permitted on 16<sup>th</sup> and 17<sup>th</sup> of the succeeding month.

3.2.3 The return (GSTR-2) would be filed by 17<sup>th</sup> of the succeeding month. Late filing would be permitted on payment of late fees only.

3.3. Components of valid GST Return (GSTR-3):

3.3.1 The GST Monthly Return form would capture the following information:



1. Basic details of the Taxpayer i.e. Name and Address along with GSTIN
2. Period to which the Return pertains
3. Turnover Details including Gross Turnover, Export Turnover, Exempted Domestic Turnover, Nil Rated Domestic Turnover, Non GST Turnover and Net Taxable Turnover
4. Final aggregate level outward and inward supply information. These details will be auto populated from GSTR-1 and GSTR-2.
5. There will be separate tables for calculating tax amounts on outward and inward supplies based on the information contained in various tables in the GSTR-3 return.
6. There will be a separate table for capturing the TDS credit received and which has been credited to his cash ledger (the deductee).
7. Tax liability under CGST, SGST, IGST and Additional Tax.
8. Details regarding revision of invoices relating to outward and inward supplies  
(as per details in para 3.1.1 and 3.2.2 above)
9. Details of other liabilities (i.e. Interest, Penalty, Fee, others etc.).
10. Information about ITC ledger, Cash ledger and Liability ledger (these are running electronic ledgers maintained on the dashboard of taxpayer by GSTN). These would be updated in real time on an activity in connection with these ledgers by the taxpayer. Both the ITC ledger and the cash ledger will be utilized by the taxpayer for discharging the tax liabilities of the returns and

others. Details in these ledgers will get auto populated from previous tax period return (irrespective of mode of filing return i.e. online / offline utility)

11. Details of ITC utilized against tax liability of CGST, SGST and IGST on supplies of goods and services.
12. Net tax payable under CGST, SGST, IGST and Additional Tax.
13. Details of the payment of tax under various tax heads of CGST, SGST, IGST and Additional Tax separately would be populated from the debit entry in Credit/Cash ledger. GST Law may have provision for maintaining four head wise account for CGST, SGST, IGST and Additional tax and at associated minor heads for interest, penalty, fee and others. Excess payment, if any, will be carried forward to the next return period. The taxpayer will have the option of claiming refund of excess payment through the return for which appropriate field will be provided in the return form. The return form would display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited.
14. Details of other payments - Interest/Penalties/Fee/Others, etc. This will be auto populated from the Debit entry in Cash ledger irrespective of mode of filing i.e. online / offline utility.
15. Details of ITC balance (CGST, SGST and IGST) at the end of the tax period will be auto-populated in the ITC ledger irrespective of mode of filing return. In case of net exporter or taxpayers dealing with inverted duty structure or similar other cases, where input tax credit is greater than output tax due on supply, the taxpayer would be eligible for refund. The return would have a

field to enable the tax payer to claim the refund or to carry forward the ITC balance (CGST, SGST and IGST). The return form should display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited. To begin with GST law may provide that the refund will be processed quarterly.

16. Details of cash balance (CGST, SGST, IGST and Additional tax) in personal ledger at the end of the tax period (this will be auto populated irrespective of mode of filing return).

17. Information regarding quantity of goods (as per Unique Quantity Code) supplied will not be contained in the monthly return. However, the same would be submitted by the taxpayer in the annual return. (GST Law may contain appropriate provision in this regard). The format of the annual return would have a suitable field for this purpose.

3.3.2 The return (GSTR-3) would be entirely auto- populated through GSTR -1 (of counterparty suppliers), own GSTR -2, ISD return (GSTR-6) (of Input Service Distributor), TDS return (GSTR-7) (of counterparty deductor), own ITC Ledger, own cash ledger, own Tax Liability ledger. However, the taxpayer may fill the missing details to begin with.

3.3.3 The return would be permitted to be filed both on online and offline mode. In case of offline mode, payment by debit to cash / ITC ledger can be done at an earlier date also and such debit entry number would be verified at the time of uploading of the return. In online mode, both debiting and filing can be done simultaneously.

3.3.4 The return would be filed by 20<sup>th</sup> of the succeeding month. Late filing would be permitted on payment of late fees only .

#### 3.4 Quarterly Return for compounding Taxpayers (GSTR-4):

3.4.1 After crossing the threshold exemption limit, the taxpayers may opt for compounding scheme wherein they would be required to pay taxes at fixed rate without any ITC facilities. Such taxpayers would be required to file a simplified quarterly return (GSTR-4) as per the format prescribed. In this return the taxpayer is only required to indicate the total value of supply made during the period of return and the tax paid at the compounding rate along with the details of payment of tax in the return. The compounding taxpayer will also need to declare invoice-level purchase information (auto-drafted from supply invoice information uploaded by counter-party taxpayers) for the purchases from normal taxpayers. The Compounding taxpayer will also be required to submit details of the goods and services imported from outside India. The Compounding taxpayers would be allowed to export supplies outside India. GST Law may provide for suitable provisions with respect to the eligibility of such taxpayers to purchase only tax paid supplies and that they can make purchases from unregistered suppliers on payment of GST on reverse charge basis.

#### 3.5 Non-Resident Foreign Taxpayers (GSTR-5):

3.5.1 Non-Resident foreign taxpayers would be required to file GSTR -5 for the period for which they have obtained registration within a period of seven days after the date of expiry of registration. In case registration period is for more than one month, monthly r eturn(s) would be file d and thereafter return for remaining period would be filed within a period of seven days as stated earlier.

### 3.6 Components of a valid ISD Return (GSTR-6):

#### 3.6.1 This return form would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Final invoice -level inward supply information pertaining to the tax period separately for goods and services on which the ITC is being claimed. This will be auto populated on the basis of GSTR -1 filed by the Counterparty Supplier of the taxpayer. The same may be modified i.e. added or deleted by the Taxpayer while filing the ISD return. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and have received the services.
4. Details of the Invoices along with the GSTIN of the receiver of the credit i.e. to whom the ISD is distributing credit.
5. There will be separate ISD Ledger in the return that will detail the Opening Balance of ITC (to be auto - populated on the basis of previous return), credit for ITC services received , debit for ITC reversal and ITC distributed and Closing Balance.

3.6.2 This return would be filed by 15<sup>th</sup> of the succeeding month. Late filing would be permitted on payment of late fees only.

### 3.7 Components of a valid TDS Return (GSTR-7):

#### 3.7.1 This return would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN

2. Period to which the Return pertains
3. Details of GSTIN of the Supplier along with the invoices against which the Tax has been deducted. This will also contain the details of tax deducted against each major head i.e. CGST, SGST and IGST.
4. Details of other payments - Interest/Penalties/Fee/Others, etc. (This will be auto populated from the Debit entry in Cash ledger)

3.7.2 This return would be filed by 10<sup>th</sup> of the succeeding month. Late filing would be permitted on payment of late fees only.

### 3.8 Steps for Return Filing:

Step1: The taxpayer will upload the final GSTR-1 return form either directly through

data entry at the GST Common Portal or by uploading the file containing the said GSTR-

1 return form through Apps by 10<sup>th</sup> day of month succeeding the month during which supplies has been made. The increase / decrease (in supply invoices) would be allowed, only on the basis of the details uploaded by the counter-party purchaser in GSTR-2, upto 17<sup>th</sup> day of the month. (i.e. within a period of 7 days). In other words, the supplier would not be allowed to include any missing invoices on his own after 10<sup>th</sup> day of the month.

GSTN will facilitate periodic (may be daily, weekly etc.) upload of such information to minimize last minute load on the system. GSTN will facilitate offline preparation of GSTR-1.

Step2: GST Common Portal (GSTN) will auto-draft the provisional GSTR-2 of taxpayer based

on the supply invoice details reported by the counter-party taxpayer (supplier) on a near real-time basis.

Step3: Purchasing taxpayer will accept / reject/ modify such auto-drafted provisional GSTR-2.

(A taxpayer will have the option to download his provisional purchase statement from the Portal or through Apps using Application Programming Interface (APIs) and update / modify it off-line).

Step4: Purchasing taxpayer will also be able to add additional purchase invoice details in his

GSTR-2 which have not been uploaded by counter-party taxpayer (supplier) as described in Step 1 and 2 above, provided he is in possession of valid invoice issued by counter-party taxpayer and he has actually received such supplies.

Step5: Taxpayers will have the option to do reconciliation of inward supplies with counter-

party taxpayers (suppliers) during the next 7 days by following up with their counter-

party taxpayers for any missing supply invoices in the GSTR-1 of the counter-party taxpayers, and prompt them to accept the same as uploaded by the purchasing taxpayer. All the invoices would be auto-populated in the ITC ledger of taxpayer. The taxpayer would, however, indicate the eligibility / partial eligibility for ITC in those cases where either he is not entitled or he is entitled for partial ITC.

Step 6: Taxpayers will finalize their GSTR-1 and GSTR-2 by using online facility at Common

Portal or using GSTN compliant off-line facility in their accounting applications,

determine the liability on their supplies, determine the amount of eligible ITC on their

purchases and then generate the net tax liability from the system for each type of tax. Cash details as per personal ledger/ carried forward from previous tax period, ITC carried forward from previous tax period, ITC reversal and associated



Interest/Penalty, taxes paid during the current tax period etc. would get auto-populated in the GSTR-3.

Step 7: Taxpayers will pay the amount as shown in the draft GSTR-3 return generated

automatically at the Portal post finalization of activities mentioned in Step 6 above.

Step8: Taxpayer will debit the ITC ledger and cash ledger and mention the debit

entry No. in the GSTR-3 return and would submit the same.

### 3.9 Acknowledgement:

3.9.1 On submission of return, an Acknowledgement Number will be generated. In case of submission of a return which has been prepared by using offline tools, acknowledgement of submission will take some time as GSTN System will need to first verify details like the carry forward cash as per personal ledger, ITC, tax payment details etc. In such cases, initially a Transaction ID confirming receipt of data will be conveyed to the taxpayer, (as also envisaged in case of filing of short paid / non -paid return). Final acknowledgement of receipt of return will be generated after validation of data is completed, which will also lock-in the Transaction ID.

3.9.2 The acknowledgement of e -return would contain the following details:

- (i) Return acknowledgement number (unique number generated by the GSTN), Date and Time
- (ii) Transaction ID No., Date and Time
- (iii) GSTIN of taxpayer
- (iv) Relevant tax period details

- (v) Gross Supplies, Taxable Supplies and Tax paid / refund claimed (CGST, SGST, IGST and Additional tax separately) during the Return period

### 3.10 Contents of Invoice level information :

3.10.1. The following invoice level information would be captured in the return:

1. Invoices pertaining to B2B transactions (Intra-State, Inter-State and supplies to

UN organizations/embassies) [both for supply and purchase transactions]:

- (i) Goods and Services Tax Identification Number (GSTIN)/Unique ID issued to UN organizations/Embassies
- (ii) Invoice Number, Date and value
- (iii) HSN code for each item line (for Goods)/ Accounting code for each item line (for services)
- (iv) Taxable Value
- (v) Tax Rate (CGST & SGST or IGST and/ or Additional Tax)
- (vi) Tax Amounts (CGST & SGST or IGST and / or Additional Tax)
- (vii) Place of Supply (State)
- (viii) For Capital Goods, there will be separate column in the Table of the return for ease of tracking of credit due and availed over the period as prescribed by GST law
- (ix) An Invoice may have two items having different tax rates or different HSN codes in case of B2B supplies. If the invoice contains more than one tax rate/one HSN Code, the taxpayer would have to submit line - wise information separately for each HSN Code / each tax rate

2. Invoices pertaining to B2C transactions (Inter-State B2C supplies for consumer

on record)[only supply transactions]:

A. In respect of invoices whose taxable value is more than Rs. 2.5 lakhs (to enable transfer of funds to respective states):

- (i) Invoice Number, Date and value
- (ii) HSN Code for goods / Accounting code for services
- (iii) Taxable Value
- (iv) Tax Rate (IGST and Additional Tax)
- (v) Tax Amount (IGST and Additional Tax)
- (vi) Buyer's address (State Code)
- (vii) Departmental ID allotted by State Government to Government entities / PSUs , etc. not dealing in GST supplies or to persons dealing in exempted / Nil rated / non -GST goods or services
- (viii) Place of Supply (State) if different than S. No. (vi) above

B. For invoices whose taxable value is upto Rs 2.5 lakhs, only aggregated taxable value of all such invoices will be submitted, state-wise and tax rate-wise.

(GST Law may provide for mandatory mention of address of the buyer in every invoice whose taxable value is more than Rs. 50000/-)

3. Invoices pertaining to B2C transactions (Intra-State B2C supplies) [only supply transactions]:

For intra-state B2C supplies, aggregated taxable value of all such invoices will be submitted tax rate-wise.

4. Invoice pertaining to Export and deemed export supply [only supply transactions]:

- (i) Invoice Number, Date and value

- (ii) 8-digit HSN Code for goods/ Accounting Code of Services for each line item ( as HSN Code / Accounting code is mandatory in case of exports)
- (iii) Taxable Value
- (iv) Tax Rate
- (v) Tax Amounts (IGST, CGST & SGST) (in case exports on payment of GST).
- (vi) Shipping Bill/ Bill of Export Number

5. Invoices pertaining to exempted including Nil rated supply [both for supply and purchase transaction ]:

Aggregate value of all exempted (including Nil rated) supplies made by the taxpayer during the return period would be submitted. The aggregate value of exempted (including Nil rated) purchases would also be declared by the taxpayer in the return.

6. Bills of Entry relating to Import [only purchase transactions]:

- (i) Bill of Entry Number, Date and value
- (ii) Assessable Value for IGST
- (iii) 8-digit HSN Code for goods
- (iv) IGST rate
- (v) IGST Amount
- (vi) Importer's address (for transfer of IGST) [Will get auto populated in case of registered taxpayer. In case of others, it will have to be provided by them]

These details would be verified from Bill of Entry data available at ICES / ICEGATE.

7. Credit Note / Debit Note [for Sales-Purchase return, Post-sale discount]:

- (i) Invoice Number, Date and value

For sale-purchase return, on account of differential value/quantity/tax rates: (i) Debit / Credit Note Number

(ii) Original Invoice Number and Date

(iii) Taxable Value, Tax Rate and Tax Amount (CGST & SGST or IGST and Additional Tax) ( that is being modified )

The credit/debit note will be reflected in the monthly return in which such

notes have been issued.

GST Law may provide the time period within which sales return can be made and the date (invoice date or date of receipt by the buyer) from which such time period is to be calculated.

#### 8. Post sales discount:

GST Law may provide what constitutes a sale price especially with respect to

post sales discount. The Law may also contain suitable provisions about admissibility or otherwise of post supply discounts. The adjustments for post sales discount will be completed before filing of annual return. The credit/debit note will be reflected in the monthly return in which the said adjustment is made.

#### 9. Advances received against a supply to be made in future :

GST law may provide for Point of Taxation Rules which will determine the

point at which the taxes would be paid by the taxable person. So, accordingly,

if the tax is to be paid on the basis of advance payment received against a future supply of goods and/or services, then the following details would be required to be provided:

- (i) GSTIN/UID/GDI/Name of customer
- (ii) State Code
- (iii) HSN Code for goods / Accounting code for services
- (iv) Amount of advance received
- (v) Tax Rate (CGST and SGST or IGST and Additional Tax)
- (vi) Tax Amount (CGST and SGST or IGST and Additional Tax)

10. TDS:

GST law may provide for provision of TDS (Tax Deducted at source) for certain

supplies of goods and/or services made to specified categories of purchasers who will be obligated to deduct tax at a certain percentage from the payment due to the suppliers. They will be required to file a TDS return and submit the following details:

- (i) GSTIN/GDI of deductor
- (ii) GSTIN of deductee /supplier
- (iii) Invoice no. with date (iv) TDS Certificate no. with date and value
- (v) Taxable value

(v) Rate of TDS for IGST, CGST and SGST as applicable

(vi) Amount of IGST, CGST and SGST as applicable, deducted as TDS

#### 11. ISD:

GST law may retain the concept of Input Service Distributor (ISD).  
Accordingly,

ISDs would be required to file a monthly return and submit the following details:

(i) Details of ISD i.e. GSTIN, name and address

(ii) Details of recipient i.e. GSTIN, name and address

(iii) Details of the inward supply invoices on the basis of which Input Tax

Credit is claimed.

(iv) Invoice / Document no. with date

(v) Amount of IGST, CGST, SGST Credit, as applicable, being distributed.

3.10.2 GST Law may provide the suitable provisions for the mandatory fields and data structure which must be contained in a GST invoice.

3.11 Where will the taxpayer file Return?

3.11.1 A registered Tax Payer shall file GST Return at GST Common Portal either:

(i) by himself logging on to the GST Common Portal using his own user ID

and password;

- (ii) Through his authorized representative using the user Id and password (allotted to the authorized representative by the tax authorities), as chosen at the time of registration, logging on to the GST Common Portal.

The filing may be done either directly or by using Applications developed by accounting companies / IT companies which will interact with GST System using APIs or through Facilitation Center (FC).

3.11.2 At the time of registration, every taxpayer has to enroll with GST Common Portal (GSTN). A unique User-ID and Password will be generated and intimated to the taxpayer. This User-ID and Password shall be used by him for filing the tax return on the Common Portal as well. However, a taxable person may prepare and submit his returns himself or can use services of a TRP. The process for filing return through TRP is given below :

- (i) A TRP will have to be chosen by the taxpayer out of TRPs registered with respective State tax authorities/CBEC. (taxpayer will have the option to change TRP any time);
- (ii) The TRPs registered with tax authorities will be provided separate user ID and password;
- (iii) Using his own user Id and password, the TRP will prepare the return in prescribed format on the basis of the information furnished to him by the taxable person. (The legal responsibility of the correctness of information contained in the return prepared by the TRP will rest with



the taxable person only and the TRP shall not be liable for any errors or incorrect information.);

- (iv) The TRP will be able to upload all types of return, based on the information provided by the taxpayer who has authorized him to do so at the portal;
- (v) The system will generate an email and SMS having basic data of return and send the same to the taxpayer;
- (vi) The taxpayer can accept the correctness of the return and submit the same by just clicking on the link provided in the e-mail. In case he does not respond to the e-mail, return will be considered as not submitted;
- (vii) In case taxpayer wants to respond to the SMS, he may do so by replying YES and mention the OTP sent alongwith the SMS. In case he does not respond to the SMS, return will be considered as not submitted;
- (viii) This mechanism may be provided in the GST law and the TRPs would have to be approved by the tax administration and allotted a Unique ID and will also be provided appropriate training by them.

3.11.3 The return can also be submitted by the taxpayer through any Facilitation Center (FC) approved by the Tax authorities and selected by the taxpayer at GST System. The taxpayer shall make available the requisite documents to the facilitation center. Facilitation Centre (FC) shall be responsible for the uploading of all types of return given to it by the taxable person. After uploading the data on the common

portal using the ID and Password of FC, the GSTN system will generate an email/SMS for the taxpayer. The process explained in Para 3.11.2 above will be followed. With e-sign being worked out by Department of Electronics and Information Technology (DEITY), individual signing of return by one-time Digital Signature Certificate (DSC) can also be completed. This will do away with the requirement of print-out of acknowledgement of return proposed earlier based on the current system of ITR filing.

3.11.4 Registration of TRP/FC will be done by CBEC / respective State tax authorities and the registration data will be shared with GSTN to enable applicants/taxpayers to choose one from the available list of registered TRPs/FCs. The GST Law may also contain suitable provisions about it.

3.11.5 The common portal will display the electronic form to be used for filing the return. The form can be downloaded, filled and then uploaded using approved e- tools.

3.11.6 The portal will provide a form generation utility which can be downloaded by the taxpayer for preparation of the return offline and for conducting the preliminary arithmetic checks before return is uploaded on the portal using APIs.

3.11.7 Along with the return, taxpayer is not required to submit any other document. The documents as required for scrutiny or audit shall be made available by the taxpayer to the audit party deputed by the CBEC /State tax authorities/CAG.

3.11.8 The Common Portal will maintain and display the ledger of the Tax Payer providing information about the tax deposited, input tax credit availed/taken, input

tax credit utilized, tax liability created , balance ITC carried forward , tax payments made by debiting the ledgers under respective major tax heads, refund granted and balance in respective cash ledger and credit ledger carried forward [Separate ledger will be maintained for ITC and Cash for each Taxpayer]. The information of Interest on delayed payments, Penalty for legal defaults, Tax Demand as per adjudication/appellate orders, etc. would also be provided. The ledger will also give the status of the tax dues or excess payment on any given date. Thus such ledger would have eight pages and cash ledger would have 20 pages.

3.11.9 A return related liability should mean the tax liability for the transactions (including credit/debit notes) of the return period and the additional liability arising out of any ITC reversal or late inclusion of the supply in the return period . Arrears pertaining to audit/reassessment/enforcement outcomes would be handled separately, and not mixed with the return related liabilities and payments. The payments made on this account, however, would be reflected in the return.

### 3.12 Revision of Return

3.12.1 There would be no revision of returns.

3.12.2 All unreported invoices of previous tax period would be reflected in the return for the month in which they are proposed to be included. The interest, if applicable will be auto populated.

3.12.3 All under-reported invoice and ITC revision will have to be corrected using credit/debit note and such credit / debit note would be reflected in the return for the month in which such adjustment is carried out . The credit/debit note will have

provision to record original invoice, date etc. to enable the system to link the same with the original invoice as also to calculate the interest, if applicable. Its format will be like the invoice.

3.12.4 There would be separate tables in the returns for reflecting those adjustments for which credit / debit notes are not required to be issued / issued. The interest, if applicable will be auto populated.

### 3.13 Non-filing, late-filing and short-filing of return

#### A. Non-Filers & Late-Filers

In case of failure by the taxpayer to submit periodic returns, a defaulter list will be generated by the IT system by comparing the return filers with the registrant database. Such defaulter list will be provided to the respective GST Authorities for necessary enforcement and follow up action.

GST Common Portal can auto generate and send the notice to all non-filers (being done by many State VAT authorities) in the form of email and SMS. Jurisdictional tax authorities can get the same printed and dispatch such notices. The details of non-filers shall be made available on the dash board of jurisdictional officers. GST Law may also provide for imposition of automatic late fees for non-filers and late filers which can also be in-built in the notices.

#### B. Short-Filers

As per the requirement of the IGST model , Return should be allowed to be filed only on payment of due tax as self -assessed and declared in the return. It has,

however, been decided that e-Return should be allowed to be uploaded even in case of short payment for the limited purpose of having the information about self-assessed tax liability even though not paid. The invoice matching and inter-governmental fund settlement would, however, take place only after the full tax has been paid. Return without full payment of tax will be allowed to be uploaded but it will be treated as an invalid return and this return will not be used for matching of invoices and settlement of funds.

Any invalid return (including the one not supported by full payment) will merely be recorded with unique transaction ID, but not accepted in the system, and that aspect will be made known to the taxpayer at the time of communicating the ID itself.

[GST Law may provide adequate penal provisions for short-filing and non-filing of return]

#### 4 Return for Casual/Non-Resident Taxpayers:

Casual/Non-Resident Taxpayers should file GSTR-1, GSTR-2 and GSTR-3 for the period for which they have obtained registration within a period of seven days after the date of expiry of registration. In case registration period is for more than one month, monthly return(s) would be filed and thereafter return for remaining period would be filed within a period of seven days as stated earlier.

## 5 Annual Return (GSTR-8):

5.1 All the Normal taxpayers would be required to submit Annual Return. This return to be filed annually is intended to provide 360 degree view about the activities of the taxpayer. This statement would provide a reconciliation of the returns with the audited financial statements of the taxpayer.

5.2 This return is a detailed return and captures the details of all the income and expenditure of the taxpayer and regroups them in accordance with the monthly returns filed by the taxpayer. This return also provides for the reconciliation of the monthly tax payments and will provide the opportunity to make good for any short reporting of activities undertaken supply wise. The said return would also capture the details of pending arrears against the taxpayer and the current status of the orders leading to such arrears. The details of all the refund claims pending with the tax authorities would also be captured. Since this return captures the minutest details of income and expenditure of the taxpayer, the gross profit/loss arrived on the basis of the details submitted in this statement should tally with the gross profit/loss indicated in the Profit and Loss Account of the dealer. Accordingly, this return is to be submitted along with the audited copies of the Annual Accounts of the dealer and would be filed by 31<sup>st</sup> December following the end of the financial year for which it is filed.

5.3 A separate reconciliation statement, duly certified by a Chartered

Accountant, will have to be filed by those taxpayers who are required to get

their accounts audited under section 44AB of Income Tax Act 1961. Currently this limit is Rs 1 Crore.

5.4 Consolidated statement of purchases and supplies based on monthly returns filed by the taxpayer can be made available to taxpayers by GSTN common portal as a facilitation measure for enabling him to prepare annual return.

5.5 The format of Reconciliation statement would be finalized after finalization of GST Model law.

## 6 Processing of Return:

After the GST Return has been uploaded onto the GST Common Portal, the Portal will undertake the following activities:

- (i) Acknowledge the receipt of the return filed by the taxpayer after conducting required validations.
- (ii) Acknowledgement number would be issued as per procedure detailed in  
Para 3.9  
above.
- (iii) Once a return is acknowledged, forward that GST Return to tax authorities of Central and appropriate State Govt. through the established IT interface.
- (iv) The ITC claim will be confirmed to purchasing taxpayer in case of matched invoices after 20<sup>th</sup> of the month succeeding the month of the tax period

month provided counterparty supplying taxpayer has submitted the valid return (and paid self-assessed tax as per return).

- (v) Communicate to the taxpayers through SMS/e-Mail, about the macro- results of the matching. The details will be in the taxpayer s' dashboard/ledger which can be viewed after log-in at the Portal.
- (vi) Auto-populate the ITC reversals due to mismatching of invoices in the taxpayer 's account in the return for the 2<sup>nd</sup> month after filing of return for a particular month.
- (vii) Aggregation of cross-credit utilization of IGST and SGST for each State and generation of settlement instructions based on IGST model and as finalized by the Payments Committee. This has to be with dealer-wise details as the concerned tax administration's follow on activities will be dependent on that detailing.

(Satish Chandra)  
Member Secretary  
Secretary Empowered Committee  
Department of Revenue of State Finance Ministers  
Government of India

(Rashmi Verma)  
Special



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LIST OF PARTICIPANTS OF THE MEETING HELD ON 9<sup>TH</sup> OCTOBER, 2015

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Government of India

1. Smt. Rashmi Verma, Special Secretary (Revenue), Government of India
2. Shri Udai Singh Kumawat, Joint Secretary (Revenue), Government of India
3. Shri Manish Saxena, Additional Director, Directorate General of Systems, Government of

India

4. Shri Shashank Priya, ADG, DG (GST), CBEC, Government of India
5. Shri Upender Gupta, Commissioner, GST, CBEC, Government of India
6. Shri G.D. Lohani, Commissioner, CBEC, Government of India
7. Shri Rajeev Yadav, Director (Service Tax), CBEC, Government of India
8. Shri Ravneet Singh Khurana, Deputy Commissioner, CBEC, Government of India
9. Shri Vishal Pratap Singh, Deputy Commissioner (GST), CBEC, Government of India
10. Smt. Aarti Saxena, Deputy Secretary (State Taxes), Government of India
11. Shri Tshering Y. Bhutia, Assistant Secretary, Department of Revenue, Government of India

States

1. Shri Gautam Das Gupta, Deputy Commissioner of Taxes, Assam
2. Shri T. Ramesh Babu, Additional Commissioner, Commercial Tax, Andhra Pradesh
3. Shri Ajay Kumar Chourasia, Joint Commissioner, Commercial Tax, Bihar
4. Shri Vijay Kumar, Commissioner (VAT), Trade and Taxes, Delhi
5. Shri Jagmal Singh, Deputy Director, Trade and Taxes, Delhi
6. Shri Dipak M. Bandekar, Commissioner, Commercial Tax, Goa
7. Dr. P.D. Vaghela, Commissioner, Commercial Tax, Gujarat
8. Shri Riddhesh Raval, Assistant Commissioner, Commercial Tax, Gujarat
9. Shri Hanuman Singh, Additional Commissioner, Excise & Taxation, Haryana
10. Shri Prediman Bhat, Additional Commissioner, Commercial Tax, Jammu & Kashmir
11. Shri S.K. Prasad, Deputy Commissioner, Commercial Tax, Jharkhand
12. Shri Ritvik Pandey, Commissioner, Commercial Tax, Karnataka
13. Dr. M.P.Ravi Prasad, Joint Commissioner, Commercial Tax, Karnataka
14. Dr. Rajan Khobragade, Commissioner, Commercial Tax, Kerala
15. Shri Sudip Gupta, Deputy Commissioner, Commercial Tax, Madhya Pradesh
16. Shri Niten Chandra, Commissioner, Commercial Tax, Odisha

17. Shri Dipankar Sahu, Deputy Commissioner(IT&P), Commercial Tax, Odisha
18. Shri K. Sridhar, Deputy Commissioner, Commercial Tax, Puducherry
19. Shri Pawag Garg, Additional Commissioner, Excise & Taxation, Punjab
20. Shri Dinesh Chandra Rakhecha, Assistant Commissioner, Commercial Tax, Rajasthan
21. Shri K. Rajaraman, Principal Secretary/Commissioner, Commercial Taxes, Tamil Nadu
22. Shri D. Soundraraja Pandian, Joint Commissioner (Taxation), Commercial Taxes, Tamil Nadu
23. Shri K. Chandrasekhar Reddy, Additional Commissioner, Commercial Tax, Telangana
24. Shri Rakesh Verma, Joint Commissioner, Commercial Tax, Uttar Pradesh
25. Shri Vivek Kumar, Additional Commissioner, Commercial Tax, Uttar Pradesh
26. Shri N.C. Sharma, Additional Commissioner, Commercial Tax, Uttarakhand
27. Shri Khalid Aizaz Anwar, Joint Commissioner, Commercial Tax, West Bengal

#### Goods and Services Tax Network (GSTN)

1. ~~Shri Navin Kumar, Chairman, Goods and Services Tax Network~~
2. Shri Prakash Kumar, Chief Executive Officer, Goods and Services Tax Network
3. Shri S.B. Singh, SVP (Services), Goods and Services Tax Network
4. Shri K.P. Verma, VP (Services), Goods and Services Tax Network
5. Ms. Kalyaneshwari B. Patil, AVP (Services), Goods and Services Tax Network
6. Shri J. Rasal Dass Soloman, AVP (Services), Goods and Services Tax Network

#### Empowered Committee of State Finance Ministers

1. ~~Shri Satish Chandra, Member Secretary, Empowered Committee~~
2. Shri Bashir Ahmed, Adviser, Empowered Committee
3. Shri V.P. Gupta, Senior Administrative Officer, Empowered Committee

## GSTR-1

## OUTWARD SUPPLIES MADE BY THE TAXPAYER

[To be furnished by the 10<sup>th</sup> of the month] [Not to be furnished by compounding taxpayer/ISD]

1. GSTIN: .....
2. Name of the taxpayer: .....  
(S. No. 1 and 2 will be auto-populated on logging)
3. Gross Turnover of the taxpayer in the previous FY.....  
(To be submitted only in first year. To be auto populated in subsequent year)
4. Period: Month..... Year .....

## 5. Taxable outward supplies to a registered

(figures in Rs)

GSTIN/ person UIN	Invoice					IGST		CGST		SGST		Addl Tax <sup>#</sup>		POS (only if different from the location of recipient)	Indicate if supply attracts reverse charge \$
	No.	Date	Value	HSN/ SAC*	Taxabl e value	Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)

\* As per Para 3.1 (4) (iii) of the return report

# Not applicable to services and intra-state & specified inter-state supplies of goods

\$ To be filled only if a supply attracts reverse charge

Notes:

1. SAC to be different from HSN (may be prefix 'S')
2. Taxpayer has the option to furnish the details of nil rate and exempted supplies in this Table
3. In case of inter-state supplies, only IGST & Additional Tax (if applicable) would be filled
4. In case of intra-state supplies, CGST & SGST would be filled.

6. Taxable outward supplies to a consumer where place of supply is other than the State where supplier is located (Inter-state supplies) and Invoice value is more than Rs 2.5 lakh (optional in respect of other supplies)

(figures in Rs)

Recipient's State code	Name of the recipient/GDI	Invoice					IGST		Addl Tax <sup>#</sup>		POS (only if different from the location of recipient)
		No.	Date	Value	HSN/SAC*	Taxable value	Rate	Amt	Rate	Amt	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

\* As per Para 3.1 (4) (iii) of the return report

# Not applicable to services and intra-state & specified inter-state supplies of goods

Notes:

1. SAC to be different from HSN (may be prefix 'S')
2. Taxpayer has the option to furnish the details of nil rate and exempted supplies in this Table

### 7. Taxable outward supplies to consumer (Other than 6

above)

(figures in Rs)

HSN/SAC*	State code (Place of supply)	Aggregate Taxable Value	IGST		CGST		SGST		Addl Tax <sup>#</sup>	
			Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

\* As per Para 3.1 (4) (iii) of the return report

# Not applicable to services and intra-state & specified inter-state supplies of goods

Notes:

1. SAC to be different from HSN (may be prefix 'S')
2. Taxpayer has the option to furnish the details of nil rate and exempted supplies in this Table

### 8. Details of Credit/Debit

(figures in Rs)

Debit Note/credit note		Original Invoice		Differential Value (Plus or Minus)	Differential Tax							
No.	Date	No.	Date		IGST		CGST		SGST		Addl Tax#	
(1)	(2)	(3)	(4)	(5)	Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt

Debit Note

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Credit Note

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# Not applicable to services and intra-state & specified inter-state supplies of goods

Note: Information about Credit Note / Debit Note to be submitted only if issued as a supplier.

9. Amendments to details of Outward Supplies of earlier tax periods (including post supply discounts) (figures in Rs)

Original Invoice		GSTIN/ UIN	Revised Invoice				IGST		CGST		SGST		Addl Tax#		POS (only if different from the location of recipient)
No.	Date		No.	Date	HSN/ SAC	Taxable Value	Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt	
(1)	(2)	(3)	(4)	(5)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)

# Not applicable to services and intra-state & specified inter-state supplies of goods

10. Nil rated, Exempted and Non GST outward supplies\* (figures in Rs)

	Nil Rated (Amount)	Exempted (Amount)	Non GST supplies (Amount)
(1)	(2)	(3)	(4)
Interstate supplies to registered person			
Intrastate supplies to registered person			
Interstate supplies to consumer			
Intrastate supplies to consumer			

If the details of "nil" rated and "exempt" supplies have been provided in Table 5,6 and 7, then info in column (3) may only be furnished.

11. Supplies Exported (including deemed exports) (figures in Rs)

	Invoice					Shipping bill/ bill of export		IGST		CGST		SGST	
	No.	Date	Value	HSN/ SAC*	Taxable value	No.	Date	Rate	Amt	Rate	Amt	Rate	Amt
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Without payment of GST													
With payment of GST													

\* As per Para 3.1 (4) (iii) of the return report

12. Tax liability of amount received in advance against a supply to be made in future  
(figures in Rs)

GSTIN/UI D/GDI/ Name of customer	State Code	HSN/SAC* of supply to be made	Amount of advance received without raising a bill	TAX							
				IGST		CGST		SGST		Addl Tax#	
				Rate	Tax	Rate	Tax	Rate	Tax	Rate	Tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

\* As per Para 3.1 (4) (iii) of the return report

# Not applicable to services and intra-state & specified inter-state supplies of goods

Note: A transaction id would be generated by system for each transaction on which tax is paid in advance

13. Tax already paid (on advance receipt) on invoices issued in the current period  
(figures in Rs)

Invoice No.	Transaction id (A number assigned by the system when tax was paid)	TAX Paid on receipt of advance							
		IGST		CGST		SGST		Addl Tax#	
		Rate	Tax	Rate	Tax	Rate	Tax	Rate	Tax
(1)	(2)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

# Not applicable to services and intra-state & specified inter-state supplies of goods

Note: Tax liability in respect of invoices issued in this period shall be net of tax already paid on advance receipt.

Usual Declaration  
Person)

(Signatures of Authorized

INSTRUCTIONS for furnishing the information

1. Terms used:

GSTIN: Goods and Services Taxpayer Identification Number

UID: Unique Identity Number for embassies

HSN: Harmonized System of Nomenclature for goods

SAC: Service Accounting Code

GDI: Government department unique ID where department does not

have GSTIN POS: Place of supply of goods or services – State Code to be mentioned

GSTR-2

[To be furnished by the 15<sup>th</sup> of the month] [Not to be furnished by compounding taxpayer /ISD]

Note:

1. Auto-population would be done, on the basis of GSTR1 of counter-party supplier, on or after 11<sup>th</sup> of succeeding month.
2. Addition of invoices / debit note / credit note, not submitted by counter-party supplier, would be permitted between 12<sup>th</sup> to 15<sup>th</sup> of succeeding month.
3. Adjustments would be permitted on 16<sup>th</sup> and 17<sup>th</sup> of succeeding month.
4. Further the other details that are not auto-populated, i.e. import of services, eligibility of ITC and quantum thereof and purchases from unregistered taxpayer shall be furnished.

INWARD SUPPLIES/PURCHASES RECEIVED

1. GSTIN.....
2. Name of taxpayer.....  
(S. No. 1 and 2 will be auto-populated on logging)
3. Period :           Month.....           Year .....
4. From Registered taxpayers

(figures in Rs)

GSTIN of supplier	Invoice		Addl. Taxable value	Tax# Rate	IGST		CGST		Eligibility of Total Tax ITC available			ITC this month		
	No.	Date			Value	Rate	Amt	Rate	Amt	Rate	Amt		(select from as ITC drop down)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)		
(14) (15) (16) (17) Other than supplies attracting reverse charge														
Auto populated			Shall be auto populated from counterparty GSTR1									Input Capital goods		
Not auto populated											None Same as above			
(Claimed) Supplies attracting reverse charge														
Auto populated			Shall be auto populated from own GSTR1									Same as above		

Others

\* As per Para 3.1 (4) (iii) of the return report



# Not applicable to services and intra-state & specified inter-state supplies of goods  
 Note: If the supply is received in more than one lot, the invoice information should be reported in the return period in which the last lot is received and recorded in the books of accounts.

**5. Goods /Capital goods received from Overseas (Import of goods)**

(figures in Rs)

Bill of entry					IGST		Eligibility for ITC (select from drop down)	Total IGST available as ITC	ITC available this month
No.	Date	Value	HSN/SAC*	Taxable value	Rate	Amt			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
							Input		
							Capital Goods		
							None		

\* As per Para 3.1 (4) (iii) of the return report

**6. Services received from a supplier located outside India (Import of services)**

(figures in Rs)

Invoice					IGST		ITC Admissibility	
No	Date	Value	SAC	Taxable value	Rate	Amt	Total ITC admissible	ITC admissible this month
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

**7. Details of Credit/Debit Notes**

(figures in Rs)

Debit Note/ credit note		Original Invoice		Differential Value (Plus or Minus)	Differential Tax								Eligibility for ITC (select from drop down as in Table 5 above)	Total IGST available as ITC	ITC available this month	
No.	Date	No.	Date		IGST		CGST		SGST		Addl Tax#					
(1)	(2)	(3)	(4)	(5)	Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt	(14)	(15)	(16)	

Debit Note Received

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Column No. 1 to 13 shall be auto populated from

Credit Note Received



11. TDS Credit received

(figures in Rs)

GSTIN/ GDI/of TDS deductor	TDS Certificate		TDS					
			IGST		CGST		SGST	
	No	Date	Rate	Tax	Rate	Tax	Rate	Tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(3)
Shall be auto populated from counterparty TDS return								

12. ITC Received on an invoice on which partial credit availed earlier

(figures in Rs)

Original invoice/ doc.		ITC availed					
		IGST		CGST		SGST	
No	Date	Earlier	This month	Earlier	This month	Earlier	This month
(2)	(3)	(4)	(5)	(6)	(7)	(8)	(3)
ITC taken earlier shall be auto populated upon choosing the invoice number							

Usual declaration

Signature of Authorized Person



Rate of Tax (Rate wise-Including Nil, (1)	Value (2)	CGST (3)	SGST (4)
Goods			
Services			

Note: To be auto-populated from Table 5 plus Table 8 plus Table 10 of GSTR-1

### 6.3 Inter-State Supplies to Consumers (Auto populated from GSTR-1)

1)

(including unregistered Government Departments / persons dealing in exempted / NIL rated/ non GST goods or services )

(figures in Rs)

State Code (1)	Rate of Tax (Rate wise-Including Nil, (2)	Value (3)	IGST (4)	Additional Tax (5)
Goods				
Services				

Note: To be auto-populated from Table 6 plus Table 7 plus Table 8 plus Table 10 of GSTR-1

### 6.4 Intra-State Supplies to Consumers (Auto populated from GSTR-1)

(figures in Rs)

Rate of Tax (Rate wise-Including Nil, exempt and (1)	Value (2)	CGST (3)	SGST (4)
Goods			
Services			

Note: To be auto-populated from Table 7 plus Table 8 plus Table 10 of GSTR-1

### 6.5 Exports (including deemed exports) (Auto populated from GSTR-1)

(figures in Rs)

Description (1)	Taxable Value (2)	IGST (3)	CGST (4)	SGST (5)
Goods				
Without payment of GST				

With Payment of GST				
Services				
Without payment of				
With Payment of GST				

Note: To be auto-populated from Table 11 of GSTR-1

**6.6 Revision of supply invoices pertaining to previous tax period (including post sales discounts or any clerical/other errors)**

[Auto populated from GSTR1]

(figures in Rs)

Invoice No	Invoice Date	Differential Value (Plus or Minus)	IGST	CGST	SGST	Additional Tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Goods						
Services						

Note: To be auto-populated from Table 9 of GSTR-1

**6.7 Total tax liability on outward supplies above)**

(Auto Populated from the Tables

(figures in Rs)

Value	IGST	CGST	SGST	Additional Tax
(1)	(2)	(3)	(4)	(5)
Goods				
Services				

Note: To be auto-populated from Tables 6.1 to 6.6 above of this Return

**7. Inward supplies**

**7.1 Inter-State supplies received**

(Auto-populated from

GSTR2)

(figures in Rs)

State Code	Rate of Tax (Rate wise-Including Nil, exempt and non-GST)	Value	IGST	IITC of IGST the current available in	Addl Tax
(1)	(2)	(3)	(4)	(5)	(6)

Goods_Inputs					
Capital goods					
Services					

Note: To be auto-populated from Table 4 plus Table 7 plus Table 9 of GSTR-2

7.2 Intra-State supplies received

(Auto populated from GSTR

-2)

(figures in Rs)

Rate of Tax (Rate wise-Including Nil, exempt, compounding)	Value	CGST	SGST	ITC-CGST available in current month	ITC-SGST available in current month
(1)	(2)	(3)	(4)	(5)	(6)
Goods_Inputs					
Capital Goods					
Services					

Note: To be auto-populated from Table 4 plus Table 7 plus Table 9 of GSTR-2

7.3 Imports

(Auto populated from

GSTR -2)

(figures in Rs)

	Assessable Value	IGST	ITC- IGST available in current month
(1)	(2)	(3)	(4)
Goods_ inputs			
Capital goods			
Services			

Note: To be auto-populated from Table 5 plus Table 6 of GSTR-2

7.4 Revision of purchase invoices pertaining to previous tax period (including post sales discounts received or any clerical / other errors) ( Auto populated from GSTR-2)

(figures in Rs)

Differential Value (+/-)	CGST	SGST	IGST	Additional Tax
(1)	(2)	(3)	(4)	(5)
Goods_Inputs				

Capital goods				
Services				

Note: To be auto-populated from Table 8 of GSTR-2

**7.5 Total Tax liability on inward supplies on reverse charge** (figures in Rs)

Value	CGST	SGST	IGST	Additional Tax
(1)	(2)	(3)	(4)	(5)
Goods				
Services				

Note: To be auto-populated from Table 6 of GSTR-2

**8 Total Tax liability for the month (Table 6.7 plus Table 7.5 of this Return)** (figures in Rs)

Value	CGST	SGST	IGST	Additional Tax
(1)	(2)	(3)	(4)	(5)
Goods				
Services				

**9. TDS credit received during the month ( Auto-populated from GSTR-2)** (figures in Rs)

GSTIN/ GDI/of TDS deductor	TDS Certificate		IGS T		CGS T		SGS T	
	No	Date	Rate	Tax	Rate	Tax	Rate	Tax
(1)	(3)		(4)	(5)	(6)	(7)	(8)	(9)

Note: To be auto-populated from Table 11 of GSTR-2

**10. ITC received during the month (auto populated from ITC Ledger)** (figures in Rs)



IGS T		CGS T		SGS T	
Rat	Tax	Rat	Tax	Rat	Tax
(2)	(3)	(4)	(5)	(6)	(7)

**11. Tax, fine and penalty paid (auto-populated from cash and ITC**

ledger)

(figures in Rs)

S. No.	Description	IGS T	CGST	SGST	Addl Tax
(1)	(2)	(3)	(4)	(5)	(6)
1.	ITC Reversal paid (On account of adjustment)				
2.	ITC Reversal paid ( On account of mismatch)				
3.	Interest				
4.	Tax for previous Tax periods				
5.	Tax for Current Tax period				
6.	Late fee				
7.	Penalty				
	Debit Nos. in Ledger				
1.	In Cash Ledger				
2.	In ITC ledger				

**12. Refunds claim of excess ITC in specified cases and excess tax paid earlier**

(1)	CGST	SGST	IGST
(1)	(2)	(3)	(4)
Refund of ITC accumulation claimed in specified cases			
Refund of excess amount of tax paid earlier			
Refund from cash ledger			
Bank Account Number*			

\*This should be one of the bank accounts mentioned in the GSTIN

Usual declaration

Signatures of Authorized Person

TAX Liability Ledger (Auto populated in real time)

(figures in Rs)

	CGST	SGST	IGST	Addl Tax	Total
(1)	(2)	(3)	(4)	(4)	(5)
Opening Tax Liability (6)					
Tax liability arising out of return					
Tax liability on account of mismatch of					
Other tax liability					
TDS Liability					
Penalty					
Fees					
Interest					
Less : Tax paid (cash plus ITC)					
Closing balance					

The heads for tax, TDS and other liability shall be shown as drop down items for facilitation

CASH LEDGER (updated on real time)

(figures in Rs)

	CGST	SGST	IGST	Addl Tax	Total
(1)	(2)	(3)	(4)	(5)	(6)
Opening Balance					
Amount deposited [Auto populated from CIN]					
CIN .....					
CIN .....					
Amount of TDS Credit [Auto populated from TDS Return of counterparty deductor]					
Amount utilized for payment of tax					
Outstanding liability from earlier period					
For this tax period					
Any other liability paid (indicate reference from Tax liability register)					
Amount utilised for payment of interest/penalty and other amount paid					
Interest paid on delay in payment of tax					
Fees paid for late filing of return					
Others penalties paid					
Other amount paid (selection)					
Refund from cash ledger					
Closing balance					

ITC LEDGER (updated on real time)

(figures in Rs)

	CGST	SGST	IGST	Total
(1)	(2)	(3)	(4)	(5)
Opening Balance				
ITC availed (including revision in invoices) [first 4 will be auto-				
Inputs				
Capital goods				
Services-received directly				
Services credit received from ISD				
Mismatched credit claimed				
Disputed credit claimed				
Credit claimed by a taxpayer on becoming regular taxpayer				
Any other ITC claimed (Please specify)				
Credit utilized				
ITC Reversal ( On account of adjustment)				
ITC Reversal ( On account of mismatch)				
ITC Revision for any reason				
ITC Disallowed				
Interest Liability related to Returns of previous Tax period				
Tax Liability of earlier Tax periods				
Tax payment for the month [selection]				
ITC_ refund under process/refund allowed				
Other tax liability paid				
Closing Balance				



(figures in Rs)

Bill of entry					IGST	
No.	Date	Value	HSN/ SAC*	Taxable value	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)

\*at 8-digit level

**7. Services received from a supplier located outside India (Import of services)**

(figures in Rs)

Invoice					IGS	
No	Date	Value	SAC*	Assessable Value	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)

\* As per Para 3.1 (4) (iii) of the return report

**8. Outward Supplies**

made

(figures in Rs)

S.No.	Nature of supplies	Amount
(1)	(2)	(3)
1	Intra-state supplies	
2	Non GST Supplies	
3	Exports	

**9. Tax**

Payable

(figures in Rs)

	IGST#	CGST#	SGST#	Compounding Tax
(1)	(2)	(3)	(4)	(5)
Tax payable as per return				
Interest payable for delayed payment of Fees for late filing of return				
Others				
Total				

# Tax paid in respect of supplies attracting reverse charge and those received from unregistered traders

10. Details of Tax

Payment

(figures in Rs)

Cash Ledger Debit Entry No.	Date	IGST	CGST	SGST	Compounding Tax
(1)	(2)	(3)	(4)	(5)	(6)

11. Are you likely to cross composition limit before the date of next return: Y/N

Declaration:

(Signatures of Authorized Person)





--	--	--	--	--	--	--	--	--	--	--	--	--

\* As per Para 3.1 (4) (iii) of the return report

7. ITC availed on inputs and input services

(figures in Rs.)

S. No.	GSTIN of supplier	Invoice					IGST		CGST		SGST	
		No.	Date	Value	HSN/SAC *	Taxable value	Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

\* As per Para 3.1 (4) (iii) of the return report

8. Tax paid

(figures in Rs.)

Description	Tax payable	ITC utilized	Tax paid in cash (after)
(1)	(2)	(3)	(4)
IGST			
CGST			
SGST			
Total			

9. Closing stock of Goods

S. No.	Description of goods	HSN*	UQC	Quantity	Value (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)

\* As per Para 3.1 (4) (iii) of the return report

Usual Declaration

Signature

## GSTR-6

## RETURN FOR INPUT SERVICE DISTRIBUTOR

(To be furnished by 15<sup>th</sup> of the month)

(To be furnished by Input Service Distributor)

1. GSTIN: .....

2. Name of the Registered person: .....  
(S.No. 1 and 2 will be auto-populated on logging)

3. Period: Month ..... Year.....

4. From Registered taxpayers (to be auto-populated from counter party GSTR-1)  
(figures in Rs)

GSTIN of supplier	Invoice					IGST		CGST		SGST		Total Tax available as ITC for distribution	ITC available this month for distribution
	No	Date	Value	SAC	Taxable	Rate	Amt	Rate	Amt	Rate	Amt		
(1)	(2)	(3)	(4)			(7)	(8)	(11)	(12)	(13)	(14)	(16)	(17)
Other than supplies attracting reverse charge													
Auto populated													
Claimed													
Supplies attracting reverse charge													

## 5. Input Service Distribution

(figures in Rs)

GSTIN of receiver of credit	Invoice/Document No.				
	No.	Date	ISD Credit distributed		
			CGST	SGST	IGST
(1)	(2)	(3)	(4)	(5)	(6)

## 6. ISD Ledger

(figures in Rs)

	CGST	SGST	IGST	Total
(1)	(2)	(3)	(4)	(5)
Opening Balance				
ITCs received*				
ITC Reversal				
ITC Distributed				
Closing balance				

\* To be auto-populated from table No. 4 above

Usual Declaration:

(Signatures of Authorized Person)

**GSTR-7  
TDS Return**

(To be furnished by 10<sup>th</sup> of the month)

(To be furnished by person liable to deduct TDS)

1. GSTIN/GST TDS IN: .....
2. Name of dedutor : .....
- (S.No. 1 and 2 will be auto-populated on logging)
3. Return period:                    Month..... Year.....

4. TDS details

(figures in Rs.)

GSTIN of supplier	Invoice			CIN No. vide which TDS paid	TDS_IGST		TDS_CGST		TDS_SGST		TDS_All Taxes	
	No	Date	Value		Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

5 Other amount paid

(figures in Rs)

	CGST A/c	SGST A/c	IGST A/c	CIN No
(1)	(2)	(3)	(4)	
Interest on delayed payment of				
Fees for late filing of return				
Others (pl specify)				
Total				

Declaration:

(Signatures of Authorized Person)

## GSTR-8

## ANNUAL RETURN

[To be furnished by the 31<sup>st</sup> December of the next Financial Year]

1. GSTIN .....
2. Name of the Taxpayer .....  
(S. No. 1 and 2 will be auto-populated on logging)
3. Date of statutory Audit .....
4. Auditors .....
5. Details of expenditure:

(a) Total value of purchases on which ITC availed (inter-

State) Goods

Sl. No.	Description	HSN Code	UQC	Quantity	Tax Rate	Taxable Value	IGST Credit	Additional Tax paid

Services

Sl. No.	Description	Accounting Code	Tax Rate	Taxable Value	IGST Credit

b) Total value of purchases on which ITC availed (intra-State)

Goods

Sl.No	Description	HSN Code	UQC	Quantity	Taxable Value	Tax Rate		Tax Credit	
						CGST	SGST	CGST	SGST

Services

Sl.No	Description	SAC	Taxable Value	Tax Rate		Tax Credit	
				CGST	SGST	CGST	SGST

C) Total value of purchases on which ITC availed (Imports)

Goods

Sl.No.	Description	HSN Code	UQC	Quantity	Tax Rate	CIF Value	IGST	Custom Duty paid

Services

Sl.No.	Description	SAC	Tax Rate	Taxable Value	IGST

(d) Other Purchases on which no ITC availed

Sl.No.	Goods/Services	Purchase Value

(e) Sales Returns

Sl.No	Goods	HSN Code	Taxable Value	CGST	SGST	IGST	Additional Tax

--	--	--	--	--	--	--	--

(f) Other Expenditure (Expenditure other than purchases)

Sl. No.	Specify Head	Amount

6. Details of Income:

(a) Total value of supplies on which GST paid (inter-State Supplies)

Goods

Sl. No.	Description	HSN Code	Tax Rate	Taxable Value	IGST	Additional Tax

Services

Sl. No.	Description	Accounting Code	Tax Rate	Taxable Value	IGST

(b) Total value of supplies on which GST Paid (intra-State Supplies)

Goods

Sl.No	Description	HSN Code	Taxable Value	Tax Rate		Tax	
				CGST	SGST	CGST	SGST

Services

Sl.No	Description	SAC	Value	Tax Rate		Tax	
				CGST	SGST	CGST	SGST



--	--	--	--	--	--	--	--

(c) Total value of supplies on which GST Paid (Exports)

Goods

Sl.No	Goods	HSN Code	Tax Rate	FOB Value	IGST	Custom Duty

Services

Sl.No	Services	SAC	Tax Rate	FOB Value	IGST

(d) Total value of supplies on which no GST Paid (Exports)

Goods

Sl.No	Goods	HSN Code	Tax Rate	FOB Value

Services

Sl.No	Services	SA	Tax Rate	FOB Value

(e) Value of Other Supplies on which no GST paid

Sl. No.	Goods/Services	Value

(f) Purchase Returns

Goods

Sl. No	Goods	HSN Code	Taxable Value	CGST	SGST	IGST	Additional Tax

Services

Sl. No	Services	SAC	Taxable Value	CGST	SGST	IGST

(g) Other Income (Income other than from supplies)

Sl. No.	Specify Head	Amount

7 Return reconciliation Statement

A\_CGST

Sl. No	Month	Tax Paid	Tax Payable (As per audited a/c)**	Difference	Interest	Penalty
	Total					

B\_SGST

Sl. No	Month	Tax Paid	Tax Payable (As per audited a/c)**	Difference	Interest	Penalty
	Total					

C IGST

Sl. No.	Month	Tax Paid	Tax Payable (As per audited a/c)**	Difference	Interest	Penalty
	Total					

D Additional Tax

Sl. No.	Month	Tax Paid	Tax Payable (As per audited a/c)**	Difference	Interest	Penalty
	Total					

\*\*

1. Presently the statutory auditor is not required to calculate the tax payable on account of CE and ST.
2. Further there is bound to be difference in supply value when compared with the Taxable value determined in accordance with the Valuation Rules (this may be on account of certain permissible deductions from the supply value or on account of certain additions which may be required to be made to arrive at the taxable value).
3. A reconciliation format (reconciling the supply value with the taxable value), therefore, is required to be prescribed. Such a format can be prepared only after the GST law particularly the valuation Rules are finalized.

8. Other Amounts@@  
A Arrears (Audit/Assessment etc.)

Sl. No.	Details of Order	Tax Payable	Interest	Penalty	Current Status of the Order
	Total				

B Refunds

Sl. No.	Details of Claim	Date of Filing	Amount of Refund	Current Status of the claim

This may be divided into parts:-

i) amount already paid / refund already received during the year, ii) amount payable / refund pending.

9. Profit as Per the Profit and Loss Statement  
Gross Profit Profit after  
Tax Net Profit
-



## **5.3 Report on Registrations**

**REPORT**

**OF**

**THE JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST**

**ON**

**GST REGISTRATION**

**Empowered Committee of State Finance Ministers**

**New Delhi**

**July, 2015**

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## **Report of the Joint Committee on Business Processes for GST on Registration Processes in GST Regime**

### **1.0 Introduction**

During the Empowered Committee meeting held on 10<sup>th</sup> March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also keep in view the Registration and Return requirements necessary for IGST Model. Accordingly, a Joint Committee, in consultation with the Government of India, was constituted on 7<sup>th</sup> April, 2014 (Annexure-I).

1.1. The Committee held its deliberations on 28<sup>th</sup> October, 2014, 12<sup>th</sup> November, 2014, 25<sup>th</sup> November, 2014, 22<sup>nd</sup> December, 2014, 2<sup>nd</sup> and 3<sup>rd</sup> February, 2015, 19<sup>th</sup> and 20<sup>th</sup> February, 2015, 16<sup>th</sup> and 17<sup>th</sup> April, 2015 and 7<sup>th</sup> and 8<sup>th</sup> July, 2015. The Report of the Joint Committee on Business Processes on Registration was accordingly circulated to all the States. However, this Report was further discussed in the meeting of the Joint Committee on Business Processes held on 22<sup>nd</sup> and 23<sup>rd</sup> July, 2015. Some changes were made as per the discussions in the meeting of the Joint Committee on Business Processes held on 22<sup>nd</sup> and 23<sup>rd</sup> July, 2015. The report of the Joint Committee on Business Processes on Registration was accordingly finalized. The list of the participants of the meeting of the Joint Committee on Business Processes held on 22<sup>nd</sup> and 23<sup>rd</sup> July, 2015 is appended at Annexure-II.

1.2. Registration of a business with the tax authorities implies obtaining a unique identification code from the concerned tax authorities so that all the operations of and data relating to the business can be agglomerated and correlated. In any tax system this is the most fundamental requirement for identification of the business for tax purposes or for having any compliance verification program. Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:

- Legally recognized as supplier of goods or services.
- Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- Pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.

## 2.0 Assumptions

2.1 The business process proposed in this document is based on the following assumptions: (1) A legal person without GST registration can neither collect GST from his customers

nor claim any input tax credit of GST paid by him.

(2) There will be a threshold of Gross Annual Turnover including exports and exempted supplies (to be calculated on all-India basis<sup>1</sup>) below which any person engaged in supply of Goods or Services or both will not be required to take registration. Once a dealer crosses the required threshold or he starts a new business, registration application must be filed within 30 days from the date of the dealer's liability for obtaining such registration. Effective date of registration would be the date of application in all cases i.e. whether the application has been filed within prescribed time limit of 30 days or otherwise. The taxpayer would be eligible for ITC in respect of all his purchases from the date of application in case application for registration has been filed within 30 days. The taxpayer would, however, not be eligible for ITC in respect of his purchases prior to the date of registration in case the registration application is not filed within the prescribed time limit of 30 days, although Centre is of the view that such a provision may not stand the test of judicial scrutiny. On the other hand States, based on their experience under VAT, were of the view that having relevant provision in the GST law has helped them contest cases in courts. **GST Law Drafting Committee to make provision relating to eligibility for ITC accordingly as well as for levying penalty in case of a dealer failing to register within the stipulated time period.**

<sup>1</sup> Please refer Para 7 of the **Report of the Committee on the Problem of Dual Control, Threshold and Exemptions in GST Regime (Annexure-VIII)**

(3) However, such person with all-India gross annual turnover below the threshold turnover would be allowed to take registration, if he wants to. By taking such voluntary registration he can enter the credit chain even prior to crossing the threshold limit, provided he does not opt for the Compounding scheme (as defined below).

(4) There will be another relatively higher threshold of Gross Annual Turnover (to be calculated on all-India basis) to be called Compounding turnover up to which the registered person can opt to pay tax at a specified percentage of the turnover, without entering the credit chain. Such registered person will neither be allowed to collect tax from his customers nor claim any input tax credit. Compounding dealers shall remain under compounding scheme till their turnover crosses threshold or they opt for out of the scheme. Such dealers don't have to apply every year to remain under the compounding scheme. However, if the compounding dealer opts out of compounding in a financial year, for any reason, but eligible and wish to avail compounding in the next financial year, such dealer will have to apply afresh for compounding in the beginning of the financial year in which he wishes to claim compounding scheme.

(5) All other taxable persons will be required to take GST registration. Such persons will be able to take the credit of taxes paid on inputs / input services / capital goods and pass on the credit of GST to his customers / recipients of goods or services or both.

(6) The registered person eligible for the Compounding scheme but opting against the Compounding can pay regular taxes and file tax returns on monthly basis, and thereby make his supplies eligible for input tax credit in the hands of the purchasers/recipients.

(7) Irrespective of turnover, if a taxable person carries out any inter-state supply and / or is liable to pay GST under reverse charge, he will be compulsorily required to take registration. Such person shall neither be eligible for exemption threshold nor for Compounding scheme. **However, an individual importing services for personal consumption will not be liable to pay GST under reverse charge or register under GST if the GST law so provides.**

(8) All UN bodies seeking to claim refund of taxes paid by them would be required to

obtain a unique identification number (ID) from the GST portal. The structure of the said ID would be uniform across the States in uniformity with GSTIN structure and the same will be common for the Centre and the States. The supplier supplying to these organizations is expected to mention the UID on the invoices and treat such supplies as B2B supplies and the invoices of the same will be uploaded by the supplier.

(9) A unique identification number (ID) would be given by the respective state tax authorities through GST portal to Government authorities / PSUs **not making outwards supplies of GST goods (and thus not liable to obtain GST registration)** but are making inter-state purchases. The structure of the said ID would be uniform across the States in uniformity with GSTIN structure. The supplier supplying to these organizations is expected to mention the UID on the invoices and treat such supplies as B2B supplies and the invoices of the same will be uploaded by the supplier.

(10) **The concept of Input Service Distributor (ISD) presently being followed in Centre's Law may continue if the GST Law so provides.** They would be required to obtain GSTIN for distributing the credit of GST paid on services proposed to be used at multiple locations which are separately registered. This would be an exception/ deviation in case of services only. **GST Law Drafting Committee to make appropriate provisions for the same.**[While, at this stage it has been decided to make exception only for services, it is worth mentioning here that the Cenvat Credit Rules provide for a mechanism to allow distribution of inputs, which is basically a mechanism to distribute credit on inputs. Such mechanism is necessary for service provider as the location of payment of GST may be distinct from the location where goods are received. Therefore, drafting Committee may look into this issue.]

(11) All existing registered persons, whether with the Centre or State under any of the tax statues being subsumed in GST, would be allotted a GST registration number called Goods and Services Tax Identification Number (GSTIN) on voluntary basis. Dealers who are below the GST threshold will have option to remain in GST chain. **GST Law Drafting Committee to make appropriate provision.**

(12) Tax authorities, in case of enforcement cases, may grant suo-moto registration. If

such person does not have PAN, the registration would be initially temporary and later converted into a PAN based registration. [GSTN to develop temporary registration numbering system]

2.2 For each State the taxable person will have to take a separate registration, even though the taxable person may be supplying goods or services or both from more than one State as a single legal entity.

2.3 Multiple registrations within one State to business verticals [as defined in Accounting Standard (AS) 17 issued by ICAI] of a taxable person may also be permitted, subject to all the verticals being on the same scheme of tax treatment **if the GST Law so provides.**

2.4 A supplier who is not registered on regular basis, whether on mandatory or voluntary basis, in other State (s) and desires to conduct business in a particular State for a limited period, will have to obtain registration in that State for that limited period. Such suppliers are known as casual dealers and shall not be allowed to opt for composition scheme. However, the supplier would be eligible to claim ITC on purchases / inward supplies. The period of registration would be mentioned in the registration certificate also. The format of Registration Certificate for such taxpayers is different from the regular taxpayers. Even the application form for registration will have field for ascertaining estimated supplies. Return for such taxpayers would also be different. Such taxpayers would be required to self-assess their likely liability and deposit the same as an Advance Tax. Such amount would be deposited by way of two Demand Drafts (one for Centre and other for State) which would be returned to the taxpayer after he has discharged his final liability. **The GST Law Drafting Committee may provide for conditions for registration and tax payment.**

2.5 A Non-resident Supplier is a person who, in the course of business, makes an intra-state supply of goods or services or both, but is not a resident in the state in which he has applied for registration, but is already registered in any other state. Since the Non-Resident Supplier is already registered in another State, there would be an easy way of registering such entities in the State in which registration is applied as Non-Resident Supplier. The provisions applicable on casual dealers (as detailed in para

2.4 above) may apply to them except that no security deposit or advance tax collection may be made in their case.

### 3.0 Structure of registration number

3.1 Each taxpayer will be allotted a State wise PAN-based 15-digit Goods and Services Taxpayer Identification Number (GSTIN).

3.2 Various digits in GSTIN will denote the following:

State Code		PAN										Entity Code	BLANK	Check Digit
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

3.3 In the GSTIN, the State Code as defined under the Indian Census 2011 would be adopted. In terms of the Indian Census 2011, each State has been allotted a unique two digit code e.g. „09“ for the State of Uttar Pradesh and „27“ for the State of Maharashtra.

3.4 13<sup>th</sup> digit would be alpha-numeric (1-9 and then A-Z) and would be assigned depending on the number of registrations a legal entity (having the same PAN) has within one State. For example, a legal entity with single registration within a State would have „1“ as 13<sup>th</sup> digit of the GSTIN. If the same legal entity goes for a second registration for a second business vertical in the same State, the

13<sup>th</sup> digit of GSTIN assigned to this second entity would be „2“. This way 35 business verticals of the

same legal entity can be registered within a State.

3.5 14<sup>th</sup> digit of GSTIN would be kept BLANK for future use.

3.6 In GST regime, multiple registrations within a State for business verticals of a taxable person would be allowed. This provision should be subject to following specific stipulations –

(1) Input Tax Credit across the business verticals of such taxable persons shall not be allowed unless the goods or services are actually supplied across the verticals.

(2) For the purpose of recovery of dues, all business verticals, though separately registered, will be considered as a single legal entity. **(Final view needs to be taken by the GST Law drafting committee)**

3.7 Switching over from Compounding scheme to Normal scheme and *vice-versa* would be dealt in the manner described below –

(1) Any existing taxpayer not under Compounding scheme may opt for Compounding scheme, if eligible, only from the beginning of the next Financial Year. The application will have to be filed on or before 31<sup>st</sup> March of the previous year so that Returns can be filed accordingly.

(2) Compounding dealer may be allowed to switch over to Normal scheme even during the year if they so want, with a condition that they cannot switch over to Compounding scheme again during the same financial year.

(3) Any existing taxpayer under the Compounding scheme upon crossing the Compounding threshold will be switched over to the Normal scheme automatically from the day following the day of crossing the Compounding threshold. **GST Law drafting committee should provide for a suitable time-period of inputs and capital goods purchases on which ITC would be permitted at the time of switching over to Normal scheme.**

(4) For the changes covered by (1) to (3) above, the validation in the return module should change automatically under intimation to the concerned taxpayer and both the tax authorities. A suitable validation / dependency of the return module should be established.

The above changes should also be published on the common portal in addition to being

intimated to other taxpayers who have identified such taxpayer as their counter-party taxpayer.

#### **4.0 Procedure for obtaining Registration**

4.1 For obtaining registration, all the taxable persons shall interact with tax authorities through a common portal called GST Common Portal<sup>2</sup> that would be set up by Goods and Services Tax Network (GSTN). The portal will have backend integration with the respective IT systems of the Centre and States.

4.2 The procedure prescribed in para 6.0 below is meant for new applicants. The procedure for migration of existing registrants either with the Centre or State or both is dealt in para 7.0 below.

4.3 A new applicant would be allowed to apply for registration without prior enrollment. Once a complete application is submitted online, a message asking for confirmation will be sent through e-mail and SMS to the authorized signatory of the applicant. On receipt of such confirmation from the authorized signatory, Acknowledgement Number would be generated and intimated to the applicant. Once the application is approved and GSTIN is generated, the same along with Log-in ID and temporary Password will be sent to the authorized signatory. This credential will be permanently used to access the GST Common Portal subsequently. Provision for capturing e-mail and Mobile Number of authorized representative of the taxpayer has also been incorporated in the proposed GST Registration Form. It would be the responsibility of the taxpayer to keep this information updated.

4.4 Online verification of PAN of the Business / Sole Proprietor/ Partner/Karta/**Managing Director and whole time directors**/Member of Managing Committee of Association, Managing trustee/authorized signatory etc. of the business would be mandatory and without such verification, registration application will **not be allowed to be submitted**.

#### **5.0 Facilitation Center and Tax Return Preparer Scheme**

5.1 In order to cater to the needs of taxpayers who are not IT savvy, following facilities shall be \_\_\_\_\_

<sup>2</sup> Refinement to the process for States opting for two-way API based integration and flexibility (decision dated 18.4.2012 of EC) will be formulated separately(**Annexure-IX**).



**5.2 Tax Return Preparer (TRP):** A taxable person may prepare his registration application / returns himself or can approach the TRP for assistance. TRP will prepare the said registration document / return in prescribed format on the basis of the information furnished to him by the taxable person. The legal responsibility of the correctness of information contained in the forms prepared by the TRP will rest with the taxable person only and the TRP shall not be liable for any errors or incorrect information. **If so provided in the GST law, TRPs would be approved by the tax administration of the Centre and the States and will also be provided appropriate training by them, as per common curriculum to be devised by EC/ GST Council.**

**5.3 Facilitation Centre (FC)** shall be responsible for the digitization and / or uploading of the forms and documents including summary sheet duly signed by the Authorized Signatory and given to it by the taxable person. After uploading the data on common portal using the ID and Password of FC, a print-out of acknowledgement will be taken and signed by the FC and handed over to the taxable person for his records. The FC will scan and upload the summary sheet duly signed by the Authorized Signatory. This is the system in vogue for submitting TDS returns by more than 2 million tax deductors to the Income Tax Department.

**5.4 Registration of TRP/FC is recommended. Final view may be taken by the GST Law drafting committee on the same.**

## **6.0 New Applicants**

6.1 The process highlighted in the paragraphs below is applicable for new applicants for registration, both mandatory and voluntary.

6.2 New applicant can apply for registration:

(1) at the GST Common Portal directly<sup>3</sup>; or

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<sup>3</sup> Refinement to the process for states opting for two-way API based integration and flexibility (decision dated 18.4.2012 of EC) will be formulated separately(**Annexure-IX**).

(2) at the GST Common Portal through the Facilitation Center (FC)

Multiple applications can be filed at one go where a taxable person seeks registration in more than one State or for more than one business vertical located in a single / multiple State(s).

6.3 Following scanned documents are required to be filed along with the application for Registration –

Relevant Box No. in the Registration Form	Document required to be uploaded	Reason for requirement
2. Constitution of Business	<input type="checkbox"/> Partnership Deed in case of Partnership Firm ; <input type="checkbox"/> Registration Certificate in case of other businesses like Society, Trust etc. which are not captured in PAN.	<p>In case of Companies, GSTN would strive for online verification of Company Identification Number (CIN) from MCA21.</p> <p>Constitution of business / applicant as per PAN would be taken except for businesses such as Society, Trust etc. which are not captured in PAN.</p> <p>Partnership Deed would be required to be submitted in case of Partnership Firms.</p>
11. Details of the Principal Place of business	<input type="checkbox"/> In case of Own premises – any document in support of the ownership of the premises like Latest Tax Paid Receipt or Municipal Khata copy or Electricity Bill copy <input type="checkbox"/> In case of Rented or Leased premises – a copy of the valid Rent / Lease	<p>This is required as an evidence to show possession of business premises. If the documentary evidence in Rent Agreement or Consent letter shows that the Lessor is different from that shown in the document produced in support of the ownership of the property, then the case must be</p>

	<p>document in support of the ownership of the premises of the Lessor like Latest Tax Paid Receipt or Municipal Khata copy or Electricity Bill copy</p> <p><input type="checkbox"/> In case of premises obtained from others, other than by way of Lease or Rent – a copy of the Consent Letter with any document in support of the ownership of the premises of the Consenter like Municipal Khata copy or Electricity Bill copy</p> <p><input type="checkbox"/> Customer ID or account ID of the owner of the property in the record of electricity providing company, wherever available should be sought for address verification.</p>	<p>Case”, warranting a post registration visit for verification. GST Law Drafting Committee may add penalty provision for providing wrong lease details.</p>
12. Details of Bank Account (s)	<p>Opening page of the Bank Passbook held in the name of the Proprietor / Business Concern – containing the Account No., Name of the Account Holder, MICR and IFS Codes and Branch details</p>	<p>This is required for all the bank accounts through which the taxpayer would be conducting business.</p>
17. Details of Authorised Signatory	<p>For each Authorised Signator</p> <p><input type="checkbox"/> Letter of Authorisation or copy of Resolution of the Managing Committee or Board of Directors to that effect</p>	<p>This is required to verify whether the person signing as Authorised Signatory is duly empowered to do so.</p>
Photograph	<p><input type="checkbox"/> Proprietary Concern – Proprietor</p> <p><input type="checkbox"/> Partnership Firm / LLP – Managing/ Authorized</p>	

	<p>Partners (personal details of all partners is to be submitted but photos of only ten partners including that of Managing Partner is to be submitted)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> HUF – Karta</li> <li><input type="checkbox"/> Company – Managing Director or the Authorised Person</li> <li><input type="checkbox"/> Trust – Managing Trustee</li> <li><input type="checkbox"/> Association of Person or Body of Individual – Members of Managing Committee (personal details of all members is to be submitted but photos of only ten members including that of Chairman is to be submitted)</li> <li><input type="checkbox"/> Local Body – CEO or his equivalent</li> <li><input type="checkbox"/> Statutory Body – CEO or his equivalent</li> <li><input type="checkbox"/> Others – Person in Charge</li> </ul>
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6.3.1 For Field No 16 (i.e. Details of Proprietor / all partners / Karta / Managing Director and whole-time Director / Members of the Managing Committee of Association of Persons / Board of Trustees etc.) and Field No 17 (i.e. Details of the Authorized Signatory), verification of PAN with CBDT database and GSTN database will be carried out online before the submitted application is sent to the State/ Centre. In case of mismatch the applicant will be given an opportunity to correct the same.

6.4A registration form has been designed and is annexed as Annexure-III. This form should be developed by GSTN as per the standard practices / protocols on IT notified by the Govt. of India e.g. for digitally capturing a postal address, name etc. *In case there is no standard practice for any of the field, the same should be developed by the GSTN and form designed accordingly.* Fields marked by asterisk in the form are mandatory fields and must be filled by the applicant.

Separate application forms are to be designed for:

- (1) Multiple registration for business verticals of same legal entity (it must be registered already) within a State;
- (2) Application for registration in more than one State (that can be filed at one go);
- (3) Amendments to existing Registration(s);
- (4) Cancellation of Registration(s);

- (5) Option to avail / withdraw from the Compounding scheme;
- (6) Enrolment of Tax Practitioner or Facilitation Centre if provided for in the GST Law;
- (7) Assignment of Role (by a dealer) to TP/FC, as agent of the dealer if so provided for in the GST Law;
- (8) Application for new registration on account of Succession / Amalgamation / De-merger etc. of existing GST registrants;
- (9) Application by UN bodies for getting a Unique Identification Number (ID).

6.5 In some North-eastern States, individuals (Proprietorship firms) are exempt from Income Tax. However, to obtain GSTIN they will have to obtain a PAN before they can apply for registration under GST. Further Government departments will also be required to obtain PAN if they are required to obtain registration under GST. Under *GST regime, registration will not be allowed without a valid PAN.*

6.6 If applicant files application through the Facilitation Center, then the above procedure shall be followed by him through the FC by making available the requisite documents to the FC. The User ID and Password of taxable person will however be forwarded by portal to the e-mail furnished by the taxable person (that of primary authorized signatory) and by SMS to the mobile number furnished by taxable person or by post, if the taxable person so desires. It will not be sent to FC.

6.7 The GST common portal shall carry out preliminary verification / validation, including real- time PAN validation with CBDT portal, Adhaar No validation with UIDAI, CIN (Company Identification) with MCA and other numbers issued by other Departments through inter-portal connectivity before submission of the application form. Taxpayers would have the option to sign the submitted application using valid digital signatures (if the applicant is required to obtain DSC under any other prevalent law then he will have to submit his registration application using the same). In the absence of digital signature, taxpayers would have to send a signed copy of the summary extract of the submitted application form printed from the portal to a central processing center to be operated by GSTN. The location details of this central processing center would be intimated to the applicant along with the application acknowledgement number. The application will be processed even without waiting for receipt of the signed copy of the summary extract. If the signed copy is not received within

30 days, a reminder will be sent through e-mail and SMS to the authorized signatory through the portal. If the copy is not received within 30 days after such reminder being sent, the system will prompt the concerned tax authority to initiate the action for cancellation of the registration. Such cancellation will have prospective effect i.e. from the date of cancellation. GST portal would acknowledge the receipt of application for registration and issue an Acknowledgement Number which could be used by the applicant for tracking his application. Such Acknowledgement Number would not contain the details of jurisdictional officers.

6.8 The application form will be passed on by GST portal to the IT system of the concerned State/ Central tax authorities for onward submission to appropriate jurisdictional officer (based on the location of the principal place of business) along with the following information –

- (1) Uploaded scanned documents;
- (2) State specific data and documents;
- (3) Details if the business entity is already having registration in other States. This should also include GST compliance rating<sup>4</sup>;
- (4) Details of the PAN(s) of individuals mentioned in the application which are part of the other GST registrations;
- (5) Acknowledgment number stated in para 6.7 above;
- (6) Details of any record of black-listing or earlier rejection of application for common PAN(s).
- (7) Last day for response as per the 3 common working day limit for both tax authorities as set out through Holiday Master.

On receipt of application in their respective system, the Centre / State authorities would forward the application to jurisdictional officers who shall examine whether the uploaded documents (as detailed in para 6.3 above) are in order and respond back to the common portal within 3 common working days, excluding the day of submission of the application on the portal, using

<sup>4</sup> Please refer para 23 IX. of the report of the Committee on IGST and GST on imports **(Annexure-X)**.

An indicative process for processing of the application by the concerned tax authorities will be drafted and shared separately. Submission of latitude and longitude data in respect of principal place of business will be of help in automatic identification of jurisdictional officer in case of geographically distributed officials mapped on a digital map. However, submission of latitude and longitude would be optional.

6.9 After verification, the following situations are possible:

- (1) If the information and the uploaded documents are found in order, the State and the Central authorities shall approve the application and communicate the approval to the common portal within 3 common working days. The portal will then automatically generate the Registration Certificate.
- (2) If during the process of verification, one of the authorities raises some query or notices some error, the same shall be communicated to the applicant either by the Tax Authority directly or through the GST Common Portal and also simultaneously to the other authority and to the GST Common Portal within 3 common working days. The applicant will reply to the query / rectify the error / answer the query within a period informed by the concerned tax authorities (Normally this period would be seven days). A separate sub-process and interactive form for this purpose will have to be designed. On receipt of additional document or clarification, the relevant tax authority will respond within 7 common working days. **(time-period that would be allowed to the applicant for rectification of any error will be decided by the GST Law drafting committee)**
- (3) Thereafter the processing of registration application will commence resulting in either grant of registration or refusal to grant registration. If either of the two authorities (Centre or State) refuses to grant registration, the registration will not be granted.
- (4) In case registration is refused, the applicant will be informed about the reasons for such refusal through a speaking order. The applicant shall have the right to appeal

against the decision of the Authority. **A deeming provision to the effect that rejection of the registration application by one authority amounts to rejection by both Centre and State will need to be incorporated in the GST law.**

- (5) The tax authorities in the Centre and State would have a period of 3 common working days to respond to the application, either conveying approval or raising a query. In case any of the authority neither reject the application nor raise a query within 3 common working days, then the registration would be deemed to have been approved by both the authorities and the GST Common Portal will automatically generate the registration certificate. In case either authority raises a query within 3 common working days, applicant will have to respond to the same within next 7 common working days failing which the application will be rejected. After the applicant has responded to the query raised by any authority, a period of another 7 common working days will be given to the authorities to respond to the application. In case any of the authority neither rejects the application nor raises a query during this period, then the registration would be deemed to have been approved by both the authorities and the GST Common Portal will automatically generate the registration certificate. ( **GST law to have provision for the same**)

6.10 The applicant shall be informed of the fact of grant or rejection of his registration application through an e-mail and SMS by the GST common portal. Jurisdictional details would be intimated to the applicant at this stage.

6.11 In case registration is granted, applicant can download the Registration Certificate from the GST common portal. **GST law may provide that GST Registration certificate shall be displayed at the principal place of business of the taxpayer.**

6.12 The GST common portal will provide a risk profile to the tax authorities based on the risk parameters made available by the tax authorities. The Central/State tax authorities will also have their own risk profile based on their own risk parameters. It was noted that submission of Adhaar No. cannot be made compulsory. Non –submission of Adhaar No. could be one of the risk parameters for deciding about the post registration physical verification. **On the basis of both risk profiles, the**



**jurisdictional officer of tax authorities will take a decision about post registration verification of the application if so provided in the GST Law.**

**6.13 GST Law Drafting Committee may provide for appropriate provision for imposition of substantial penalty in cases of fraudulent registrations.**

## **7.0 Migration of existing registrants**

7.1 Existing registrants are those who are either registered with States or with the Centre or with both.

7.2 In case of such registrants, the system shall be designed to migrate cleaned and verified data from the existing database to the GST Common Portal and a GSTIN shall be generated. With regard to the migration of data of the existing registrants, following steps are necessary:

- (1) The process of migration of data must be started sufficiently in advance so that the business of existing registrants does not suffer and transition from the present system to GST is smooth.
- (2) At present, tax payers are separately registered with State and/ or with Central tax administrations or with both based on their business activity. In the GST regime, a taxpayer will have to obtain State wise registration. Even within a State, the taxpayer may either opt for a single registration or multiple registrations for different business verticals.
- (3) Analysis of registration data available with States and Centre conducted by NSDL and

GSTN reveals the following:

- a) The number of fields in the registration database of various State VAT and CBEC system are different than that finalized for GST. The number of fields varies from 50 to 107 in case of States/Centre whereas GST Registration Form has 120 fields. Thus there is a gap of 13 to 70 fields, meaning that data will have to be collected from the taxpayers.
- b) As per report of NSDL, which conducted as is study of State Systems as well as

that of CBEC, in majority of cases, the available data does not comply with Metadata and Data Standards (MDDS) of Government of India. This is also confirmed by the feedback received from States in May 2015. Importing such data, which is not MDDS compliant, will lead to wrong or incomplete results on query.

- c) The data from States also shows that they do not have scanned copies of supporting documents for mandatory fields like principle place of business, photos of MD or Karta etc. in their database. This again will have to be collected from them.

Since, lots of reports will be using registration database, purity of registration data will be of paramount importance. Migrating half-complete and incorrect data from existing registration databases to GST database will adversely impact the reports and intelligence derived out of it. Thus data will have to be collected afresh from the existing taxpayers. GSTIN can be issued based on State and validated PAN. In case of taxpayers under Excise and VAT, source of data for issuing GSTIN should be VAT data as in most cases Excise assessee will also be registered under VAT. For taxpayers under Service Tax the source of data for issuing GSTIN should be Service Tax.

Out of six mandatory data fields in the GST Registration field, three can be filled up from validated PAN data, namely PAN, name of business, constitution of business. The name of State is known in case of VAT data. The remaining two mandatory data fields namely

„Principal Place of Business“ and „details of promoters“ will have to be collected from taxpayers along with non-mandatory items. In case of Service Tax, State will have to be collected before generating GSTIN. With this the following process has been suggested:

(4) For Taxpayers Registered under State VAT/Excise

- i. GSTIN will be generated by NSDL in case of all VAT TINs where PAN has been validated. Along with a password the GSTIN will be sent to respective State Tax Authorities.
- ii. State tax authorities will communicate the GSTIN/password to taxpayers, with instruction to log on the GST portal and fill up the remaining data. State specific data over and above what is contained in the GST Registration Form can be collected after GST registration becomes operational.

- iii. The data so collected by GSTN/NSDL will be provided to States so that they can undertake the verification exercise as per their convenience after 1/4/2016 in a staggered manner spread over a period of one to two quarters so that it does not affect the working of the tax authorities. This is being suggested as the dealer is already registered with VAT department.
  - iv. In case, PAN has been validated but the email or mobile numbers of dealers are not available, such dealers may be advised through newspaper advertisement to visit the GST portal and use the following data for user authentication:
    - 1. VAT-TIN
    - 2. PAN
    - 3. Date of Birth/Date of Incorporation in DDMMYYYY format. (This data is available with PAN Database)
      - i. Date of birth of proprietor in case of Proprietorship firm.
      - ii. Date of incorporation in case of all other types of dealers.
  - v. In those cases where PAN has not been validated, State VAT department will have to collect the taxpayers.
- (5) In case of Service Tax, the taxpayers are not registered under a State, a different approach will have to be adopted.
- I. Since all Service Taxpayers have user ID and password and Service Tax has their email IDs, they may advise the taxpayers to intimate State(s) where they would like to get themselves registered in.
  - II. Service Tax portal will check from GST portal whether GSTIN has been generated for combination of State and PAN of the taxpayer. If not generated, request GST portal to generate the same.
  - III. GST portal will generate the GSTIN and communicate to Service Tax, which will be communicated to the taxpayer asking him/her to provide remaining data at GST Portal.
- (6) Any verification / updation of the information as outlined above would have to be

done by the taxable person within a specified period.

(7) If the verification/updation is not done within the stipulated period, the GSTIN will be suspended till the taxable person does the needful.

(8) Any verification by State / Central authorities can be done after GSTIN is issued.

## **8.0 Registration of Compounding Dealers**

8.1 Dealers below the Compounding ceiling will be provided with an option of availing the Compounding scheme i.e. they can pay the tax at Compounding rate (to be specified) without entering the credit chain.

8.2 Although the Compounding scheme is only a temporary phase before the taxable person starts functioning as a normal taxable person, separate format annexed as Annexure-V has been prescribed for enabling such taxable persons to opt for Compounding scheme. When the taxable person opts for Compounding scheme he should indicate so in the registration form and GST Common Portal would internally flag him as a Compounding dealer. Later on when he goes out of the Compounding scheme due to his turnover crossing the Compounding ceiling (change will be triggered by the tax return values) or he opts out of the scheme (through an amendment application annexed as Annexure-VI), the said flag will be removed and he would continue operating with the same registration number, without undertaking any fresh registration.

## **9.0 Amendments in the Registration Form**

9.1 Capturing registration information is not a one-time activity and any change in critical information should be entered at the common portal within a stipulated time period. Except the fields mentioned in Para 7.2 (7) above, changes to other registration data can be done on self-service basis. The changes to fields mentioned in Para 7.2 (7) above and a change to Compounding scheme will require submission of reasons and prescribed relevant documents, and will be subject to approval by the concerned tax authorities. All amendments in the details in registration application form will be retained in the database of the GSTN and will be made visible to the tax authorities.

## **10.0 Cancellation/Surrender of registration**

10.1 In the following cases, the registration can be either surrendered by the registrant or cancelled by the tax authorities:

- (1) Closure of business of tax payer;
- (2) Gross Annual Turnover including exports and exempted supplies (to be calculated on all-India basis) falling below threshold for registration;
- (3) Transfer of business for any reason including due to death of the proprietor of a proprietorship firm;
- (4) Amalgamation of taxable person with other legal entities or de-merger;
- (5) Non commencement of business by the tax payer within the stipulated time period prescribed under the GST laws **(Suitable provision to be made in the GST law).**

10.2 In case of surrender, the system will send an acknowledgment by SMS and e-Mail to the applicant regarding his surrender of registration and he will be deemed to be unregistered from the date of such acknowledgement. There will be a provision in the system to prompt such surrendered registrants to update their address and mobile number at a prescribed periodicity till all dues are cleared/refunds made. Application form for Surrender / Cancellation of registration is annexed as Annexure-IV.

**10.3 GST Law drafting committee would make appropriate provision for recovery of arrears, other dues and compliance verification pertaining to past periods.**

10.4 The cancellation of registration may be done by tax authorities in the following situations:

- (1) In case signed copy of the summary extract of submitted application form is not received even after a reminder;
- (2) In case a tax payer contravenes specified provision of the GST law;
- (3) In case a taxpayer has not filed any return at all during a predetermined period (say six months). In case a taxpayer has filed a nil return continuously for this period, then the provisions of cancellation will not be applicable. **(GST Law drafting committee should provide for the time period for which if there is a continuous failure by a taxpayer to file returns, the registration shall be cancelled)**

(4) The cancellation of registration may be preceded by system generated notice giving 7 days" time for furnishing reply by the taxpayer. Principle of natural justice to be followed before cancellation, i.e., giving an opportunity to taxpayer to be heard and passing of order.

10.5 If the taxpayer approaches the tax authority for revocation of surrendered or cancelled registration, the surrendered / cancelled registration can be revoked. The action for revocation would be initiated by that Authority which has cancelled the registration or had earlier accepted the surrender of registration.

10.6 The GST Law would contain appropriate provisions relating to revocation / surrender / cancellation of registration.

10.7 The action for revocation / cancellation of registration would have to be initiated by both Centre and State tax authorities. Once the registration is cancelled by one authority it would be deemed to be cancelled by other authority also.

10.8 The cancellation or surrender of registration would always have prospective effect.

### **11.0 Explanation of the Entries in the Form (should be attached to the Form)**

11.1 The critical information / documents required from the applicant while making the application has been outlined in para 6.3 above. Here the manner of organization of the said information in the registration form (Annexure-III) has been explained.

11.2 The form has fields from 1- 21 requiring various details from the applicant. These fields have been organized so that applicant can introduce himself and the nature of his business to the tax authorities in simple interactive manner. To maintain uniformity in the manner of submission of the form, the fields are provided in the standard conventional manner. These can be adopted from the forms notified by the Information Technology department of the Central and State Governments. For example, the legal name can be either a single field or it could be split into first name, middle name and last name. *In case there is no standard practice for any of the fields,*

*the same should be developed by the GST common portal.* The form is self-explanatory and has online validation facility before the submission of the form. Wherever possible, drop down menu will be provided so that the form is user friendly and there is no dispute about the information submitted.

11.3 The fields marked with asterisk are the critical fields and need to be filled before the form can be submitted to the portal. In case of non-availability of the information such as PAN Number with the applicant, the common portal will direct the applicant to the website of the income tax department where he can submit the application for obtaining the PAN and after obtaining PAN, can apply for registration under GST.

11.4 Fields 1-5 are the basic introductory fields and need no explanation.

11.5 Field 6 is relevant for taxable persons opting for Compounding scheme.

11.6 Field 7 asks for date of commencement of business in the State in which the taxable person is applying for registration. As has been discussed earlier, the taxable person in the GST regime will be required to take State specific single registration for CGST, IGST and SGST purposes (multiple registrations in a state for business verticals are permitted) .

11.7 Field 8 asks for the date on which liability to pay tax has arisen. Field 9 asks for the details of time period for which registration is required by the casual dealers. Field „From“ – „To“ - will be mandatory for casual /non-resident dealers in the registration application. For others field „From“ only would be mandatory. Field 10 captures the reason for such liability. This field would not be enabled in case of registration application by casual/non-resident dealer.

11.8 Field 11 is for the existing registrants. They have to indicate the details of their existing registrations, so that information already available in the respective data bases can be culled out and made use by the tax authorities for granting new registration to the applicant under GST.

11.9 Field 12 asks for the details of the principal place of business of the applicant. Principal place of Business in the State is the place declared by the taxable person, where-

- (1) He will make available all the records to the tax authorities when called for.
- (2) The tax authorities will serve all the communications, notices, orders etc. and service of the communications, notices and orders at this place will be treated as legal service of such communications, etc.

11.10 Field 13 seeks the details of the Bank Accounts of the applicant. The taxable person is required to disclose the details of all the bank accounts maintained by him for conducting his business.

11.11 Field 14 and 15 ask for the details of top 5 goods or services **(in terms of turnover or any other parameter to be specified by the GST Law drafting Committee)** which taxable person is supplying or likely to supply.

11.12 Field 16 captures details of the additional places of business. In this field the applicant has to give the details of all the places from where he conducts the business.

11.13 Field 17 asks for the details of Proprietor, partners, Karta, Directors, Member of Managing Committee of Association, Managing trustee etc. of the business depending on the constitution of the business.

11.14 Field 18 asks for the details of the authorized signatory.

11.15 Field 19 asks for the details of authorized representative (TRP / CA/ Advocate, etc.) of the taxpayer.

11.16 Field 20 is kept to capture any State specific information, **if so provided in the GST law**

.

11.17 Field 21 is required to capture the scanned documents (as mentioned in para 6.3. above) required to be uploaded along with the application

11.18 Field 22 is the field for verification and declaration made by the applicant about correctness of the information submitted by him in the registration application.

**(Satish Chandra)**  
**Secretary**  
**Committee**  
**Ministers**

**(Rashmi Verma) Member**  
**Additional Secretary Empowered**  
**Department of Revenue of State Finance**  
**Government of India**



## **ANNEXURE-I**

### **CONSTITUTION ORDER OF JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST**

#### **EMPOWERED COMMITTEE OF STATE FINANCE MINISTERS DELHI SECRETARIAT, IP ESTATE, NEW DELHI – 110002**

Tel. No. 2339 2431, Fax: 2339 2432 e-mail:  
[vatcouncil@yahoo.com](mailto:vatcouncil@yahoo.com)

No.15/45/EC/GST/2014/32  
April, 2014

Date: 7<sup>th</sup>

#### **JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST**

During the last Empowered Committee meeting held on 10<sup>th</sup> March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also keep in view the Registration and Return requirements necessary for IGST Model. Accordingly, a Joint Committee, in consultation with the Government of India, is constituted with the following members:

#### **Government of India**

- (1) Smt. Rashmi Verma, Additional Secretary (Revenue) -- Co-convener
- (2) Shri P.K. Mohanty, Joint Secretary (TRU-I)
- (3) Shri M. Vinod Kumar, Joint Secretary (TRU-II)
- (4) Shri J.M. Kennedy, Director (TRU-II)
- (5) Director/Deputy Secretary holding the charge of State Taxes Section

#### **States Government**

- (1) Dr. J.B. Ekka, Commissioner of Taxes, Assam
- (2) Shri Prashant Goyal, Commissioner, Trade & Taxes, Delhi
- (3) Shri H.V. Patel, Commissioner, Commercial Tax, Gujarat
- (4) Shri Sudhir Rajpal, Commissioner, Excise & Taxation, Haryana
- (5) Shri Kifayat Hussain Rizvi, Commissioner, Commercial Tax, J&K
- (6) Shri Ajay Seth, Commissioner, Commercial Tax, Karnataka
- (7) Shri Shyam Jagannathan, Commissioner, Commercial Tax, Kerala
- (8) Shri Amit Rathore, Commissioner, Commercial Tax, Madhya Pradesh
- (9) Dr. Nitin Kareer, Commissioner, Sales Tax, Maharashtra

- (10) ShriAbhishekBhagotia, Commissioner, Commercial Tax, Meghalaya  
(11) Shri Manoj Ahuja, Commissioner, Commercial Tax, Odisha  
(12) Shri Sanjay Malhotra, Commissioner, Commercial Tax, Rajasthan  
(13) Shri K. Rajaraman, Commissioner, Commercial Tax, Tamil Nadu  
(14) Shri M.K. Narayan, Commissioner, Commercial Tax, Uttar Pradesh  
(15) ShriDilipJawalkar, Commissioner, Commercial Tax, Uttarakhand  
(16) ShriBinod Kumar, Commissioner, Commercial Tax, West Bengal

**Empowered Committee of State Finance Ministers**

(1) Shri Satish Chandra, Member Secretary -- Co-convener

2. The Committee will submit its report to the Empowered Committee in two months time.

Sd/-

(Satish  
Chandra) Member  
Secretary Empowered  
Committee of State  
Finance Ministers

Copy to: All the Members of the Joint Committee

Copy also to:

- (1) PS to Chairman, Empowered Committee of State Finance Ministers
- (2) Adviser to Chairman, Empowered Committee of State Finance Ministers
- (3) Sr.A.O./OSD/F.O./A.O., Empowered Committee of State Finance Ministers

## **ANNEXURE-II**

### **LIST OF PARTICIPANTS OF THE MEETING HELD ON 22<sup>ND</sup> AND 23<sup>RD</sup> JULY, 2015**

#### **Government of India**

1. Smt. Rashmi Verma, Additional Secretary (Revenue), Government of India
2. Shri Rajeev Yadav, Director (Service Tax), CBEC, Government of India
3. Shri B.B. Agrawal, Principal Commissioner, CBEC, Government of India
4. Shri Upender Gupta, Commissioner, GST, CBEC, Government of India
5. Shri M.K. Sinha, Commissioner (LTU), Audit, CBEC, Government of India
6. Shri G.D. Lohani, Commissioner, CBEC, Government of India
7. Shri Ravneet Singh Khurana, Deputy Commissioner, CBEC, Government of India
8. Shri Sachin Jain, Additional Commissioner, CBEC, Government of India
9. Shri P.K. Manderna, Superintendent (GST Cell), Government of India

#### **States**

1. Shri Gautam Das Gupta, Deputy Commissioner of Taxes, Assam
2. Shri T. Ramesh Babu, Additional Commissioner, Commercial Tax, Andhra Pradesh
3. Shri Arun Kumar Mishra, Joint Secretary, Finance, Bihar
4. Shri Santosh Kumar Sinha, Additional Commissioner, Commercial Tax, Bihar
5. Shri Deepak Kanan, Additional Commissioner, Commercial Tax (GST), Bihar
6. Shri R.K. Trivedi, Additional Commissioner, Commercial Tax, Chhattisgarh
7. Shri Kishor Bhalla, Deputy Commissioner (VAT), Daman & Diu and Dadra & Nagar Haveli
8. Shri Vijay Kumar, Commissioner (VAT), Trade and Taxes, Delhi
9. Shri Jagmal Singh, Deputy Director, Trade and Taxes, Delhi
10. Shri Dipak M. Bandekar, Additional Commissioner, Commercial Tax, Goa
11. Dr. P.D. Vaghela, Commissioner, Commercial Tax, Gujarat
12. Ms. Aarti Kanwar, Special Commissioner, Commercial Tax, Gujarat
13. Shri Shyamal Misra, Commissioner, Excise & Taxation, Haryana
14. Shri Hanuman Singh, Additional Commissioner, Excise & Taxation, Haryana
15. Shri J.C. Chauhan, Commissioner, Excise & Taxation, Himachal Pradesh
16. Shri P.K. Bhat, Additional Commissioner, Commercial Tax, Jammu & Kashmir
17. Smt. Nidhi Khare, Secretary-cum-Commissioner, Commercial Tax, Jharkhand
18. Dr. M.P.Ravi Prasad, Joint Commissioner, Commercial Tax, Karnataka
19. Dr. Rajan Khobragade, Commissioner, Commercial Tax, Kerala
20. Shri M.I. Mansur, Assistant Commissioner, Commercial Tax, Kerala
21. Shri Sudip Gupta, Deputy Commissioner, Commercial Tax, Madhya Pradesh
22. Shri P. Velrasu, Special Commissioner, Sales Tax, Maharashtra
23. Shri B.V. Borhade, Joint Commissioner, Sales Tax, Maharashtra
24. Shri P.M. Kulkarni, Deputy Commissioner, Sales Tax, Maharashtra
25. Shri K. Sanglawma, Commissioner of Taxes, Mizoram
26. Shri H. Rangthanmawia, Superintendent of Taxes (GST Cell), Mizoram
27. Shri Niten Chandra, Commissioner, Commercial Tax, Odisha
28. Shri Sahadev Sahoo, Joint Commissioner, Commercial Tax, Odisha
29. Shri K. Sridhar, Deputy Commissioner, Commercial Tax, Puducherry
30. Dr. Karthik, Additional Secretary, Punjab
31. Shri Pawag Garg, Additional Commissioner, Excise & Taxation, Punjab

32. Shri Vaibhav Galriya, Commissioner, Commercial Tax, Rajasthan
33. Shri Manoj Rai, Joint Commissioner, Commercial Tax, Sikkim
34. Shri D. Soundraraja Pandian, Joint Commissioner (Taxation), Commercial Taxes, Tamil Nadu
35. Shri K. Chandrasekhar Reddy, Additional Commissioner, Commercial Tax, Telangana
36. Shri Vikas Singh, Commissioner of Taxes and Excise, Mizoram
37. Shri Vivek Kumar, Additional Commissioner, Commercial Tax, Uttar Pradesh
38. Shri Abhijit Gupta, Commercial Tax Officer (IT), Uttar Pradesh
39. Shri N.C. Sharma, Additional Commissioner, Commercial Tax, Uttarakhand
40. Smt. Ujjaini Datta, Joint Secretary, Finance, West Bengal

**Goods and Services Tax Network (GSTN)**

1. Shri Navin Kumar, Chairman, Goods and Services Tax Network
2. Shri Prakash Kumar, Chief Executive Officer, Goods and Services Tax Network

**Empowered Committee of State Finance Ministers**

1. Shri Satish Chandra, Member Secretary, Empowered Committee
2. Shri Bashir Ahmed, Adviser, Empowered Committee

**ANNEXURE-III**

**Form GST -**

[See Rule  
]

**Application for Registration under Goods and Services Tax Act,  
Year**

1	Legal Name of Business*	
1A	Trade Name (optional)	

2	Constitution of Business (Please Select the Appropriate)*
---	---

Proprietorship	<input type="checkbox"/>	Partnership	<input type="checkbox"/>
Hindu Undivided Family	<input type="checkbox"/>	Private Limited Company	<input type="checkbox"/>
Public Limited Company	<input type="checkbox"/>	Society/Club/Trust/Association of	<input type="checkbox"/>
Government	<input type="checkbox"/>	Public Sector Undertaking	<input type="checkbox"/>
Unlimited Company	<input type="checkbox"/>	LLP's	<input type="checkbox"/>
Local Authority	<input type="checkbox"/>	Statutory Body	<input type="checkbox"/>
Others ( Please Specify	<input type="checkbox"/>		

**In case of Proprietorship\***

3	Name of Proprietor											
4	PAN of the proprietor											

**In case of other Businesses\***

4A	PAN of the <b>Business</b>											
----	----------------------------	--	--	--	--	--	--	--	--	--	--	--

5	Name of the State and its Code*	Drop down for Name of State & Codes	▲
---	---------------------------------	-------------------------------------	---

6	Option For Composition	Yes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No	<input type="checkbox"/>
---	------------------------	-----	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	----	--------------------------

7	Date of commencement of business	D	D	M	M	Y	Y	Y	Y
		D	D	M	M	Y	Y	Y	Y
8	Date on which liability to pay tax	D	D	M	M	Y	Y	Y	Y
9	Estimated supplies (in case of casual								
	Period for which registration is								
	required -								
	To								
10	Reason of liability to obtain	▲							
	registration (from								

(1) Due to crossing the Threshold

- (2) Due to inter-State supply
- (3) Due to liability to pay as recipient of services
- (4) Due to being Input Service Distributor (ISD)
- (5) UN bodies for allotment of Unique Identification Number (ID)
- (6) Due to transfer of Business which includes change in the ownership of business (if transferee is not a registered entity)
- (7) Due to death of the Proprietor (if the successor is not a registered entity)
- (8) Due to de-merger
- (9) Due to change in constitution of business
- (10) Due to Merger /Amalgamation of two or more registered taxpayers
- (11) Being casual Dealer
- (12) Being Non resident Dealer
- (13) None of the above – on voluntary basis

### 11 Indicate Existing Registrations

	Yes/No	Registration Details
Central Excise		
Service Tax		
State VAT Registration (TIN)		
CST Registration No		
IEC No.(Importer Exporter Code		
Corporate Identity Number (CIN)		
GSTIN		

### 12 Details of Principal Place of Business\*

ADDRESS									
Building No/Flat No/Door No						Floor No			
Name of the Premises/Building						Road/Street/Lane			
Locality/Area/Village						District/Town/City			
Latitude (optional)						Longitude (optional)			
PIN Code									
CONTACT DETAILS									
Telephone number						Fax Number			
Mobile Number									
Email Address									
Nature of possession of premises									
Owned	<input type="radio"/>	Leased	<input type="radio"/>	Rented	<input type="radio"/>	Consent	<input type="radio"/>	Shared	<input type="radio"/>

Please Tick the Nature of Business Activity being carried out at above mentioned					
Factory / Manufacturing	<input type="checkbox"/>	Wholesale Business	<input type="checkbox"/>	Retail Business	<input type="checkbox"/>
Warehouse/Deport	<input type="checkbox"/>	Bonded Warehouse	<input type="checkbox"/>	Service Provision	<input type="checkbox"/>
Office/Sale Office	<input type="checkbox"/>	Leasing Business	<input type="checkbox"/>	Service Recipient	<input type="checkbox"/>
EOU/ STP/ EHTP	<input type="checkbox"/>	SEZ	<input type="checkbox"/>	Input Service Distributor (ISD)	<input type="checkbox"/>

Works Contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
----------------	--------------------------	--------------------------	--------------------------	--------------------------

### 13. Details of Bank Accounts (s)

Total number of Bank Accounts maintained by the applicant for conducting business	
---	--

#### Details of Bank Account 1

Account Number	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Type of Account							IFSC						
Name of the Bank													
Branch and Address of the	To be auto-populated (Edit mode)												
<b>PIN Code</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>State</b>						

#### Details of Bank Account 2

Account Number	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Type of Account													
Name of the Bank													
Branch and Address of the	To be auto-populated (Edit mode)												
<b>PIN Code</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>State</b>						

Details 3...n (Multiple fields will be available to capture the details of all the additional Bank A/c)

#### 14 Details of the **Goods/Commodities** supplied by the Business

Please specify top 5 Commodities		
S.N o.	Description of Goods	HSN Code (4 digit code)
1		
2		
...		
5		

#### 15 Details of **Services** supplied by the Business.

Please specify top 5 Services		
S. No.	Description of Services	Service Accounting Code
1		



2		
---		
5		

### 16 Details of Additional Place of Business

Number of additional places	
-----------------------------	--

#### Premises 1

##### Details of Additional Place of Business

<b>ADDRESS</b>									
Building No/Flat No/Door No					Floor No				
Name of the Premises/Building					Road/Street/Lane				
Locality/Area/Village					District/Town/City				
PIN Code									
<b>CONTACT DETAILS</b>									
Telephone number					Fax Number				
Mobile Number									
Email Address									
Nature of possession of premises									
Owned	<input type="radio"/>	Leased	<input type="radio"/>	Rented	<input type="radio"/>	Consent	<input type="radio"/>	Shared	<input type="checkbox"/>

<b>Please Tick the Nature of Business Actiity being carried out at above mentioned Premises</b>					
Factory / Manufacturing	<input type="radio"/>	Wholesale Business	<input type="radio"/>	Retail Business	<input type="radio"/>
Warehouse/Deport	<input type="radio"/>	Bonded Warehouse	<input type="radio"/>	Service Provision	<input type="radio"/>
Office/Sale Office	<input type="radio"/>	Leasing Business	<input type="radio"/>	Service Recipient	<input type="radio"/>
EOU/ STP/ EHTP	<input type="radio"/>	SEZ	<input type="radio"/>	Input Service Distributor (ISD)	<input type="radio"/>
Works Contract	<input type="radio"/>				

**Premises 2.....n (Multiple fields will be available to capture the details of all the additional places of business within the state)**

### 17 Details of Proprietor/all Partners/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc. \*

Total Number of Persons

Please provide details in the table below. In case you need more tables, click on add table

- In case of **Proprietorship**: Details of Owner/Proprietor
- In case of **Partnership**: Details of **all Managing/ Authorized Partners** (personal details of all partners but photos of only ten partners including that of Managing Partner is to be submitted)
- In case of **Companies** registered under Companies Act: **Managing Director and**

**whole time directors**

- In case of **HUF**: Details of **Karta of HUF**

- In case of **Trust**: Details of **Managing Trustee**
- In case of **Association of Persons**: Details of Members of Managing Committee(personal details of all members but photos of only ten members including that of Chairman is to be submitted)
- In case of Local Authority: Details of CEO or equivalent
- In case of Statutory Body: Details of CEO or equivalent
- In case of others: Details of person responsible for day to day affairs of the business

	First Name	Middle Name	Surname
Name of Person			
Name of Father /Husband			
Designation		Date of Birth	
			DD MM YYYY
PAN			
Passport No (in case of foreigners)			
UID No			
DIN No. (if any)			

Mobile Number												
E-mail address								Gender	M	<input type="checkbox"/>	F	<input type="checkbox"/>
Telephone No								FAX No				

<b>Residential Address</b>			
<b>Building No/Flat</b>		<b>Floor No</b>	
<b>Name of the Premises/Building</b>		<b>Road/Street/Lane</b>	
<b>Locality/Area/Village</b>		<b>District/Town/Ci</b>	
<b>PIN Code</b>		<b>State</b>	

**Details 2...n (Multiple fields will be available to capture the details of other persons)**

### 18 Details of Authorized Signatory

Number of Authorized Signatory

#### Details of Signatory No. 1

	First Name	Middle Name	Surname
Name of Person			
Name of Father / Husband			
Designation		Date of Birth	
			DD MM YYYY
PAN			

UID No														
DIN No. (if any)														
Mobile Number														
E-mail address								Gender	M	<input type="checkbox"/>	F	<input type="checkbox"/>		
Telephone No								FAX No						
<b>Residential Address</b>														
<b>Building No/Flat</b>								<b>Floor No</b>						
<b>Name of the Premises/Building</b>								<b>Road/Street/Lane</b>						
<b>Locality/Area/Village</b>								<b>District/Town/Ci</b>						
<b>PIN Code</b>								<b>State</b>						

**Details 2....n (Multiple field will be available to capture the details of other authorized persons)**

**19 Details of Authorized Representative (TRP / CA / Advocate etc.)**

	First Name	Middle Name	Surname										
Name of Person													
Status	<b>TRP / CA / Advocate etc.</b>												
Mobile Number													
E-mail address													
Telephone No								FAX No					

- 20 State Specific Information a.**  
**Field 1**  
**b. Field**  
**2 c. ....**  
**d. ....**  
**e. Field n**

**21 Document Upload**  
*A customized list of documents required to be uploaded (as detailed in para 6.3 of the process document) as per the field values in the form should be auto-populated with provision to upload relevant document against each entry in the list.*

22  
 Verification

*I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom*

Place ..... Name of Authorized Signatory .....  
 Date ..... Designation .....

**Instructions to Taxable  
Person**

1. **Field 4:**In case of Proprietary concerns, only PAN of the Proprietor will be required while in case of other business entities, only PAN of the business will be required.
2. **Field 4A:**PAN should be in same name as the Legal Name in Field 1.
3. **Field 6:** If "Yes" option is selected, the applicant will be asked to confirm that the likely all- India annual turnover including exports and exempted supplies during next 12 months (**depending on the exact legal formulation to be made by the GST Drafting Law Committee**) is below Rs. .... Lakh.
4. **Field 17:** In case of multiple authorized signatories provided by the Dealer, any one of them can sign this form as Authorized Signatory
5. **Field marked with \* are mandatory fields.** Any changes in these fields require approval from proper officer.

**All communication will be made to the Mobile Number and e-mail mentioned in Principal Place of Business.**

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**Suggestions for System Development**

1. Pin Code should be the field requiring primary data, and the other two field should get auto- populated (based on master values) with option to enter locality/area/village if that is not in the portal master. Alternatively, a validation between PIN Code and Locality/Area/Village and District/Town/City should be inbuilt.
2. For Field No 17 (i.e. Details of Proprietor / all partners / Karta / Managing Director and whole-time Director / Members of the Managing Committee of Association of Persons / Board of Trustees etc.) and Field No 18 (Details of the Authorised Signatory) providing PAN would be mandatory for Indian nationals. For foreign national passports details would be required.
3. In Field 10, there should be an option to enter details of multiple entities which are merged and the application is on behalf of the merged entity
4. In Field No. 9 (Period for which registration is required – From/ To) validity period

of registration is captured. The "From Date" is mandatory for all dealers but the "To Date" should be mandatory only for Casual/non-resident Dealers. Following validation needs to be built in

- Inserting of a radio buttons – Whether regular dealer or Casual/non-resident dealer
  - In case of Casual/non-resident dealer – both from date and to date are enabled, and both are mandatory fields. Further, the "from date" could be retrospective date (in view of para 2.1 (2)).
  - In case of Regular dealer – only from date is enabled and is mandatory and this could be retrospective date (in view of para 2.1 (2)).
  - Further, the system must be able to display all the previous registrations obtained as Casual/non-resident Dealer with from date and to date and the LVO in which he was registered and arrears of amounts if any standing in his name.
5. Field No. 10 (Reason of liability to obtain registration) should not be enabled for casual dealers. Voluntary registration is to be enabled.
6. Field No. 11 (Indicate existing registrations) – Following state specific fields need to be captured:
- Professions Tax E.C. No.
  - Professions Tax R.C. No.
  - State Excise License No. and the name of the person in whose name Excise Licence is held.
7. For Field No. 12 (Details of Principal Place of Business) and Field No. 16 (Details of Additional Place of Business), it is required to display the earlier places of business – i.e. Address, From date and To date from the History Table, for the efficiency of tax administration. Though this may not be useful in new registrations, it is required in case of amendments, when the addresses are changed, additional places are added or deleted. This would not need modification in the registration format and business process, but the software/ database should take care of the displaying these details when an amendment form is being filled or when the departmental officer views it. In case of casual dealers, principal place of business will be the place where he will run his business.

8. For Field No. 14 (Details of Goods/ Commodities supplied by the Business) history of existing/ deleted/ added commodities and services with from date and to date needs to be captured by the software. This would give a detailed picture of the nature of the commodities dealt by the dealer. Further, it is also better if the dealer identifies one of the commodities/ service as the main commodity/ service, he is dealing in. This is required to match the GST return information with the details obtained from macro-economic parameters and matching with NIC Activity classification, based on which the macro-economic performance is presented.
9. For Field No. 17 (Details of Proprietor/all Partners/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc.) – All changes in Partners or Directors, or Managing Persons, must be kept in the database to enable the jurisdictional officer to see the history of the persons entered earlier, and from date and to date. Photos of maximum of 10 partners including that of Managing Partner is required to be uploaded.

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**ANNEXURE-IV**

**Form GST -**

[See Rule  
]

**Application for Surrender of Registration under Goods and Services Tax Act,  
Year**

Please file **your tax return** for the tax period in which the effective date of cancellation of your registration falls before applying for cancellation. **Filed no. 2 to 5 would get auto populated on the basis of information mentioned in filed no. 1.**

<b>1. GSTIN</b>																			
-----------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>2. Full Name of Registrant</b>																			

<b>3. Trade Name, if any</b>																			
------------------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>4. Address of Principal Place of Business</b>																			
--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>5. Address for correspondence (e-mail, mobile, landline etc.)</b>																			
--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>6. Reason for</b> <u>Tick <input type="checkbox"/><input type="checkbox"/><input type="checkbox"/><input type="checkbox"/><input type="checkbox"/><input type="checkbox"/> one</u>	<input type="checkbox"/> Discontinuance of business <input type="checkbox"/> Death of sole proprietor <input type="checkbox"/> Has ceased to be liable to pay tax <input type="checkbox"/> Amalgamation etc.	<input type="checkbox"/> Closure of incorporated body <input type="checkbox"/> Dissolution of firm <input type="checkbox"/> Merger <input type="checkbox"/> Others (specify the reason)
--	---	--

(Note: In case of death of Sole Proprietor application will have to be made by the legal heir / successor manually before the concerned tax authorities)

<b>7. In case of amalgamation or merger, provide particulars of registration in which merged,</b>	
(i) GSTIN	
(ii) Name	
(iii) Principal Place of Business	

(The new entity in which the applicant proposes to amalgamate itself must be registered with the tax



authority before the filing of the surrender application. This application can only be made after that.)

8. Date from which registration under -----Act, 20--  
is to be surrendered

			/		
	<u>Day</u>		/		<u>Month</u>
			<u>Year</u>		

9. Amount of GST payable in respect of goods / capital goods held on the date of surrender of registration (Rs.)	Turnover	Tax	
		CGST	SGST

10. Details of amount of GST paid as calculated at 9 above. (This needs to be amended in view of maintenance of ITC / Cash Ledger)	i) Date of deposit			-			-			
		<u>Day</u>		<u>Month</u>		<u>Year</u>				
	ii) Challan No.									
	(iii) Name of Bank & Branch									

11. Verification \_\_\_\_\_

(i) I/We \_\_\_\_\_ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

(ii) I/We undertake to discharge any tax liability which is found to be payable subsequent to the surrender of registration and the tax authorities shall be free to take any action as prescribed in the law.

Signature of Authorised Signatory	
Full Name	
Designation/Status	



**ANNEXURE-V**

**Form GST -**

[See Rule ]

**Application to Opt for Composition Scheme**

(For existing taxpayer)

Filed no. 2 & 3 would get auto populated on the basis of information mentioned in filed no. 1.

<b>1. GSTIN</b>																			
-----------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>2. Full Name of Applicant Dealer</b>																			

<b>3. Please Tick the Nature of Business Activity being carried out at above mentioned</b>					
Factory / Manufacturing	<input type="checkbox"/>	Wholesale Business	<input type="checkbox"/>	Retail Business	<input type="checkbox"/>
Warehouse/Deport	<input type="checkbox"/>	Bonded Warehouse	<input type="checkbox"/>	Service Provision	<input type="checkbox"/>
Office/Sale Office	<input type="checkbox"/>	Leasing Business	<input type="checkbox"/>	Service Recipient	<input type="checkbox"/>
EOU/ STP/ EHTP	<input type="checkbox"/>	SEZ	<input type="checkbox"/>	Input Service Distributor (ISD)	<input type="checkbox"/>

<b>4. Year for which composition scheme is sought</b>																			
---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>5. Turnover in the preceding year</b>																				
--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>6. Estimated Turnover in the current year</b>																				
--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

<b>7. Tax Payable</b> on Opening Stock lying at the beginning of the current	Description	Turnover (Rs.)	Tax															
			CGST				SGST				IGST							
(i) Trading Stock																		
(Iii) Raw material																		



**ANNEXURE-VI**

**Form GST -**

*[See Rule ]*

**Application for withdrawal from Composition Scheme**

(For existing taxpayer)

Filed no. 2 & 3 would get auto populated on the basis of information mentioned in filed no. 1.

1. GSTIN																				
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

2. Full Name of Applicant Dealer																				

3. Please Tick the Nature of Business Activity being carried out at above mentioned					
Factory / Manufacturing	<input type="checkbox"/>	Wholesale Business	<input type="checkbox"/>	Retail Business	<input type="checkbox"/>
Warehouse/Deport	<input type="checkbox"/>	Bonded Warehouse	<input type="checkbox"/>	Service Provision	<input type="checkbox"/>
Office/Sale Office	<input type="checkbox"/>	Leasing Business	<input type="checkbox"/>	Service Recipient	<input type="checkbox"/>
EOU/ STP/ EHTP	<input type="checkbox"/>	SEZ	<input type="checkbox"/>	Input Service Distributor (ISD)	<input type="checkbox"/>
Works Contract	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>

4. Date from which withdrawal from composition scheme is sought (dd/mm/yyyy)						-						
--	--	--	--	--	--	---	--	--	--	--	--	--

5. Turnover in the preceding year / period (Rs.)														
--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

6. Reasons for withdrawal from composition scheme	

7. Input Tax Credit	Description	Turnover (Rs.)	Input Tax Credit (Rs.)
---------------------	-------------	----------------	------------------------

<b>available</b> ongoods purchased and lying in stock on the day of withdrawal from the scheme(provisio n for capital goods may have to be made if the GST law provides for proportionate			CGST				SGST				IGST			
	(i) Trading Stock													
	(Iii) Raw material													
	(iii) Packaging Material													
	(iv) Finished Goods													
	Total													

**8. Verification**

I/We \_\_\_\_\_ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory \_\_\_\_\_

Full Name (*first name, middle, surname*) \_\_\_\_\_

Designation/Status \_\_\_\_\_

Place																				
-------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Date								
	Day	Month	Year					



## **ANNEXURE-VIII**

### **EXTRACT OF THE REPORT OF THE COMMITTEE ON THE PROBLEM OF DUAL CONTROL, THRESHOLD AND EXEMPTIONS IN GST REGIME**

Para 7. The matter was deliberated upon by the Committee. It was felt that the threshold, both for SGST and CGST should be common except for North-eastern States where the threshold could be prescribed at lower level. It was also felt by the Committee that the threshold both for services and goods should be same. However, for inter-state dealers, the threshold should be zero. The threshold should be worked out taking into account both the supply of goods and services on gross turnover basis. Such turnover would include the turnover of exempted goods and services (including non-taxable) and exports. It was also agreed that the turnover so calculated would be applicable for the purposes of Threshold, Compounding Scheme and Dual Control. While the State representatives felt that turnover should be State-wise of a legal entity, the representatives of Government of India strongly felt that it should be All India turnover of a legal entity, otherwise it may lead to tax evasion. It was pointed out by the Centre's representatives that if the turnover of an entity is considered State-wise, the threshold for CGST would increase steeply when calculating the turnover of the entity on an All India basis. This would adversely affect the revenue of the Centre. What would happen is that an entity will open office in States and Union Territories (which are 37 in number) for availing of State-wise threshold for SGST purposes. In such a scenario, the threshold for CGST purposes would work out to Rs. 9.25 Crores (Rs. 25 Lacs \* 37). Similar impact would be there for the compounding scheme as well as for the issue relating to dual control. The suggestion of the Central Board of Excise and Customs (CBEC) that legal entity on all India basis should be taken was considered by the Committee and after due deliberations the suggestion was agreed to avoid tax evasion by the manufacturers/traders/dealers.



## ANNEXURE-IX

### **EXTRACT OF THE MINUTES ON REFINEMENT TO THE PROCESS FOR STATES OPTION FOR TWO-WAY API BASED INTEGRATION AND FLEXIBILITY (DECISION DATED 18.04.2012 OF EC) WILL BE FORMULATED SEPARATELY**

14. The Chairman, Empowered Committee asked the Member Secretary to indicate the recommendations of the Committee regarding strategic control of the Government on GST Network. The Member Secretary mentioned that a Committee of Principal Secretaries/Secretaries (Finance/Taxation) and Commissioners of Commercial Taxes met on 10<sup>th</sup> April, 2012 to discuss the various concerns raised by the States regarding GSTN-SPV. Dr. Nandan Nilekani, Chairman, Unique Identification Authority of India and Chairman, Empowered Group on IT Infrastructure for GST kindly agreed to join the discussion of the Committee. He, during the Committee meeting, clarified the position why the Government of India, Empowered Committee and the Empowered Group on IT Infrastructure for GST have recommended for setting up of a Non-profit Section 25 Private Company. During the meeting, concerns were raised regarding flexibility to be provided to the States and the strategic control of the Government on GSTN. After due deliberations, following recommendations were made by the Committee for the consideration of the Empowered Committee:

- (i) Following three options may be made available to the States for usage of services to be provided by GSTN:
  - a. „Full service model“ where the GSTN will offer the full range of GST services as a utility which the States can utilize.
  - b. „Limited service model“ where a State will use the GSTN for common registration, return and payments and has its own software for remaining GST functions.
  - c. „Application Programming Interface (API) model“ where the States will have their own software for flexibility but will, adhere to the common registration, return and payment formats defined by the GSTN (though they may collect additional data) and ensure that the rights of both States and Centre are protected in terms of getting instantaneous information and ensuring timely settlements of their respective share of taxes.
- (ii) The Committee noted that the ownership of the private equity holders will be widely dispersed and hence, the basic control would stay with the Government. The distinction between ownership and control was also noted.
- (iii) The Committee noted that the Empowered Committee had deliberated on the non- Government status of the SPV in detail in its earlier meetings and taken a considered view to approve it. However, Committee requested that the list of potential private equity partners should be decided in consultation with the Empowered Committee.
- (iv) The Committee noted that the mechanisms recommended by Empowered Group for ensuring strategic control would be adequate. However, the draft Memorandum of Association and Articles of Association incorporating necessary provisions should be placed before the Empowered Committee for consultation before finalisation.

- (v) To provide higher representations to the States, there should be an Advisory Committee of the GSTN-SPV in which all the States should be represented.
- (vi) There should be an exit/sunset clause for dissolving the GSTN-SPV, if both the Centre and the States decide to do so.
- (vii) Any new developments during the process leading to the formation of GSTN SPV should be brought to the notice of the Empowered Committee.

15. The Chairman, Empowered Committee broadly indicated that the strategic control over the SPV will be available by virtue of thinly dispersed private shareholding, the composition of Board of Directors, special resolutions, share holders agreement, induction of deputationists from the Government and agreements between GSTN-SPV and Government, Advisory Committee of GSTN- SPV etc. After due deliberations, the recommendations of the Committee mentioned in para 14 was approved by the Empowered Committee.

16. It was also mentioned by the Member Secretary that during the meeting of the Hon“ble Union Finance Minister on 17th April, 2012, the issue regarding finalizing the other details of the formation of the GSTN-SPV came up for discussion. It was felt that the Empowered Group on IT Infrastructure for GST, chaired by Dr. Nandan Nilekani, may also look into this aspect as well. The Empowered Committee accordingly decided to endorse the same.

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**EXTRACT OF THE REPORT OF THE COMMITTEE ON IGST AND GST ON  
IMPORTS**

**I. Norms for blacklisting of dealers for blocking tax credits**

A system of "GST Compliance Rating" can be introduced. Any fall in the rating below a prescribed level will have impact of blacklisting a dealer. The rating is only a measure to facilitate informed choices by the purchasers and not a punishment measure. There should be clear declaration in the law that blacklisting does not mean that ITC claim on other non-blacklisted dealers is assured by the Government as any eligibility for ITC primarily depends on the selling dealer owning up the tax invoice and paying the due tax. However, if the rating falls below the prescribed level resulting in that dealer becoming blacklisted, purchases from him will no longer be eligible for ITC, on self-assessment basis, (they however will be eligible for availing the ITC only after the tax has been paid by such selling dealers) by the buyers, till improvement of the rating to normal level.

**IX.A. Trigger for Blacklisting**

- i. Continuous default for 3 months in paying ITC that has been reversed.
- ii. Continuous default of 3 months or any 3 month-period over duration of 12 months in uploading sales details leading to reversal of ITC for others. Defaulters of even a single event should also be flagged and put in public domain as being a potential black listed dealer so as to alert the buyers.
- iii. Continuous short reporting of sales beyond a prescribed limit of 5% (of total sales) for a period of 6 months.

**IX.B. Default**

Not doing the activity within the prescribed cut off dates. A system of rating the dealers based on their compliance should also be done and put in public domain to inform prospective buyers.

**IX.C. Rating and Compliance Profile**

There should also be a continuous rating system, provided under model law, for dealers based on parameters such as promptness in e-return filing, discrepancies detected where the dealer has had to make corrections, making prompt payment in lieu of reversed ITC, etc. The profiles for all dealers would be posted in public domain so that the dealer community is kept aware of the compliance profile of all registered dealers

with whom they may have to deal with during the course of their business. While the system of blacklisting may only highlight deviant behaviour after it crosses a certain threshold, a system-updated dealer profile will serve as a continuing rating mechanism for the entire community and leaders within a certain industry can set a benchmark for others to emulate.

#### **IX.D. Blacklisting**

- i. Only for regulating ITC by others.
- ii. Will be based on dealer rating. A dealer will be blacklisted if dealer rating falls below the prescribed limit.
- iii. To be put in public domain.
- iv. To be notified (auto-SMS) to all dealers who have pre-registered this dealer (black listed now) as their supplier.
- v. To be prospective only (from month next to blacklisting)
- vi. Blacklisted GSTINs cannot be uploaded in purchase details.  
Corresponding denial of ITC to be supported by suitable provision in the law.
- vii. ITC reversal in hands of the buyer should take place for disowning of any tax invoice with date prior to effect of blacklisting of the seller.
- viii. Once blacklisting is lifted, buyers can avail unclaimed ITC subject to this dealer uploading sales details along with tax and interest.

## 5.4 Report on Refunds

REPORT

OF

THE JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST

ON

REFUND PROCESSES

Empowered Committee of State Finance Ministers

New Delhi

August, 2015

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# REPORT OF THE JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST

## ON

### REFUND PROCESSES IN GST REGIME

#### INTRODUCTION:

1.0 During the Empowered Committee meeting held on 10<sup>th</sup> March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also give its recommendations on Refund Processes in GST regime. Accordingly, a Joint Committee, in consultation with the Government of India, was constituted on 7<sup>th</sup> April, 2014 (Annexure-I).

1.1 In the second meeting of the Joint Committee on Business Processes for GST held on 12<sup>th</sup> November, 2014, it was decided to constitute a Sub-Committee on GST Refund Processes. Pursuant to that decision, a Sub-Committee under the Co-convenership of Shri Manoj Ahuja, Commissioner, Commercial Tax, Odisha and Shri Upender Gupta, Additional Commissioner, GST, CBEC, Government of India was constituted on 14<sup>th</sup> November, 2014 (Annexure-II). Shri Sanjeev Khirwar, Commissioner, Trade Taxes, Delhi was co-opted as a member of the Sub-Committee.

1.2 The Sub-Committee examined the present practices prevalent in the Central and the State VAT laws and also noted the proposed structure for verifications, etc. envisaged under the IGST Model. The Sub-Committee submitted its Report on 28<sup>th</sup> January, 2015. The Report of the Sub-Committee was considered by the Joint Committee on Business Processes for GST in its meeting held on 2<sup>nd</sup> February, 2015 and 3<sup>rd</sup> February, 2015. The list of the participants of the last meeting of the Joint Committee on Business Processes is



appended at Annexure-III. The Joint Committee broadly agreed with the recommendations of the Sub-Committee and the two Conveners of the Sub-Committee were requested to finalise the Report of the Sub-Committee keeping in view the observations made during the meeting of the Joint Committee on Business Processes on 2<sup>nd</sup> February, 2015 and 3<sup>rd</sup> February, 2015. Accordingly, a final Report was received on 11<sup>th</sup> February, 2015 from the Co-convenor of the Sub-Committee. The Report of the Joint Committee on Business Processes for GST was prepared accordingly. The Report was further discussed in the Joint Committee on Business Processes for GST meeting held on 22<sup>nd</sup> and 23<sup>rd</sup> July, 2015. Changes have been incorporated as per discussions.

#### SITUATIONS WHERE REFUNDS WOULD ARISE:

2.0 In the taxation administration, refund refers to any amount that is due to the tax payer from the tax administration. In the present taxation system it is considered as a strained area, both for the taxpayer and the tax administration. So in order to establish an effective and efficient tax administration system it is essential that issues on which refund arises ought to be kept at minimum and be clearly defined in the law. Since GST is going to subsume many of the existing taxation laws such as Central Excise, Service Tax, VAT, CST, etc., the situations under which refund arise under these laws are as follows:

- (A) Excess payment of tax due to mistake or inadvertence.
- (B) Export (including deemed export) of goods / services under claim of rebate or Refund of accumulated input credit of duty / tax when goods / services are exported.
- (C) Finalization of provisional assessment.

- (D) Refund of Pre – deposit for filing appeal including refund arising in pursuance of an appellate authority's order (when the appeal is decided in favor of the appellant).
- (E) Payment of duty / tax during investigation but no/ less liability arises at the time of finalization of investigation / adjudication.
- (F) Refund of tax payment on purchases made by Embassies or UN bodies.
- (G) Credit accumulation due to output being tax exempt or nil-rated.
- (H) Credit accumulation due to inverted duty structure i.e. due to tax rate differential between output and inputs.
- (I) Year-end or volume based incentives provided by the supplier through credit notes.
- (J) Tax Refund for International Tourists

Each of the situations mentioned above are being discussed hereunder individually for better appreciation of the issue and the proposed process to handle them under the proposed GST regime.

(A) EXCESS PAYMENT OF TAX DUE TO MISTAKE OR INADVERTENTCE.

- i) As the heading suggests, it refers to the situations where the tax payer has made excess payment of tax either by mistake or by inadvertence resulting in more payment of tax than due to the Government. Since the tax that has been paid is in excess, which was actually not required to be paid, the same should be refunded to the taxpayer.
- ii) Such excess payment may be on account of:-
  - a) wrong mention of nature of tax (CGST / SGST / IGST),
  - b) wrong mention of GSTIN, or
  - c) wrong mention of tax amount.
- iii) In first two situations i.e. in case of wrong mention of nature of tax (CGST / SGST / IGST) or in case of wrong mention of GSTIN, the tax

administration is required to verify the correctness of the taxpayer's claim and therefore the taxpayer may file a refund application which should be decided within a period to be prescribed by the GST Law.

- iv) A dealer is required to make tax payment on two accounts i.e. payment linked to a return or payment in response to a specific demand arising out of audit, etc. The IT system should be in a position to make a distinction between these two type of payment. Perhaps the payment challan may have a field to select the purpose of payment.
- v) The GST Law Drafting Committee / Payment Committee may decide as to whether the payment is to be made tax period wise or a system of Personal Ledger Account (PLA) is to be used. Maharashtra has suggested that Kerala model of return cum challan may also be examined by the GST Law Drafting Committee / Payment Committee.
- vi) In the third situation i.e. where the amount has been mentioned wrongly, the refund of excess amount of tax, at the option of the taxpayer, would either be automatically carried forward for adjustment against future tax liabilities or be refunded on submission of application (return itself can be treated as a refund application) by the taxpayer. The automatic carry forward would be allowed if the excess payment was made against a return and not against any other liability. The GST Law may provide for automatic set off if the excess payment of tax is not on account of interpretation of notifications, application of exemptions etc., i.e. the excess payment is not on account of difference of opinion between the tax administration and the taxpayer. The GST Law may also lay down the time limit within which the excess amount of tax, as reflected in the return filed by a taxpayer for that relevant period, can be re- credited suomoto and can be utilized by the taxpayer for payment of future tax liability.

- vii) The refund may be on account of CGST, SGST or IGST as the case may be.

- (B) EXPORT (INCLUDING DEEMED EXPORT) OF GOODS / SERVICES UNDER CLAIM OF REBATE OR REFUND OF ACCUMULATED CREDIT OF TAX WHEN GOODS / SERVICES ARE EXPORTED: The treatment for export of goods and services and that of deemed export would be different under GST regime because of their inherent nature. Therefore these are being discussed separately as follows:

EXPORT OF GOODS:

- i) Presently under the Central Law, every exporter has three options available for neutralization of taxes paid on inputs used for export goods or taxes paid on finished goods exported by him which are delineated hereunder:
  - a) Obtaining non duty paid inputs and exporting final product without payment of duty.
  - b) Obtaining duty paid inputs and claiming refund of the same at the time of export of the finished goods without payment of duty.
  - c) Obtaining duty paid inputs, availing the input tax credit thereon and exporting finished goods after payment of duty (after utilizing such input tax credit) and thereafter claiming the rebate of the duty paid on exported goods.
- ii) It was noted that in the proposed GST regime, exports are proposed to be Zero rated which means that the export goods would not suffer any actual tax liability although the inputs for them would be tax paid which would be subsequently neutralized. So there should be a mechanism whereby the GST paid on the inputs or on exported finished

goods, either through cash or by utilization of input tax credit, is refunded to the exporter. This would serve two objectives simultaneously. On the one hand, the ITC chain through the various dealers will not be broken and on the other hand, the exporter of the finished goods will get the refund of the GST paid on the inputs or on finished goods thereby making the exports actually free from the burden of taxes. The system should be simple and efficient so that exporters do not experience any hassles while claiming refund of taxes. For this it is essential to devise a system based verification mechanism so that human intervention is reduced to the minimum.

- iii) It is recommended that the first option mentioned above i.e. option to procure duty free inputs for exported goods should not be available in the GST regime. This would obviate the requirement of submission of statutory form and the supplier of goods to the actual exporter would be required to pay the GST and will not be required to comply with various formalities presently required for making tax free supplies.
- iv) It is further recommended that other two options may be made available to the exporter in the proposed GST regime. It is recommended that GST Law drafting Committee may provide for the provision of rebate and the legality of the same will be examined at the time of vetting of the GST law by the Law Ministry.
- v) Since the process for payment of refund of GST paid on inputs (including input services) or payment of rebate of GST paid on finished goods is similar to a large extent, the same is being discussed here together. The following process is proposed for making this system as simple as possible:

- a) The IEC details of taxpayer will be captured at the time of issuance of GSTIN and the same can be verified online with DGFT for verifying the correctness of the exporter's particulars.
- b) The refund of ITC / rebate of GST paid on exported goods may be granted on submission of application to this effect by the taxpayer.
- c) Since the trigger point for refund is export of goods, therefore the event of export needs to be verified (mostly online) so as to minimize cases of erroneous / fraudulent claims of refund / rebate.
- d) It is recommended that linkage between ICEGATE of Customs administration and the proposed GSTN of GST administration may be established so that online verification of the exports can be carried out. In any case such linkage has to be established to verify IGST paid at the time of import of goods / services.
- e) It is also noted that, as per IGST Model, there is a requirement for online filing of invoice wise sale / purchase details by the taxpayers' along with the monthly returns. These details can be linked with the Customs data (for export cases) available with ICEGATE.
- f) Normally for export verification the following documents are sought from the applicant :
  - i) Shipping Bill (Export Promotion copy);
  - ii) Mate's Receipt / Transporter's Challan (in case of export by road);
  - iii) Export invoice;
  - iv) Packing list;
  - v) Bill of Lading/ Airway Bill;
  - vi) Bank Realization Certificate (BRC).

- g) Since it is proposed to establish linkage between ICEGATE and GSTN, therefore shipping bill, which includes relevant details from the export invoice and packing list, can be verified online and there would not be any need for the exporter to submit the same. Further, Mate's Receipt and Bill of Lading are the crucial documents that determine the occurrence of event of export, the exporter would be required to upload the scanned copies of the same with online refund application. As regards the BRC, it was noted that as per the RBI guidelines, the exporter has a time period of one year from the date of export, within which the export proceeds are required to be remitted into India. Thus BRC will not be available till the time export proceeds are realized. Therefore it is recommended that submission of BRC may not be insisted upon at the time of filing of refund application and post facto verification can be carried out by the tax authorities. The refund in such cases should be subject to submission of BRC details within a period of maximum one year or such period as extended by RBI from the date of the export. If such details are not submitted at the portal at which the refund application was made, the portal should generate an alert/report for the concerned tax authorities to take up appropriate action. In case of any short receipt of export receipts, necessary action for recovery of proportionate refunded amount may be taken accordingly.
- h) BRC, however, may be verified at the time of exports itself if the payment has already been received in advance. It is also recommended that e-BRC module may be integrated in the Refund process under GST.

- i) The time limit for filing of refund application is normally linked with the date of export and it is proposed that this time limit should be fixed at one year from the date of export. This date is the date on which the proper officer under the Customs Act gives an order for export of goods commonly known as “Let Export Order” (LEO). This date can also be verified online in view of the proposed linkage between ICEGATE and GSTN.
- j) Once the export is established, verification of the duty paid on the final products at the time of export is required to be carried out. For this, normally, copy of challans/ invoices evidencing duty payment are sought from the exporter and the same are verified manually by the jurisdictional authority. In the proposed GSTN, the payment of GST on exported goods can be verified online (as the sales invoices are required to be filed along with the monthly return) and there is no need for separate submission of these documents. Once the GST paid character of exported goods is established, refund can be sanctioned.
- k) In respect of refund claimed for GST paid on inputs (including input services) used for exported goods, once the export is established, verification of the GST paid on the inputs (including input services) as well as their utilization for the exports is required to be carried out. For this normally copy of invoices evidencing GST payment are sought from the exporter and the same are verified manually by the jurisdictional authority. Besides a declaration is filed by the applicant with the proper officer declaring inter alia input-output ratio for inputs on which refund is sought. In the proposed GST regime, the GST paid character of inputs (including input services) can be established online (as the purchase invoices



are required to be filed along with the monthly return) and the refund of input tax credit on inputs (including input services) can be sanctioned once the input tax credit has been matched from the purchase and sale statements filed by the exporter and supplier respectively and there is no need for separate submission of these documents. As regards utilization of the inputs for exports, a simple formula can be adopted that will provide for proportionate credit based on export turnover divided by total turnover. Moreover, a declaration can be obtained from the exporter regarding utilization of inputs in the exported goods.

#### EXPORT OF SERVICES:

- i) It is noted that in case of export of services there are no custom documents that can substantiate the occurrence of event of export as no shipping bill is required to be filed. Thus invoice and Bank Realization Certificate (BRC) are the only documents that can substantiate the occurrence of event of exports. It is, therefore, recommended that in the case of export of services, BRC would be required before sanction of the refund of GST paid on inputs (input services) / rebate of GST paid on exported services.
- ii) It is further noted that the invoice and BRC are the crucial documents for filing of the refund application. Therefore the relevant date, in case of export of services, will be the date of invoice or the date of BRC, whichever is later. This will take care of the situation if the payment has already been received in advance. It is also recommended that e-BRC module may be integrated in the refund process under GST.

- iii) It is suggested that since exports of services cannot be verified online through ICEGATE, there should be a separate application for refund of service exported.

DEEMED EXPORT OF GOODS OR SERVICES:

- i) It was noted that there is a concept of deemed export for situations listed in Chapter 8 of the Foreign Trade Policy. Supplier of domestically produced duty paid goods when supplied to EOUs / SEZs / Projects under International Competitive Bidding (ICB) / Mega Power Plants / World Bank Funded Projects can seek refund of terminal excise duty as also drawback of the duty paid on the inputs used in manufacture of such goods. However such refund is not permissible for VAT paid on such domestically supplied goods.
- ii) It is recommended that the deemed export need to be treated on equal footing as export and the similar provision as detailed above for actual exports of goods or services would be applicable except the following:
  - a) The supplier of final goods, in the course of deemed export, will pay the IGST on his supplies and can claim refund, only if, the IGST amount has not collected from the recipient. It is also required to be verified that the recipient has not availed the input tax credit in respect of such supplies.
  - b) The supplier may file a simple refund application along with a Chartered Accountant's Certificate certifying the fact of non-passing of the GST burden by him, being claimed as refund. GST Law Drafting Committee may prescribe a threshold amount below which self-certification (instead of CA Certificate) would be sufficient.

- c) The recipient unit would be eligible for refund of IGST, if it has actually paid IGST at the time of obtaining goods / services from the domestic supplier. In no case, both the supplier and the recipient unit can obtain refund at the same time in respect of the same transaction. A suitable validation to block such double claim should be built in the GSTN /refund processing backend system.
  - d) Such recipients may not be registered under GST regime and therefore they would have to submit copies of all the invoices, etc. in case claim of refund is filed by them.
- iii) It is also recommended that this recommendation may be specifically brought to the notice of EC as this is deviation from the present practice being followed by the States.

GENERAL:

- i) It was suggested that as a thumb rule, up to 90% of the refund claimed by the taxpayer may be sanctioned automatically by the system. The balance amount of refund may be granted after completion of verification of documents / accounts to be done at the end of the financial year and to be completed within a period of three months. The issue was discussed and it is recommended that partial refund may not be allowed and entire refund claim may be sanctioned within the time limit laid down in the GST Law.
- ii) It was noted that there may be certain goods on which Customs Export Duty may be leviable. It is recommended that in such cases refund of ITC of GST paid on inputs (including input services) used for such exported goods may not be admissible.

- iii) Requirement of BRC for sanction of refund in respect of export of services and as a post facto verification in case of export of goods may be provided in the GST Law.
- iv) It was noted that the exports would be treated as inter-state supplies and therefore IGST would be required to be paid by the taxpayer in cases GST is paid at the time of export. Refund of such IGST would have to be paid by the Centre. In case of refund of GST paid on inputs (including input services) used for exported goods, the refund of CGST, SGST or IGST may arise and the same needs to be paid by the respective tax administration. A suitable validation to block use of same tax invoices for more than one refund claim should be built in the GSTN /refund processing backend system.
- v) It was further noted that the principle of unjust enrichment is not applicable in case of actual export of goods or services as the recipient is located outside the taxable territory. In case of deemed exports, however, the concept is applicable.
- vi) It is further recommended that the amount of input tax credit claimed as refund may be blocked at the time of time of submission of application for refund itself. And if the refund claim is rejected wholly or partially the rejected portion of the ITC claim amount will be restored in the ITC ledger of the applicant.

(C) FINALIZATION OF PROVISIONAL ASSESSMENT:

As discussed in Para No. (I) below, the issues relating to provisional assessment being presently followed by Central Tax Authorities would be handled by the system of issuance of debit and credit notes, therefore refund may not arise in such cases. The process has been delineated

here under, if the GST Law provides for continuance of the system of provisional assessment:

- i) In the proposed GST regime the returns of the taxpayer will be electronically filed. In the return itself there should be a field for indicating whether the tax being paid is provisional or final. In case the tax has been paid on provisional basis, there should be a drop box that would indicate the reasons for which the tax has been paid on provisional basis.
- ii) Once such a return comes up before the assessing officer and if he agrees with the reason mentioned by the taxpayer, the return / assessment may be kept provisional.
- iii) Thereafter the return may be taken up for finalization once the issue involved in provisional assessment is settled. GST law may prescribe time period for finalization i.e. 90 days and this time line should not be breached, as far as possible.
- iv) At the time of finalization of the return / assessment by the assessing officer, a speaking order may be issued which will also mention the amount that the taxpayer is required to pay or is eligible for refund.
- v) The refund would be granted only if the incidence of GST paid by him has not been passed on to the consumer (the concept of unjust enrichment). This issue would be examined by the assessing officer at the time of finalization of assessment.
- vi) The model GST Law may provide for appropriate provisions relating to the principle of unjust enrichment.
- vii) For satisfying the requirement of unjust enrichment, the taxpayer would be required to submit a Chartered Accountant's Certificate certifying the fact of non-passing of the GST burden by the taxpayer, being claimed as refund. GST Law Drafting Committee may prescribe a

threshold amount below which self certification (instead of CA Certificate) would be sufficient. This would also settle the issue of ITC that would have been claimed by the purchaser on the basis of the provisional tax paid by the taxpayer as ITC would have to be reversed by the recipient before sanction of refund to the supplier.

- viii) The differential amount claimed as refund will be reflected in the return for the month in which the finalization takes place.
- ix) The refund may be on account of CGST, SGST or IGST as the case may be.

(D) REFUND OF PRE – DEPOSIT FOR FILING APPEAL INCLUDING REFUND ARISING IN PURSUANCE OF AN APPELLATE AUTHORITY’S ORDER.

Refund arising in pursuance of appellate authority’s order is another area that has been subject of judicial scrutiny and strictures. The following process is recommended in order to make this process streamlined, efficient and in line with the judicial decisions on the matter:

- i) Looking at the policy objective of making the refund process hassle free, it is recommended that the taxpayer may file a simple refund application along with a Chartered Accountant’s Certificate certifying the fact of non-passing of the GST burden by the taxpayer, being claimed as refund. As mentioned earlier, the GST Law Drafting Committee may prescribe a threshold amount below which self certification (instead of CA Certificate) would be sufficient.
- ii) The refund may not be kept in abeyance if the appellate authority’s order (in pursuance of which refund arises) is appealed against at the next higher appellate forum unless the jurisdictional authority has obtained a stay from the higher appellate authority against the

operation of the appellate authority's order in pursuance of which refund has arisen. This position may be appropriately reflected in the GST Law itself so that any ambiguity on this issue can be avoided and the tax administrations are made more accountable for early action in case of such refunds.

- iii) GST Law may provide for certain predefined period during which refund may not be granted which can be regarded as the mandatory waiting period for the outcome of the appeal / application for stay.
- iv) GST Law Drafting Committee may also consider for providing powers to jurisdictional authority at sufficiently senior level for withholding the refund in exceptional cases on the condition that interest at appropriate rate has to be paid.
- v) The refund may be on account of CGST, SGST or IGST as the case may be.

(E) PAYMENT OF DUTY/TAX DURING INVESTIGATION BUT NO / LESS LIABILITY ARISES AT THE TIME OF FINALIZATION OF INVESTIGATION / ADJUDICTION :

Presently the Central Law (State Laws do not have similar provision) does not debar suo-motto payments during investigation / audit without issuance of a formal show cause notice / demand. If the GST Law does not debar such payments during investigation / audit process and ultimately no / less demand arises vis-à-vis amount already paid, then refund of such amount may be handled as per the procedure given below:

- i) A separate mechanism for the accounting of such payments has to be designed.

- ii) Refund in such cases requires utmost attention as such amount of tax paid during investigation, etc. become non leviable once the investigation is finalized and / or an adjudication order in favor of the taxpayer is issued. Therefore this process should be simple and hassle free.
- iii) As soon as the investigation, etc. is over which does not lead to issuance of a show cause notice or where after investigation, show cause notice is issued but the adjudication order is in favor of the taxpayer i.e. where the demand of duty is dropped in full or in part, the taxpayer should be immediately eligible to claim refund of the amount that is found to have been paid in excess during investigation, etc.
- iv) Looking at the policy objective of making the refund process hassle free, it is recommended that the taxpayer may file a simple refund application along with a Chartered Accountant's Certificate certifying the fact of non-passing of the GST burden by him, being claimed as refund. GST Law Drafting Committee may prescribe a threshold amount below which self certification (instead of CA Certificate) would be sufficient.
- v) However, as every adjudication order can potentially be appealed against, the model GST Law may provide for a time limit after which only the refund can be sanctioned either by cash or by adjustment order at the option of the tax payer by the jurisdictional officers. This time limit should be concurrent with the time limit available for filing of an appeal so that department has time to file an appeal along with stay application, if any against adjudication order.
- vi) Refund may be withheld only if the department has obtained a stay order on the operation of the adjudication order, failing which, refund has to be allowed.



- vii) The GST Law Drafting Committee may also consider for providing powers to jurisdictional authority at sufficiently senior level for withholding the refund in exceptional cases on the condition that interest at appropriate rate has to be paid.
- viii) The refund may be on account of CGST, SGST or IGST as the case may be.

**(F) REFUND FOR TAX PAYMENT ON PURCHASE BY UN BODIES, SUPPLIES TO CSD CANTEENS, PARA MILITARY FORCES CANTEENS, ETC.:**

- i) Presently the UN bodies are eligible for refund of taxes paid by them at the time of purchases made by them from the market. GST Law may provide for similar provision and in such a case, the following process for grant of refund is recommended.
  - a) Refund on purchases by UN Bodies may be granted from only one office each of both the tax administrations within one State.
  - b) UN Bodies may be assigned a unique identification number (ID) the structure of which would be uniform across the States in conformity with the GSTIN Structure. (Some other structure may have to be considered as such bodies do not have PAN)
  - c) The registration document, return document and invoice would contain a column for capturing this Unique ID.
  - d) There has to be a separate field for allotting ID to such bodies.
  - e) While making supplies to such bodies, the suppliers must indicate the Unique ID on the invoices.
  - f) The UN Bodies may file their purchase statements (without purchase invoices) along with their claim for refund.
  - g) The GST Law may provide that some purchases are ineligible for refund (e.g. invoice value less than the prescribed threshold,

goods / services specified as ineligible for refund, etc.). Such cases should be specifically marked in the purchase statement or may not be included in the purchase statement.

- h) The net claim will be related to GST paid on total purchases minus GST paid on ineligible purchases.
- i) The IT system will carry out the matching with the sales statements of the counter party suppliers.
- j) The matched and claimed to be eligible invoices will be seen by the jurisdictional authority to verify that none of the ineligible purchases have been included in the refund claim.
- k) The refund may be granted based on the matching and the limited manual verification.
- l) There might be situations when the supplier does not declare the supply in his monthly return. In such a case, unmatched invoices will get marked by the IT system and the supplier will be notified accordingly.
- m) The UN body may be granted refund along with its next claim if any of the unmatched supplies have been accepted and related GST has been paid by the supplier and return has been filed subsequently.
- n) The personal purchases by the staff may also be done seeking ID of the UN body on the invoice.
- o) Such invoices in the statement can be marked as “for personal consumption” for any additional verification in case of any restriction under the GST Law.
- p) GST Law Drafting Committee may provide for appropriate provisions whether refund has to be given for the personal purchases by the staff of UN bodies and Embassies. Such provisions may also relate to limits or restrictions, if any on such refunds.

- ii) It is recommended that the suppliers to CSD Canteens, Para Military Canteens would not be eligible for exemption. The procedure as detailed above would apply in respect of supplies to CSD Canteens, Para Military Forces canteens etc. and these bodies would claim refund.
- iii) Form of application for refund which may be used by such bodies is enclosed as Annexure-VII to this document.
- iv) The refund may be on account of CGST, SGST or IGST as the case may be.

**(G) TAX CREDIT ON INPUTS USED FOR MANUFACTURING /GENERATION /PRODUCTION /CREATION OF TAX FREE SUPPLIES OR NON-GST SUPPLIES:**

- i) There would be certain goods or services which may be either exempted or NIL rated in GST regime. Further there may be certain goods or services which may not be brought under GST regime. Persons supplying such exempted / nil rated / non-GST goods or services would be receiving goods or services as their input supplies after payment of GST.
- ii) The issue, whether such taxpayers are entitled to cash refund of the GST paid by them in respect of such input supplies (including input services or capital goods) which will be used for making supplies without payment of GST, was discussed at length.
- iii) It is felt that the ITC is allowed to remove cascading and under modern VAT laws, tax is charged on value addition only and not on tax paid at the earlier level of supply chain. It is for this reason that the ultimate consumer is liable to bear the tax. Most State VAT administrations as well as Centre do not allow refund of ITC on inputs used for tax exempt / nil rated goods.

- iv) Further the inputs (including input services or capital goods) received by such suppliers would become exempt if the refund is allowed to them, which is not intended by tax design.
- v) It is recommended that the model GST Law may provide that the suppliers of exempted / NIL rated / non GST goods or services would not be entitled to the ITC of GST paid on inputs (including input services or capital goods) received by them and consequently for refund of GST paid by them. In case of mixed supplies, ITC may be allowed proportionately.
- vi) The tax credit on the inputs used for supply of exempted / NIL rated / non GST goods or services should be treated as “ineligible input tax credit” and there should be an appropriate provision in the return to provide the related invoice details.
- vii) In addition to ineligible input tax credit arising from inputs used for supply of exempted / Nil rated / non-GST goods or services, there may be other types of ineligible input tax credits such as those related to specified capital goods / assets. It is recommended that the model GST law may provide for the full scope of such ineligible input tax credits.
- viii) It is also recommended that such ineligible tax credit should accrue to the importing States in accordance with the Place of Supply Rules. This imperative will also apply to the inter-state supplies procured by the economic entities / government departments / public bodies supplying tax exempt / nil-rated / non-GST goods and services only. The mechanism for flow of such funds to the importing state by way of a system based apportionment in a consistent manner may be decided as a part of the return process.

(H) REFUND OF CARRY FORWARD INPUT TAX CREDIT:

- i) As stated earlier, ITC is allowed to remove cascading and under modern VAT laws, tax is charged on value addition only and tax is not charged on tax. It is for this reason that the ultimate consumer is liable to bear the tax burden.
- ii) It is noted that the ITC may accumulate on account of the following reasons :
  - a) Inverted Duty Structure i.e. GST on output supplies is less than the GST on the input supplies;
  - b) Stock accumulation;
  - c) Capital goods; and
  - d) Partial Reverse charge mechanism for certain services.
- iii) As regards the accumulated ITC attributed to accumulation of stock or capital goods, it is recommended that GST Law may provide that refund of carried forward ITC may not be allowed and such amount would be carried forward to the next tax period (s). The GST Law may provide for appropriate provisions in this regard.
- iv) Under the proposed GST law, it is proposed to have fewer tax rates and fewer exemptions and therefore it is felt that chances of inverted duty structure would not be there or would be very minimal. But still there might be a possibility that ITC may accumulate on account of inverted duty structure.
- v) It is recommended that in such case, cash refund may be granted after due audit and should be sanctioned only after the input tax credit has been matched from the purchase and sales statements filed along with monthly returns. The refund would be granted on submission of application. It may be mentioned, however, that presently the Centre does not grant refund in such cases.
- vi) Two options i.e. blocking the utilization of input tax credit claimed as refund at the time of submission of application for refund itself or debiting the input tax credit account / cash ledger subject to the amount

available in either account at the time of issuance of sanction order of refund were discussed. It is recommended that the first option should be adopted. Suitable linkage between the refund application and blocking of the “carry forward input tax credit” in the return/cash ledger should be built in GSTN and refund backend processing system.

- vii) ITC may also accumulate on account of circumstances wherein liability to pay service tax is under Partial reverse Charge Mechanism. Presently the liability to pay service tax is either on the service provider or on service recipient or on both. The third category is popularly known as joint / partial reverse charge where both the service provider and the service recipient are liable to pay the service tax.
- viii) In case of partial reverse charge, service provider may be left with unutilized balance in the input credit account as he is not liable to discharge the tax liability in full. In such cases, refund may be granted if the GST law provides for a joint reverse charge mechanism.
- ix) The refund may be on account of CGST, SGST or IGST as the case may be.

(I) REFUND ON ACCOUNT OF YEAR END OR VOLUME BASED INCENTIVES PROVIDED BY THE SUPPLIER THROUGH CREDIT NOTES.

It is noted that suppliers are allowing year end or volume based discounts through credit notes. Such practice is being misused by the trade where the downstream dealers show negative value-additions. Some States have placed restrictions on such ITC. It is felt that the GST Law may provide for suitable provisions in this regard as provisions for such discounts is a trade practice and will have to be permitted in the GST regime. The following procedure is recommended:

- i) The refund would be granted on submission of a simple application along with a Chartered Accountant’s Certificate certifying the fact of non-passing of the GST burden by the taxpayer, being claimed as refund. The GST Law Drafting Committee may prescribe a threshold

amount below which self-certification (instead of CA Certificate) would be sufficient.

- ii) In such cases, the eligibility for ITC at the buyer's end and the output liability at the supplier's end will get simultaneously reduced / adjusted on the basis of credit notes issued by the supplier and the corresponding debit notes issued by the buyers.
- iii) This would also obviate the need for resorting to provisional assessment presently provided in Central Law and discussed in para (C) above.
- iv) The GST Law may contain suitable provision to this effect and the GSTN should have suitable validations to this effect. The validation should include matching of credit and debit notes and reversal of the reduction of the output tax liability in case of the mismatch.
- v) The refund may be on account of CGST, SGST or IGST as the case may be.

(J) TAX REFUND FOR INTERNATIONAL TOURISTS.

Tax Refund for International Tourist (TRT) scheme provides an opportunity to the foreign tourists to purchase goods during their stay in any country on payment of GST and obtain refund of the GST so paid, at the time of exit from the country. Nearly 52 countries have adopted such kind of refund mechanism. It was noted that such a scheme helps in attracting tourist and is in line with avowed objective of GST regime of zero rating of goods and Make in India initiative of Government of India. State governments are offering VAT refunds to foreign diplomats and officials of multilateral agencies. This scheme will be implemented through particular retailers who are registered for this scheme. Refund of GST will be available at designated airports and ports only and the refund of the GST paid on retail purchase by the foreign tourists during their stay in India is allowed. A part of the eligible amount of refund will

be deducted as handling fee for services rendered. GST law drafting Committee may provide for this provision as well delineate the details of the scheme.

#### REFUND FORMS:

3.0 The form should be simple to fill, easy to understand and more importantly, in the context of the technological world, it should be in electronic format. The forms for Refund Claim, Refund order and Reduction / Adjustment summary are enclosed as Annexure –IV to VII to this document.

#### TIME PERIOD FOR FILING OF REFUND AND RELEVANT DATE:

4.0. It is recommended that a period of one year from the relevant date may be allowed for filing of refund application. Relevant date for filing of each kind of refund needs to be defined separately. The following dates are recommended as relevant dates for different type of refund cases:

- i) Date of payment of GST when the refund arises on account of excess payment of GST due to mistake or inadvertence.
- ii) Date on which proper officer under the Custom Act gives an order for export known as “LET EXPORT ORDER ” for the purpose of refund filed on account of export of goods under claim of rebate of GST paid on exported goods or refund of accumulated input credit of GST when goods are exported.
- iii) Date of BRC in case of refund on account of export of services under claim of rebate of GST paid on exported services or refund of accumulated input credit of GST when services are exported.



- iv) Date of the finalization order where refund arises on account of finalization of provisional assessment. (May not be required if the GST law does not provide for provisional assessment)
- v) Date of communication of the appellate authority's order where the refund arises in pursuance of an appellate authority's order in favor of the taxpayer.
- vi) Date of communication of adjudication order or order relating to completion of investigation when refund arises on account of payment of GST during investigation, etc. when no/less liability arose at the time of finalization of investigation proceedings or issuance of adjudication order.
- vii) Date of providing of service (normally the date of invoice) where refund arises on account of accumulated credit of GST in case of a liability to pay service tax in partial reverse charge cases.
- viii) Date of payment of GST for refund arising out of payment of GST on petroleum products, etc. to Embassies or UN bodies or to CSD canteens, etc. on the basis of applications filed by such persons.
- ix) Last day of the financial year in case of refund of accumulated ITC on account of inverted duty structure.

#### SUPPORTING DCOUMENTS:

5.0 Documents evidencing tax payments required to be enclosed with the refund application should be minimal but adequate so that both the taxpayer and tax authority find it easy to deal with the application. Normally following documents are required to establish the rightful claim of refund:

- i) Copy of TR-6 / GAR-7/ PLA / copy of return evidencing payment of duty. It is recommended that these forms may not be called for as in the

proposed GST scenario payment of duty will be in electronic mode and the same will be easily visible to the refund sanctioning authority on screen.

- ii) Copy of invoices (in original) (for the purpose of evidencing the supply of goods and the fact that duty is not reflected in the same). It is noted that the IGST Committee has recommended that the taxpayers would upload their invoice details on monthly basis. Once the same is done and the refund sanctioning authority is able to examine and view them on screen then submission of invoices can be dispensed with. It was noted that the field relating to “Quantity” is not captured in the invoice details proposed to be uploaded either before or alongwith the Return. It was further noted that this information would be required in case of refund in relation to exports. The applicant for refund in such cases would submit the copies of the invoices or a statement containing details of quantity along with the refund application. Documents evidencing export. In the proposed GST scenario it is recommended that the ICEGATE and GSTN would be inter linked, and therefore these documents can be verified on line and therefore can be dispensed with.
- iii) Documents evidencing that the tax burden has not been passed on to the buyer. Since GST is an Indirect tax, there will be a rebuttable presumption that the tax has been passed on to the ultimate consumer. Therefore there is a need for establishing that principle of “unjust enrichment” does not apply to the refund claim. It is recommended that a Chartered Accountant’s Certificate certifying the fact of non-passing of the GST burden by the taxpayer, being claimed as refund should be called for. The GST Law Drafting Committee may prescribe a threshold amount below which self-certification (instead of CA Certificate) would be sufficient.

- iv) Any other document as prescribed by the refund sanctioning authority. It is recommended that the state and central tax authorities together prescribe the documents that are required for demonstrating the legitimacy and correctness of refund claimed and checklists can be generated for refund sanctioning process.

RECEIPT OF REFUND APPLICATION AND PROCEDURE FOR GENERATING PROOF OF RECEIPT OF APPLICATION FOR REFUND:

6.0 It is recommended that the State Tax authorities shall deal with the SGST refund and Central Tax authorities shall deal with refund of CGST and IGST. The following procedure is proposed in this regard.

- i) Applicant may be given the option of filing refund application either through the GSTN portal or through the respective State / Central Tax portal. Filing through GSTN portal may be beneficial for those applicants whose refund relates to CGST / IGST as well as SGST or the refund arises in different State Tax jurisdictions. Instead of filing applications with different tax authorities, the same may be filed with the GSTN portal which will forward it to the respective tax authority.
- ii) On filing of the electronic application, a receipt/ acknowledgement number may be generated and communicated to the applicant via SMS and email for future reference. A provision may be made to display the application for refund in dealer's online dashboard when he logs into the system.
- iii) The “carry forward input tax credit” in the return and the cash ledger should get reduced automatically, if the application is filed at GSTN portal itself. In case the application is filed at the tax department portal, suitable integration of that portal with GSTN portal should be

established to reduce/block the amount before taking up the refund processing.

- iv) It should be clearly mentioned / highlighted that generation of this number does not in any way affirm the legality, correctness or completeness of the refund application.

#### NUMBER OF COPIES OF APPLICATIONS TO BE FILED:

7.0 As the filing of the electronic refund application is a preferred mode, filing of multiple copies of applications is not required.

#### REQUIREMENT FOR TAXPAYER TO KEEP A COPY OF REFUND APPLICATION FOR THE PRESCRIBED PERIOD:

8.0 Since the application for refund is expected to be filed electronically, the application form should have a print option along with the option for the applicant to download the same so that he can store the same for future reference and record. This would serve the purpose of record keeping for the applicant.

#### PROCEDURE AND TIME WITHIN WHICH PRELIMINARY SCRUTINY OF SUBMISSION OF THE RELEVANT DOCUMENTS IS CARRIED OUT:

9.0 After the receipt of the application in the jurisdictional officer's menu, the same should be examined for deficiency, if any. Since the recommendation is to reduce the number of documents that are to be filed along with the application and most of the documents related to refund application will be available online, it is recommended that the preliminary scrutiny may be carried out within 30 common working days and

deficiency, if any, should be communicated to the applicant directly from the respective tax portal. (In case refund relates to different jurisdictions or involves both central and state GST levy, then the said deficiency needs to be forwarded to GSTN also which will communicate the same to the corresponding tax authority relating to that refund).

9.1 It is recommended that tax authorities should make efforts to ensure that piece meal queries are avoided. Applicant may file his reply through the respective tax authority portal / GSTN. Any further queries should be raised only with the approval of higher authorities so that unnecessary queries are avoided. Once the refund application is found to be complete in all respect, the same may be communicated to applicant via SMS and e mail and the date of communication shall be considered as the relevant date for the purpose of time limit prescribed for sanctioning of refund and initiation of interest clause.

#### PROCEDURE FOR DEALING WITH REFUND THEREAFTER INCLUDING EXAMINATION OF PRINCIPLE OF “UNJUST ENRICHMENT ” :

10.0 Once the refund application is found to be complete and the fact of completeness has been intimated to the applicant, the jurisdictional tax authority should examine the same in the light of the provisions of the GST Law relating to refund. Important parameters include the timeliness of refund application, tax payment, date of export (if relating to export), reasons for refund etc.

10.1 It is recommended that for the sake of uniformity, the state and central laws should have similar provisions.

10.2 As GST is an indirect levy, there is always a rebuttable presumption that the tax has been passed on to the ultimate consumer by the applicant. So it is essential that every refund application should be examined in light of the principle of “unjust enrichment” and the appropriate provisions may be incorporated in the GST law. The burden of discharging the obligation under “unjust enrichment” should be on the applicant and documents manifesting the same should be submitted along with the application. As discussed above, a Chartered Accountant’s Certificate certifying the fact of non-passing of the GST burden by the taxpayer, being claimed as refund should be submitted. The GST Law Drafting Committee may prescribe a threshold amount below which self-certification (instead of CA Certificate) would be sufficient.

10.3 If the refund is not found to be legal or correct for any reason, then the jurisdictional authority should issue Show Cause Notice (SCN) to the applicant and thereafter the refund will be kept in abeyance in the system till the SCN is adjudicated. In case, the refund application is found to be in order but does not satisfy the test of unjust enrichment, the refund amount, after sanction, would be credited to the Consumer Welfare Fund. The GST Law Drafting Committee may examine whether such amount should be credited to Consumer Welfare Fund or to the consolidated fund of State / Union.

MINIMUM AMOUNT BELOW WHICH REFUND SHALL NOT BE GRANTED:

11. Filing of refund application and processing of the same involves investment of resources, in terms of time, money and manpower, by both

the applicant and tax administration. Therefore the amount should not be meager enough to create uneconomical burden on the applicant as well as tax administration. Looking at the rising inflation, it is recommended that an amount in the range of Rs. 500-1000/- may be fixed below which refund shall not be granted. This limit should be uniform for both CGST/IGST and SGST.

#### SANCTIONING OF REFUND:

12. To make the process of refund hassle free, it is important that even this last stage of refund processing should be simple and free from human intervention so that the applicant may have a pleasant experience while dealing with tax authorities. Therefore it becomes significant that once the tax authority decides about sanctioning of the refund, the same shall be granted to the applicant promptly. For this it would be essential that the details of the bank account are sought from the applicant at the time of filing of the refund application itself so that the amount of refund can be transferred to the applicant electronically through NEFT /RTGS/ECS.

#### VERIFICATION AND CONTROL:

13. Every refund that is sanctioned would need to go through a process of review by higher authorities in order to ensure the correctness of the decision of refund sanctioning authority. So once the refund is sanctioned, the same shall be transferred through the IT system to the menu of the higher authority along with the documents on the basis of which decision was taken by the refund sanctioning authority. Any documents that were sought besides those in the application should also be forwarded manually to the higher authority for taking a decision about review of the order. It is essential that there is simultaneous flow of the refund documents in paper

along with the electronic application to the audit section so that the process of post audit can be carried out concurrently.

13.1 It is recommended that looking at the higher level of compliance and self regulating mechanism in the form of system based ITC verification, uploading of sales and purchase invoices, reconciliation, compliance rating etc. post audit of refund application (and not of the accounts of the taxpayer) can be dispensed with if so decided by the respective Tax Jurisdiction for refunds upto Rs. One lakh for normal taxpayers and for refund upto Rs. 2 lakhs for certain prescribed categories of applicants (like public sector undertakings, applicants having the AEO Status, etc.) but the process of review of refund may be provided in the GST Law.

13.2 Besides this, for refund amounts exceeding a pre-determined amount a provision for pre-audit of refund application (and not of the accounts of the taxpayer) before the sanction of the refund may be provided for. Keeping in view the points mentioned above regarding increased compliance, self-regulation and system based verification, etc., it is recommended that the monetary limit for pre-audit of the refunds sanctioned may be kept at Rs. one crore or as may be decided by the respective Tax Jurisdiction. The procedure for pre-audit will be same as that for the post audit except that the application will have to move to and fro between the refund sanctioning authority and the audit authority before grant of refund. The GST Law may provide that the process of audit should be time bound with clearly defined timeline so that quality of audit does not suffer from insufficiency of time.



13.3 It is recommended that either the review procedure or system of pre-audit & post-audit may be kept in the GST Law. GST Law Drafting Committee may provide for the appropriate provision.

#### INTEREST:

14. It is recommended that the GST Law may provide for a prescribed time limit of 90 days from the date of the system generated acknowledgment of refund application within which refund has to be paid. It may also be provided in the GST law that, interest clause will start automatically once the prescribed time limit for sanctioning of refund has been breached.

14.1 The issue relating to dealing with the refund cases in which refund application has been filed but the same is found to be incomplete or deficient was discussed. It is recommended that the GST Law may clearly specify that the time limit for payment of interest will start from the date of the electronically generated acknowledgement of the refund application signifying that the application is complete in all respects. The GST Law may also provide for a time limit of 30 days from the date of receipt of refund application for raising queries/ deficiency memos by tax authorities regarding incompleteness of the refund documents. Piecemeal queries must be avoided. Once the applicant files a reply to the deficiency memo and the refund application is found complete as per the prescribed documents, the same should be acknowledged electronically by the refund sanctioning authority and the time limit for interest will start from the date of such electronic acknowledgement.

14.2 It is recommended that the rate of interest for delayed payment of refund and that in case of default in payment of GST should be different. The Committee recommends that the rate of interest in case of refund may be around 6% and that in case of default in payment of interest may be

around 18%. The GST Law may provide accordingly. The GST Law may also provide that the interest will accrue from the last date when refund should have been sanctioned even when the refund is ordered to be paid by the order of the appellate authority in the appeal filed by the applicant against order of rejection passed by the refund sanctioning authority. This would discourage refund sanctioning authority from rejecting refund claims on frivolous grounds.

**ADJUSTMENT:**

15 In some cases, the taxpayer may have outstanding demand under GST Act. The GST Law may provide for adjusting the refund claim against any amount of un-stayed confirmed demand lying beyond the appeal period. The refund order may clearly state the amount so adjusted and particulars of the adjusted demand may also be stated in the annexure to be attached with the order. Format of Application for refund and Refund order can be designed accordingly. Suggested format is enclosed as Annexure-IV to VI to this document.

**RECOVERY OF ERRONEUS REFUND:**

16 It is recommended that the GST law may provide for the provisions for recovery of erroneously granted refunds along with interest.

(Satish Chandra)  
Member Secretary  
Empowered Committee  
of State Finance Ministers

(Rashmi Verma)  
Additional Secretary  
Department of Revenue  
Government of India

ANNEXURE-I

CONSTITUTION ORDER OF JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST

EMPOWERED COMMITTEE OF STATE FINANCE MINISTERS

DELHI SECRETARIAT, IP ESTATE, NEW DELHI – 110002

Tel. No. 2339 2431, Fax: 2339 2432 e-mail: vatcouncil@yahoo.com

No.15/45/EC/GST/2014/32

Date: 7<sup>th</sup> April, 2014

JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST

During the last Empowered Committee meeting held on 10<sup>th</sup> March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also keep in view the Registration and Return requirements necessary for IGST Model. Accordingly, a Joint Committee, in consultation with the Government of India, is constituted with the following members:

Government of India

- (1) Smt. Rashmi Verma, Additional Secretary (Revenue) -- Co-convener
- (2) Shri P.K. Mohanty, Joint Secretary (TRU-I)
- (3) Shri M. Vinod Kumar, Joint Secretary (TRU-II)
- (4) Shri J.M. Kennedy, Director (TRU-II)
- (5) Director/Deputy Secretary holding the charge of  
State Taxes Section

States Government

- (1) Dr. J.B. Ekka, Commissioner of Taxes, Assam
- (2) Shri Prashant Goyal, Commissioner, Trade & Taxes, Delhi
- (3) Shri H.V. Patel, Commissioner, Commercial Tax, Gujarat
- (4) Shri Sudhir Rajpal, Commissioner, Excise & Taxation, Haryana

- (5) Shri Kifayat Hussain Rizvi, Commissioner, Commercial Tax, J&K
- (6) Shri Ajay Seth, Commissioner, Commercial Tax, Karnataka
- (7) Shri Shyam Jagannathan, Commissioner, Commercial Tax, Kerala
- (8) Shri Amit Rathore, Commissioner, Commercial Tax, Madhya Pradesh
- (9) Dr. Nitin Kareer, Commissioner, Sales Tax, Maharashtra
- (10) Shri Abhishek Bhagotia, Commissioner, Commercial Tax, Meghalaya
- (11) Shri Manoj Ahuja, Commissioner, Commercial Tax, Odisha
- (12) Shri Sanjay Malhotra, Commissioner, Commercial Tax, Rajasthan
- (13) Shri K. Rajaraman, Commissioner, Commercial Tax, Tamil Nadu
- (14) Shri M.K. Narayan, Commissioner, Commercial Tax, Uttar Pradesh
- (15) Shri Dilip Jawalkar, Commissioner, Commercial Tax, Uttarakhand
- (16) Shri Binod Kumar, Commissioner, Commercial Tax, West Bengal

Empowered Committee of State Finance Ministers

- (1) Shri Satish Chandra, Member Secretary -- Co-convener

2. The Committee will submit its report to the Empowered Committee in two months time.

Sd/-  
(Satish Chandra)  
Member Secretary  
Empowered Committee of  
State Finance Ministers

Copy to: All the Members of the Joint Committee

Copy also to:

- (1) PS to Chairman, Empowered Committee of State Finance Ministers
- (2) Adviser to Chairman, Empowered Committee of State Finance Ministers
- (3) Sr.A.O./OSD/F.O./A.O., Empowered Committee of State Finance Ministers

ANNEXURE-II

CONSTITUTION OF SUB-COMMITTEE ON GST REFUND PROCESSES

EMPOWERED COMMITTEE OF STATE FINANCE MINISTERS

DELHI SECRETARIAT, IP ESTATE, NEW DELHI – 110002

Tel. No. 2339 2431, Fax: 2339 2432 e-mail: [vatcouncil@yahoo.com](mailto:vatcouncil@yahoo.com),  
[vatcouncil@gmail.com](mailto:vatcouncil@gmail.com)

No.15/45/EC/GST/2014/170

Date: 14<sup>th</sup> November, 2014

CONSTITUTION OF SUB-COMMITTEE ON GST REFUND PROCESSES

During the last meeting of the Joint Committee on Business Process for GST held on 12<sup>th</sup> November, 2014, it was decided to form a Sub-Committee to look into the GST refund processes. Accordingly, a Sub-Committee consisting of the following is constituted.

Government of India

- (1) Shri Upender Gupta, Additional Commissioner, GST Cell -- Co-convener
- (2) Shri Manish Sinha, Director (CX)
- (3) Shri Rajiv Yadav, Director (ST)

State Governments

- (1) Shri Manoj Ahuja, Commissioner, Commercial Tax -- Co-convener  
Government of Odisha
- (2) Shri Amit Rathore, Commissioner, Commercial Tax,  
Government of Madhya Pradesh
- (3) Dr. Nitin Kareer, Commissioner, Sales Tax, Government  
of Maharashtra
- (4) Shri M. Girees Kumar, Commissioner, Commercial Tax,  
Government of Kerala

Goods and Services Tax Network

- (1) Shri Prakash Kumar, Chief Executive Officer

Special Invitee

- (1) Shri Ajay Seth
2. The Sub-Committee should submit its report in one month's time.

Sd/-  
(Satish Chandra)  
Member Secretary  
Empowered Committee of  
State Finance Ministers

Copy to: All the Members of the Committee

LIST OF PARTICIPANTS OF THE MEETING HELD ON 22<sup>ND</sup> AND  
23<sup>RD</sup> JULY, 2015

Government of India

1. Smt. Rashmi Verma, Additional Secretary (Revenue), Government of India
2. Shri Rajeev Yadav, Director (Service Tax), CBEC, Government of India
3. Shri B.B. Agrawal, Principal Commissioner, CBEC, Government of India
4. Shri Upender Gupta, Commissioner, GST, CBEC, Government of India
5. Shri M.K. Sinha, Commissioner (LTU), Audit, CBEC, Government of India
6. Shri G.D. Lohani, Commissioner, CBEC, Government of India
7. Shri Ravneet Singh Khurana, Deputy Commissioner, CBEC, Government of India
8. Shri Sachin Jain, Additional Commissioner, CBEC, Government of India
9. Shri P.K. Manderna, Superintendent (GST Cell), Government of India

States

1. Shri Gautam Das Gupta, Deputy Commissioner of Taxes, Assam
2. Shri T. Ramesh Babu, Additional Commissioner, Commercial Tax, Andhra Pradesh
3. Shri Arun Kumar Mishra, Joint Secretary, Finance, Bihar
4. Shri Santosh Kumar Sinha, Additional Commissioner, Commercial Tax, Bihar
5. Shri Deepak Kanan, Additional Commissioner, Commercial Tax (GST), Bihar
6. Shri R.K. Trivedi, Additional Commissioner, Commercial Tax, Chhattisgarh
7. Shri Kishor Bhalla, Deputy Commissioner (VAT), Daman & Diu and Dadra & Nagar Haveli
8. Shri Vijay Kumar, Commissioner (VAT), Trade and Taxes, Delhi
9. Shri Jagmal Singh, Deputy Director, Trade and Taxes, Delhi
10. Shri Dipak M. Bandekar, Additional Commissioner, Commercial Tax, Goa
11. Dr. P.D. Vaghela, Commissioner, Commercial Tax, Gujarat
12. Ms. Aarti Kanwar, Special Commissioner, Commercial Tax, Gujarat

13. Shri Shyamal Misra, Commissioner, Excise & Taxation, Haryana
14. Shri Hanuman Singh, Additional Commissioner, Excise & Taxation, Haryana
15. Shri J.C. Chauhan, Commissioner, Excise & Taxation, Himachal Pradesh
16. Shri P.K. Bhat, Additional Commissioner, Commercial Tax, Jammu & Kashmir
17. Smt. Nidhi Khare, Secretary-cum-Commissioner, Commercial Tax, Jharkhand
18. Dr. M.P.Ravi Prasad, Joint Commissioner, Commercial Tax, Karnataka
19. Dr. Rajan Khobragade, Commissioner, Commercial Tax, Kerala
20. Shri M.I. Mansur, Assistant Commissioner, Commercial Tax, Kerala
21. Shri Sudip Gupta, Deputy Commissioner, Commercial Tax, Madhya Pradesh
22. Shri P. Velrasu, Special Commissioner, Sales Tax, Maharashtra
23. Shri B.V. Borhade, Joint Commissioner, Sales Tax, Maharashtra
24. Shri P.M. Kulkarni, Deputy Commissioner, Sales Tax, Maharashtra
25. Shri K. Sanglawma, Commissioner of Taxes, Mizoram
26. Shri H. Rangthanmawia, Superintendent of Taxes (GST Cell), Mizoram
27. Shri Niten Chandra, Commissioner, Commercial Tax, Odisha
28. Shri Sahadev Sahoo, Joint Commissioner, Commercial Tax, Odisha
29. Shri K. Sridhar, Deputy Commissioner, Commercial Tax, Puducherry
30. Dr. Karthik, Additional Secretary, Punjab
31. Shri Pawag Garg, Additional Commissioner, Excise & Taxation, Punjab
32. Shri Vaibhav Galriya, Commissioner, Commercial Tax, Rajasthan
33. Shri Manoj Rai, Joint Commissioner, Commercial Tax, Sikkim
34. Shri D. Soundraraja Pandian, Joint Commissioner (Taxation), Commercial Taxes, Tamil Nadu
35. Shri K. Chandrasekhar Reddy, Additional Commissioner, Commercial Tax, Telangana
36. Shri Vikas Singh, Commissioner of Taxes and Excise, Mizoram
37. Shri Vivek Kumar, Additional Commissioner, Commercial Tax, Uttar Pradesh
38. Shri Abhijit Gupta, Commercial Tax Officer (IT), Uttar Pradesh
39. Shri N.C. Sharma, Additional Commissioner, Commercial Tax, Uttarakhand
40. Smt. Ujjaini Datta, Joint Secretary, Finance, West Bengal



### Goods and Services Tax Network (GSTN)

1. Shri Navin Kumar, Chairman, Goods and Services Tax Network
2. Shri Prakash Kumar, Chief Executive Officer, Goods and Services Tax Network

### Empowered Committee of State Finance Ministers

1. Shri Satish Chandra, Member Secretary, Empowered Committee
2. Shri Bashir Ahmed, Adviser, Empowered Committee







(i) Refund claimed																				
(ii) Refund reduced, if any																				
(iii) Refund allowed (i – ii)																				
(iv) Interest due in case of delayed payment of refund																				
(v) Amount of adjustment against outstanding demand																				



ANNEXURE-VI

**Reduction / Adjustment Summary**

Sr No.	Description	Year & Tax Period	Amount (reduction / adjustment)	Order No.	Order date	Balance demand, if any remaining
1	2	3	4	5	6	7
1.	Reduction of refund amount					
2.	Adjustment against outstanding demand					
	<b>Total</b>					

(Signature)

Name

(Designation

)

Ward/Circle/Unit/Other

(Place

)

(Date)





7. Details of purchases of tax paid goods in respect of which refund of tax is sought

Sr. No.	Invoice date	Invoice No.	Supplier's	Supplier's	Value / Price (excluding	Tax (Rs.)		
						IGST	CGST	SGST
1	2	3	4	5	6	7	8	9
Total								

8. Details of Bank Account in which refund should be remitted	Bank Account Number																		
	Bank Account Type																		
	Operated in the name of																		
	MICR / IFSC																		
	Name of Bank																		
	Address of Branch																		

9. Verification

I/We \_\_\_\_\_ hereby solemnly affirm and declare that the

\_\_\_\_\_

\_\_\_\_\_



## 5.5 Report on Payment

REPORT

OF

THE JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST

ON

GST PAYMENT PROCESS

Empowered Committee of State Finance Ministers

New Delhi

April, 2015

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## Report of the Joint Committee on Business Processes for GST- Payment

### INTRODUCTION

During the Empowered Committee meeting held on 10<sup>th</sup> March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Payment and Return to the Empowered Committee. Accordingly, a Joint Committee, in consultation with the Government of India, was constituted on 7<sup>th</sup> April, 2014 (Annexure-I). The Committee held its deliberations on 28<sup>th</sup> October, 2014, 12<sup>th</sup> November, 2014, 25<sup>th</sup> November, 2014, 22<sup>nd</sup> December, 2014, 2<sup>nd</sup> and 3<sup>rd</sup> February, 2015, 19<sup>th</sup> and 20<sup>th</sup> February, 2015 and 16<sup>th</sup> and 17<sup>th</sup> April, 2015.

2. The Joint Committee on Business Processes for GST held on 2<sup>nd</sup> February, 2015, it was decided to constitute a sub-committee on GST Payment Process. Pursuant to that decision, the Member Secretary, Empowered Committee constituted the Sub-Committee vide his memorandum letter dated 3<sup>rd</sup> February, 2015 (Annexure-II). Shri V Rajendaran, DG (Government Accounts), CAG, Mrs. Krishna Tyagi, CCA, CBEC, Government of India, Shri Madan Mohan, Jt. CGA, Government of India and Shri G Sreekumar, CGM, RBI were co-opted as members of the Sub-Committee. Shri Ravneet S. Khurana, Deputy Commissioner GST Cell, CBEC also participated in the deliberations of the Sub-Committee. The Sub-Committee met in Bengaluru on 14<sup>th</sup> and 15<sup>th</sup> February, 2015 and on 06<sup>th</sup> and 7<sup>th</sup> April, 2015. The Sub-Committee also exchanged

drafts on emails during the interregnum period. The Sub-Committee submitted its final report on 10<sup>th</sup> April, 2015.

3. The report of the Sub-Committee was discussed in the meeting of the Joint Committee of Business Processes held in Delhi on 16<sup>th</sup> and 17<sup>th</sup> April 2015 and was accepted with certain modifications. The meeting of the Joint Committee was attended by the officers as listed in Annexure III.

4. In modern day taxation regime, every transaction of the tax payer with the tax administration should be transparent, responsive and simple. It has been experience of tax administrations that more the system and procedures are made electronic more is the efficiency of tax administration and greater is the satisfaction of taxpayer. In this context, payment system of GST should also be based on Information Technology which can handle both the receipt and payment processes.

5. The objectives of this report are as under:

- a) Highlight key issues in tax collection, collation, remittance and reporting of tax collection into Government account;
- b) Need for a uniform system of banking arrangements for collection, remittance and reporting of GST to both Central and State Governments;
- c) Proper accounting and bank reconciliation of taxes derived from basic data of payments made by taxpayers to banks, with the required classification of heads of accounts indicated on the Challan;
- d) Designing the format of a new Challan for use by the taxpayers paying GST;
- e) Developing a detailed accounting procedure common to both Central and State Governments for GST, covering all relevant aspects of payments, accounting and

related banking arrangements.

6. It is noted that under GST regime, some taxes and duties may remain outside the purview of GST and will continue to be collected in the manner prescribed under existing accounting procedures/rules/manuals, etc. This means that two types of challans (one for GST and other for non-GST) will be used and accounted for by the respective Pay and Accounts Offices (PAOs)/State AGs.

7. The payment processes under proposed GST regime should have the following features:

- a) Electronically generated challan from GSTN Common Portal in all modes of payment and no use of manually prepared challan;
- b) Facilitation for the taxpayer by providing hassle free, anytime, anywhere mode of payment of tax;
- c) Convenience of making payment online;
- d) Logical tax collection data in electronic format;
- e) Faster remittance of tax revenue to the Government Account;
- f) Paperless transactions;
- g) Speedy Accounting and reporting;
- h) Electronic reconciliation of all receipts;
- i) Simplified procedure for banks;
- j) Warehousing of Digital Challan.

8. With the above features in mind the following three modes of payment are proposed:



- a) Payment by taxpayers through Internet Banking through authorized banks and through credit card/debit card;

(Section 45 of RBI Act, 1934 permit banks other than RBI to be appointed as agency banks for carrying out government business. Agency banks are permitted to both receive and make payments on behalf of the Government and therefore act as Banker to respective governments. However, authorized banks are only permitted to receive payment of GST on behalf of the Government, and keeping this distinction in view, the expression ‘authorized bank’ is used throughout this Document.)

- b) Over the Counter payment (OTC) through authorized banks;
- c) Payment through NEFT/RTGS from any bank (including other than authorized banks).

9. Mode of payment described at b) above will be available for payments up to Rs. 10,000/- per challan only. Model GST law may have suitable provisions in relation to this. However, there should not be any IT system constraints for this i.e. the systems should be able to receive payments through all three modes irrespective of the amount. Other means of payment, such as payment by book adjustment as is presently being allowed by Government of India to some departments / State governments or payment by debit to export scrips, while paying tax would not be allowed. It is also noted that all taxpayers under Centre are paying taxes electronically and possibly the same situation exists in some State Tax administrations. It is desirable that under the GST regime, all taxpayers should gradually move to internet payment over an indicative time frame.

10. The Committee recommends that RBI should play the role of an aggregator through its e-Kuber system. Such role will facilitate participation of larger number of banks in GST receipts enhancing convenience for the tax payers and provide single source of information for credit of the receipts to Government accounts and thereby simplifying accounting and reconciliation tasks. In case of any discrepancy found during the reconciliation by the Accounting Authorities, they would directly interact with RBI. Joint CGA suggested that as per the provisions of Section 20 of the RBI Act, 1934 in the proposed scenario, RBI would be the sole banker to the Governments. RBI, on the other hand, has indicated that Section 20 and Section 45 of the RBI Act, 1934 are not mutually exclusive and therefore there would not be any conflict in the role envisaged for the RBI in the proposed model.

11. Each of the above modes is discussed separately along with the role of stakeholders involved, process of reporting, accounting and reconciliation of data. As already mentioned above, it is envisaged that for each mode of payment, the challan will be generated electronically at the GSTN and no manual challan will be used under any mode of payment.

I. PAYMENT BY TAXPAYERS THROUGH INTERNET BANKING THROUGH AUTHORIZED BANKS AND THROUGH CREDIT CARD/ DEBIT CARD.

12. With increasing spread of internet and electronic communication, this mode has emerged as one of the preferred modes of tax payment for both the taxpayers and administrators. As the name suggests, this mode of payment involves payments by the taxpayers that utilize the electronic network, right from the generation of the challan by the taxpayer to the ultimate reconciliation of the data by the Accounting authorities.

Before understanding the process involved in e-payments, it is important to list the stakeholders involved in this mode of payment. The following stakeholders will play a key role in establishing an effective e-payment network in the proposed GST scenario:

- a) GSTN (Goods and Service Tax Network);
- b) e- FPBs (Electronic Focal Point Branches) of authorized banks;
- c) e-Kuber of RBI;
- d) Central Accounts Section (CAS) of RBI, Nagpur;
- e) e-PAOs (Electronic Pay and account Offices) / e-Treasuries of State Governments;
- f) Pr. CCA, CBEC (Principal Chief Controller of Accounts) / Accountant General of the States;
- g) Tax authorities of Centre and States.

Process involved in e-payment of GST:

13. Every tax payer who wants to avail the facility of e-payment will access GSTN for generation of the Challan through which payment is to be made. The following methods for creation of draft challan for GST payments are recommended.

- a) By Registered tax payer or his authorized person by logging on to GSTN Common Portal where basic details (such as name, address, email, mobile no. and GSTIN) of the tax payer will be auto populated in the challan;
- b) By authorized representatives of tax payers by logging on to the GSTN Common Portal whereafter the list of registered taxpayers represented by him will be displayed. He can select any tax payer on whose behalf he proposes to pay GST and challan details for such tax payer will be auto populated;

- c) By grant of temporary Registration number by any one Tax authority on GSTN Common Portal which can be used by both the tax authorities for facilitating tax payments on behalf of an unregistered person. Such a situation can arise during enforcement action by a tax authority and this temporary registration can be later converted into a regular registration number (GSTIN) if the tax payer has a regular GST liability to discharge after the enforcement action (detailed procedure described in Para 78 below);
- d) By creation of a challan without requirement of USER ID and Password, for enabling payment of GST by a registered or an unregistered person on behalf of a taxpayer as per the directions of the tax authority using the GSTIN (like the present provision under Service tax). In this method, GSTN would provide for a validation check (like CAPTCHA) so that challan can be created by a person and not by machine.

14. The issue whether challans should have provision for entering jurisdictional location ( e.g. Commissionerate, division and range) was discussed in detail and it was decided that the same will not be mentioned in the challan. Instead, the Tax authorities would send the Taxpayers updated master data to GSTN as well as to Accounting Authorities. The incremental changes in the said master would also be sent on real time basis by the Tax authorities to GSTN and Accounting authorities. As challan would not have a jurisdictional location code, the Accounting Authorities would use the TAXPAYER Master received from Tax authorities for mapping the challans with the Jurisdictional PAOs / tax authorities' offices by having a suitable mapping mechanism.

15. Upon creation of the draft challan, the taxpayer will fill in the details of the taxes that are to be paid. The challan page will have sets of mandatory fields, which the user has to provide. The tax payer will have the option to pay CGST, IGST, Additional Tax and SGST concurrently. The tax payers can partially fill in the challan form and temporarily “save” the challan for completion at a later stage. A saved challan can be “edited” before finalization. After the tax payer has finalized the challan, he will generate the challan, for use of payment of taxes. The remitter will have option of printing the challan for his record. The challan so generated will have a 14-digit (yyymm followed by 10-digit) Unique Common Portal Identification Number (CPIN), assigned only when the challan is finally generated, this will help the portal and other authorities in identifying the challan. The CPIN would be a running serial number to be initialized every calendar month. After the challan is generated, it will be frozen and will not be allowed to be modified. The CPIN/challan so generated would be valid for a period of seven days. In case of payment through Mode III, CPINs would remain live with RBI for a period of 30 days. GSTN would purge all unused CPINs on the day immediately after the date on which the validity period is over (i.e. 7 days if Mode I or II is selected and 30 days if Mode III is selected for payment). At the end of each day (EOD), GSTN would send all the CPINs generated on that day to the Accounting authority of the Centre and to those accounting authorities of the states that so desire. The suggested format of the challan is appended at Annexure – IV which is a common format for all three modes of payment. Since the challan would be prepared electronically, chances of errors will be minimal. However to deal with challan correction in exceptional circumstances, a challan correction mechanism, prepared in consultation with the office of Pr. CCA, CBEC is detailed in paras 123 and 124 below.

16. Since there are three modes of payment, the tax payer has to choose the e-payment mode. This mode will also cover payment by Credit/Debit Card which can be used only after log in on the GSTN.

17. Once e-payment mode is selected, options will be shown to taxpayer to choose between Internet Banking and Credit / Debit Cards for making payment. In case Internet Banking mode is selected, a field with drop down box detailing names of various authorized banks, registered with GSTN for Internet Banking, would be displayed. The taxpayer will have option of choosing his preferred bank for Internet Banking. Credit and Debit Cards of all banks shall be accepted. However, the payment gateway services should be obtained by GSTN from the authorised banks or their payment gateway SPVs only. To encourage competition, preferably more than one such gateway should be provided on the GSTN portal, with display of their respective charge rate and service performance level. The taxpayer can choose any of the gateways available on the portal for making the payment. The exact charge should be calculated separately by the gateway service provider. The gateway provider should collect this amount separately over and above the challan amount. The challan amount should be fully credited to respective Government accounts maintained with the authorised bank (acquiring bank for CC/DC payments), while the gateway charges should be retained back by the gateway provider. The Government/GSTN should procure the payment gateway services from the authorised banks (or their SPVs) through an appropriate competitive process to keep the charge rates low. The Committee also deliberated the issue of charge back claims in case of credit card based payment, and felt that the possibility of such claims on payments to the government is minimal and manageable.

especially in view of implementation of two-step authentication norm by the banks. In addition, the taxpayer would be required to pre-register his credit card, from which the tax payment is intended, with the GSTN system. GSTN may also attempt to put in a system with banks in getting the credit card verified by taking a confirmation from the credit card service provider. The payments using credit cards can therefore be allowed without any monetary limit to facilitate ease of doing business. In the event of such claims, recommended standard operating procedure, prepared in consultation with RBI, is enclosed as Annexure-V.

18. In case of Payment Gateway, the first choice for a taxpayer would be to select the card type to be used for making the payment. Upon choosing the card type, the taxpayer would be displayed available gateway service providers servicing the card type. Once a taxpayer chooses a gateway, the interface of the gateway would be invoked. Alongside, GSTN will forward the same electronic string as was passed for Internet Banking (details in para 19 below). The service provider will capture and verify the card details and debit the challan amount and additional gateway charges from the card holder. The Payment Gateway service providers are expected to build their interface with GSTN common portal to capture challan amount breakup in terms of CGST, IGST, Additional Tax and SGST. Along with the interface, associated accounts for CGST, IGST, Additional Tax and state-wise accounts for SGST should be created by the Authorized banks associated with the gateway service providers. The breakup received from GSTN common portal will be used to credit the amounts received under respective accounts created for the purpose. The Committee noted that in respect of credit card payments, presently the acquiring bank is permitted to transfer the amount to the merchant on

T+3 basis. Thus there may arise some situations where the taxpayers account has been debited on T+0 basis whereas Government's account in authorised bank would be credited on T+3 basis. It was informed by RBI that this time could be reduced to T+1 basis by suitable negotiations with the payment gateways. It is recommended that suitable negotiations may be carried out by the Accounting authorities and RBI with payment gateways to credit the amount on T+1 basis.

19. In case of payment through Internet Banking, once the taxpayer chooses a particular bank for payment of taxes, GSTN will direct him to the website of the selected bank. Alongside, GSTN will forward an electronic string to the selected bank carrying the following details for each challan on real time basis:

- a) GSTIN;
- b) CPIN;
- c) Challan Amount;
- d) Break Up of the Amount into CGST, IGST, Additional Tax and SGST ;
- e) State/UT Government to which SGST remittance pertains.

GSTN in consultation with banks would decide about the requirement of merchant code as a GSTN identifier.

20. Taxpayer will make the payment using the USER ID and Password provided by the bank to enter into the secured e- banking area of his bank. He will select an account for debiting the total tax amount and authorize the payment. While making the payment, the bank will display the breakup of total amount payable into CGST, IGST, Additional Tax and SGST and seek confirmation from the user. No change in the break up as well as the total amount would be allowed on the Bank's portal. In case the user



wants to change the break up or the total amount, he should abort the transaction and go back to GSTN portal from the bank's portal and reinitiate the process.

21. After the successful completion of a transaction, e-FPB of the concerned bank will create a unique Challan Identification Number (CIN) against the CPIN. This will be a unique 17-digit number containing 14-digit CPIN generated by GSTN for a particular challan and unique 3-digit Bank code (MICR based which will be communicated by RBI to GSTN). The incorporation of the date of payment in the CIN may be examined from the IT's perspective. This CIN, as a combination of CPIN and Bank Code, will be reported by the banks along with its own Unique Bank reference number (BRN). Such CIN is an indicator of successful transaction and will be used as a key field for accounting, reconciliation etc. by taxpayers, accounting authorities and tax authorities. After every successful e-payment transaction, there will be an instantaneous reverse flow of information through an electronic data string from the collecting bank to the GSTN containing the following details:

- a) CIN;
- b) GSTIN;
- c) Bank Reference number (BRN);

[Since there could be maximum of four credits against one debit, banking practice may be ascertained by GSTN. If such transactions (i.e. four credits against one debit require multiple BRNs i.e. one for each credit entry), all BRNs should be reported.]

- d) Challan amount;
- e) Date of Payment;

f) Time of Payment

22. If the transaction cycle is not completed because of failure of credential verification, there would be no response from the bank to portal informing about the same. If a response (positive or negative) is not received by GSTN within the stipulated period (few minutes), there would be a feature in GSTN to re-ping the bank system and seek a response against CPIN. There may be a scenario in which the internet banking transaction is successful, but the connection drops before the control comes back to GSTN portal, and the re-ping facility will help in finding the status of such transactions.

23. Upon receipt of confirmation from the bank regarding successful completion of the transaction, GSTN will inform the relevant tax authorities about payment of taxes. A copy of the paid challan (downloadable/printable) with auto-populated CIN, date and time of payment and a statement confirming receipt of the amount by the bank will be provided to the taxpayer by GSTN.

24. Thereafter the tax paid challan (CIN) will be credited to the tax ledger account of the taxpayer. It was discussed and agreed by the Committee that there would be 20 ledger accounts (one for each Major heads i.e. CGST, IGST, Additional Tax & SGST and 4 Minor heads for each Major Head i.e. Interest, Penalty, Fees & Others).

Role to be played by each Stakeholder:

GSTN:

25. In the framework of GST administration, GSTN is envisaged to be a “pass through portal” that works as a common interface between taxpayers, tax authorities,

authorized banks, RBI and accounting authorities. So GSTN will play the following role in this mode of payment:

- a) Generation of challan along with CPIN;
- b) Facilitating e-payments by providing a linkage to Internet Banking interfaces of authorized banks and payment gateways of authorised banks for CC/DC based payments;
- c) Receipt of real time data from IT system (e-FPBs) of each authorized bank regarding successful completion of payment transaction by the taxpayer (CIN);
- d) Generating receipt containing BRN No. of collecting bank for taxpayer acknowledging receipt of payment by the bank. A further facility of generating receipt containing RBI's scroll number for taxpayer would also be provided;
- e) Information to the respective Tax Authorities on real time basis for each successful transaction reported by banks. The communication at this stage may contain a minimal set consisting of GSTIN, CIN (i.e. CPIN + Bank Code), BRN(s), Challan amount, break-up of the amount into CGST, IGST, Additional Tax and SGST and date of payment;
- f) At EOD, GSTN will also send the details of CPIN generated for the particular day to the Accounting Authority of the Centre (to facilitate estimation of revenue and fund management) and to such State accounting authorities that may so desire;
- g) On T+1 morning, GSTN will generate a consolidated file containing a summary as well as entire details of the challans for which successful transactions were reported by the banks on real time basis for the date value of T=0 (for this purpose, daily transactions would include transactions from 20:01 hrs on previous day to 20:00 hrs in the current day). The file will be sent to the

respective accounting authorities. At this stage, the challan data will also include CIN (i.e. CPIN + Bank Code) and BRN reported by the banks. GSTN would generate this file on all working days including the days on which no transaction took place;

- h) GSTN will receive 39 consolidated e-scrolls from RBI (one each for CGST, IGST and Additional Tax and one each for SGST for each State/UT Govt, see para 26(a) below) on T+1 basis. The contents of the scrolls are mentioned in para 28 below;
- i) On receipt of consolidated transaction level e-scrolls from RBI during latter part of the day, GSTN will carry out preliminary system based reconciliation with reference to the successful transactions already reported real time by the banks and consolidated by GSTN as per step (g) above. GSTN will append the RBI scroll Number on each challan and thereafter forward its reconciliation results to the respective accounting authorities;
- j) Once the amount reflected in the CIN, received by GSTN from Bank on real time basis, is credited in the cash ledger of the taxpayer, GSTN will lock that CIN to prevent its further usage;
- k) Purge all unused CPINs after the expiry of seven days in case of Mode I & II / 30 days in case of Mode III;
- l) Receive TAXPAYER master as well as updates thereto from the respective Tax Authorities on real time basis.

e- FPBs (ELECTRONIC FOCAL POINT BRANCHES) OF AUTHORIZED BANKS:

26. There would be a single e-FPB for each Authorized bank for the entire country.

It will perform the following role:

- a) Each e-FPB will open a major head wise (CGST, IGST, Additional Tax and SGST) account of each government (total 39 accounts) to which the remittances received by it would be credited. Currently, the Constitutional Amendment Bill states that the Additional Tax will be collected by Centre and assigned to States. If this arrangement is continued, the e-FPB will maintain one account for Additional Tax for Centre. A Committee has been constituted by the EC to examine the operational issue of Additional Tax and if it is decided that this tax will be collected by the respective State Government and retained by them, separate accounts for every State will have to be maintained for Additional Tax also, on the lines of SGST;
- b) Sending real time data regarding successful completion of payment transaction by the taxpayer (CIN);
- c) At the end of each day (T+1), each e-FPB will be responsible for preparing daily luggage files Major Head wise (CGST, IGST, Additional Tax and SGST) for each government detailing receipts from all modes of payments on a particular day (including nil payment days) and forwarding it to RBI in the morning. Each luggage file will have a Unique Serial Number which will be a running serial number extending through a financial year which will facilitate identification of missing files. This luggage file number will become part of the electronic file. For operational purposes such as size of the file, it may be broken up into different parts with each part being numbered uniquely and also mentioning the total number of parts of that file;
- d) In the morning of each day (T+1), each e-FPB will also forward the daily luggage file mentioned above to accounting authorities of the Centre and the respective

State, in case their accounting authorities so desire, so that they can independently monitor delayed remittances, if any, from the banks to the Government account in RBI;

e) On the first day of every month, e-FPB will provide Datewise Monthly Statements (DMS) for each tax and government separately to RBI for the preceding month with following details:

- i) Name of Tax;
- ii) Government Name;
- iii) Datewise number of successful transactions and total credit reported to RBI; and
- iv) List of discrepancies remaining unresolved at the end of the report month (MOE UIN, CIN, BRN, Amount, Nature of discrepancy).

These statements will be simultaneously communicated to the respective Accounting Authorities, if they desire so.

27. Each authorised bank should have one or more service branch in each State to serve as GST help desk and to receive queries / e mails to resolve the issues from Taxpayers, Tax Authorities and Accounting Authorities.

e-Kuber (Core Banking System) of RBI.

28. The following functions will be performed by RBI (e-Kuber):

- a) RBI will consolidate luggage files received from all authorized banks, debit their accounts and correspondingly credit the CGST, IGST and Additional Tax accounts of Government of India and SGST accounts of each State/UT Government maintained in RBI(39 accounts);

- b) RBI would send consolidated, digitally signed e-scrolls, along with all the challan details, for each type of Tax (one each for CGST, IGST and Additional Tax for Government of India, and separate e-scrolls of SGST for each State/UT Governments) per day (including NIL payment day) after including the amount collected by it in Mode – III to Accounting Authority of Centre (e-PAO) / each State (e-Treasury) and GSTN simultaneously. Daily Major head account-wise scroll from RBI will consist of following information:-
- (i) Merchant Code given to GSTN;
  - (ii) Scroll Number and Date;
  - (iii) Name of Government to which the scroll pertains;
  - (iv) CIN;
  - (v) GSTIN;
  - (vi) BRN;
  - (vii) RBI Transaction Number;
  - (viii) Mode of payment;
  - (ix) Tax amount;
  - (x) Control parameters like total transaction, Total Amount in the scroll, etc.
- c) If any discrepancy is reported by Accounting Authority or GSTN, it would carry out the correction mechanism with the authorized bank and thereafter report the corrected data to respective Accounting Authority and GSTN.
- d) RBI will consolidate Datewise Monthly Statements (DMS) received from the banks for each tax and government, validate the consolidated statements (39) with reference to its own data of e-scrolls reported during the report month, have a systemic review of unresolved discrepancies and communicate the

statements to the respective accounting authorities within 3 days from end of the report month.

Central Accounts Section (CAS) of Reserve Bank of India, Nagpur:

29. CAS, Nagpur reports daily consolidated credits and debits to each Government and Accounting Authorities. Such daily statements cover all receipts and payments for the respective governments including inter-government transactions. GST credits will be one of the items reported by CAS, Nagpur in its daily statements. The scroll number mentioned in para 28 (b) (ii) above should be the credit identifier in the daily statements.

e-PAOs (Electronic Pay and Account Offices ) of Centre and e-Treasuries of State Governments:

30. In the case of Central government, the existing e-PAO (Central Excise) and e-PAO (Service Tax) can work as e-PAO (IGST), e-PAO (CGST) in the GST regime. Another e-PAO (Additional Tax) can be operated till the time that the Additional Tax remains in force. All these e-PAOs can be located at Delhi itself. The State governments will need to establish their e-PAOs / e-Treasuries (proposed Central Accounting Unit in the RBI Report of 2014). The following functions will be performed by e-PAOs/e-Treasuries:

- a) At EOD, the Central Accounting Authority and those State accounting authorities that so desire will receive details of CPIN generated by GSTN for the particular day. (Centre's accounting authorities require this to facilitate estimation of revenue and fund management);
- b) Each morning (T+1), e-PAOs / e-Treasuries will receive from GSTN a consolidated file of entire details of the challans (including CIN) for which



successful transactions were reported by the banks to GSTN on real time basis for the previous day;

- c) Each morning (T+1), e-PAOs for CGST, IGST & Additional Tax and e-Treasuries of the State Government will get consolidated transaction level digitally signed daily e-scrolls from RBI (along with all the challan details) pertaining to the successful transactions of the previous day (date value T=0);
- d) E-FPB of authorized banks would also send such scrolls on T+1 basis to central accounting authorities and to those e-Treasuries that may so desire;
- e) They will also receive from GSTN, later in the day, results of reconciliation by GSTN with the bank's and its own data;
- f) The e-PAO and e-Treasuries of the States would reconcile the challan details [received in step b) above] with the e-Scroll information [received from RBI in step c) and from GSTN in step e) above], and do the detailed revenue accounting based on the information provided in the e-scroll provided by RBI to the accounting authorities;
- g) They will receive TAXPAYER master from the respective Tax Authorities (backend module) and the same would be required to be kept updated on real time basis by the respective Tax Authorities. The said TAXPAYER master would be used by the Accounting Authorities for mapping the challan details with the Jurisdictional PAOs by having a suitable mapping mechanism. This is a requirement of the Government of India for determining revenue from each formation. States may also follow a similar procedure, if they so desire;
- h) They will also provide CIN wise payment / challan details to the respective Tax Authorities daily or periodically as per requirements / norms of their

governments for departmental reconciliation and for updating Tax Authorities database that the tax amount has been accounted in the government's books. Accounting Authorities should provide their accounting reference number (in Government of India, CIN is used for this purpose; some State Governments seem to be generating their own accounting reference number) for each challan accounted by them along with the tax amount as per the credit accounted by them to the jurisdictional Tax Authorities for reconciling their records.

- i) They will provide verified Datewise Monthly Statement (DMS) to Pr. CCA, CBEC (Principal Chief Controller of Accounts) and Accountant General of the states.

Pr. CCA, CBEC (PRINCIPAL CHIEF CONTROLLER OF ACCOUNTS) AND ACCOUNTANT GENERAL OF THE STATES:

31. The following functions will be performed by them.

- a) They will receive daily and monthly Put Through Statements from CAS, RBI;
- b) They will also receive verified Datewise Monthly Statement (DMS) from e-PAOs and e-Treasuries of the States respectively;
- c) The reconciliation of both the data will be carried out by them;
- d) Office of Pr. CCA CBEC will also consolidate the total collection and forward the same to the Office of CGA for further consolidation.

II. OVER THE COUNTER PAYMENT THROUGH AUTHORIZED BANKS:

32. Another mode of payment that will be employed in the proposed GST regime will be Over the Counter (OTC) payments which will enable the taxpayers to make payment of the taxes at the Authorized Bank's counter. This will be beneficial for smaller taxpayers that do not have access to internet banking facilities. CCA raised an

issue that the authorized banks might be asked as to whether they would be able to scroll these OTC payments through e-FPBs. This was discussed and RBI's representative assured that the scrolling by e-FPBs of OTC payments in one scroll would be ensured. The authorized banks will be required to establish / upgrade their IT software for accepting GST receipts.

33. The following stakeholders will play a key role in establishing an effective OTC payment system in the proposed GST scenario:

- a) GSTN;
- b) Branches of Authorized Banks;
- c) e-FPBs of Authorized banks;
- d) e-Kuber of RBI;
- e) e- PAOs of Centre / e-Treasuries of State Governments;
- f) Pr. CCA, CBEC / Accountant General of the States;
- g) Tax authorities of Centre and States.

Process involved in Over the Counter payment of GST through authorized banks:

34. Every tax payer who wants to avail the facility of OTC payment (only for paying tax upto Rs. 10,000/- per challan), will access GSTN for generation of a challan through which payment is to be made.

35. Upon creation of the draft challan, the taxpayer will fill in the details of the taxes that are to be paid. From the available payment options, the taxpayer would select option of cheque, DD or cash based payment. The name of the authorized bank and its

location (city/town/village) where the instrument/cash is to be presented is required to be filled in necessarily. No outstation cheques are to be accepted except those which are payable at par at all branches of bank having presence at that location. In case cheque or DD is selected as the mode of payment, entry of Instrument details is recommended, but not mandatory, as the taxpayer may not have the instrument ready at the time of challan generation. The tax payers can partially fill in the challan form and temporarily “save” the challan for completion at a later stage. A saved challan can be “edited” before finalization. After the tax payer has finalized the challan, he will generate the challan, for use of payment of taxes. The challan so generated will have a Unique Common Portal Identification Number (CPIN), assigned only when the challan is finally generated, that will help the portal and other authorities in identifying the challan. After the challan is generated, it will be frozen and will not be allowed to be modified. The CPIN / challan so generated would be valid for a period of seven days within which payment is to be tendered. GSTN will inform the challan details including validity period to the CBS (Core Banking System) of the selected bank on a real time basis.

36. Upon successful saving of the challan details, the challan will be available on the dashboard of the taxpayer in downloadable/printable form. So the taxpayer can either download the challan form and print it offline or can print the challan directly from GSTN. If the payment is made by cheque or DD, the challan itself would have a disclaimer that the payment is subject to realization of cheque or DD.

37. Thereafter taxpayer will approach the branch of the authorized bank for payment of taxes along with the instrument or cash. Since the tax payer is required to pay four types of taxes and the amount is required to be credited in the accounts

maintained by bank for each type of tax, one option for the tax payer is to submit four instruments for crediting to the respective accounts. Four instruments may not be required if pooled account for realization of instrument is maintained. The matter was discussed in detail and it was recommended, that in the interest of facilitating the payment, each e-FPB should maintain a GST pool account so that the tax payer can issue only one instrument which will be written in the name of the GST pool account of the concerned bank. The bank's IT system upon realization of the instrument, will immediately first credit that amount to the GST pool account and then immediately transfer that amount to the respective tax accounts [CGST, IGST, Additional Tax or SGST(39 accounts) as per details in challan (CPIN Data)]. However RBI representatives observed that since there would be real-time sharing of data between GSTN and Agency Banks, the details would be available to the bank official before submission of the challan by the customer. In such a situation, GSTN would have already shared the break-up of the total amount to the bank and the bank needs to credit the same in the appropriate head. The internal Accounting mechanism of bank may be left to the bank to design, as the requirement here is the proper booking and reporting of the transaction which banks would have to ensure. It was decided that those banks need not operate a GST pool account which can credit the amount in the respective tax accounts 'on the fly'.

38. There should be a linkage between the GSTN and the Core Banking System (CBS) of the authorized banks whereby the details of challan are shared with the Authorized bank selected by the tax payer on real time basis so that they can be stored in the database of banks and also to facilitate the cashier / Teller to verify the details of the

challan submitted by the remitter. This will eliminate the need for manual feeding of the challan details by the cashier / Teller in the banking system and thereby reduce the errors in data processing.

39. The taxpayer should preferably carry two copies of the challan, one for the bank's record and another for himself to get acknowledgement. In the alternative, he can use a normal pay-in-slip and mention CPIN and challan amount in it. On approaching the bank, he should provide the challan itself or at least CPIN number on normal pay-in-slip to enable the cashier / teller to fetch the challan details in his system. There should be a customized IT application (software) in the bank's system to accept GST receipts on OTC basis. While each branch can accept GST receipts, the credits should always be to the GST accounts maintained and operated by e-FPB . The banks not having such system should not be allowed to accept OTC payments. The minimum requirements to be met by the banks for being authorized to accept GST receipts for all modes including OTC mode are detailed in para 85 below.

40. The cashier / teller will verify the details of challan, payment instrument and amount provided by the taxpayer with those displayed in his system and should accept the receipt only when no discrepancy is found. If the challan has crossed its validity period of seven days, the bank's system itself should bar acceptance of the payment. In any case, the challan would also not be available in the GSTN and consequently in the bank's system because it would have been purged from the System by GSTN upon the expiry of the 7 day validity period.

41. The tax payer may make payment by cash or instruments drawn on the same bank or on some other bank in the same city. In case of cash payments or same bank

instruments, the payment would be realized immediately and a transaction number (BTR/BRN) and CIN will be generated immediately at the authorized bank's system which will be unique for each and every transaction. Such successful transactions shall be intimated to GSTN on real-time basis with details similar to those mentioned in para 21 above. This message will convey to the common portal that the payment has been successfully received at the bank's counter.

42. After generation of BRN, the bank cashier may give a printed receipt from his system including the Bank's transaction number (BTR/BRN) and CIN. However, if it not found feasible to print a separate receipt, the cashier should record the BRN and CIN generated from the system, on the tax payer's copy of the challan or pay-in-slip as acknowledgment.

43. In case an instrument drawn on another bank in the same city is presented, the payment would not be realized immediately. In such case, CIN will not be generated immediately, and cashier should write only the system generated acknowledgment number on the challan / pay-in-slip and a stamp to the effect that the acknowledgment by the bank is subject to realization of the cheque / DD. The tax-payer need not visit the bank again to get CIN as the same will be communicated to him from GSTN as per the process detailed in para 47 & 48 below. However, if he does not receive any communication from GSTN within 3 days, he should visit the bank to ascertain the status of his payment.

44. Where the instrument is drawn on another bank, there should be a validation in the bank's system to prevent out station cheques (except those payable at par across

cities), and to also prevent deduction of commission charges for instruments drawn on another bank in the same city.

45. The Authorized Bank would send the instrument for collection and the transaction would be treated as complete and successful only after the actual receipt of the amount by the said bank.

46. The bank will inform GSTN on real time basis in two stages. First when an instrument is given OTC. At this stage the Authorized bank will forward an electronic string to GSTN which will contain the following details:

- a) CPIN;
- b) GSTIN;
- c) Challan Amount;
- d) Bank's acknowledgement number.

On receipt of the above first message, GSTN should send a SMS to the tax payer, in addition to showing the status of the payment on its portal as subject to realization.

47. The bank's system would send a second message to GSTN once the cheque is realized, the total amount is credited first to GST pool account and thereafter the funds are credited to the respective tax accounts as per CPIN data (as stated in para 34 above, GST pool accounts are not required to be maintained by those banks who can credit the amount in the respective tax accounts 'on the fly'). On the day of realization, it will become a successful transaction to be reported to RBI on T+1 (T = 0 being day of realization). After the successful completion of transaction, the second



acknowledgement will have the same details as mentioned in para 46 above with three additional details.

- a) CIN;
- b) Date of Realization of Cheque;
- c) Time of realization of cheque;
- d) Bank Transaction Number (BRN/BTN).

On receipt of the second message, GSTN would send a SMS to the tax payer, in addition to updating the status of the payment on its portal.

48. This 2 stage intimation by authorized banks is recommended for the following reasons:

- a) Keep a watch on delays on the part of authorized banks in realization;
- b) Maintaining a system based control as all branches of authorized banks will be allowed for OTC.

49. On receipt of the real time information for a successful transaction as per para 41 above (cash, cheque on same bank or DD) or receipt of the second message from Bank as per para 47 above (cheque drawn on another bank), the tax paid challan will be credited to the tax ledger account of the taxpayer. If the OTC payment was subject to realization (para 46), the initial status on the dashboard will state so. If the cheque is dishonoured, the presenting bank should inform GSTN about the fact of dishonour and same will be informed by GSTN to taxpayer and reflected on his dashboard.

Role to be played by each stakeholder:

50. The role played by each stakeholder in this mode of payment will be the same as mentioned in Mode I. There is an additional stakeholder in this mode, namely Branch of Authorized bank that receives the remittances and its role is discussed below.

Branch of Authorized bank:

51. Being the first point of contact for the remittance by the taxpayer, the branch of the Authorized bank receiving the payment will play a key role in the accounting and reconciliation of data with GSTN. It will perform the following functions.

- a) Accept the payment only through the customized GST software/screen in its system.
- b) Provide an acknowledgement to the tax payer;
- c) Send the instrument (if pertaining to another bank) to the clearing house for realization and record the result in the IT system as and when the response is received. Such recording should be system based rather than manual and include realization or dishonouring of the cheque, as the case may be, so that the IT software can take up further action including intimation to GSTN on real time basis;
- d) Credit the realized amount into either GST pool account, if so, maintained by the authorized bank (in its e-FPB) and thereafter transfer the said amount into the individual tax head accounts as indicated in the challan (all Authorized banks must develop a suitable GST software for this purpose) or to credit the amount directly to the respective government's account (39 accounts).
- e) In case the instrument is dishonoured, the presenting bank should inform GSTN.

52. It is to be noted that banks will have to develop a mechanism/IT application where all these amounts tendered at individual branches of an authorized bank are only handled through the e-FPB of that authorized bank. This is because the tax accounts will be maintained only by the e-FPB. Individual branches have not been authorized by RBI to operate Government account. It is also important to provide for a mechanism in GST Law to debar those tax payers whose cheques have once bounced from using this mode of payment. The most effective mechanism will be through GSTN which should debar such defaulters from using this mode.

III. PAYMENT THROUGH NEFT/RTGS FROM ANY BANK (INCLUDING OTHER THAN AUTHORIZED BANKS):

53. The third mode of payment envisaged under the GST regime is OTC payment through all banks including other than authorized banks, i.e., a bank where a tax payer may have account but that bank may not be authorized by the Government to accept GST receipts. The payment through this mode will strictly be a matter of normal banking service of NEFT / RTGS provided by that bank to its customer. The chances of error in this mode are similar to that of any remittance done through NEFT / RTGS. However, care needs to be taken to ensure that CPIN number is correctly mentioned in NEFT / RTGS message. The Committee recommends that this mode being a new mode of remittance should be scaled up gradually starting with a pilot run by RBI. It was informed by RBI that a detailed process flow could be worked out with specific provisions for validations. RBI further informed that this concept was being tested in Karnataka and this experience would be further used for developing this mode of payment. NEFT / RTGS mandate would have the same validity period of seven days as

the CPIN and the date upto which it would remain valid would be printed on it. The Committee observed that in this mode of payment, it would not be possible to automatically ensure that a CPIN was not used beyond its validity period of 7 days. It was decided that CPIN once generated and intimated by GSTN to RBI in this mode though will have a validity period of 7 days but would remain live with RBI for a period of 30 days. In case the payment is received after the expiry of the said 30 days, RBI would return the amount to the remitter bank. Beside this, it was also decided that there should be a provision in the GST law whereby any taxpayer using this mode beyond the validity period (seven days) of the CPIN more than two times would be barred by GSTN from availing this mode of payment.

54. Although the process under this mode will be more or less similar to the OTC payment discussed earlier in paras 32-52 above, but due to involvement of a new stakeholder i.e. a non-authorized bank, certain modifications are required for this process. This process will be beneficial for those taxpayers who do not have a bank account in any of the authorized banks or find such bank to be far away for OTC payment or want to make the payment directly from their account in their own bank only. In this mode, only payment through National Electronic Funds Transfer (NEFT) / Real Time Gross Settlement (RTGS) is to be allowed as other payment instruments would require the Central and the State Governments to create accounts with non-authorized banks also which will not be desirable.

Process involved in payment through NEFT / RTGS from any Bank (including other than authorised banks):

55. Every tax payer who wants to avail the facility of payment through NEFT/RTGS mode will access GSTN for generation of a challan through which payment is to be made.

56. Upon creation of the draft challan, the taxpayer will fill in the details of the taxes that are to be paid. As agreed by the RBI representative, RBI would itself be the recipient of the amount transferred through NEFT / RTGS, thus eliminating the need for a link-up first with an authorized branch to receive the payment and thereafter its transfer to the RBI. RBI would thus perform the role of Authorized bank and that of e-FPB in this mode of payment. In this view, the name of the authorized bank will be auto populated as RBI. As a part of the challan preparation, a tax payer will have to choose the mode of payment as NEFT / RTGS from any bank. The challan so generated will have a Unique Common Portal Identification Number (CPIN), assigned only when the challan is finally generated. The generated Challan will have a NEFT / RTGS mandate associated with it. This mandate will contain NEFT / RTGS pooling bank account details (i.e. of RBI) along with IFSC for receiving money. After the challan is generated, it will be frozen and will not be allowed to be modified. The CPIN so generated would be valid for a period of seven days within which payment is to be tendered but would remain live with RBI for a period of 30 days. NEFT/RTGS mandate would have the validity period of CPIN printed on it. As mentioned above, there shall be a provision in the GST Law whereby any taxpayer using challan under this mode beyond the validity period of

seven days of the CPIN more than two times would be barred from availing this facility by GSTN.

57. Upon successful saving of the challan details, the challan will be available on the dashboard of the taxpayer in downloadable / printable form. So the taxpayer can either download the challan form or print it offline or can print the challan directly from GSTN.

58. Besides the generation of challan, GSTN will also generate NEFT / RTGS mandate form in prescribed format. The CPIN generated at the portal shall be incorporated in NEFT/RTGS mandate form in "Account Name" field. RBI would provide for suitable validations for this field. The "Sender to Receiver" field shall carry the entry "GST Payment". In case of NEFT / RTGS payments, there shall also be a disclaimer on the challan copy and the mandate form that the payment through NEFT / RTGS is a transaction between the tax payer and his bank and the payment will be deemed to be received by the government only when the amount is credited to the designated account in RBI. The payments in this mode would be permitted only against cheques and no cash payments would be permitted to initiate NEFT / RTGS transaction for the reasons mentioned in Para 67 below.

59. The following details will be available in the NEFT / RTGS mandate form.

- a) Beneficiary IFSC : IFSC of RBI hosting the NEFT / RTGS account for GST;
- b) Beneficiary Account Number : Account Number of RBI's pooled account for GST;
- c) Account Name : CPIN of relevant challan (suitable validation to be provided by RBI);

- d) Total Amount;
- e) Sender to Receiver Remarks: GST Payment.

The form will have a provision to write the NEFT/RTGS charges manually and then record the total amount to be collected by the bank (sum of challan amount and charges). The entire NEFT/RTGS form will be auto-populated except the part relating to the charges.

60. Thereafter taxpayer can print a copy of NEFT / RTGS mandate form and approach his bank branch (any bank) for payment of taxes (within a period of seven days of the generation of CPIN, so that when the amount is received by RBI, the CPIN is still valid.) The payments in this mode would be permitted only against cheques and no cash payments would be permitted to initiate NEFT / RTGS transaction. NEFT/RTGS mandate would have validity period of CPIN printed on it. As already mentioned above, there should be a provision in GST law whereby any taxpayer using this mode beyond the validity period (seven days) of the CPIN more than twice would be barred from availing this facility by GSTN.

61. GSTN will inform RBI on real time basis the following details:

- a) CPIN;
- b) GSTIN;
- c) Challan Amount;
- d) Break Up of the Amount into CGST, IGST, Additional Tax and SGST;
- e) State/UT Government to which SGST remittance pertains.

62. The accepting bank should add its charges for doing NEFT / RTGS remittance and collect gross amount from the customer. The amount indicated as GST amount for remittance should be transferred by the remitter bank to the designated account of the government in RBI. For the proper identification of the transaction, there should be a Unique Transaction Reference (UTR) that should be conveyed along with file details to RBI. The remitter bank must also mention the CPIN in the NEFT/RTGS mandate as part of the Account Name. The Remarks field shall mention 'GST Payment'.

63. Upon successful completion of the transfer at the end of the remitter bank, the remitter will get a receipt detailing Unique Transaction Reference (UTR). Taxpayer should thereafter login back to GSTN portal and update the challan details with Unique Transaction Reference (UTR) provided by the remitter bank for NEFT / RTGS transaction. An alternate SMS based facility for such updating by the tax payer (instead of internet based) may be established by GSTN to facilitate those taxpayers who do not have an internet access. On receipt of the transaction number, GSTN will communicate this Unique Transaction Reference (UTR) (for the corresponding CPIN) also to RBI on real time basis.

64. Once the RBI receives the payment in its account with NEFT/RTGS message, it will link up the payment with the CPIN earlier received from GSTN and report the transaction to GSTN on real time basis through an electronic string which will contain the following details:

- a) CIN (CPIN and Bank Code of RBI);
- b) GSTIN;
- c) Challan Amount;



- d) BRN of RBI;
- e) Unique Transaction Reference (UTR);
- f) Time of Payment;
- g) Date of Payment.

65. Upon receipt of the electronic string regarding successful completion of the transaction by GSTN, the tax paid challan will be credited to the cash ledger of the taxpayer. The GSTN will thereafter lock the CIN so that it cannot be used again.

66. As recommended in para 58 above, the Mode III may be implemented with arrangement of CPIN being mentioned as the "Account Name" in NEFT/RTGS message. RBI will provide for a suitable validation for this field. In such arrangement, the chances of error will be only marginal as the remitter banks take care to mention the account name correctly in any NEFT/RTGS message. In case of error, NEFT/RTGS unique transaction number (UTR) intimated by the tax payer can be used as a secondary identifier. The primary matching by RBI should be with reference to CPIN only, i.e., CPIN as contained in NEFT/RTGS message and CPIN data provided by GSTN. On successful matching, the GST pooled account should be debited and the respective 39 tax accounts (CGST, IGST, Additional Tax and SGST) should be credited simultaneously as per the challan details with generation of CIN and BRNs. At this stage, the transaction should be treated as successful and CIN and BRNs should be communicated to GSTN by RBI.

67. As stated in para 15 above, though the CPIN is valid for a period of 7 days, the same would remain live with RBI for a period of 30 days. Thus RBI can accept the payment during the said period of 30 days. In case payment is received after the expiry

of 30 days, RBI would refund the said amount to the remitter bank. Keeping in view this requirement, it has been recommended, as mentioned above, that payments in cash would not be accepted for initiating NEFT / RTGS transaction.

68. The Committee deliberated the need for a pooled GST account. Based on inputs provided by RBI, a receiving account is necessary for NEFT/RTGS process. Therefore, a pooled GST account as an operational necessity will have to be opened in RBI. This account may be opened in the name of the Accounting Authority of the Government of India solely for the operational reasons as a transit account. There should be a validation in RBI system that no funds pertaining to the transactions with date value T=0 are left in this account when the scroll is prepared on T+1.

69. If the matching based on CPIN does not succeed, the role of UTR as secondary matching identifier becomes important. However, it is possible that RBI may receive NEFT/RTGS message even before the tax payer updates his challan with UTR number and GSTN informs RBI on real time basis. In case of failure of CPIN based matching and UTR not being available, the funds will remain in the pooled account till the UTR is received or scroll is prepared, whichever is earlier. Such credit in the pooled account should be with a "CPIN mis-match" flag that a secondary level matching needs to be carried out before scroll is generated on T+1 basis. Once UTR is provided by GSTN, the secondary matching of all such transactions remaining in the pooled account should be carried out. If a transaction can now be linked to the correct challan, the respective Tax accounts should be credited with generation of CIN and BRNs. There should be a validation in RBI system that all the transactions with "CPIN mis-match" and date value T=0 in the pooled account are subjected to secondary level matching before generation of scroll for all taxes.

70. If the matching based on CPIN and UTR NEFT / RTGS transaction number UTR both fails, the entire receipt should be credited to CGST account with a “CPIN mis-match” flag so that the Accounting Authorities of Government of India can account such amount under a separate suspense sub-head (possibly receipts awaiting transfer i.e. RAT).

71. In all such cases of CGST credits with “CPIN mis-match”, the tax payer will not get a confirmation SMS from GSTN and his ledger will not reflect the payment. He can be expected to provide UTR at this stage. Once the UTR becomes available, GSTN should carry out the matching with CPIN, and communicate following details to the Accounting Authorities of Government of India and concerned State Government.

- a) RBI scroll number and date which carried the credit (CGST scroll);
- b) BRN;
- c) CIN (of credit to CGST account with “CPIN mis-match” flag);
- d) Challan amount;
- e) Breakup of total amount in CGST, IGST, Additional Tax and SGST;
- f) Name of State Government to whom SGST pertains.

72. Based on the communication from GSTN, CGST Accounting Authorities shall take steps for clearing the suspense sub-head by transferring the credit to CGST, IGST and Additional Tax accounting heads, and for carrying out inter-government transfer to the concerned State Government.

73. The reconciliation between e-Scroll sent by RBI on T+1 and the transaction details available with GSTN (provided earlier by RBI) will be performed using CIN and Unique Transaction Reference (UTR).

Role to be played by each stakeholder:

74. As for the role played by each stakeholder in this mode of payment, it will be same as for their role in OTC payments through authorized banks. The role of Branch of remitter bank that transfers the funds to RBI and the additional role of RBI performing the functions akin to authorized banks is discussed below.

Branch of remitter bank:

75. The branch of the remitter bank would perform the following functions:

- a) Remitter bank is required to ensure that the correct CPIN is entered in the NEFT / RTGS message and also inform UTR to the taxpayer;
- b) Transfer the amount indicated in the NEFT / RTGS message [which includes Unique Transaction Reference (UTR)] to RBI.

RBI performing functions akin to authorized banks:

76. RBI's role for the Mode III will be akin to that of authorised banks for other modes, i.e, RBI will be the bank which will receive the funds directly from a taxpayer's account in a pooled account. It should be possible to have a suitable IT system which will carry out CPIN or UTR based matching (as detailed in para 66 above) for each NEFT/RTGS receipt and credit the remittance to a specially created pooled GST account and thereafter transfer it to the respective tax accounts of each government.

77. Once the remittances are received by RBI, it will perform the following functions:

- a) RBI will receive and validate the NEFT/RTGS transaction against the Challan details received by it;

- b) RBI would communicate the receipt of payment (CIN) to GSTN on real time basis;
- c) On first day of every month, RBI as e-FPB will provide Datewise Monthly Statements (DMS) for each tax and government separately to the concerned wing of RBI for the preceding month with following details:
  - i) Name of Tax;
  - ii) Government Name;
  - iii) Date wise number of successful transactions and total credit reported to RBI;  
and
  - iv) List of discrepancies remaining unresolved at the end of the report month (MOE UIN, CIN, BRN, Amount, Nature of discrepancy).

These statements will be simultaneously communicated to accounting authorities of the Centre and the respective States in case their accounting authorities so desire.

- d) RBI will also be responsible for incorporating these payment details in their daily master scroll generated by them as an aggregator for amounts received through Mode I and II.

#### PAYMENT ACROSS DEPARTMENTAL COUNTER:

78. The issue was discussed in the Joint Committee on Business Process and it was decided that since the emphasis in GST regime is towards automation and least human interface between the tax administration and the taxpayer, therefore there is no need to provide for this mode i.e. payment across departmental counters. It was also stated that

taxpayers have been provided various other modes to facilitate anytime, anywhere payment and this mode would be retrograde especially when e-payment is being declared as the preferred mode of payment. However, the departmental officers will accept the deposit of taxes during the course of enforcement and anti-evasion investigations including by flying squads, etc. While doing so, if the concerned person is not already registered, the departmental officer will create a temporary GSTIN on the GSTN common portal. For this purpose, GSTN will provide a separate module and a GSTIN series for giving temporary GSTIN. The officer will collect the amount in respect of all types of taxes payable by him in cash/cheque/DD from the said person, issue a temporary receipt to him, generate the challan from GSTN, fill up the challan (at a later stage, if not possible at that time) and remit the amount using Mode2. GSTN will provide a facility for linking of the temporary GSTIN to the permanent GSTIN, if taken at a later stage.

#### PENALTY MECHANISM FOR ERRING BANKS:

79. At present, banks are subjected to penalty for delayed fund remittances only. Current system of remuneration to banks for collection of Central Excise, Service Tax and Customs duties is determined on the basis of challans. New parameters of bank performance could be developed, based on timely remittance and reporting of error-free data to all stakeholders. A system of incentives / penalties to be administered by the respective Accounting Authority (i.e. if defaults arise in remission of CGST/IGST/Additional Tax, by Accounting Authority of Centre and if defaults arise in remission of SGST, by Accounting Authority of the concerned state) can be built-in, based on a transparent evaluation mechanism of the quality of data of collection

reported by banks for accounting and reconciliation purposes. The CGA has suggested that penalties for inaccurate reporting and delayed settlement of taxes is already in place in the case of Direct Taxes and the same may be put in place in GST regime. It is further recommended that a framework of desired features and validations at Banks for collection of taxes under GST regime should be devised by RBI in consultation with the Accounting Authorities. Any bank found not having built capabilities to adhere to the framework, should not be allowed to collect GST receipts. Due care should be taken so that discontinuities arising from manual interventions in the banks' internal processes are removed. The Committee also recommends that, over a long term, Accounting Authority should develop a service quality rating for the participating banks based on identified transparent and quantifiable parameters.

#### BANKING ARRANGEMENTS UNDER GST:

80. At present Central Government and each State Finance Department prescribes banking arrangements for collection of government taxes. At present, Central and State governments utilize the services of Public Sector Banks/ Other Public Sector Banks (IDBI)/ Private Sector Banks (ICICI Bank, Axis Bank, HDFC Bank) for tax collection. The committee was informed that Non-Scheduled and Cooperative banks operating in State(s) are not permitted to collect taxes.

81. The list of all authorized banks participating in the GSTN should be common across all states. This can be a super set consisting of existing authorized banks of the Central Government and all State Governments and Union Territories. A list of banks that have been presently authorized either by the Centre or State Tax Authorities has been provided by RBI and the same is enclosed as Annexure-VI. It is recommended that

all these banks may be considered for authorization in the GST regime in consultation with the Department of Financial Services.

82. Only those banks should be accredited who refine their IT systems to handle GST remittances in a seamless manner obviating need for manual intervention for data entry, funds flow and exchange of data.

83. It is also noted that a participating bank in the current context has limited mandate for tax receipts as compared to that of an authorized bank. The mandate of participating banks, though essentially agents of RBI, is limited to acceptance of tax receipts through internet banking mode only. Whereas, authorized banks have a broader mandate of accepting government receipts through both internet banking mode and physical mode (OTC) of Cash, DD and Cheques, in addition to mandate of making government payments. In order to give a broader choice to the tax payers, and hence to enhance ease of doing business, it is recommended that the participating banks can also be allowed to accept GST receipts through OTC mode envisaged in this report.

84. Out of the superset of existing authorized banks and participating banks only those banks should be authorized to accept GST receipts who meet the minimum requirements suggested below. The objective of these minimum requirements is to ensure that a bank has the capability to handle GST receipts in a seamless manner in a consistent and error free manner underpinned by a robust IT system with no process flow discontinuities.

85. Minimum requirements to be met by a bank for being authorized for GST remittances are recommended to be as follows:



- a) A centralized application for handling GST receipts for both modes (internet banking and OTC) in an end-to-end manner should be established.
- b) There should not be any process flow discontinuities for any mode of the receipt.
- c) The system should not require any post-event data entry at any stage.
- d) The data entry at any stage of the process should be limited to the operations performed at the bank's end.
- e) The data received from GSTN portal should not require any fresh data entry and should not be open for modification.
- f) There should be functional integration with GSTN portal and banks for both modes.
- g) The IT system should have the ability to receive challan data and to communicate successful remittances on real time basis to GSTN portal for both modes.
- h) The collation of data and reporting to GSTN portal and to RBI should be system based and not require manual operations.
- i) The standards of communication prescribed by RBI (ISO 20022) should be followed.
- j) There should be an upfront (before being authorized) as well as periodic audit of the IT system and the centralized application for handling GST receipts. The system audit should cover operational, technical and security aspects as per terms of reference and periodicity set by GSTN in consultation with Accounting Authorities.
- k) One branch of the concerned authorized bank in the entire country should be established / designated as the e-FPB (Electronic Focal Point Branches) to handle

all backend operations of GST receipts including operation of 39 tax accounts, data collation, reporting and reconciliation with RBI / GSTN / Accounting Authorities.

- l) In addition, one or more branch of the concerned authorized bank in each State Capital should serve as GST helpdesk (Refer Para 27 above).
- m) Three separate tax accounts for Government of India (one each for CGST, IGST and Additional Tax) and one tax account for each State/UT Government (36 in total) (for SGST) should be set up and operated by e-FPB alone.
- n) The credit to respective tax accounts should be simultaneous with debit to the tax-payer's account in case of internet banking mode, realization of a cheque or submission of DD/cash in case of OTC mode and receipt of NEFT / RTGS remittances from remitter banks into RBI's pool account and then its transfer to tax accounts.
- o) The above mentioned credit to the respective tax accounts should be by the IT system itself as per the mandate contained in the Challan data received from GSTN and not require manual intervention.
- p) In addition to tax specific 39 accounts (for CGST, IGST, Additional Tax and SGST account for each State / UT Government), a common pooled account for cheque/Draft and CC/DC payments should be set up and operated by e-FPB ( but not required by those banks who can credit the amount 'on the fly').
- q) As a part of the daily consolidated but transaction level report of successful receipts in each government account to RBI, there should be an assurance that all transactions credited to respective CGST, IGST, Additional Tax and SGST Accounts are being reported to RBI and no balances are left in these accounts

meant for cheque realization. RBI will need to build a similar assurance for NEFT/RTGS remittances.

r) Suitable validations prescribed by GST Law should be inbuilt in the IT system / GST application. Some of such validations will pertain to non-acceptance of outstation cheques and non-deduction of cheque collection charges for OTC receipts, and mark up and collection of CC/DC charges (to be agreed) from tax payers.

86. It was agreed that the minimum standards to be met by the participating banks, as encapsulated above, should be communicated to the banks well in advance in consultation with RBI.

#### ACCOUNTING SYSTEMS UNDER GST:

87. State governments/UTs accounting system also follows, to a large extent, the general principles and procedures of Central government accounting, with minor variations in respect of classification of tax heads of accounts. While the List of Major and Minor Heads of accounts are common to both Central and State/UT Governments accounts, classification below Minor Heads may vary at the State level.

88. Under the proposed GST regime, it is recommended that a uniform system of banking arrangement for both the Central and State/UTs governments to facilitate fund flow, reporting and accounting may be framed.

## PROPOSED ACCOUNTING SYSTEM UNDER GST:

89. Four different Major Heads of accounts would be required to be opened for classifying CGST, IGST, Additional Tax and SGST along with underlying minor heads and sub-heads, wherever required, to account for various taxes.

90. There is a need to standardize these accounting codes for all items covered under GST regime among all the States and UTs, since settlement of IGST would be based on centralized reporting. SGST will be accounted for by the States and credited to individual State Treasuries, through the existing system followed in each State. SGST will not be reflected in accounts of the Central Government.

91. There may be cases of mis-classification and erroneous scrolling under Major Heads of accounts which may lead to less or excess revenue settlements between the Centre and State(s). To deal with such transactions, detailed accounting procedures should be designed. It is recognized that it is IT system issue, and not an accounting issue. The debit from tax-payers account should result in auto-credit to respective accounts of Government of India and the concerned State Government. Except in case of remittance through any authorized bank including a non-agency bank (where the funds have to necessarily come to a designated account in RBI), there should not be any mix-up of the funds belonging to two governments.

92. The CGA has suggested the following in this regard.

- a) Codal provisions of the DDO & PAO should be complied with for discharge of PAO's role. The automation as proposed should conform to this basic requirement.

- b) PAO is the sole authority for receipt, payment and reconciliation of accounts book with Bank Reconciliation statement (BRS).
- c) Any compromise on this fundamental work flow may lead to legal complications in preparation of Finance Accounts / Appropriation Accounts which is constitutional mandate.
- d) Each challan detail must be linked with one DDO and PAO and bank account.
- e) As part of standard operating process, accounts classification should be done by the PAO in his books and no one else. Bank is not involved in classification of accounts.

93. The challan will reflect only the net tax paid amount along with related bifurcations of nature of tax liability, such as, Interest, Penalty, Fees, other charges, etc. Presently, the Tax Payment Challan information forms the basis of accounting and reconciliation between the banks, RBI, Tax authorities and Accounting authorities of the Centre/States/UTs. A list of sample tax accounting codes under GST is proposed in the table below:-

S. No.	Type of Tax Liability	Sample Accounting Code
1	CGST - Tax	00010001
2	CGST – Interest	00010002
3	CGST – Penalty	00010003
4	CGST – Fees	00010004

5	CGST – Other	00010005
6	IGST – Tax	00020001
7	IGST – Interest	00020002
8	IGST – Penalty	00020003
9	IGST – Fees	00020004
10	IGST – Other	00020005
11	SGST- Tax	00030001
12	SGST – Interest	00030002
13	SGST – Penalty	00030003
14	SGST – Fees	00030004
15	SGST – Other	00030005
16	Additional Tax – Tax	00040001
17	Additional Tax – Interest	00040002
18	Additional Tax – Penalty	00040003
19	Additional Tax – Fees	00040004
20	Additional Tax – Others	00040005

The actual accounting codes have to be finalized by CGA in consultation with CAG on the basis of proposals from Tax Authorities.

94. CGST, IGST and Additional Tax components will be accounted for under Consolidated Fund of India (CFI). Transfers of due IGST amount and Additional Tax to the States can thereafter be made there from as per the existing procedure.

95. The interest, penalty, fees or other charges, if any, under GST will need to be accounted for separately. Hence, they would be reflected under separate heads in the Tax Payment Challan.

96. The IT audit of the process flows and settlement of funds by the FPBs / Link cells with RBI will be conducted periodically by a CERT-IN empanelled agency selected by the office of Pr. CCA, CBEC, or by a designated authority of States/UTs so as to ensure correctness of revenue collections.

#### RECONCILIATION OF RECEIPTS:

97. Well-developed and stabilized IT systems without manual process discontinuities in banks, RBI and common portal should eliminate/reduce possibilities of errors. However, there may still be reconciliation challenges arising due to errors encountered during the stabilization phase of the IT systems of the stakeholders and their mutual functional integration. Even in the post stabilization phase, some errors may be seen due to problems external to the IT systems, e.g., in the public network used for sharing the data. A process and standard operating procedure for handling the

errors, if they arise, will have to be established, as multiple agencies would be handling funds and related information pertaining to different governments.

98. The proposed GST payment process envisages a paradigm shift from the processes and validations currently being used for payment of taxes to the Government. This shift is aimed at establishing a convenient, consistent and efficient payment process for the tax payers as well as for the 37 governments simultaneously. This shift is possible in view of current IT capabilities in the eco-system and the experience gained in various systems for payments to the governments.

99. Following are the fundamental changes from the existing systems:

- a) Tax payer will generate the electronic challan, and therefore that challan data can be trusted for its correctness for its contents, as filled in by the taxpayer.
- b) The challan thus generated on GSTN portal will provide a unique Id (CPIN) which would be used uptill the time payment has been received by the bank and CIN (CPIN plus Bank Code) has been generated. The said CIN would be used thereafter for accounting, reconciliation, etc.
- c) All modes of payment will use the system generated electronic challan and there would not be re-digitization of the challan data, as recorded by the taxpayer, by any agency in their part of the workflow.
- d) Any agency handling the payment process will merely add its unique Id and parameter to the basic data received by it from another agency earlier in the workflow chain, and thereafter pass on the data to the agency next in the chain.



e) RBI will play the role of the aggregator for flow of funds as well as information from the banks.

f) GSTN will have the primary anchor position in the payment process with responsibility for information flow to various agencies whereas RBI will have the primary anchor's role in relation to funds flow, information flow about receipts and correction of discrepancies noticed during reconciliation process.

g) e-Scroll from RBI will be the basis for accounting, reconciliation and other incidental activities to be carried out by the accounting authorities of both Centre and States.

100. In view of these fundamental changes, the key Id for information exchange with banks and RBI should use the unique Id generated by GSTN, i.e., CPIN. Once the payment has been made by the taxpayer and CIN is generated and reported by the recipient bank along with its transaction number (BRN), CIN which has CPIN embedded there in, would be used as key Id in subsequent stages. CIN is recommended to be used as a key Id as it is the sole indicator of the receipt of actual payment. Similarly, the transaction reported by RBI for the funds flow (credit) to government accounts through the e-scrolls should form the basis for accounting as it reflects the actual credit in the Government Accounts.

#### Reconciliation by GSTN:

101. GSTN through its IT system should carry out reconciliation in following two stages:

a) When the banks report each successful transaction on real time basis, the IT system should validate the bank's message with reference to CPIN and total amount of the challan, and communicate the discrepancy, if any, immediately. This validation and real time response by GSTN is particularly relevant for Mode II and III for which the entire payment is not in a single workflow.

b) When consolidated e-scrolls are received from RBI on T+1 basis, GSTN should carry out the reconciliation between those scrolls and the consolidated challan files communicated to the Accounting Authorities earlier in the day. The discrepancies should be communicated by GSTN to the Accounting Authorities and RBI simultaneously on the same day. The purpose of this reconciliation is to assist those Accounting Authorities who may not have IT systems to carry out transaction level reconciliation in an automated manner, and to identify systemic and service level issues for taking up with the authorized banks and RBI.

102. The role of GSTN in the reconciliation process should be limited to the above set of activities. GSTN should not be expected to take up MOE process for any error type as that is fairly resource intensive, requires manual appreciation of facts and is time consuming. The transaction level resolution of discrepancies through the Memorandum of Error (MOE) process with RBI and banks should be the responsibility of the respective Accounting Authorities.

Reconciliation by Accounting Authorities:

103. The Accounting Authorities through their IT systems are expected to carry out the reconciliation at their level de novo based on communication by GSTN of challan data for successful transaction received on T+1 basis (State AG authorities to be assisted

for setting up accounting interface with GSTN) or through Tax Authorities system (based on the integration capabilities at Central / State level) and e-scrolls received from RBI for each day on T+1 basis. The reconciliation results communicated by GSTN would act as additional validation in the reconciliation process. The reconciliation would be performed on the basis of CIN, which will be the unique identifier across all databases.

Resolution of Reconciliation Outcomes (discrepancies noted during the reconciliation process):

104. There would be to and fro data transmission between GSTN, e-FPB of Authorized Banks, banks other than authorized Banks, RBI, Accounting Authorities and Tax Authorities. There is a scope of error occurring at each leg of communication. The process for reconciliation of such errors in each leg of communication is discussed in succeeding paras.

First leg of communication of data (CPIN linked to a GSTIN) starts from GSTN to Authorized banks:

105. If the data forwarded by GSTN (CPIN linked to a GSTIN) itself has an error then this error will be reflected in all the later transactions. So significance of accuracy of this data cannot be overemphasized. It would be important for GSTN to maintain a robust system for maintaining data integrity and keeping the data error free by having suitable validations at the time of creation of CPIN. Key elements here are CPIN and GSTIN.

Second leg of communication of data (CIN with embedded CPIN) starts from Authorized banks / RBI to GSTN (T=0):

106. This communication is not meant to be the basis for accounting, but act as an enabler to reduce errors in the overall process and to facilitate fleet-footed monitoring by the Tax Authorities. The IT system of the authorized banks should have the following validations to reduce possibility of discrepancies in this leg:-

- a) In any reporting of successful transactions by the banks to GSTN, CPIN field is never a blank;
- b) The response sent back to GSTN is always against a CPIN received from GSTN;
- c) Sum total of all credits to Tax accounts for a particular CPIN adds up to the challan amount.
- d) CIN reported by the authorized banks/RBI should always have a CPIN embedded in it.

107. In spite of the above mentioned validations, if a discrepancy is found in a bank's response, the discrepancy will get noticed in the real time validation of the response by the GSTN. The response sent by e-FPB of authorized bank (in Mode I & II) / RBI (in Mode III) should be validated with the data sent earlier by GSTN to Authorized bank / RBI. Key elements are CPIN, GSTIN, CIN & Challan amount in case of authorized banks and CPIN, GSTIN, CIN, NEFT/RTGS UTR and Challan amount in case of RBI. This validation between CPIN available with GSTN and CIN received from e-FPB of authorized banks / RBI should be done on real time basis and the discrepancies, if found should be communicated to the concerned banks immediately by GSTN's IT system so as to enable

time to the banks for correction, if possible, before communicating the receipts to RBI on T+1 basis.

108. The validation by GSTN may throw up following discrepancies in the transaction being reported (with CIN added by the bank) by e-FPB of authorized bank / RBI.

- a) without CPIN;
- b) with incorrect CPIN;
- c) with challan amount mismatch.

109. In all these cases, the resolution at e-FPB may require manual intervention. The bank may resend the data to GSTN after correction. If the bank is unable to resolve by T+1 reporting time to RBI, the bank should include the transaction in the luggage file with whatever CPIN data it may have for that transaction. It will be type (c) error in the third leg.

Third leg of communication of data (luggage file) starts from Authorized banks to RBI (T+1):

110. In this leg, the data is being collated and transferred by authorized banks to RBI in daily luggage files for each type of tax of Government of India (CGST, IGST & Additional Tax) and SGST (state wise; for 29 states and 7 UTs) separately [there will be total thirty nine luggage files (3+29+7)]. The key element here is CIN. So the accurate reporting of the same by the authorized bank to RBI has to be underlined. As RBI would prepare e-scrolls based on this data, correctness and cleanliness of this data is crucial. RBI collates daily luggage files ( thirty nine) received from all the authorized banks, includes payments received directly by it in Mode III, adds RBI Transaction Id for all

modes, prepares and sends daily e-scroll (one for each major head for Centre and each State) to GSTN and Accounting Authorities. Reconciliation by GSTN and Accounting Authorities (of the Centre and the States) will be initiated after they receive their respective files (Government of India authorities will receive three files while State Authorities will receive a file each). Errors in this leg of communication would be detected at this stage. Various situations that can be envisaged in this leg are as follows:

a) Transaction reported to GSTN by authorized banks but not to RBI (CIN reported to GSTN but not included in luggage file):

111. To prevent/minimize this type of error, the bank's IT system should have a validation that all credits to the Tax accounts for the date value being the previous day should get reported to RBI in the luggage file. This discrepancy will be detected at the stage when GSTN and Accounting Authorities compare the challan data (CIN ) of the day received from authorized banks with the e-scroll of the corresponding date received from RBI on T+1 basis. If GSTN detects such a discrepancy, it will communicate the same to the relevant Accounting Authority and RBI. On the basis of this information or on the result of their own reconciliation with reference to CINs reported earlier by GSTN, the Accounting Authority will generate a Memorandum of Error (MOE) with a Unique Identification Number (UIN) and communicate the same to the RBI and copy the same to the concerned authorized bank and GSTN. GSTN being only a pass through portal, should not be entrusted the work of MOE and its resolution. Moreover, MOE process requires manual appreciation of facts, accounting expertise and decision making on behalf of each Government, which will be beyond GSTN's mandate/capacity. The steps involved in the correction mechanism in the aforesaid situation are as follows:

i) GSTN to report the error to the relevant Accounting Authority (and Tax Authority, if GOI or concerned State so wants) and RBI, if the discrepancy is detected by GSTN;

ii) The relevant Accounting Authority to generate a MOE with a UIN and communicate the same to RBI with a copy to concerned authorized bank for resolution (Accounting Authorities of the Centre and States will have to initiate MOE in respect of their respective taxes) (This may be on the basis of discrepancy detected and communicated by GSTN or by the Accounting Authorities themselves);

iii) RBI to ascertain from e-FPB of the concerned authorized bank / RBI and get the discrepancy corrected. E-FPB of the concerned Authorized bank / RBI must rectify this discrepancy within a period of two days from the date of receipt of MOE from the Accounting Authority;

iv) Rectification by the concerned e- FPB / RBI will be by way of identifying the missing transaction, putting it in a separate luggage file containing the UIN of the relevant MOE and then transmitting the same to RBI;

v) RBI will send a separate e-scroll relating to MOE to the concerned Accounting Authority containing the missing transaction;

Points at iv) and v) are design issues, which can be decided by GSTN in consultation with RBI. The reporting by e-FPB and thereafter by RBI can be through separate files as mentioned above, or the normal luggage file from banks and scroll from RBI can contain the now resolved transaction with a MOE resolution flag and UIN as additional field for the relevant record.

vi) Accounting Authority to note the correction of MOE and report the same to GSTN and the concerned Tax authority thereby completing the transaction cycle;

vii) RBI to take steps to penalize the e-FPB of the concerned Authorized bank.

b) Transaction reported by Bank to RBI but not to GSTN (CIN included in luggage file but CIN not reported to GSTN):

112. In case of payment through internet banking (Mode I), this seems to be an unlikely scenario, as all payments will be processed at the Core Banking Solution (CBS) of the concerned e-FPB of authorized bank and therefore the compiled data that it reports to RBI on T+1 basis will be nothing but the compilation of data (CIN) already reported by e-FPB of authorized bank on real time basis to GSTN. This discrepancy may however arise due to communication failure even after the prescribed rounds of pinging.

113. This discrepancy can arise in other modes of payment (Mode II and III), because the payment cycle is not a single workflow, is spread over a longer period of minimum two days and requires participation of various banking officials even though the entire cycle is supposed to be done on the IT system customized for GST payments.

Such a discrepancy will be detected by GSTN when it undertakes a reconciliation of the challan details (CIN) of a day available with it with the e-scroll of the same day received from RBI on T+1 basis. In such cases, the correction mechanism will involve the following steps:

i) If CPIN and associated data reported in the scrolls received from RBI matches with GSTN's CPIN data, GSTN can forward the entire challan details of that CPIN to



the concerned Accounting Authorities with a copy to Tax Authorities. There will not be any need for MOE in such case. The Accounting Authorities will carry out the accounting based on scroll data received from RBI and tally it with the challan data (CIN) now received from GSTN. GSTN would also update the taxpayer's cash ledger after confirming the payment from the authorized bank / RBI;

ii) If e-FPB of an authorized bank has reported a transaction to RBI in GST luggage file, without it being a GST transaction or without realization of the amount, it should take up such cases for refund outside the MOE process as a more comprehensive verification will be needed before allowing the refund. For minimizing this kind of error, the bank's IT system should have validations/controls mentioned in para 85 above;

iii) Only if the CPIN and associated data in the scroll does not match with GSTN's data there will be a need for MOE. That will be type c) error, discussed in the paragraph below. In those cases, the Accounting Authority should create MOE with a UIN and communicate it to RBI with a copy to e-FPB of the concerned authorized bank. (The Accounting Authorities will identify the concerned bank on the basis of bank code contained in the CIN reported against the successful CPIN in the e-scroll received from RBI).

c) Transaction reported to RBI but with incorrect details of CIN (CIN level mismatch);

114. This kind of error can be minimized through suitable validations in the bank's IT system. If the error still occurs, it will be noted when the scroll data is processed by GSTN / Accounting Authorities. Even if the error gets noticed earlier as mentioned in

para 109 above but remains unresolved till the time of reporting to RBI on T+1 basis, the bank should report the transaction to RBI with whatever CIN data it has received from the e-FPB of authorized bank. The bank should not hold back any balance in the tax accounts beyond the reporting time to RBI in respect of transactions of the previous day. When such unresolved transaction is reported to RBI, it should carry a flag indicating type of discrepancy. RBI should credit the amount to the account of the respective government as mentioned in the luggage file. As the scroll from RBI will have an unresolved CPIN discrepancy, the Accounting Authorities may credit the amount to a separate sub-head under the relevant major head and simultaneously take up MOE process. If the discrepancy pertains to the total challan amount, its impact on individual taxes will get known during reconciliation of the scroll data with the challan data, and the Accounting Authorities of the affected government should take up MOE process.

d) Money transferred to wrong government accounts though CIN matches with data in e-scroll received from RBI (major head level):

115. It may so happen that while sending the luggage file to RBI, the e-FPB of the authorized bank / RBI reflects the amount received in a tax head different from the one specified in the challan (major head level) (CPIN).

116. In such a situation, Accounting Authorities will play a crucial role as they are statutorily responsible not only for proper accounting of money but also for its credit into the correct government account. This discrepancy will be ascertained by the Accounting Authorities while carrying out reconciliation between the challan data obtained from GSTN on T+1 basis (detailing major heads) and e-scroll (for each major

head separately) received from RBI. Steps involved in the correction mechanism are as follows:

- i) The relevant Accounting authority would generate MOE with UIN and communicate the same to RBI. Accounting Authorities of the Centre and States will have to initiate MOE in respect of their respective taxes;
- ii) RBI to ascertain from e-FPB of the concerned Authorized bank / RBI (in case of Mode III) and get the discrepancy corrected within a time period of 2 days from the receipt of MOE from the Accounting Authorities;
- iii) E- FPB of the concerned Authorized bank / RBI would verify the details in the CIN transmitted to GSTN with the details transmitted to RBI in the daily luggage file. Thereafter correction entry would be transmitted to RBI in a separate luggage file with UIN of MOE;
- iv) On the basis of information transmitted by e-FPB of the concerned Authorized bank, RBI would carry out the corrective Debit/Credit entries in the accounts of the concerned governments;
- v) Thereafter RBI would send a separate e-scroll relating to MOE to the relevant Accounting authority about the corrective entry carried out resulting in reconciliation and correction;
- vi) Relevant Accounting Authority to account for the corrective entry in its records and report correction of MOE to GSTN and relevant Tax authority thereby completing the transaction cycle;
- vii) RBI to take steps to penalize e-FPB.

e) CIN neither transmitted to GSTN nor conveyed in luggage file from authorized bank to RBI and therefore not included in e-scroll received from RBI.

117. This scenario will reflect the failure of the system at two ends. In this scenario the taxpayer has properly paid taxes into the government account through authorized / non-authorized banks but the same has neither been reported to GSTN nor to RBI thereby in effect eliminating the transaction from the system itself. So it is crucial that suitable protocol should be developed for dealing with this kind of errors. It has to be kept in mind here that CPIN generated at GSTN has a validity period of only 7 days within which the payment is to be tendered. This error cannot be ascertained on the basis of any reconciliation as there will not be any flow of information from authorized banks / RBI. The error will be noticed only when the taxpayer on not receiving a credit confirmation SMS from GSTN or not finding the credit in his ledger inform GSTN. Steps involved in correction are:

i) In case of OTC payment through authorized banks in cash or by instruments drawn on the same bank, taxpayer will be provided with an instantaneous acknowledgement by the bank containing CIN. As CIN is available with the taxpayer, he should inform GSTN about the transaction (CIN, bank branch where OTC payment was made and date of payment). On the basis of this information, GSTN should ascertain from e-FPB of the concerned authorized bank regarding receipt of payment. Once the confirmation is received through an electronic string, GSTN will validate the same against CPIN and thereafter the tax paid challan (CIN) will be credited to the taxpayer's ledger. e-FPB of the Authorized bank is now

expected to include this receipt in the luggage file for the day for transmission to RBI.

ii) In case of OTC payment through authorized banks by instruments drawn on another bank in the same city, the process of giving acknowledgement would be in two steps. In case CIN is not reported to GSTN by the e-FPB of the authorized bank, the taxpayer may follow the procedure detailed in sub-para i) above. E-FPB of the authorized bank is now expected to include this receipt in the luggage file for the day for transmission to RBI.

iii) In case of OTC payment through banks via NEFT/RTGS, upon successful completion of the transfer at the end of the bank, the taxpayer will get a receipt detailing Unique Transaction Reference (UTR). Taxpayer can thereafter login into GSTN and update the details of UTR provided by the bank for NEFT/RTGS transaction in the challan. GSTN is expected to communicate the UTR to RBI. In case the CIN is not communicated by RBI, GSTN will now take up the matter with RBI (instead of with authorized bank) in the manner detailed in sub para i) above. RBI is now expected to include this receipt in the e-scroll for the day, if NEFT/RTGS remittance was received. If the remittance was not received, RBI will inform GSTN accordingly. In turn, the tax payer will be intimated by GSTN for taking up the matter with his bank (through which NEFT / RTGS was effected by him) for deficiency of service.

f) Sum total of amount for a CIN reported in e-scroll by RBI is lesser / greater than that reported by e-FPB of authorized bank / RBI to GSTN.

118. This error relating to the shortfall can occur if a bank has deducted collection charges in Mode II and a bank has collected remittance charges for NEFT / RTGS transaction from the challan amount Mode III . Such errors in Mode II can be minimized through suitable validations in the bank's IT system. In such case, one of the tax amounts will be less than the amount indicated in the challan. The relevant Accounting Authority (for whom the amount received is less than the amount mentioned in challan) will have to take up MOE process with RBI with a copy to the concerned bank as detailed in para 116 above for getting the shortfall amount.

119. In case the amount in the scroll is more than the challan amount for any tax, the bank will have to raise the MOE with the concerned Accounting Authority for the refund. Without approval of the Accounting Authority, the banks should not be allowed to adjust the excess amount against future receipts.

Fourth leg of communication of data is between RBI and GSTN & Accounting Authorities:

120. RBI is collating luggage files from e-FPBs of various authorized banks, including amount received by it in Mode III and thereafter generating and transmitting e-scrolls Major head wise to Government of India and SGST (state wise). During collation of the data, an error can creep into e-scroll resulting in missing / additional transaction. Since there is simultaneous flow of information to two different agencies i.e. GSTN and Accounting Authorities, following situations may arise:

- a) Transaction reported to GSTN by e-FPB of authorized banks but not by RBI in its e-scroll (CIN level);

- b) Transaction reported by RBI in its e-scroll but not by e-FPB of authorized bank / RBI to GSTN (CIN level);
- c) Transaction reported by RBI but with incorrect details of CIN (CIN level);
- d) Sum total of the amount for CIN reported to RBI is lesser/greater than that received by GSTN/Accounting Authority.
- e) There is mismatch between tax wise amounts while the total challan amount matches.

121. In all the situations mentioned above, the reconciliation and error correction mechanism would be similar to that in the third leg of communication (para 110 to 119 above) as the source of discrepancy cannot be identified. It can be at the bank level or at RBI level. Therefore, the concerned Accounting Authorities should take up MOE with RBI with a copy to concerned authorized bank. RBI should first verify the data at its own end for corrective measure, if the error had arisen from its actions, if the source of error is found by RBI to be the one of the authorized bank, it should facilitate/ensure corrective measure by the identified bank in a time bound manner.

Recording by Tax Authorities:

122. After reconciliation and successful accounting of each payment, the transaction level data with unique accounting number, if required by a State Government (some governments have that practice) should be communicated by the Accounting Authorities to the Tax Department's system for updating the records, which would finally contain following unique Ids for each receipt.

- a) CIN;

- b) GSTIN;
- c) Bank Transaction Number (BRN);
- d) RBI Transaction Number;
- e) Accounting Entry ID Number/confirmation flag.

The presence of all the above mentioned five fields would constitute the assurance for credit to the government account with RBI, and the reconciliation and accounting in the government books.

Challan Correction Mechanism.

123. In view of the presumptions listed above, the requirement of providing for a challan correction mechanism would be minimal though not completely ruled out. The Committee recommends for providing the correction mechanism in following situations:-

- a) ERROR IN GSTIN: This may happen in situations where the payment of tax is being made by either authorized representative such as CA or any other person on behalf of the taxpayer. Such kind of error will have no impact on the transfer of the funds to the account of the concerned governments as the money will be correctly transferred on the basis of the CIN. Further once the payment confirmation is received by GSTN from the concerned bank then the amount will be credited to the ledger of the taxpayer whose GSTIN is mentioned in the electronic string that is relayed by the bank to GSTN (earlier the same GSTIN was communicated by GSTN to bank). Therefore taking into account both the above factors as well as the fact that Challan has been generated either by the taxpayer himself or through his authorized representative and the mistake being committed has no impact on the



funds with tax administration, there is no need for providing an error correction mechanism for the same. The authorized representative, acting as an agent for the taxpayer should be responsible to the principal for any error committed while performing authorized acts and tax administration should have no role to play in this matter.

b) **ERROR IN MAJOR HEAD:** In such a scenario, the bank though has collected the correct amount but has credited the wrong head of tax account. This would impact the transfer of funds to the account of the respective governments as bank has transferred the funds on the basis of the data not detailed in CPIN. Thus bank would be required to withdraw funds from one account and credit the other account(s). It is proposed to permit banks to rectify such error before the end of the day during which the amount has been received by the bank as at the end of the day, the amount would have been credited in respective government accounts and thereafter the same would also have been accounted by Accounting Authorities of the Centre and State. No correction in the challan data is required even in this case. If the error is noted after reporting of the credit on T+1 basis, the normal MOE process should be used.

c) **ERROR IN TOTAL AMOUNT:** If the amount paid is in excess then there is provision for either claim of refund by the taxpayer or the amount can be carried forward to the next period and therefore there is no need to provide for correction mechanism.

124. In view of recommended maintenance of cash ledger, the fields relating to 'Tax period' and 'purpose' will not be captured in the challan as being done presently and therefore correction mechanism for correcting these two fields has not been provided for.

CHALLAN FORMAT:

125. e-Challan will remain the source document for the purpose of accounting and reconciliation by the accounting authorities of the Centre/States/UTs. The Office of C & AG has stressed upon the need for ensuring the availability of e-Challan for accounting and reconciliation purposes. A proper Challan format (Annexure -IV) that covers all the details required for accounting and reconciliation is essential to be prescribed, that will be treated as proof of payment to the government.

126. In the GST regime, the existing practice of entry of challan data at the bank branch level will be dispensed with as the challan would be shared on real time basis from the GSTN portal to the CBS of the authorized bank / RBI indicated in the challan.

127. Central Government Accounts (Receipt and Payment) Rules, 1983 provides for submission of Challan in form GAR 7 along with the payments to facilitate the Pay and Accounts Officer to classify the receipts accurately in his accounts. The form will need to be suitably modified for use in the electronic systems envisaged for GST payments. Almost all the information currently required in GAR 7 has been provided in proposed GST challan form. However, as discussed in para 14 above, the jurisdictional location

code will not be available in the challan and the same would need to be mapped with the help of the backend system of each tax administration.

(Satish Chandra)  
Member Secretary  
Empowered Committee  
of State Finance Ministers

(Rashmi Verma)  
Additional Secretary  
Department of Revenue  
Government of India

Annexure-I

EMPOWERED COMMITTEE OF STATE FINANCE MINISTERS

DELHI SECRETARIAT, IP ESTATE, NEW DELHI – 110002

Tel. No. 2339 2431, Fax: 2339 2432 e-mail: [vatcouncil@yahoo.com](mailto:vatcouncil@yahoo.com)

No.15/45/EC/GST/2014/32

Date: 7<sup>th</sup> April, 2014

JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST

During the last Empowered Committee meeting held on 10<sup>th</sup> March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also keep in view the Registration and Return requirements necessary for IGST Model. Accordingly, a Joint Committee, in consultation with the Government of India, is constituted with the following members.

Government of India

- (1) Smt. Rashmi Verma, Additional Secretary (Revenue) -- Co-convener
- (2) Shri P.K. Mohanty, Joint Secretary (TRU-I)
- (3) Shri M. Vinod Kumar, Joint Secretary (TRU-II)
- (4) Shri J.M. Kennedy, Director (TRU-II)
- (5) Director/Deputy Secretary holding the charge of State Taxes Section

States Government

- (1) Dr. J.B. Ekka, Commissioner of Taxes, Assam
- (2) Shri Prashant Goyal, Commissioner, Trade & Taxes, Delhi
- (3) Shri H.V. Patel, Commissioner, Commercial Tax, Gujarat
- (4) Shri Sudhir Rajpal, Commissioner, Excise & Taxation, Haryana
- (5) Shri Kifayat Hussain Rizvi, Commissioner, Commercial Tax, J&K
- (6) Shri Ajay Seth, Commissioner, Commercial Tax, Karnataka
- (7) Shri Shyam Jagannathan, Commissioner, Commercial Tax, Kerala
- (8) Shri Amit Rathore, Commissioner, Commercial Tax, Madhya Pradesh
- (9) Dr. Nitin Kareer, Commissioner, Sales Tax, Maharashtra
- (10) Shri Abhishek Bhagotia, Commissioner, Commercial Tax, Meghalaya

- (11) Shri Manoj Ahuja, Commissioner, Commercial Tax, Odisha
- (12) Shri Sanjay Malhotra, Commissioner, Commercial Tax, Rajasthan
- (13) Shri K. Rajaraman, Commissioner, Commercial Tax, Tamil Nadu
- (14) Shri M.K. Narayan, Commissioner, Commercial Tax, Uttar Pradesh
- (15) Shri Dilip Jawalkar, Commissioner, Commercial Tax, Uttarakhand
- (16) Shri Binod Kumar, Commissioner, Commercial Tax, West Bengal

Empowered Committee of State Finance Ministers

- (1) Shri Satish Chandra, Member Secretary -- Co-convener

2. The Committee will submit its report to the Empowered Committee in two months time.

Sd/-  
(Satish Chandra)  
Member Secretary  
Empowered Committee of  
State Finance Ministers

Copy to: All the Members of the Joint Committee

Copy also to:

- (1) PS to Chairman, Empowered Committee of State Finance Ministers
- (2) Adviser to Chairman, Empowered Committee of State Finance Ministers
- (3) Sr.A.O./OSD/F.O./A.O., Empowered Committee of State Finance Ministers

Annexure-II

EMPOWERED COMMITTEE OF STATE FINANCE MINISTERS

DELHI SECRETARIAT, IP ESTATE, NEW DELHI – 110002

Tel. No. 2339 2431, Fax: 2339 2432 e-mail: [vatcouncil@yahoo.com](mailto:vatcouncil@yahoo.com), [vatcouncil@gmail.com](mailto:vatcouncil@gmail.com)

No.15/45/EC/GST/2015/20

Date: 3<sup>rd</sup> February, 2015

SUB-COMMITTEE ON PAYMENT PROCESSES UNDER GST

During the meeting of the Joint Committee on Business Processes for GST held on 2<sup>nd</sup> February, 2015, it was decided that a Sub-Committee should be constituted to consider the Report of the Committee for Finalizing Payment Processes under GST and to give its recommendations for the consideration of the Joint Committee on Business Process for GST. Accordingly, a Sub-Committee consisting of the following officers was constituted:

Government of India

- |  |             |
|--|-------------|
| 1. Shri Shashank Priya, Commissioner, GST Cell, CBEC,<br>Government of India                       | Co-convener |
| 2. Shri Upender Gupta, Additional Commissioner, CBEC<br>Government of India                        | Member      |
| 3. Shri Manish Saxena, Additional Director, Directorate<br>General of Systems, Government of India | Member      |

States

- |   |             |
|---|-------------|
| 1. Shri Ritvik Ranjanam Pandey, Commissioner,<br>Commercial Tax, Karnataka              | Co-convener |
| 2. Shri K. Rajaraman, Principal Secretary/Commissioner,<br>Commercial Taxes, Tamil Nadu | Member      |
| 3. Shri Manoj Ahuja, Commissioner, Commercial Tax<br>Odisha                             | Member      |
| 4. Dr. P.D. Vaghela, Commissioner, Commercial Tax,<br>Gujarat                           | Member      |

Goods and Services Tax Network

1. Shri Prakash Kumar, Chief Executive Officer, GSTN Member

Special Invitee

1. Shri Ajay Seth, former Commissioner, Commercial Tax, Karnataka Member

2. It was also decided to request RBI, Principal Chief Controller of Accounts, CBEC and Controller General of Accounts to nominate senior officers to attend the meetings of the Sub-Committee/Committee.

3. It was further decided that the first meeting of the Sub-Committee will be held at 10.00 am on 14<sup>th</sup> February, 2015 at Hotel Le Meridien, Bangalore. All the members of the Sub-Committee are requested to kindly make it convenient to attend the meeting of the Sub-Committee. They are also requested to intimate their travel programme to Shri Ritvik Ranjanam Pandey, Commissioner Commercial Tax, Karnataka (Tel: 080-22264495, Fax: 080-22263595 and e-mail: [ritvik@gov.in](mailto:ritvik@gov.in)) so that necessary arrangements for their boarding, lodging and transport could be made under intimation to the Empowered Committee.

Sd/-  
(Satish Chandra)  
Member Secretary  
Empowered Committee of  
State Finance Ministers

Copy to:

Additional Secretary (Revenue), Government of India with the request to kindly request RBI, Principal Chief Controller of Accounts, CBEC and Controller General of Accounts to nominate suitable officers to attend the meeting in Bangalore and subsequent meeting of the Joint Committee on Business Process for GST, when the Business Process for payment is considered by the Committee.

Copy to: All the members of the Sub-Committee

Copy also to:

Adviser/OSD/Sr.A.O./A.O., Empowered Committee of State Finance Ministers.

Annexure-III

LIST OF PARTICIPANTS OF THE MEETING HELD ON 16<sup>TH</sup> AND 17<sup>TH</sup> APRIL, 2015

Government of India

1. Smt. Rashmi Verma, Additional Secretary (Revenue), Government of India
2. Shri Manish Saxena, Additional Director, Director General of Systems, CBEC, Government of India
3. Shri M.K. Sinha, Director (Central Excise), Government of India
4. Shri Rajeev Yadav, Director (Service Tax), CBEC, Government of India
5. Shri Shashank Priya, Commissioner, GST, CBEC, Government of India
6. Shri Ravneet Singh Khurana, Deputy Commissioner, CBEC, Government of India
7. Shri Upender Gupta, Additional Commissioner, GST, CBEC, Government of India

States

1. Dr. Ravi Kota, Commissioner of Taxes, Assam
2. Shri Sanjeev Khirwar, Commissioner (VAT), Trade and Taxes, Delhi
3. Shri Jagmal Singh, Deputy Director, Trade and Taxes, Delhi
4. Shri Umesh Kumar Tyagi, Special Commissioner, Trade and Taxes, Delhi
5. Dr. P.D. Vaghela, Commissioner, Commercial Tax, Gujarat
6. Shri Riddhesh P. Raval, Assistant Commissioner, Commercial Tax, Gujarat
7. Shri Shyamal Misra, Commissioner, Excise & Taxation, Haryana
8. Shri Hanuman Singh, Additional Commissioner, Excise & Taxation, Haryana
9. Shri Zaffar Ahmad Bhat, Commissioner, Commercial Tax, Jammu & Kashmir
10. Dr. Shamim Ahmad, Additional Commissioner, Commercial Taxes, Jammu & Kashmir
11. Shri Ritvik Ranjanam Pandey, Commissioner, Commercial Tax, Karnataka
12. Dr. M.P.Ravi Prasad, Joint Commissioner, Commercial Tax, Karnataka
13. Shri M. Girees Kumar, Commissioner, Commercial Tax, Kerala
14. Shri M.I. Mansur, Assistant Commissioner, Commercial Tax, Kerala
15. Shri Sudip Gupta, Deputy Commissioner, Commercial Tax, Madhya Pradesh
16. Shri Rajiv Jalota, Commissioner, Sales Tax, Maharashtra
17. Shri P. Velrasu, Special Commissioner, Sales Tax, Maharashtra
18. Shri Manoj Ahuja, Commissioner, Commercial Tax, Odisha
19. Shri Sahadev Sahoo, Joint Commissioner, Commercial Tax, Odisha
20. Shri Vaibhav Galriya, Commissioner, Commercial Tax, Rajasthan
21. Shri K. Rajaraman, Principal Secretary/Commissioner, Commercial Taxes, Tamil Nadu



22. Shri K.Gnanasekaran, Additional Commissioner, Commercial Taxes, Tamil Nadu
23. Shri Mritunjay Kumar Narayan, Commissioner, Commercial Tax, Uttar Pradesh
24. Shri Rakesh Verma, Joint Commissioner, Commercial Tax, Uttar Pradesh
25. Shri Puneet Tripathi, Assistant Commissioner, Commercial Tax, Uttar Pradesh
26. Shri N.C. Sharma, Additional Commissioner, Commercial Tax, Uttarakhand
27. Shri Vipin Chandra, Joint Commissioner, Commercial Tax, Uttarakhand
28. Shri Khalid Aizaz Anwar, Joint Commissioner, Commercial Tax, West Bengal

#### Goods and Services Tax Network (GSTN)

1. Shri Navin Kumar, Chairman, Goods and Services Tax Network
2. Shri Prakash Kumar, Chief Executive Officer, Goods and Services Tax Network

#### Special Invitee

1. Smt. Nidhi Khare, Commissioner, Commercial Tax, Jharkhand

#### CCA

1. Mrs. Krishna Tyagi, Chief Controller of Accounts, CBEC
2. Alok Kumar Verma, Controller of Accounts, CBEC

#### CGA

1. Shri Chandan Mishra Dwivedi, Deputy Comptroller and General of Accounts

#### RBI

1. Shri G. Sreekumar, CGM, RBI
2. Shri Manish Parashar, Deputy GM, RBI

#### Empowered Committee of State Finance Ministers

1. Shri Satish Chandra, Member Secretary, Empowered Committee
2. Shri Bashir Ahmed, Adviser, Empowered Committee

#### PWC

1. Shri Kalyan K. Pal, PWC

Annexure-IV

**GST CHALLAN FORM**

CPIN	<<Auto Generated after submission of information>>
------	--

GSTIN	<<Filled in/Auto populated>>
Name	<<Auto Populated>>
Address	<<Auto Populated>>

Date	
Email address	<<Auto Populated>>
Mobile No.	<<Auto Populated>>

Tax Liability					
	Tax	Interest	Penalty	Others	Total
Government of India					
CGST					
IGST					
Additional Tax					
Government of <State>					
SGST					
				Total Challan Amount	

Note :

1. Different colors to reduce possibility of data entry errors to be provided.
2. Accounting Codes are to be provided for at the backend

**Mode of Payment (relevant Portion to become active when selected)**

<input type="checkbox"/> e-Payment	
Net Banking	<input type="checkbox"/>
Credit Card	<input type="checkbox"/>

<input type="checkbox"/> Authorised Bank OTC	
Name of Receiving Bank (where	

Debit Card <input type="checkbox"/>	
Name of Bank	
Name of Payment Gateway (in case of payment through CC /DC)	

instrument is proposed to be deposited)		
Name of Branch (Optional)		
Name of City/Town/Village where payment is proposed to be made		
Details of instrument(optional)		
Cash <input type="checkbox"/>	Ch/DD No.	
	IFSC Code	
Cheque <input type="checkbox"/>	Bank	
DD <input type="checkbox"/>	Branch	

Note : Only local cheques ( not outstation cheques to be accepted)

<input type="checkbox"/> NEFT/RTGS Remitting Bank	
Name of Bank	
Name of Branch	
IFSC Code	
Name and Code of Beneficiary Bank (RBI and its code)	
Name of the beneficiary account ( Description 'GST payment' to be auto Populated)	


Beneficiary Account Number ( CPIN Auto Populated)	
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Note:

1. Payments through RTGS / NEFT
2. Beneficiary to be defined as the RBI and its account. This would be auto populated by GSTN
3. Charges to be over and above Tax amount

**Paid Challan Information**

Bank Reference No.	
CIN	
Date of Clearing	
NEFT/RTGS Unique Ref No.	

Challan Received at

## Annexure V

### Issue of charge back in CC/DC Payment

1. Under the charge back claim, a taxpayer after making payment through credit card may seek refund of the money till 60 days of the transaction. Usually such refunds can be sought under three scenarios:
  - (i) Payment was made fraudulently by someone using the card of others;
  - (ii) Extra payment was made because of some technical error during payment;
  - (iii) Some service was not delivered for the payment made.
2. During the past few years, there have been significant changes in the security systems surrounding a transaction done through credit cards. The nature of such transactions has undergone changes because of introduction of two factor authentication and OTP (one time password) as per RBI's regulations. Under such circumstances it has become more improbable to have fraudulent transactions. Banks also have stopped entertaining claims caused by fraudulent transactions. As such scenario (i), i.e., payment through fraudulent use can be practically ruled out.
3. In scenario (ii) arising from technical errors, the errors can be detected even before any transaction is reported to RBI on T+1 basis. The acquiring banks should have a validation in their IT system that no double payment is reported for a tax against the same CPIN. If a credit card has been charged twice for the same challan total amount, the additional collection may be refunded by the acquiring bank.

4. In case the technical error of charging the card twice is noticed after the transaction has been reported to GSTN on real time basis but before the reporting to RBI on T+1 basis, the acquiring bank can refund the amount under real time intimation to GSTN. Thereafter, such double payment should not be reported to RBI.
5. In case the technical error is detected after reporting to RBI on T+1, the acquiring bank should send the claim to GSTN with full details. GSTN should verify its database, and confirm to the bank regarding double payment received against the same CPIN.
6. There should be a validation in GSTN's system that such double payments (para 4 and 5 above) are either not reflected in the tax payer's ledger or the second payment against the same CPIN is barred from utilization. Based on the confirmation from GSTN, the acquiring bank can refund the extra payment.
7. For scenario (iii) arising from claim of non-delivery of service, the acquiring bank should send the claims to GSTN with full details. GSTN can rebut the claim by providing a copy of the Challan (pdf file generated from its system) used for making the payment and details of the tax-payer's ledger account in which credit was made to show that the service was provided. The bank can use the above details /document as a sufficient basis to repudiate any charge back claim for non-delivery of service. Such evidences have to be provided to banks within 48 hours of the claim.
8. Even if the charge back request for scenario (iii) is received by the acquiring bank before reporting of the transaction to RBI on T+1, the bank should send the claim to GSTN for a response. GSTN should verify its record, and rebut the claim as mentioned in para 7 above. GSTN will have 48 hrs to send its response. In the meantime at T+1 event,

the acquiring bank should report the transaction to RBI in normal course. The bank should not hold back the funds. Subsequently when the response is received from GSTN, the bank may either decide to reject the claim (most likely as it is fairly easy to establish that the tax was actually paid to the Government and there was no denial of service) or accept the claim. If the claim is accepted, the process suggested in para 9 below may be followed.

9. In case the charge back is accepted after reporting to RBI (either in case of scenario (ii) or in case of scenario (iii) when GSTN's rebuttal is not accepted) and refund is made by the acquiring bank to the issuing bank, such refund should be reported as a new transaction to RBI. The report to RBI as well as the entry in RBI's scroll should be as a debit entry identified using the original CPIN. On receipt of such information, GSTN should debit the taxpayer's ledger and inform the Tax Authorities who should recover the amount from the said taxpayer.

Annexure VI

List of Banks presently authorised in Centre and States

S. NO.	Name of Bank
1.	ALLAHABAD BANK
2.	ANDHRA BANK
3.	BANK OF INDIA
4.	BANK OF BARODA
5.	BANK OF MAHARASHTRA
6.	CANARA BANK
7.	CENTRAL BANK OF INDIA
8.	CORPORATION BANK
9.	DENA BANK
10.	INDIAN BANK
11.	INDIAN OVERSEAS BANK
12.	ORIENTAL BANK OF COMMERCE
13.	PUNJAB NATIONAL BANK
14.	PUNJAB & SIND BANK
15.	SYNDICATE BANK
16.	UNION BANK OF INDIA
17.	UNITED BANK OF INDIA
18.	UCO BANK
19.	VIJAYA BANK
20.	STATE BANK OF INDIA



21.	STATE BANK OF BIKANER & JAIPUR
22.	STATE BANK OF HYDERABAD
23.	STATE BANK OF MYSORE
24.	STATE BANK OF PATIALA
25.	STATE BANK OF TRAVANCORE
26.	IDBI Bank Ltd

**First Discussion Paper  
On  
Goods and Services Tax  
In India**



**The Empowered Committee  
Of  
State Finance Ministers**

**New Delhi**

November 10 , 2009

**Foreword**

If the Value Added Tax (VAT) is considered to be a major improvement over the pre-existing Central excise duty at the national level and the sales tax system at the State level, then the Goods and Services Tax (GST) will be a further significant breakthrough - the next logical step - towards a comprehensive indirect tax reform in the country.

Keeping this overall objective in view, an announcement was made by Shri P. Chidambaram, the then Union Finance Minister in the Central Budget (2007-2008) to the effect that GST would be introduced from April 1, 2010 and that the Empowered Committee of State Finance Ministers, on his request, would work with the Central Government to prepare a road map for introduction of GST in India. After this announcement, the Empowered Committee of State Finance Ministers decided to set up a Joint Working Group (May 10, 2007), with the then Adviser to the Union Finance Minister and the Member-Secretary of Empowered Committee as Co-convenors and the concerned Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the States as its members. This Joint Working Group, after intensive internal discussions as well as interaction with experts and representatives of Chambers of Commerce and Industry, submitted its report to the Empowered Committee (November 19, 2007).

This report was then discussed in detail in the meeting of Empowered Committee (November 28, 2007). On the basis of this discussion and written observations of the States, certain modifications were made and a final version of the views of Empowered Committee at that stage was prepared and was sent to the Government of India (April 30, 2008). The comments of the Government of India were received on December 12, 2008 and were duly considered by the Empowered Committee (December 16, 2008). It was decided that a Committee of Principal Secretaries/ Secretaries of Finance/Taxation and Commissioners of Trade Taxes of the States would be set up to consider these comments, and submit their views. These views were submitted and were accepted in principle by the Empowered Committee (January 21, 2009). Consequent upon this in-principle acceptance, a Working Group, consisting of the concerned officials of the State Governments was formed who, in close association with senior representatives of the Government of India, submitted their recommendations in detail on the structure of GST. An important interaction has also recently taken place between Shri Pranab Mukherjee, the Union Finance Minister and the Empowered Committee (October 19, 2009) on the related issue of compensation for loss of the States on account of phasing out of CST. The Empowered

Committee has now taken a detailed view on the recommendations of the Working Group of officials and other related matters. This detailed view of the Empowered Committee on the structure of GST is now presented in terms of the First Discussion Paper, along with an Annexure on Frequently Asked Questions and Answers on GST, for discussions with industry, trade, agriculture and people at large.

The Discussion Paper is divided into four sections. Since GST would be further improvement over the VAT, Section 1 begins with a brief reference to the process of introduction of VAT at the Centre and the States and also indicates the precise points where there is a need for further improvement. This section also shows how the GST can bring about this improvement. With this as the background for justification of GST, Section 2 then describes the process of preparation for GST. Thereafter, Section 3 presents in detail the comprehensive structure of the GST model. For illustrating this GST model further, there is in the end an Annexure on Frequently Asked Questions and Answers.

This Discussion Paper has been the result of truly collective efforts on the basis of hardwork of all the concerned officials of the States, the officials of Empowered Committee Secretariat and the Adviser and officials of the Union Finance Ministry, the counsel and active participation of Finance Ministers and concerned Senior Ministers of the States at each stage, and the encouragement and advice of the Union Finance Minister.

With the release of this First Discussion Paper and the Annexure on Frequently Asked Questions and Answers, we now sincerely invite interaction with the representatives of industry, trade, agriculture and common people. This interaction and campaign will immediately start at the national level and at the State levels. As a part of this interaction, we look forward to receiving the views of industry, trade, agriculture as well as consumers in a time-bound manner.

Asim Kumar Dasgupta  
Chairman,  
Empowered Committee of  
State Finance Ministers

&  
Minister of Finance & Excise,  
Government of West Bengal

New Delhi,  
November 10, 2009

## **1. Introduction**

1.1 Introduction of the Value Added Tax (VAT) at the Central and the State level has been considered to be a major step – an important breakthrough – in the sphere of indirect tax reforms in India. If the VAT is a major improvement over the pre-existing Central excise duty at the national level and the sales tax system at the State level, then the Goods and Services Tax (GST) will indeed be a further significant improvement – the next logical step – towards a comprehensive indirect tax reforms in the country.

1.2 Keeping this objective in view, an announcement was made by the then Union Finance Minister in the Central Budget (2007-08) to the effect that GST would be introduced with effect from April 1, 2010 and that the Empowered Committee of State Finance Ministers, on his request, would work with the Central Government to prepare a road map for introduction of GST in India. After this announcement, the Empowered Committee of State Finance Ministers decided to set up a Joint Working Group (May 10, 2007), with the then Adviser to the Union Finance Minister and Member-Secretary of the Empowered Committee as its Co-convenors and concerned four Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the States as its members. This Joint Working Group got itself divided into three Sub-Groups and had several rounds of internal discussions as well as interaction with experts and representatives of Chambers of Commerce & Industry. On the basis of these discussions and interaction, the Sub-Groups submitted their reports which were then integrated and consolidated into the report of Joint Working Group (November 19, 2007).

1.3 This report was discussed in detail in the meeting of the Empowered Committee on November 28, 2007, and the States were also requested to communicate their observations on the report in

writing. On the basis of these discussions in the Empowered Committee and the written observations, certain modifications were considered necessary and were discussed with the Co-convenors and the representatives of the Department of Revenue of Union Finance Ministry. With the modifications duly made, a final version of the views of Empowered Committee on the model and road map for the GST was prepared (April 30, 2008). These views of Empowered Committee were then sent to the Government of India, and the comments of Government of India were received on December 12, 2008. These comments were duly considered by the Empowered Committee (December 16, 2008), and it was decided that a Committee of Principal Secretaries/ Secretaries of Finance/Taxation and Commissioners of Trade Taxes of the States would be set up to consider these comments, and submit their views. These views were submitted and were accepted in principle by the Empowered Committee (January 21, 2009). As a follow-up of this in-principle acceptance, a Working Group consisting of the concerned officials of the State Governments was formed who, in association with senior representatives of Government of India, submitted their recommendations in detail on the structure of GST. An important interaction has also recently taken place between Shri Pranab Mukherjee, the Union Finance Minister and the Empowered Committee (October 19, 2009) on the related issue of compensation for loss of the States on account of phasing out of CST. The Empowered Committee has now taken a detailed view on the recommendations of the Working Group of officials and other related matters. This detailed view is now presented in terms of the First Discussion Paper, along with an Annexure on Frequently Asked Questions and Answers on GST, for discussion with industry, trade, agriculture and people at large. Since the GST at the Centre and States would be a further improvement over the VAT, a brief recalling of the process of introduction of VAT in India is worthwhile.

## **Value Added Tax at the Central and the State level**

1.4 Prior to the introduction of VAT in the Centre and in the States, there was a burden of multiple taxation in the pre-existing Central excise duty and the State sales tax systems. Before any commodity was produced, inputs were first taxed, and then after the commodity got produced with input tax load, output was taxed again. This was causing a burden of multiple taxation (i.e. “tax on tax”) with a cascading effect. Moreover, in the sales tax structure, when there

was also a system of multi-point sales taxation at subsequent levels of distributive trade, then along with input tax load, burden of sales tax paid on purchase at each level was also added, thus aggravating the cascading effect further.

1.5 When VAT is introduced in place of Central excise duty, a set-off is given, i.e., a deduction is made from the overall tax burden for input tax. In the case of VAT in place of sales tax system, a set-off is given from tax burden not only for input tax paid but also for tax paid on previous purchases. With VAT, the problem of “tax on tax” and related burden of cascading effect is thus removed. Furthermore, since the benefit of set-off can be obtained only if tax is duly paid on inputs (in the case of Central VAT), and on both inputs and on previous purchases (in the case of State VAT), there is a built-in check in the VAT structure on tax compliance in the Centre as well as in the States, with expected results in terms of improvement in transparency and reduction in tax evasion. For these beneficial effects, VAT has now been introduced in more than 150 countries, including several federal countries. In Asia, it has now been introduced in almost all the countries.

1.6 In India, VAT was introduced at the Central level for a selected number of commodities in terms of MODVAT with effect from March 1, 1986, and in a step-by-step manner for all commodities in terms of CENVAT in 2002-03. Subsequently, after Constitutional Amendment empowering the Centre to levy taxes on services, these service taxes were also added to CENVAT in 2004-05. Although the growth of tax revenue from the Central excise has not always been specially high, the revenue growth of combined CENVAT and service taxes has been significant.

1.7 Introduction of VAT in the States has been a more challenging exercise in a federal country like India, where each State, in terms of Constitutional provision, is sovereign in levying and collecting State taxes. Before introduction of VAT, in the sales tax regime, apart from the problem of multiple taxation and burden of adverse cascading effect of taxes as already mentioned, there was also no harmony in the rates of sales tax on different commodities among the States. Not only were the rates of sales tax numerous (often more than ten in several States), and different from one another for the same commodity in

different States, but there was also an unhealthy competition among the States in terms of sales tax rates – so-called “rate war” – often resulting in, revenue-wise, a counter-productive situation.

1.8 It is in this background that attempts were made by the States to introduce a harmonious VAT in the States, keeping at the same time in mind the issue of sovereignty of the States regarding the State tax matters. The first preliminary discussion on State-level VAT took place in a meeting of Chief Ministers convened by Dr. Manmohan Singh, the then Union Finance Minister in 1995. In this meeting, the basic issues on VAT were discussed in general terms and this was followed up by periodic interactions of State Finance Ministers. Thereafter, in a significant meeting of all the Chief Ministers, convened on November 16, 1999 by Shri Yashwant Sinha, the then Union Finance Minister, two important decisions, among others, were taken. First, before the introduction of State-level VAT, the unhealthy sales tax “rate war” among the States would have to end, and sales tax rates would need to be harmonised by implementing uniform floor rates of sales tax for different categories of commodities with effect from January 1, 2000. Secondly, on the basis of achievement of the first objective, steps would be taken by the States for introduction of State-level VAT after adequate preparation. For implementing these decisions, a Standing Committee of State Finance Ministers was formed which was then made an Empowered Committee of State Finance Ministers.

1.9 Thereafter, the Empowered Committee has met regularly. All the decisions were taken on the basis of consensus. On the strength of these repeated discussions and collective efforts, involving the Ministers and the concerned officials, it was possible within a period of about a year and a half to achieve nearly 98 per cent success in the first objective, namely, harmonisation of sales tax structure through implementation of uniform floor rates of sales tax.

1.10 After reaching this stage, steps were initiated for systematic preparation for introduction of State-level VAT. In order again to avoid any unhealthy competition among the States



which may lead to distortions in manufacturing and trade, attempts have been made from the very beginning to harmonise the VAT design in the States, keeping also in view the distinctive features of each State and the need for federal flexibility. This has been done by the States collectively agreeing, through discussions in the Empowered Committee, to certain common points of convergence regarding VAT, and allowing at the same time certain flexibility to accommodate the local characteristics of the States. In the course of these discussions, references to the Tenth Five Year Plan Report of the Advisory Group on Tax Policies & Tax Administration (2001) and the report of Kelkar (Chairman) Task Force were helpful.

1.11 Along with these measures, steps were taken for necessary training, computerization and interaction with trade and industry. While these preparatory steps were taken, the Empowered Committee got a significant support from Shri P. Chidambaram, the then Union Finance Minister, when he responded positively in providing Central financial support to the States in the event of loss of revenue in transitional years of implementation of VAT.

1.12 As a consequence of all these steps, the States started implementing VAT beginning April 1, 2005. After overcoming the initial difficulties, all the States and Union Territories have now implemented VAT. The Empowered Committee has been monitoring closely the process of implementation of State-level VAT, and deviations from the agreed VAT rates has been contained to less than 3 per cent of the total list of commodities. Responses of industry and also of trade have been indeed encouraging. The rate of growth of tax revenue has nearly doubled from the average annual rate of growth in the pre-VAT five year period after the introduction of VAT.

### **Justification of GST**

1.13 Despite this success with VAT, there are still certain shortcomings in the structure of VAT both at the Central and at the State level. The shortcoming in CENVAT of the Government of India lies in non-inclusion of several Central taxes in the overall framework of CENVAT, such as additional customs duty, surcharges, etc., and thus keeping the benefits of comprehensive input tax and service tax

set-off out of reach for manufacturers/dealers. Moreover, no step has yet been taken to capture the value-added chain in the distribution trade below the manufacturing level in the existing scheme of CENVAT. The introduction of GST at the Central level will not only include comprehensively more indirect Central taxes and integrate goods and service taxes for the purpose of set-off relief, but may also lead to revenue gain for the Centre through widening of the dealer base by capturing value addition in the distributive trade and increased compliance.

1.14 In the existing State-level VAT structure there are also certain shortcomings as follows. There are, for instance, even now, several taxes which are in the nature of indirect tax on goods and services, such as luxury tax, entertainment tax, etc., and yet not subsumed in the VAT. Moreover, in the present State-level VAT scheme, CENVAT load on the goods remains included in the value of goods to be taxed under State VAT, and contributing to that extent a cascading effect on account of CENVAT element. This CENVAT load needs to be removed. Furthermore, any commodity, in general, is produced on the basis of physical inputs as well as services, and there should be integration of VAT on goods with tax on services at the State level as well, and at the same time there should also be removal of cascading effect of service tax. In the GST, both the cascading effects of CENVAT and service tax are removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point upto the retailer's level is established which reduces the burden of all cascading effects. This is the essence of GST, and this is why GST is not simply VAT plus service tax but an improvement over the previous system of VAT and disjointed service tax. However, for this GST to be introduced at the State-level, it is essential that the States should be given the power of levy of taxation of all services. This power of levy of service taxes has so long been only with the Centre. A Constitutional Amendment will be made for giving this power also to the States. Moreover, with the introduction of GST, burden of Central Sales Tax (CST) will also be removed. The GST at the State-level is, therefore, justified for (a) additional power of levy of taxation of services for the States, (b) system of comprehensive set-off relief, including set-off for cascading burden of CENVAT and service taxes, (c) subsuming of several taxes in the GST and

(d) removal of burden of CST. Because of the removal of cascading effect, the burden of tax under GST on goods will, in general, fall.

1.15 The GST at the Central and at the State level will thus give more relief to industry, trade, agriculture and consumers through a more comprehensive and wider coverage of input tax set-off and service tax set-off, subsuming of several taxes in the GST and phasing out of CST. With the GST being properly formulated by appropriate calibration of rates and adequate compensation where necessary, there may also be revenue/ resource gain for both the Centre and the States, primarily through widening of tax base and possibility of a significant improvement in tax compliance. In other words, the GST may usher in the possibility of a collective gain for industry, trade, agriculture and common consumers as well as for the Central Government and the State Governments. The GST may, indeed, lead to the possibility of collectively positive-sum game.

## **2. Preparation for GST**

2.1 Keeping this significance of GST in view, an announcement was made by the then Union Finance Minister in the Union Budget, as mentioned before, to the effect that GST would be introduced from April 1, 2010, and that the Empowered Committee of State Finance Ministers would work with the Central Government to prepare a road map for introduction of the GST. After this announcement, the Empowered Committee, as stated earlier, had set up a Joint Working Group which submitted a report on a model and road map for GST. After accommodating the views of the States appropriately on this report, the views of the Empowered Committee on the model and road map were sent to the Government of India on 30th April, 2008. The comments of the Government of India were received on 12th December, 2008. These comments were duly considered by the Empowered Committee in its meeting held on 16th December, 2008 and it was decided that a Committee of Principal Secretaries/Secretaries (Finance/Taxation) and Commissioners of Trade Taxes should consider the comments received from the Government of India and submit its views and also work out the Central GST and State GST rates. The Committee held detailed deliberations on 5th and 6th January, 2009, and submitted its recommendations to the Empowered

Committee. The Empowered Committee considered these recommendations in its meeting held on 21st January, 2009 and accepted them in principle. The Empowered Committee also decided to constitute a Working Group consisting of Principal Secretaries/Secretaries (Finance/Taxation) and Commissioners of Trade Taxes of all States/UTs to give their recommendations on (a) the commodities and services that should be kept in the exempted list, (b) the rules and principles of taxing the transactions of services including the transactions in inter-State services, and (c) finalization of the model suggested for inter-state transaction/movement of goods including stock transfers in consultation with the State Bank of India and some other nationalized banks. It was also decided that the senior representatives from the Government of India may also be associated. The Working Group deliberated on the issues on 10th February, 2009 and decided to form three Sub Working Groups to deliberate each item in depth. The Reports of the Working Group on the three issues have already been received, and the Empowered Committee has taken a view on these recommendations for concluding the details of GST structure.

2.2 While making this preparation of GST, it was also necessary, as mentioned earlier, to phase out the CST, because it did not carry any set-off relief and there was a distortion in the VAT regime due to export of tax from one State to other State. The Empowered Committee accordingly took a decision to phase out CST on the understanding with the Centre that, since phasing out of CST would result in a loss of revenue to the States on a permanent basis, an appropriate mechanism to compensate the States for such loss would be worked out. The rate of CST has already been reduced to 2% and will be phased out with effect from the date of introduction of GST on the basis of such GST structure which, with necessary financial support to the States, should adequately compensate for the loss of the States on a permanent basis. With these steps at preparation in mind, it is important now to turn to the proposed model of GST.

### **3. Goods & Services Tax Model For India**

3.1 It is important to take note of the significant administrative issues involved in designing an effective GST model in a federal system with the objective of having an overall harmonious structure of rates. Together with this,

there is a need for upholding the powers of Central and State Governments in their taxation matters. Further, there is also the need to propose a model that would be easily implementable, while being generally acceptable to stakeholders.

### **Salient features of the GST model**

3.2 Keeping in view the report of the Joint Working Group on Goods and Services Tax, the views received from the States and Government of India, a dual GST structure with defined functions and responsibilities of the Centre and the States is recommended. An appropriate mechanism that will be binding on both the Centre and the States would be worked out whereby the harmonious rate structure along with the need for further modification could be upheld, if necessary with a collectively agreed Constitutional Amendment. Salient features of the proposed model are as follows:

(i) The GST shall have two components: one levied by the Centre (hereinafter referred to as Central GST), and the other levied by the States (hereinafter referred to as State GST). Rates for Central GST and State GST would be prescribed appropriately, reflecting revenue considerations and acceptability. This dual GST model would be implemented through multiple statutes (one for CGST and SGST statute for every State). However, the basic features of law such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes as far as practicable.

(ii) The Central GST and the State GST would be applicable to all transactions of goods and services made for a consideration except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits.

(iii) The Central GST and State GST are to be paid to the accounts of the Centre and the States separately. It would have to be ensured that account-heads for all services and goods would have indication whether it relates to Central GST or State GST (with identification of the State to whom the tax is to be credited).

(iv) Since the Central GST and State GST are to be treated separately, taxes paid against the Central GST shall be allowed to be taken as input tax credit (ITC) for the Central GST and could be utilized only against the payment of Central GST. The same principle will be applicable for the State GST. A taxpayer or exporter would have to maintain separate details in books of account for utilization or refund of credit. Further, the rules for taking and utilization of credit for the Central GST and the State GST would be aligned.

(v) Cross utilization of ITC between the Central GST and the State GST would not be allowed except in the case of inter-State supply of goods and services under the IGST model which is explained later.

(vi) Ideally, the problem related to credit accumulation on account of refund of GST should be avoided by both the Centre and the States except in the cases such as exports, purchase of capital goods, input tax at higher rate than output tax etc. where, again refund/adjustment should be completed in a time bound manner.

(vii) To the extent feasible, uniform procedure for collection of both Central GST and State GST would be prescribed in the respective legislation for Central GST and State GST.

(viii) The administration of the Central GST to the Centre and for State GST to the States would be given. This would imply that the Centre and the States would have concurrent jurisdiction for the entire value chain and for all taxpayers on the basis of thresholds for goods and services prescribed for the States and the Centre.

(ix) The present threshold prescribed in different State VAT Acts below which VAT is not applicable varies from State to State. A uniform State GST threshold across States is desirable and, therefore, it is considered that a threshold of gross annual turnover of Rs.10 lakh both for goods and services for all the States and Union Territories may be adopted with adequate compensation for the States (particularly, the States in North-Eastern Region and Special Category States) where lower threshold had prevailed in the VAT regime. Keeping in view the interest of small traders and small scale industries and to avoid dual control, the States also considered that the threshold for Central GST for goods may be kept at Rs.1.5 crore and the threshold for Central GST for services

may also be appropriately high. It may be mentioned that even now there is a separate threshold of services (Rs. 10 lakh) and goods (Rs. 1.5 crore) in the Service Tax and CENVAT.

(x) The States are also of the view that Composition/Compounding Scheme for the purpose of GST should have an upper ceiling on gross annual turnover and a floor tax rate with respect to gross annual turnover. In particular, there would be a compounding cut-off at Rs. 50 lakh of gross annual turn over and a floor rate of 0.5% across the States. The scheme would also allow option for GST registration for dealers with turnover below the compounding cut-off.

(xi) The taxpayer would need to submit periodical returns, in common format as far as possible, to both the Central GST authority and to the concerned State GST authorities.

(xii) Each taxpayer would be allotted a PAN-linked taxpayer identification number with a total of 13/15 digits. This would bring the GST PAN-linked system in line with the prevailing PAN-based system for Income tax, facilitating data exchange and taxpayer compliance.

(xiii) Keeping in mind the need of tax payer's convenience, functions such as assessment, enforcement, scrutiny and audit would be undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States.

Central and State Taxes to be subsumed under GST

3.3 The various Central, State and Local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

(i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.

(ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of

goods or provision of services at one end and the consumption of goods and services at the other.

(iii) The subsumation should result in free flow of tax credit in intra and inter-State levels.

(iv) The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.

(v) Revenue fairness for both the Union and the States individually would need to be attempted.

3.4 On application of the above principles, it is recommended that the following Central Taxes should be, to begin with, subsumed under the Goods and Services Tax:

- (i) Central Excise Duty
- (ii) Additional Excise Duties
- (iii) The Excise Duty levied under the Medicinal and Toiletries Preparation Act
- (iv) Service Tax
- (v) Additional Customs Duty, commonly known as Countervailing Duty (CVD)
- (vi) Special Additional Duty of Customs - 4% (SAD)
- (vii) Surcharges, and
- (viii) Cesses.

Following State taxes and levies would be, to begin with, subsumed under GST:

- (i) VAT / Sales tax
- (ii) Entertainment tax (unless it is levied by the local bodies).
- (iii) Luxury tax
- (iv) Taxes on lottery, betting and gambling.
- (v) State Cesses and Surcharges in so far as they relate to supply of goods and services.
- (vi) Entry tax not in lieu of Octroi.



**Purchase tax:** Some of the States felt that they are getting substantial revenue from Purchase Tax and, therefore, it should not be subsumed under GST while majority of the States were of the view that no such exemptions should be given. The difficulties of the foodgrains producing States and certain other States were appreciated as substantial revenue is being earned by them from Purchase Tax and it was, therefore, felt that in case Purchase Tax has to be subsumed then adequate and continuing compensation has to be provided to such States. This issue is being discussed in consultation with the Government of India.

**Tax on items containing Alcohol:** Alcoholic beverages would be kept out of the purview of GST. Sales Tax/VAT can be continued to be levied on alcoholic beverages as per the existing practice. In case it has been made Vatable by some States, there is no objection to that. Excise Duty, which is presently being levied by the States may not be also affected.

**Tax on Tobacco products:** Tobacco products would be subjected to GST with ITC. Centre may be allowed to levy excise duty on tobacco products over and above GST without ITC.

**Tax on Petroleum Products:** As far as petroleum products are concerned, it was decided that the basket of petroleum products, i.e. crude, motor spirit (including ATF) and HSD would be kept outside GST as is the prevailing practice in India. Sales Tax could continue to be levied by the States on these products with prevailing floor rate. Similarly, Centre could also continue its levies. A final view whether Natural Gas should be kept outside the GST will be taken after further deliberations.

**Taxation of Services :**As indicated earlier, both the Centre and the States will have concurrent power to levy tax on all goods and services. In the case of States, the principle for taxation of intra-State and inter-State has already been formulated by the Working Group of Principal Secretaries/Secretaries of Finance/Taxation and Commissioners of Trade Taxes with senior representatives of Department of Revenue, Government of India. For inter-State transactions an innovative model of Integrated GST will be adopted by

appropriately aligning and integrating CGST and SGST. The working of this model is elaborated below.

### **3.5 Inter-State Transactions of Goods and Services**

The Empowered Committee has accepted the recommendations of the Working Group of concerned officials of Central and State Governments for adoption of IGST model for taxation of inter-State transaction

of Goods and Services. The scope of IGST Model is that Centre would levy IGST which would be CGST plus SGST on all inter-State transactions of taxable goods and services with appropriate provision for consignment or stock transfer of goods and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information will also be submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.

The major advantages of IGST Model are:

- a) Maintenance of uninterrupted ITC chain on inter-State transactions.
- b) No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer.
- c) No refund claim in exporting State, as ITC is used up while paying the tax.
- d) Self monitoring model.
- e) Level of computerization is limited to inter-State dealers and Central and State Governments should be able to computerize their processes expeditiously.
- f) As all inter-State dealers will be e-registered and correspondence with them will be by e-mail, the compliance level will improve substantially.
- g) Model can take 'Business to Business' as well as 'Business to Consumer' transactions into account.

### **3.6 GST Rate Structure**

The Empowered Committee has decided to adopt a two-rate structure –a lower rate for necessary items and goods of basic importance and a standard rate for goods in general. There will also be a special rate for precious metals and a list of exempted items. For upholding of special needs of each State as well as a balanced approach to federal flexibility, and also for facilitating the introduction of GST, it is being discussed whether the exempted list under VAT regime including Goods of Local Importance may be retained in the exempted list under State GST in the initial years. It is also being discussed whether the Government of India may adopt, to begin with, a similar approach towards exempted list under the CGST.

The States are of the view that for CGST relating to goods, the Government of India may also have a two-rate structure, with conformity in the levels of rate under the SGST. For taxation of services, there may be a single rate for both CGST and SGST.

The exact value of the SGST and CGST rates, including the rate for services, will be made known duly in course of appropriate legislative actions.

### **3.7 Zero Rating of Exports**

Exports would be zero-rated. Similar benefits may be given to Special Economic Zones (SEZs). However, such benefits will only be allowed to the processing zones of the SEZs. No benefit to the sales from an SEZ to Domestic Tariff Area (DTA) will be allowed.

**3.8 GST on Imports:** The GST will be levied on imports with necessary Constitutional Amendments. Both CGST and SGST will be levied on import of goods and services into the country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the GST paid on import on goods and services.

### **3.9 Special Industrial Area Scheme**

After the introduction of GST, the tax exemptions, remissions etc. related to industrial incentives should be converted, if at all needed, into cash refund schemes after collection of tax, so that the GST scheme on the basis of a continuous chain of set-offs is not

disturbed. Regarding Special Industrial Area Schemes, it is clarified that such exemptions, remissions etc. would continue up to legitimate expiry time both for the Centre and the States. Any new exemption, remission etc. or continuation of earlier exemption, remission etc. would not be allowed. In such cases, the Central and the State Governments could provide reimbursement after collecting GST.

### **3.10 IT Infrastructure**

After acceptance of IGST Model for Inter-State transactions, the major responsibilities of IT infrastructural requirement will be shared by the Central Government through the use of its own IT infrastructure facility. The issues of tying up the State Infrastructure facilities with the Central facilities as well as further improvement of the States' own IT infrastructure, including TINXSYS, is now to be addressed expeditiously and in a time bound manner.

### **3.11 Constitutional Amendments, Legislations and Rules for administration of CGST and SGST**

It is essential to have Constitutional Amendments for empowering the States for levy of service tax, GST on imports and consequential issues as well as corresponding Central and State legislations with associated rules and procedures. With these specific tasks in view, a Joint Working Group has recently been constituted (September 30, 2009) comprising of the officials of the Central and State Governments to prepare, in a time bound manner a draft legislation for Constitutional Amendment, draft legislation for CGST, a suitable Model Legislation for SGST and rules and procedures for CGST and SGST. Simultaneous steps have also been initiated for drafting of a legislation for IGST and rules and procedures. As a part of this exercise, the Working Group will also address the issues of dispute resolution and advance ruling.

### **3.12 Harmonious structure of GST and the States' autonomy in a Federal Framework**

As a part of the exercise on Constitutional Amendment, a special attention would be given, as mentioned earlier in para 3.2, to the

formulation of a mechanism for upholding the need for a harmonious structure for GST along with the concern for the States' autonomy in a federal structure.

### **3.13 Dispute Resolution and Advance Ruling**

As a part of the exercise on drafting of legislation, rules and procedures for the administration of CGST and SGST, specific provisions would also be made to the issues of dispute resolution and advance ruling.

### **3.14 Need for compensation during implementation of GST**

Despite the sincere attempts being made by the Empowered Committee on the determination of GST rate structure, revenue neutral rates, it is difficult to estimate accurately as to how much the States will gain from service taxes and how much they will lose on account of removal of cascading effect, payment of input tax credit and phasing out of CST. In view of this, it would be essential to provide adequately for compensation for loss that might emerge during the process of implementation of GST for the next five years. This issue may be comprehensively taken care of in the recommendations of the Thirteenth Finance Commission. The payment of this compensation will need to be ensured in terms of special grants to be released to the States duly in every month on the basis of neutrally monitored mechanism.

3.15 With the release of this First Discussion Paper and the Annexure on Frequently Asked Questions and Answers on GST, interaction with the representatives of industry, trade and agriculture would begin immediately at the national level, and then also simultaneously at the State levels. Similarly awareness campaign for common consumers would also be initiated at the same time. As a part of the discussion and campaign, the views of

the industry, trade and agriculture as well as consumers are being sought in a structured and time bound manner.

## **Annexure**

### **Frequently Asked Questions and Answers on GST**

#### **Question 1 : What is the justification of GST ?**

**Answer :** There was a burden of “tax on tax” in the pre-existing Central excise duty of the Government of India and sales tax system of the State Governments. The introduction of Central VAT (CENVAT) has removed the cascading burden of “tax on tax” to a good extent by providing a mechanism of “set off” for tax paid on inputs and services upto the stage of production, and has been an improvement over the pre-existing Central excise duty. Similarly, the introduction of VAT in the States has removed the cascading effect by giving set-off for tax paid on inputs as well as tax paid on previous purchases and has again been an improvement over the previous sales tax regime.

But both the CENVAT and the State VAT have certain incompleteness. The incompleteness in CENVAT is that it has yet not been extended to include chain of value addition in the distributive trade below the stage of production. It has also not included several Central taxes, such as Additional Excise Duties, Additional Customs Duty, Surcharges etc. in the overall framework of CENVAT, and thus kept the benefits of comprehensive input tax and service tax set-off out of the reach of manufacturers/dealers. The introduction of GST will not only include comprehensively more indirect Central taxes and integrate goods and services taxes for set-off relief, but also capture certain value addition in the distributive trade.

Similarly, in the present State-level VAT scheme, CENVAT load on the goods has not yet been removed and the cascading effect of that part of tax burden has remained unrelieved. Moreover, there are several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which have still not been subsumed in the VAT. Further, there has also not been any integration of VAT on goods with tax on services at the State level with removal of cascading effect of service tax. In addition, although the burden of Central Sales Tax (CST) on inter-State movement of goods has been lessened with reduction of CST rate from 4% to 2%, this burden has also not been fully phased out. With the introduction of GST at the State level, the additional burden of CENVAT and services tax would be comprehensively removed, and a continuous chain of set-off from the original producer's point and service provider's point upto the retailer's level would be established which would eliminate the burden of all cascading effects, including the burden of CENVAT and service tax. This is the essence of GST. Also, major Central and State taxes will get subsumed into GST which will reduce the multiplicity of taxes, and thus bring down the compliance cost. With GST, the burden of CST will also be phased out.

Thus GST is not simply VAT plus service tax, but a major improvement over the previous system of VAT and disjointed services tax – a justified step forward.

**Question 2. What is GST? How does it work ?**





			of goods and services made to next stage				- Input tax credit
Manufacturer	100	30	130	10%	13	10	13-10 = 3
Whole seller	130	20	150	10%	15	13	15-13 = 2
Retailer	150	10	160	10%	16	15	16-15 = 1

**Question 3 : How can the burden of tax, in general, fall under GST ?**

**Answer :** As already mentioned in Answer to Question 1, the present forms of CENVAT and State VAT have remained incomplete in removing fully the cascading burden of taxes already paid at earlier stages. Besides, there are several other taxes, which both the Central Government and the State Government levy on production, manufacture and distributive trade, where no set-off is available in the form of input tax credit. These taxes add to the cost of goods and services through “tax on tax” which the final consumer has to bear. Since, with the introduction of GST, all the cascading effects of CENVAT and service tax would be removed with a continuous chain of set-off from the producer’s point to the retailer’s point, other major Central and State taxes would be subsumed in GST and CST will also be phased out, the final net burden of tax on goods, under GST would, in general, fall. Since there would be a transparent and complete chain of set-offs, this will help widening the coverage of tax base and improve tax compliance. This may lead to higher generation of revenues which may in turn lead to the possibility of lowering of average tax burden.

**Question 4 : How will GST benefit industry, trade and agriculture ?**

**Answer :** As mentioned in Answer to Question 3, the GST will give more relief to industry, trade and agriculture through a more comprehensive and wider coverage of input tax set-off and service tax set-off,

subsuming of several Central and State taxes in the GST and phasing out of CST. The transparent and complete chain of set-offs which will result in widening of tax base and better tax compliance may also lead to lowering of tax burden on an average dealer in industry, trade and agriculture.

**Question 5 : How will GST benefit the exporters?**

**Answer :** The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will increase the competitiveness of Indian goods and services in the international market and give boost to Indian exports. The uniformity in tax rates and procedures across the country will also go a long way in reducing the compliance cost.

**Question 6 : How will GST benefit the small entrepreneurs and small traders?**

**Answer :** The present threshold prescribed in different State VAT Acts below which VAT is not applicable varies from State to State. The existing threshold of goods under State VAT is Rs. 5 lakhs for a majority of bigger States and a lower threshold for North Eastern States and Special Category States. A uniform State GST threshold across States is desirable and, therefore, the Empowered Committee has recommended that a threshold of gross annual turnover of Rs. 10 lakh both for goods and services for all the States and Union Territories may be adopted with adequate compensation for the States (particularly, the States in North-Eastern Region and Special Category States) where lower threshold had prevailed in the VAT regime. Keeping in view the interest of small traders and small scale industries and to avoid dual control, the States considered that the threshold for Central GST for goods may be kept at Rs.1.5 crore and the threshold for services should also be appropriately high. This raising of threshold will protect the interest of small traders. A Composition scheme for small traders and businesses has also been envisaged under GST as will be detailed in Answer to Question 14. Both

these features of GST will adequately protect the interests of small traders and small scale industries.

**Question 7 : How will GST benefit the common consumers?**

**Answer :** As already mentioned in Answer to Question 3, with the introduction of GST, all the cascading effects of CENVAT and service tax will be more comprehensively removed with a continuous chain of set-off from the producer's point to the retailer's point than what was possible under the prevailing CENVAT and VAT regime. Certain major Central and State taxes will also be subsumed in GST and CST will be phased out. Other things remaining the same, the burden of tax on goods would, in general, fall under GST and that would benefit the consumers.

**Question 8 : What are the salient features of the proposed GST model?**

**Answer :** The salient features of the proposed model are as follows:

- (i) Consistent with the federal structure of the country, the GST will have two components: one levied by the Centre (hereinafter referred to as Central GST), and the other levied by the States (hereinafter referred to as State GST). This dual GST model would be implemented through multiple statutes (one for CGST and SGST statute for every State). However, the basic features of law such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes as far as practicable.
- (ii) The Central GST and the State GST would be applicable to all transactions of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits.

- (iii) The Central GST and State GST are to be paid to the accounts of the Centre and the States separately.
- (iv) Since the Central GST and State GST are to be treated separately, in general, taxes paid against the Central GST shall be allowed to be taken as input tax credit (ITC) for the Central GST and could be utilized only against the payment of Central GST. The same principle will be applicable for the State GST.
- (v) Cross utilisation of ITC between the Central GST and the State GST would, in general, not be allowed.
- (vi) To the extent feasible, uniform procedure for collection of both Central GST and State GST would be prescribed in the respective legislation for Central GST and State GST.
- (vii) The administration of the Central GST would be with the Centre and for State GST with the States.
- (viii) The taxpayer would need to submit periodical returns to both the Central GST authority and to the concerned State GST authorities.
- (ix) Each taxpayer would be allotted a PAN-linked taxpayer identification number with a total of 13/15 digits. This would bring the GST PAN-linked system in line with the prevailing PAN-based system for Income tax facilitating data exchange and taxpayer compliance. The exact design would be worked out in consultation with the Income-Tax Department.
- (x) Keeping in mind the need of tax payers convenience, functions such as assessment, enforcement, scrutiny and audit would be undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States.

**Question 9 : Why is Dual GST required ?**

**Answer :** India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism.

**Question 10 : How would a particular transaction of goods and services be taxed simultaneously under Central GST (CGST) and State GST (SGST)?**

**Answer :** The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient are both located within the State.

**Illustration I :** Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, the dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

**Illustration II:** Suppose, again hypothetically, that the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say Rs. 100, the ad company would charge CGST of Rs. 10 as well as SGST of Rs. 10 to the basic value of the service. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not again actually pay Rs. 20 (Rs. 10+Rs. 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his purchase (say, of inputs such as stationery, office equipment, services of an artist etc). But for paying CGST he would be allowed to use only the credit of CGST paid on its purchase while for SGST he can utilise the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

**Question 11 : Which Central and State taxes are proposed to be subsumed under GST ?**

**Answer :** The various Central, State and Local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

- (i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.
- (ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.
- (iii) The subsumation should result in free flow of tax credit in intra and inter-State levels.

- (iv) The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.
- (v) Revenue fairness for both the Union and the States individually would need to be attempted.

On application of the above principles, the Empowered Committee has recommended that the following Central Taxes should be, to begin with, subsumed under the Goods and Services Tax:

- (i) Central Excise Duty
- (ii) Additional Excise Duties
- (iii) The Excise Duty levied under the Medicinal and Toiletries Preparation Act
- (iv) Service Tax
- (v) Additional Customs Duty, commonly known as Countervailing Duty (CVD)
- (vi) Special Additional Duty of Customs - 4% (SAD)
- (vii) Surcharges, and
- (viii) Cesses.

The following State taxes and levies would be, to begin with, subsumed under GST:

- (i) VAT / Sales tax
- (ii) Entertainment tax (unless it is levied by the local bodies).
- (iii) Luxury tax
- (iv) Taxes on lottery, betting and gambling.
- (v) State Cesses and Surcharges in so far as they relate to supply of goods and services.

(vi) Entry tax not in lieu of Octroi.

**Purchase tax:** Some of the States felt that they are getting substantial revenue from Purchase Tax and, therefore, it should not be subsumed under GST while majority of the States were of the view that no such exemptions should be given. The difficulties of the foodgrain producing States was appreciated as substantial revenue is being earned by them from Purchase Tax and it was, therefore, felt that in case Purchase Tax has to be subsumed then adequate and continuing compensation has to be provided to such States. This issue is being discussed in consultation with the Government of India.

**Tax on items containing Alcohol:** Alcoholic beverages would be kept out of the purview of GST. Sales Tax/VAT could be continued to be levied on alcoholic beverages as per the existing practice. In case it has been made Vatable by some States, there is no objection to that. Excise Duty, which is presently levied by the States may not also be affected.

**Tax on Tobacco products:** Tobacco products would be subjected to GST with ITC. Centre may be allowed to levy excise duty on tobacco products over and above GST with ITC.

**Tax on Petroleum Products:** As far as petroleum products are concerned, it was decided that the basket of petroleum products, i.e. crude, motor spirit (including ATF) and HSD would be kept outside GST as is the prevailing practice in India. Sales Tax could continue to be levied by the States on these products with prevailing floor rate. Similarly, Centre could also continue its levies. A final view whether Natural Gas should be kept outside the GST will be taken after further deliberations.

**Taxation of Services :** As indicated earlier, both the Centre and the States will have concurrent power to levy tax on goods and services. In the case of States, the principle for taxation of intra-State and inter-State has already been formulated by the Working Group of Principal Secretaries/Secretaries of Finance/Taxation



and Commissioners of Trade Taxes with senior representatives of Department of Revenue, Government of India. For inter-State transactions an innovative model of Integrated GST will be adopted by appropriately aligning and integrating CGST and IGST.

**Question 12 : What is the rate structure proposed under GST ?**

**Answer :** The Empowered Committee has decided to adopt a two-rate structure –a lower rate for necessary items and items of basic importance and a standard rate for goods in general. There will also be a special rate for precious metals and a list of exempted items. For upholding of special needs of each State as well as a balanced approach to federal flexibility, it is being discussed whether the exempted list under VAT regime including Goods of Local Importance may be retained in the exempted list under State GST in the initial years. It is also being discussed whether the Government of India may adopt, to begin with, a similar approach towards exempted list under the CGST.

For CGST relating to goods, the States considered that the Government of India might also have a two-rate structure, with conformity in the levels of rate with the SGST. For taxation of services, there may be a single rate for both CGST and SGST.

The exact value of the SGST and CGST rates, including the rate for services, will be made known duly in course of appropriate legislative actions.

**Question 13: What is the concept of providing threshold exemption for GST?**

**Answer :** Threshold exemption is built into a tax regime to keep small traders out of tax net. This has three-fold objectives:

- a) It is difficult to administer small traders and cost of administering of such traders is very high in comparison to the tax paid by them.

- b) The compliance cost and compliance effort would be saved for such small traders.
- c) Small traders get relative advantage over large enterprises on account of lower tax incidence.

The present thresholds prescribed in different State VAT Acts below which VAT is not applicable varies from State to State. A uniform State GST threshold across States is desirable and, therefore, as already mentioned in Answer to Question 6, it has been considered that a threshold of gross annual turnover of Rs. 10 lakh both for goods and services for all the States and Union Territories might be adopted with adequate compensation for the States (particularly, the States in North-Eastern Region and Special Category States) where lower threshold had prevailed in the VAT regime. Keeping in view the interest of small traders and small scale industries and to avoid dual control, the States also considered that the threshold for Central GST for goods may be kept Rs.1.5 Crore and the threshold for services should also be appropriately high.

**Question 14 : What is the scope of composition and compounding scheme under GST?**

**Answer :** As already mentioned in Answer to Question 6, a Composition/Compounding Scheme will be an important feature of GST to protect the interests of small traders and small scale industries. The Composition/Compounding scheme for the purpose of GST should have an upper ceiling on gross annual turnover and a floor tax rate with respect to gross annual turnover. In particular there will be a compounding cut-off at Rs. 50 lakhs of the gross annual turnover and the floor rate of 0.5% across the States. The scheme would allow option for GST registration for dealers with turnover below the compounding cut-off.

**Question 15 : How will imports be taxed under GST ?**

**Answer :** With Constitutional Amendments, both CGST and SGST will be levied on import of goods and services into the

country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the GST paid on import on goods and services.

**Question 16 : Will cross utilization of credits between goods and services be allowed under GST regime?**

**Answer :** Cross utilization of credit of CGST between goods and services would be allowed. Similarly, the facility of cross utilization of credit will be available in case of SGST. However, the cross utilization of CGST and SGST would generally not be allowed except in the case of inter-State supply of goods and services under the IGST model which is explained in answer to the next question.

**Question 17 : How will be Inter-State Transactions of Goods and Services be taxed under GST in terms of IGST method ?**

**Answer :** The Empowered Committee has accepted the recommendation for adoption of IGST model for taxation of inter-State transaction of Goods and Services. The scope of IGST Model is that Centre would levy IGST which would be CGST plus SGST on all inter-State transactions of taxable goods and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information is also submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.

The major advantages of IGST Model are:

- a) Maintenance of uninterrupted ITC chain on inter-State transactions.
- b) No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer.
- c) No refund claim in exporting State, as ITC is used up while paying the tax.
- d) Self monitoring model.
- e) Level of computerisation is limited to inter-State dealers and Central and State Governments should be able to computerise their processes expeditiously.
- f) As all inter-State dealers will be e-registered and correspondence with them will be by e-mail, the compliance level will improve substantially.
- g) Model can take 'Business to Business' as well as 'Business to Consumer' transactions into account.

**Question 18 : Why does introduction of GST require a Constitutional Amendment?**

**Answer :** The Constitution provides for delineation of power to tax between the Centre and States. While the Centre is empowered to tax services and goods upto the production stage, the States have the power to tax sale of goods. The States do not have the powers to levy a tax on supply of services while the Centre does not have power to levy tax on the sale of goods. Thus, the Constitution does not vest express power either in the Central or State Government to levy a tax on the 'supply of goods and services'. Moreover, the Constitution also does not empower the States to impose tax on imports. Therefore, it is essential to have Constitutional Amendments for empowering the Centre to levy tax on sale of goods and States for levy of service tax and tax on imports and other consequential issues.

As part of the exercise on Constitutional Amendment, there would be a special attention to the formulation of a mechanism for

upholding the need for a harmonious structure for GST along with the concern for the powers of the Centre and the States in a federal structure.

**Question 19: How are the legislative steps being taken for CGST and SGST ?**

**Answer :** A Joint Working Group has recently been constituted (September 30, 2009) comprising of the officials of the Central and State Governments to prepare, in a time-bound manner a draft legislation for Constitutional Amendment.

**Question 20: How will the rules for administration of CGST and SGST be framed?**

**Answer :** The Joint Working Group, as mentioned above, has also been entrusted the task of preparing draft legislation for CGST, a suitable Model Legislation for SGST and rules and procedures for CGST and SGST. Simultaneous steps have also been initiated for drafting of legislation for IGST and rules and procedures. As a part of this exercise, the Working Group will also address to the issues of dispute resolution and advance ruling.

## 6 News Articles

### 6.1 Reports on business processes bring clarity<sup>14</sup>

The government has put in the public domain the reports on three key business processes - registration, tax payments and refunds - under the goods and services tax (GST) regime last week. Business Standard reached out to tax experts to understand how life will hang for businesses under the new tax regime.

Currently, a service provider having operations in multiple states can opt for a centralised indirect tax registration. But, under GST, the service provider would have to obtain the GST registration from all the states wherever it has its presence. "This will lead to tremendous increase in volume of tax compliances for such organisations," says **Pritam Mahure**, a Pune-based GST expert and trainer.

Although the industry is looking for simplification in the ease of doing business, for service companies compliance requirement would go up manifold under the new regime. "This would also require changes in income tax and books of accounts to factor in tax incidence in each state," says Nitish Sharma, executive director, Nangia & Co.

Tax experts point out that the focus of the new regime is on compliance to capture the revenue, bringing more output into the formal system. Any delay in applying for GST registration could cost a taxpayer dearly, as GST credits on procurements prior to registration will not be available.

Currently, following judicial precedence, one is allowed input tax credits pertaining to the period prior to date of obtaining registration. Under the new tax regime, registration is expected to be granted in just three working days, provided the central or state authorities neither reject the application, nor raise a query.

Exporters currently have the option to avail of duty-free inputs. In the GST regime, this option may not be available. "This may lead to serious blockage of funds for exporters unless refunds are processed in a time-bound manner," said Mahure. Taxpayers are expected to earn interest in case of delay in processing of refunds.

The GST drafting committee is yet to come out with appropriate provisions for place of supply rules that establish where a service or good has been consumed. "Absence of place of supply rules creates a lot of ambiguity for business," says Suresh Rohira, partner-indirect tax, BDO India. Tax experts say businesses are likely to get a clearer picture of

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<sup>14</sup> Sudipto Dey, Business Standard, 11 October 2015

changes in their business processes as government comes out with a detailed framework, along with rules and regulations governing the new tax regime.

## SHAPE OF THINGS TO COME

### Registration

- There will be state-specific single registration for [Central GST](#) (CGST), [Integrated GST](#) (IGST) and [State GST](#) (SGST). Multiple registrations in a state for business verticals would also be permitted
- Registration number would be a PAN-based 15-digit alpha-numeric registration number
- Registration would be granted through common GST portal
- Registration deemed to be approved if not rejected

### Payments

- Taxpayer will be required to make payment of CGST, SGST, [IGST](#) and additional tax through internet banking
- Over-the-counter payment could be permissible only for payments up to Rs 10,000 per challan
- For making e-payment, GST taxpayer will be required to access Goods and Services Tax Network (GSTN) for generation of the challan where basic details of the tax payer will be auto populated

### Refunds

- Under certain situations, such as exports, excess payment by mistake, refund of pre-deposit, and refund to international tourists, the taxpayer can claim refund of GST paid
- For export of goods, an exporter should procure goods on payment of appropriate GST, and then claim refund from respective governments
- Duty-free inputs for exported goods may not be available

## **6.2 Getting corporate India GST-ready**

(Sudipto Dey, Business Standard, 20 September 2015)

At the beginning of his address at a conference on the goods and services tax (GST), held in the capital last week, a senior official from the Central Board of Excise and Customs (CBEC) told the audience of 100-odd senior business executives that his presentation would last for around 45 minutes. Someone from the audience quipped, "Please take your time. We are in no hurry." The detailed presentation that followed - on how goods and services would be taxed under the GST regime - lasted a little over an hour. Hardly anyone in the audience had moved from the seat during the programme.

Clearly, corporate India - the hall in an upscale five-star hotel in central Delhi had representatives from the automobile and ancillary industries, FMCG, telecom, real estate, financial services, heavy machineries, exporters and importers, garment manufacturers, among others - is out to whet its appetite for the biggest tax reform the country has seen.

It seems to be slowly sinking in among top executives that this tax-led change would have a wide-ranging impact on their business decisions and structures in the near future. The time the companies have to get ready for the GST is six to 12 months.

Even if the government misses the April 1, 2016, deadline, businesses realise that the new tax regime is likely to be rolled out in the next financial year. For tax experts and consultants, steering thousands of companies through this tax transformation process - and getting them GST-ready - means a business opportunity worth crores of rupees in the next three years.

### **Bringing companies up-to-speed**

"The current delay in introduction of GST is a blessing in disguise, as it will give some more time to corporates to prepare," says **Pritam Mahure**, a Pune-based chartered accountant who has been organising GST-sensitising sessions, largely in the Tier-I and Tier-II cities.

Tax experts and consultants say that most companies are at the initial stage of transition, if GST's impact on their business is considered.

"Businesses realise that after the political will falls into place (of getting the GST Act enacted), they may not get adequate time to prepare themselves," says Anurag Mathur, partner & leader, consumer & retail, PwC India. Tax experts say they are often called to make impact-assessment presentations to members of a company's board. Some companies have introduced training sessions to sensitise their key staff in departments like finance, procurement, logistics, information systems, and marketing, with the help of external experts. "Many companies have put in place cross-functional teams to work on the different situations and consider how GST will impact their business," says Saloni Roy, senior director, Deloitte in India.

Subsequently, companies would have to re-evaluate the impact on their value chain,



which includes re-negotiating contracts with vendors and suppliers. Another piece that is likely to take time to fix is the IT-system.

According to SAP, a leading provider of ERP systems, a company will take at least three months to test and release its GST-compatible software, after all the parameters of the new tax law are in place. "Customers will need their own time after that, to be able to implement the change," says Rajamani Srinivasan, vice-president & head of platform, SAP Indian Sub-Continent.

Getting vendors and suppliers to be ready for GST is something that companies would have to drive to get the full upside of the new tax regime, say experts. "We have been advising our customers to get their vendors ready and to have their systems geared up to manage GST, as business tax credits will be based on their vendors' invoice submissions, online," says Srinivasan.

Interestingly, the government and the bureaucracy appears to be better prepared to roll out the new tax regime than industry in general. CBEC has, till date, trained 2,000-odd officers. State-level tax officials are also going through several specially-organised training sessions by the Centre. This will be followed by sessions on 'training the trainer'. "Training is an on-going process," says Upender Gupta, commissioner (GST), CBEC.

### **Rising demand for specialists**

Many tax firms, including big-ticket accounting and consultancy majors, both international and Indian, are looking at making the most of the opportunity that the process of switching to a new tax regime throws up. "Demand for GST specialists is going to outstrip supply. All the major accounting and tax advisory firms, combined, may not be able to serve the market," says Uday Pimprikar, tax partner, EY. Most consultancy firms are looking at ramping up the headcount of indirect tax experts and re-deploying existing talent into GST practice after an in-house training. For instance, EY, at present, has 150-200 tax and functional experts work on GST-related assignments. Pimprikar expects this number to magnify three-four times over the next 12 to 18 months.

KPMG in India is giving training to its 400-strong indirect tax team to deal with all aspects of GST, says Sachin Menon, the firm's national head of indirect tax. Earlier this year, it had set up a project management office, comprising sector experts and practice leaders, to coordinate any GST transformation project for a customer.

Another tax firm, BDO India, is looking at doubling the headcount in its indirect tax practice to 100-odd in the coming months. It plans to bring in a slew of international experts to the country to engage with clients and sensitise them of the issues faced by companies in other countries that have introduced GST, says Prashant Raizada, partner (indirect tax) BDO India.

According to **Mahure**, the next few years will provide enormous opportunities for GST professionals. "Unlearning the past indirect tax concepts holds the key to learning new GST concepts," is his advice to professionals who want to make a mark in this space.

## **Stepping up**

Many industry bodies and chambers are looking at stepping up their outreach programme to sensitise industry on issues around GST. "We plan to expand our online platform to reach out to more industry professionals," says V Gopalakrishnan, counsellor with CII Institute of Logistics, which has organised around 35 training sessions across the country in the past year.

The All India Federation of Tax Practitioners will hold a special session on GST for its members in October at Varanasi. "It is important for us to sensitise our members, especially in small towns and cities, about the opportunity that GST will offer," says Mukul Gupta, chairman of the committee on GST, at the federation.

Clearly, for GST practitioners, acche din are around the corner.

### 6.3 GST jitters for corporate India

(Sudipto Dey, Business Standard, 26 July 2015)

Recently, an Israel-based company approached a consultancy firm to come out with a tax-efficient rollout plan for a proposed manufacturing plant in India with an estimated investment of around Rs 100 crore. The company was advised by its tax planners to hold on to its investment till the time the country rolls out the Goods and Service Tax (GST) regime. "The company would have saved Rs 10-15 crore through input tax credits under the [GST](#) regime," said a tax consultant, who advised the firm, on condition of anonymity. The Israeli company decided to go by the advice of its tax experts, and go slow on its investment plans.

Similarly, many companies in [corporate India](#) are getting jittery about increased working capital requirement, as they go about their initial assessment of the impact of GST regime on their businesses and finding it difficult to get a hang on their price and supply chain issues without complete visibility on tax rates and its coverage across the basket of goods. The [political logjam](#) in Parliament around the [Constitution Amendment Bill](#) is adding to their apprehension. Many feel that the government should give industry six months to be GST-ready from the time that the law is in place with clear visibility over rates and coverage.

Under the dual-GST structure, there will be two GST rates - one by the Centre (central GST), and the other by the state (state GST). GST experts going by the recent global trends point out that the government is likely to keep a few goods and services outside the purview of GST - especially those that impact economically weaker sections of the society. So for all practical purpose, there could also be another category of goods and services that enjoy tax exemption by the Centre, but are taxed by the states. Similarly, states could also give tax concession to specific goods and services. GST experts expect the government to come out with a band of GST rates, prescribing a floor rate and an upper rate. "The multiplicity of rates, with different baskets of goods and services that will be taxed or are exempt, adds to the complexity of arriving at an impact on price and the supply chain," says Pritam Mahure, a Pune-based chartered accountant, who has been training many companies to be GST-ready. The lack of visibility on GST rates, including the floor rates, adds to the complexity.

Most multinational companies working out of India have some added issues to tackle. A senior executive from a global telecom equipment manufacturer said: "We finalise our departmental budgets for 2017 by October this year. If we do not have visibility on the GST law by then the challenge would be to factor in changes in budgets that need

approval from headquarters." Another executive from an MNC, who heads the supply chain division, feel that they would need six months to implement the changes across their country-wide network once all the variables around GST have fallen in place.

Tax credit is something that is bugging many companies. A senior executive from an auto company, which has been in the assembly of components, and is now setting up a manufacturing unit, says there is a question mark over Rs 30 crore of existing tax credit that is due to them. "If we don't get our dues this will affect our investment decision," says the executive. Tax credit is fundamental to the success of any GST regime, and early clarity over the issue will assuage the fears of many corporates in their preparation for GST, point out consultants.

"Our biggest concern is that working capital requirement will go up substantially," says an official from an automobile manufacturing company with a pan-India presence. Similar is the case for service providers, traders and importers. An executive from a logistics company feels that logistics costs will grow substantially. "We expect some backward and forward integration to take place in our industry," adds the executive from the logistics firm. Logistics experts feel most companies would need to revisit warehousing strategy following GST rollout. "A central warehouse with a hub-and-spoke model would make more sense, instead of having a warehouse facility in each market state," says a logistics expert. Already some logistics companies have picked up land parcels in Nagpur and parts of Madhya Pradesh to set up large-scale warehousing infrastructure to support the emerging demand.

Some companies wonder whether state governments could curtail rights to claim some tax credits at a later date. "This point needs to be clarified" says a tax head of a manufacturing company.

Though there is no mention of any anti-profiteering laws to curb price hikes following rollout of GST, many tax experts feel going by the recent experience in Malaysia - which introduced GST in April this year - the government should be ready with such an eventuality.

Tax experts point out that GST should ideally be introduced at the start of the financial year, that is April 1, such as Singapore (April 1, 1994) and Malaysia. There are instances of other countries which have rolled out the tax in the middle of the financial year - such as Australia (July 1, 2000), New Zealand (October 1, 1986) or Switzerland (January 1, 1995). If India's law makers and businesses get their act in place even by October 1, 2016, that may not look too bad.

## GIVING HEEBIE-JEEBIES TO INDIA INC

- Political logjam in Parliament
- The long road ahead to getting state assemblies to ratify a Constitution Amendment Bill, tabling and enactment of the GST law once drafting is complete
- Lack of clarity on which goods and services are subject to, or exempt from GST
- No visibility of the GST rates, including the floor rates
- No agreement among states on the threshold limit of GST
- How companies will carry forward available tax credit to GST tax regime during transition
- Apprehension around increased working capital requirements
- Difficulty in assessing impact on price and the supply chain

## 6.4 Links of key articles on GST

Article	Link
Mann ki baat on GST	<a href="http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=22800">http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=22800</a>
Economic Survey 2014-15 - GST in spotlight	<a href="http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=22915">http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=22915</a>
5 key indirect tax opportunities for new govt	<a href="http://www.deccanherald.com/content/410999/5-key-indirect-tax-opportunities.html">http://www.deccanherald.com/content/410999/5-key-indirect-tax-opportunities.html</a>
Economic Survey 2013-14 indicates novel GST approach	<a href="http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=20885">http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=20885</a>
GST - A Solution in Indian Context?	<a href="http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=17466">http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=17466</a>
'GST Groups' - Is it good to join hands?	<a href="http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=11125">http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=11125</a>
First Discussion Paper brings clarity on many issues!	<a href="http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=9917">http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=9917</a>
An open letter to Finance Minister	<a href="http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=20812">http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&amp;newsid=20812</a>



## 5 Constitutional Amendment Bill

### 4.1 122<sup>nd</sup> Constitutional Amendment Bill

AS INTRODUCED IN LOK SABHA

**Bill No. 192 of 2014**

THE CONSTITUTION (ONE HUNDRED AND TWENTY-SECOND  
AMENDMENT) BILL, 2014

A

**BILL**

*further to amend the Constitution of India.*

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

1. (1) This Act may be called the Constitution (One Hundred and Twenty-second Amendment) Act, 2014.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. After article 246 of the Constitution, the following article shall be inserted, namely:—

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

Short title and  
commencement.

Insertion of  
new article  
246A.

Special  
provision  
with respect  
to goods and  
services tax.

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

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

Amendment of article 248. **3.** In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.

Amendment of article 249. **4.** In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted. 10

Amendment of article 250. **5.** In article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

Amendment of article 268. **6.** In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

Omission of article 268A. **7.** Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted. 15

Amendment of article 269. **8.** In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.

Insertion of new article 269A. **9.** After article 269 of the Constitution, the following article shall be inserted, namely:— 20

Levy and collection of goods and services tax in course of inter-State trade or commerce. “269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. 25

*Explanation.*—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”. 30

Amendment of article 270. **10.** In article 270 of the Constitution,—

(i) in clause (1), for the words, figures and letter "articles 268, 268A and article 269", the words, figures and letter "articles 268, 269 and article 269A" shall be substituted; 35

(ii) after clause (1), the following clause shall be inserted, namely:—

“(1A) The goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).” 40

Amendment of article 271. **11.** In article 271 of the Constitution, after the words “in those articles”, the words, figures and letter “except the goods and services tax under article 246A,” shall be inserted.

12. After article 279 of the Constitution, the following article shall be inserted, namely:—

Insertion of  
new article  
279A.

“279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council.

Goods and  
Services Tax  
Council.

5 (2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister..... Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance..... Member;

10 (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

15 (4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

20 (b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;

25 (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

30 (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

35 (5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

40 (6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast,

in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.”.

Amendment of article 286.

13. In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of services or both, where such supply takes place" shall be substituted;

(B) in sub-clause (b), for the word “goods”, at both the places where it occurs the words “goods or services or both” shall be substituted;

(ii) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;

(iii) clause (3) shall be omitted.

Amendment of article 366.

14. In article 366 of the Constitution,—

(i) after clause (12), the following clause shall be inserted, namely:—

‘(12A) “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;’;

(ii) after clause (26), the following clauses shall be inserted, namely:—

‘(26A) “Services” means anything other than goods;

(26B) “State” with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;’.

Amendment of article 368.

15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures “article 162 or article 241”, the words, figures and letter “article 162, article 241 or article 279A” shall be substituted.

Amendment of Sixth Schedule.

16. In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

(i) in clause (c), the word "and" occurring at the end shall be omitted;

(ii) in clause (d), the word "and" shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

"(e) taxes on entertainment and amusements."

**17. In the Seventh Schedule to the Constitution,—**Amendment of  
Seventh  
Schedule.**(a) in List I — Union List,—***(i)* for entry 84, the following entry shall be substituted, namely:—

"84. Duties of excise on the following goods manufactured or produced in India, namely:—

*(a)* petroleum crude;*(b)* high speed diesel;*(c)* motor spirit (commonly known as petrol);*(d)* natural gas;*(e)* aviation turbine fuel; and*(f)* tobacco and tobacco products.";*(ii)* entries 92 and 92C shall be omitted;**(b) in List II — State List,—***(i)* entry 52 shall be omitted;*(ii)* for entry 54, the following entry shall be substituted, namely:—

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

*(iii)* entry 55 shall be omitted;*(iv)* for entry 62, the following entry shall be substituted, namely:—

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.".

**18. (1)** An additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

Arrangement  
for assignment  
of additional  
tax on supply  
of goods to  
States for two  
years or such  
other period  
recommended  
by the  
Council.

**(2)** The net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.

**(3)** The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

**(4)** Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

**19.** Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

Compensation  
to States for  
loss of  
revenue on  
account of  
introduction  
of goods and  
services tax.

Transitional provisions.

**20.** Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier. 5

Power of President to remove difficulties.

**21.** (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty: 10

Provided that no such order shall be made after the expiry of three years from the date of such assent. 15

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

## STATEMENT OF OBJECTS AND REASONS

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

2. The proposed Bill, which seeks further to amend the Constitution, *inter alia*, provides for—

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. It is further provided that every decision of the Council shall be taken by a majority of

not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:—

(A) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(B) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.

*Illustration:*

In terms of clause (9) of the proposed article 279A, the "weighted votes of the members present and voting" in favour of a proposal in the Goods and Services Tax Council shall be determined as under:—

$$WT = WC + WS$$

Where,

$$WT = WC + WS = \left( \frac{WST}{SP} \right) \times SF$$

Wherein—

WT = Total weighted votes of all members in favour of a proposal.

WC = Weighted vote of the Union =  $\frac{1}{3}$  i.e., 33.33% if the Union is in favour of the proposal and be taken as "0" if, Union is not in favour of a proposal.

WS = Weighted votes of the States in favour of a proposal.

SP = Number of States present and voting.

WST = Weighted votes of all States present and voting i.e.,  $\frac{2}{3}$  i.e., 66.67%

SF = Number of States voting in favour of a proposal.

(j) Clause 20 of the proposed Bill makes transitional provisions to take care of any inconsistency which may arise with respect to any law relating to tax on goods or services or on both in force in any State on the commencement of the provisions of the Constitution as amended by this Act within a period of one year.

3. the Bill seeks to achieve the above objects.

NEW DELHI;

ARUN

JAITLEY

*The 18th December, 2014*

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE  
CONSTITUTION OF INDIA

[Copy of letter No. S-31011/07/2014-SO(ST), dated the 18th December, 2014 from Shri Arun Jaitley, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill, recommends under clauses (1) and (3) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Constitution (One Hundred and Twenty-second Amendment) Bill, 2014 in Lok Sabha and also the consideration of the Bill.



## FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert a new article 279A in the Constitution relating to Constitution of Goods and Services Tax Council. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State incharge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government.

2. The creation of Goods and Services Tax Council will involve expenditure on office expenses, salaries and allowances of the officers and staff. The objective that the introduction of goods and services tax will make the Indian trade and industry more competitive, domestically as well as internationally and contribute significantly to the growth of the economy, such additional expenditure on the Council will not be significant.

3. At this stage, it will be difficult to make an estimate of the expenditure, both recurring and non-recurring on account of the Constitution of the Council.

4. Further, it is provided for compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for such period which may extend to five years. The exact compensation can be worked out only when the provisions of the Bill are implemented.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert a new article 279A relating to the constitution of a Council to be called the Goods and Services Tax Council. Clause (1) of the proposed new article 279A provides that the President, shall within sixty days from the date of the commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council. Clause (8) of the said article provides that the Council shall determine the procedure in the performance of its functions.

2. The procedures, as may be laid down by the Goods and Services Tax Council in the performance of its functions, are matters of procedure and details. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

\* \* \* \* \*

**248.** (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

Residuary powers of legislation.

\* \* \* \* \*

**249.** (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

\* \* \* \* \*

**250.** (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

\* \* \* \* \*

*Distribution of Revenues between the Union and the States*

**268.** (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

Duties levied by the Union but collected and appropriated by the States.

(a) in the case where such duties are leviable within any Union territory, by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable.

\* \* \* \* \*

**268A.** (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States, in the manner provided in clause (2).

Service tax levied by Union and collected and appropriated by the Union and the States.

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—

(a) collected by the Government of India and the States;

(b) appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.

**269.** (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Taxes levied and collected by the Union but assigned to the States.

*Explanation.*—For the purposes of this clause,—

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

\* \* \* \* \*

Taxes levied and distributed between the Union and the States.

**270.** (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 268A and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

\* \* \* \* \*

Surcharge on certain duties and taxes for purposes of the Union.

**271.** Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

\* \* \* \* \*

Restrictions as to imposition of tax on the sale or purchase of goods.

**286.** (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

\* \* \* \* \*

PART XX

AMENDMENT OF THE CONSTITUTION

Power of Parliament to amend the Constitution and procedure therefore.

**368.** (1) \* \* \* \* \*

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(a) article 54, article 55, article 73, article 162 or article 241, or

- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

\* \* \* \* \*

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

**Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram**

\* \* \* \* \*

**8. (1) \*** \* \* \* \* \*

Powers to assess and collect land revenue and to impose taxes.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

\* \* \* \* \*

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

\* \* \* \* \*

SEVENTH SCHEDULE

(Article 246) List

I- Union List

\* \* \* \* \*

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

\* \* \* \* \*

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

\* \* \* \* \*

92C. Taxes on services.

\* \* \* \* \*

List II-State List

\* \* \* \* \*

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

\* \* \* \* \*

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

\* \* \* \* \*

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

\* \* \* \* \*

LOK SABHA

---

A

**BILL**

*further to amend the Constitution of India.*

---

*(Shri Arun Jaitley, Minister of Finance)*

**LOK SABHA**  
**----- CORRIGENDA to**  
**THE CONSTITUTION (ONE HUNDRED AND TWENTY-SECOND AMENDMENT) BILL, 2014**  
**[To be/As introduced in Lok Sabha]**

1. Page 2, line 32, -  
for "Contitution,-" read "Constitution,-"
2. Page 4, line 16, -  
for "of its recommendation."." read "of its recommendations."."
3. Page 5, in the marginal citation against clause 18, - for "by the Council."  
read "by Council."
4. Page 8, *omit* line 11.



**4.2 Report of Rajya Sabha on CAB**



**PARLIAMENT OF INDIA  
RAJYA SABHA**

**REPORT OF THE SELECT COMMITTEE**

**ON**

**THE CONSTITUTION  
(ONE HUNDRED & TWENTY-SECOND AMENDMENT) BILL, 2014**

**PRESENTED TO THE RAJYA SABHA ON 22<sup>nd</sup> July, 2015**



**Rajya Sabha Secretariat, New Delhi  
22<sup>nd</sup> July, 2015/Ashadha, 1937 (Saka)**



**PARLIAMENT OF INDIA  
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\*TO BE APPENDED AT THE PRINTING STAGE

COMPOSITION OF THE COMMITTEE  
(Constituted on 12/05/2015)

1. Shri Bhupender Yadav – Chairman
2. Dr. Chandan Mitra
3. Shri Ajay Sancheti
4. Shri Madhusudan Mistry
5. Shri Mani Shankar Aiyar
6. Dr. Bhalchandra Mungekar
7. Shri Naresh Agrawal
8. Shri K. C. Tyagi
9. Shri Derek O'Brien
10. Shri A. Navaneethakrishanan
11. Shri Satish Chandra Misra
12. Shri K. N. Balagopal
13. Shri Dilip Kumar Tirkey
14. Shri C. M. Ramesh
15. Shri Praful Patel
16. Shrimati Kanimozhi
17. Shri Anil Desai
18. Shri Naresh Gujral
19. Mir Mohammad Fayaz
20. Shri D. Raja
21. Shri Rajeev Chandrasekhar

**SECRETARIAT**

1. Shri A. K. Singh, *Joint Secretary*
2. Shri Vimal Kumar, *Director*
3. Shri Sameer Suryapani, *Joint Director*
4. Shri Deepak Kalra, *Assistant Director*

(i)

## PREFACE

I, the Chairman of the Select Committee of the Rajya Sabha on The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014, to whom the aforesaid Bill, as passed by Lok Sabha on 6<sup>th</sup> May, 2015, was referred, having been authorised by the Select Committee to present the report on its behalf, present this Report of the Select Committee along with the Bill, annexed thereto.

2. The Committee heard the Secretaries, Ministry of Finance (Department of Revenue), Ministry of Law & Justice (Legislative Department), Ministry of Urban Development and Ministry of Panchayati Raj on the Bill. Apart from that, the Committee heard the views of Experts/Financial Institutions/ State Governments and other Stakeholders through this Bill.

3. While considering the Bill, the Committee took note of the following documents/papers placed before it:-

- (a) The Constitution (One Hundred & Twenty-Second Amendment), Bill, 2014 as passed by the Lok Sabha on 6<sup>th</sup> May, 2015;
- (b) Background Note on the Bill furnished by the Ministry of Finance (Department of Revenue);
- (c) Information/Papers on the Bill furnished by the Ministry of Law and Justice (Legislative Department);
- (d) Background note on the Bill furnished by the Ministry of Urban Development;
- (e) Background Note on the Bill furnished by the Ministry of Panchayati Raj;
- (f) Memoranda furnished by the State Governments;
- (g) Memoranda furnished by the Experts/other Stakeholders; and
- (h) Replies to Memoranda no. 1-58 furnished by Ministry of Finance (Department of Revenue)

4. The Committee heard the views of the Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) at its sitting held on 22<sup>nd</sup> May, 2015. The Committee then held its second meeting on 29<sup>th</sup> May, 2015 and heard the view of the representatives of the Ministries of Urban Development, Panchayati Raj, Finance (Department of Revenue) and Law & Justice (Legislative Department). On 16<sup>th</sup> June, 2015, the Committee heard the view of Shri K. M. Mani, Finance Minister, Government of Kerala and Chairman, Empowered Committee of State Finance Ministers; Shri Sumit Dutt Majumdar, Consulting Editor, TIOL & Former Chairman, CBEC; Dr. Rathin Roy, Director, National Institute of Public Finance and Policy; Prof. Pinaki Chakraborty, National Institute of Public Finance and Policy; Prof. Abhijit Sen, Former Member, Planning Commission; Shri Sagar Shah, International Liaison Partner, BDO, India LLP; Shri Satya Poddar, Ernst & young LLP; Prof. Arun Kumar, Centre for Economic Studies and Planning, School of Social Sciences, JNU, Delhi and representative of Voluntary Health Association of India (VHAI); National Association of Software and Services Companies (NASSCOM); Manufactures' Association of Information and Technology (MAIT); American Chamber of Commerce in India (ACCI); Cellular Operators Association of India (COAI). In this meeting, the Ministries of Finance (Department of Revenue) and Law and Justice (Legislative Department), also clarified points/issues raised by the Hon'ble Members on the Bill. The Committee held clause by clause consideration of the Bill at its sitting held on 3<sup>rd</sup>, 10<sup>th</sup> and 17<sup>th</sup> July, 2015. Representatives of Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) were also present in the meeting.

5. Apart from appropriate modifications in Enacting Formula and Clause I of the Bill, the Committee has also given some recommendations which are of critical importance but were not covered by the Bill. It is important that these recommendations are duly incorporated.

(iii)

6. The Committee also conducted its study visit to Chennai, Kolkata and Mumbai from 21<sup>st</sup> to 25<sup>th</sup> June, 2015, wherein the Committee heard the views of State Government of Tamil Nadu, Puducherry, Kerala, West Bengal, Maharashtra, Gujarat and Goa. The Committee also heard the views of the experts namely Dr. V. Bhaskar, Former Special Chief Secretary, Finance Department, Govt. of Andhra Pradesh; Dr. Partho Shome, Former Chairman, Tax Administration Reforms Commission and Dr. Asim Das Gupta, Former Finance Minister, Government of West Bengal. Apart from this the Committee also heard various stakeholders (list enclosed at **Annexure-I**)

7. The Committee considered and adopted the report in its meeting held on the 20<sup>th</sup> July, 2015.

8. The Committee wishes to express its thanks to the officials of the Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) concerned with the Bill for their cooperation and all the State Governments, Associations, Experts and other stakeholders for their valuable suggestions on the Amendment Bill.

9. The recommendations/observations of the Committee are set out at appropriate places in the report.

New Delhi

22<sup>nd</sup> July, 2015

..... Ashadha, 1937 (Saka)

**BHUPENDER YADAV**

*Chairman,*

*Select Committee on The Constitution*

*(One Hundred & Twenty-Second Amendment) Bill, 2014,*

*Rajya Sabha*

## Acronyms

1.	ASSOCHAM	The Associated Chambers of Commerce and Industry of India
2.	CII	The Confederation of Indian Industry (CII)
3.	CST	Central Sales Tax
4.	CGST	Central Goods and Services Tax
5.	CVD	Countervailing Duty
6.	EC	Empowered Committee
7.	FICCI	Federation of Indian Chambers of Commerce and Industry
8.	GST	Goods and Services Tax
9.	GSTN	Goods and Services Tax Network
10.	VAT	Value Added Tax
11.	IGST	Integrated Goods and Services Tax
12.	MCGM	Municipal Corporation of Greater Mumbai (MCGM)
13.	NIPFP	National Institute of Public Finance and Policy
14.	NCAER	National Council of Applied Economic Research
15.	NSDL	National Securities Depository Limited
16.	RNR	Revenue Neutral Rates
17.	SGST	State Goods and Services Tax
18.	SFC	State Finance Commission



## **REPORT**

### **CHAPTER- I**

#### **INTRODUCTION**

1.1 The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 was passed by Lok Sabha on 6<sup>th</sup> May, 2015. The said Bill on a motion (**Annexure-I**) moved by the Minister of Finance, Corporate Affairs and Information and Broadcasting, was referred to the Select Committee for examination and the Committee was asked to submit its Report by the last day of the first week of the next Session(Monsoon Session).

1.2 The Bill contains 21 clauses on which the Committee has been asked to submit a report and these clauses proposes to, inter alia, amend Constitution of India by inserting new Articles-246 A, 269A and 279 A with respect to special provision to Goods and Services Tax, levy and collection of Goods and Services Tax in course of inter-state trade or commerce and Goods and Services Tax council, respectively. Apart from that, the bill also purports to amend Articles 248, 249, 250, 268, 269, 270, 271, 286, 366 and 368 of Constitution of India and amendment of the Sixth and the Seventh schedule of the Constitution as well. The Bill also seeks to repeal Article 268A of the Constitution.

1.3 By bringing this bill into effect, the Govt. of India intends to usher in fundamental systemic reforms in the indirect taxes dispensation currently being implemented in the country by integrating and harmonizing the tax structure across the country in the form of Goods and Services Tax (GST). The proposed amendments would subsume a number of indirect taxes presently being levied by Central and State Governments into GST thereby doing away the cascading of taxes and providing a common national market for Goods and Services. The aim to bring about these amendments in the Constitution is to confer simultaneous power on Parliament and State legislatures to make laws for levying GST simultaneously on every transaction of supply and Goods and Services.

1.4 This bill is a next step forward towards a comprehensive indirect tax reform in the country after the introduction of Value Added Tax (VAT). Though the indirect tax system in the country has been going through a series of reforms over the last two decades and one of them is the introduction of Value Added Tax called, CENVAT at the Central level providing credit of tax paid on inputs and capital goods upto the manufacturing stage and Subsequently, in 1994, a tax on services (commonly known as Service Tax) was introduced by the Centre. The Service Tax with the passage of time expanded its domain to cover more services and now applies to about 115 service categories which contributed growth in revenue from this tax. In 2004, the input tax credit scheme for CENVAT and Service Tax was merged to permit cross flow of credit across these taxes. As for the States, they have switched over from a multiple point Sales tax to a Value Added Tax (VAT) covering all transactions of sale of goods within the State up to the retail stage in a phased manner starting from 2005-06.

1.5 In spite of the fact that many of the aforesaid measures have been taken, goods and services continue to be bogged down with multiple indirect taxes at different stages of the value chain with significant tax cascading under the present indirect tax regime and therefore a need to introduce GST was strongly felt.

1.6 In international arena GST is known for its end use r consumption tax. The broad objectives of introducing the Goods and Services Tax (GST) would widen the tax base through the coverage of multifarious economic activities into its ambit and by cutting down exemptions; mitigate cascading and double taxation and enabling better compliance through the lowering of overall tax burden on goods and services. By doing away with latent or embedded taxes, it would provide leeway for the competitiveness of domestic industry vis-à-vis imports and in international markets. Unifying the tax structure across States, the new scheme of tax regime would pave way for a common national market for goods and services.

1.7 The proposal for the introduction of GST was first mooted in the Budget Speech for the financial year 2006-07. Since then, detailed deliberations and negotiations were held with the Empowered Committee of State Finance Ministers (EC) on the topic. The 115th Constitutional (Amendment) Bill, 2011, for the introduction of GST was first introduced in the Lok Sabha in March 2011. The Bill was referred to a Parliamentary Standing Committee (PSC) which submitted its report in August 2013. The Bill however lapsed with the dissolution of the 15th Lok Sabha.

#### **Rationale behind moving towards GST:**

1.8 Presently, the Constitution empowers the Central Government to levy excise duty on manufacturing and service tax on the supply of services. Further, it empowers the State Governments to levy sales tax or value added tax (VAT) on the sale of goods. This exclusive division of fiscal powers has led to a multiplicity of indirect taxes in the country. In addition, central sales tax (CST) is levied on intra-State sale of goods by the Central Government, but collected and retained by the exporting States. Further, many States levy an entry tax on the entry of goods in local areas.

1.9 This multiplicity of taxes at the State and Central levels has resulted in a complex indirect tax structure in the country that is ridden with hidden costs for the trade and industry. Firstly, there is no uniformity of tax rates and structure across States. Secondly, there is cascading of taxes due to 'tax on tax'. No credit of excise duty and service tax paid at the stage of manufacture is available to the traders while paying the State level sales tax or VAT, and vice-versa. Further, no credit of State taxes paid in one State can be availed in other States. Hence, the prices of goods and services get artificially inflated to the extent of this 'tax on tax'.

1.10 The introduction of GST would mark a clear departure from the scheme of distribution of fiscal powers envisaged in the Constitution. The proposed dual GST envisages taxation of the same taxable event, i.e., supply of goods and services, simultaneously by both the Centre and the States.

1.11 GST will simplify and harmonise the indirect tax regime in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and industry more competitive, domestically as well as internationally. It is also expected that introduction of GST will foster a common or seamless Indian market and contribute significantly to the growth of the economy.

1.12 Further, GST will broaden the tax base, and result in better tax compliance due to a robust IT infrastructure. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of GST that would incentivize tax compliance by traders.

#### **Roadmap for the implementation of GST:**

1.13 Amendment of the Constitution: Government introduced on 19.12.2014 the Constitution (122<sup>nd</sup>) Amendment Bill, 2014 in the Lok Sabha for amending the Constitution of India to facilitate introduction of Goods and Services Tax (GST) in the country. The Bill has been passed by the Lok Sabha on 06.05.2015 and is pending in Rajya Sabha. After the Bill is passed in both the Houses of the Parliament by two-thirds majority, the Constitutional Amendment Bill will be sent to State Legislatures for ratification. The ratification by at least 50% of the State Legislature will be required before the proposed amendments are brought in effect.

1.14 Enactment of enabling legislation in the Centre and States: For the levy of CGST, SGST and IGST, a set of three laws would need to be enacted. CGST and IGST laws would need to be enacted by the Parliament, and the SGST law would have to be enacted by each of the State Legislatures.

#### **Status on design and mechanics of GST:**

1.15 The contours of GST are still evolving. Key aspects of GST like the tax rate, tax base, exemption limits, place of supply rules for services, appropriate IGST model etc. will be finalized on passage of the Bill. In this regard, the Empowered Committee of State Finance Ministers(EC) and the Department of

Revenue, GOI, have constituted several working groups and committees for drafting the GST Rules and processes as follows:-

- i. Committee on Dual Control, Threshold and Exemptions in GST Regime;
- ii. Committee on IGST and GST on imports;
- iii. Committee on Revenue Neutral rates for State GST & Central GST and Place of Supply Rules;
- iv. Committee to draft model GST Law;
- v. Committee to examine the Report of the sub-Group-I on Business Processes.

**Salient features of the Constitution (122<sup>nd</sup>) Amendment Bill, 2014:**

1.16 The salient features of the GST Bill as introduced in the Lok Sabha are as follows:-

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce to be collected by the

Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. It is further provided that every decision of the Council shall be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:—

(A) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(B) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.

### **Deliberations**

1.17. The Committee held its first meeting on 22<sup>nd</sup> May, 2015. At its introductory meeting the Committee decided to chalk out its future course of action. As the State Governments were the main stakeholders, it was unanimously decided by the Committee to seek their written views on the Bill by 5<sup>th</sup> June, 2015. The Members were also requested to suggest the names of the Experts/stakeholders to be heard by the Committee.

1.18 In response thereto, the Committee received written memorandum from the State Governments of Madhya Pradesh, Bihar, Odisha, Himachal Pradesh, Uttar Pradesh, Punjab, Sikkim, UT of Puducherry, Maharashtra, Chhattisgarh, Goa, Gujarat, Kerala, West Bengal, Tamil Nadu, Karnataka and Assam.

The Committee heard the views of the Secretaries of Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) on the Bill.

1.19 Secretary, Department of Revenue made a presentation before the Committee informing the Committee about a brief history and background of the Bill and the reason and purpose to bring about the constitutional Amendments proposed in the Bill.

1.20 The Committee held its second meeting on 29<sup>th</sup> May, 2015. As the Bill was going to have a wider implication on the Municipal Bodies and Gram Panchayat, the Committee invited Ministries of Urban Development and Panchayati Raj in the meeting. In addition to this, the Secretaries, Ministries of Finance (Department of Revenue) and Law and Justice (Legislative Department) had also been invited to be present in the meeting to clarify points/issues, if any, being raised by the Members on the Bill.

1.21 In his deposition before the Committee, Secretary, Ministry of Urban Development highlighted the importance of the Municipalities in the wake of urbanization and also thereby deteriorating the quality of life in the cities. He also emphasized that due to urbanization and their meager financial resources to cope with the demands of their present needs, these municipalities were facing unprecedented cash flow problems so the basic infrastructure in the cities has deteriorated to a great extent though on a comparable scale the life in cities has been more rewarding and comfortable than that of countryside. So, by way of the proposed constitutional amendment, the Ministry expected some positive changes in the present scenario whereby financial independence of the local bodies including gram panchayat could be realized in the new scheme of things and these bodies could match up and cope up with the demands and pressure being exerted on their resources and may not remain financially dependent on the sweet will of their respective states. In his deposition, before the Committee, Secretary, Panchayati Raj endorsed the views expressed by Secretary, Urban Development.

1.22. As the Bill was of very vast nature and has been described as a reform measure of unparalleled importance in the sphere of Indian Taxation regime in independent India, the Committee felt that State Governments being major stakeholders, their views would be crucial in preparation of Report on the Bill. Therefore, the Committee decided to undertake a study visit to Chennai, Kolkata and Mumbai from 21<sup>st</sup> to 25<sup>th</sup> June, 2015 to interact with the representatives of the various State Governments, Public and Private authorities/organisations/ financial institutions, etc on the Bill.

1.23 During its visit to Chennai, Kolkata and Mumbai, the Committee heard the views of the State Governments/ UTs of Tamil Nadu, Puducherry, Kerala, West Bengal, Maharashtra, Gujarat and Goa. Apart from this the Committee also heard the views of the experts namely Dr. V. Bhaskar, Former Special Chief Secretary, Finance Department, Govt. of Andhra Pradesh, Dr. Partho Shome, Former Chairman, Tax Administration Reforms Commission, Dr. Asim Das Gupta, Former Finance Minister, Govt. of West Bengal including the Industrial Houses i.e. CII, ASSOCHAM and FICCI on the Bill.



1.24 In addition to this, the Committee also heard the views of financial institutions/Associations/Organisations during the visit of the Committee. A list of the same is enclosed at **Annexure-II**

1.25 The Committee received 58 Memoranda from State Governments/Experts/other Stakeholders. These Memoranda were transmitted to the Ministry of Finance (Department of Revenue) for their comments and suggestions. While framing the specific and general recommendations on the Bill, the Committee has duly taken into consideration the suggestion made by the State Government/experts/other Stakeholders and the Department of Revenue on these memoranda.

## **CHAPTER-II**

### **CLAUSE BY CLAUSE CONSIDERATION**

#### **Clause 1**

2.1 This clause provides for short title and commencement of the Constitution (Amendment) Bill.

#### **Recommendation**

**2.2 This clause has been adopted with no change.**

#### **Clause 2**

2.3 This clause makes enabling provisions for the Union and States with respect to GST.

2.4 Sub-clause (1) of this clause seeks to provide that notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the

Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

2.5 Sub-clause (2) of the said clause seeks to provide that Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce with an explanation that that provision of this article in respect of goods and services tax referred to in clause (5) of article 279A, that is, on petroleum crude, high speed diesel, petrol, natural gas and aviation turbine fuel shall take effect from the date recommended by the Goods and Services Tax Council.

2.6 In respect of this clause, apprehensions were expressed by some Members that the clause may affect the powers of the State Governments mentioned under the concurrent list. In this regard, the Committee felt that their apprehensions were unwarranted as the clause will not affect any powers of the State Government under concurrent list.

2.7 As regards the amendments proposed in article 246A (1) to insert the words, "not exceeding 18 per cent" between "goods and services tax" and imposed by the Union or by such State" is concerned, "the Members moving the amendment stressed the need to keep GST rates moderate and reasonable so that consumers are not excessively burdened, and to this end proposed that the GST Council be bound by the Constitution to not exceed 18% as the rate for an adequately revenue-generating GST."

#### **Views of the Government**

2.8 In response thereto, the Ministry of Finance, Department of Revenue has stated that rates of GST cannot be fixed in the Constitution as this is a dynamic variable. The rates of GST would have to be recommended by the GST Council depending on various factors such as economic conditions, revenue buoyancy, etc. At the same time, every effort would be made by the GST Council to ensure that the rate of GST is reasonable. Further, there may be certain demerit goods such as

tobacco, or luxury goods, that may, if the GST Council so decides, attract a higher rate of GST. RNR was calculated by NIPFP before introduction of GST Constitution amendment Bill. NIPFP and the Committee headed by CEA are working out rates under GST as per provisions of Bill.

2.9 The Department of Revenue stated that Petroleum products have been included under definition of “goods and services tax” provided in proposed clause (12A) of article 366. An Explanation has been added in proposed article 246A to clarify that GST will not be levied on petroleum and petroleum products till a future date to be recommended by the GST Council. This has been done after FM’s meeting with State Finance Ministers on 15.12.2014 and is also as per the recommendations of the Empowered Committee to protect the revenue streams of the States.

2.10 With regard to providing for a maximum rate of GST in the Bill, the Department of Revenue mentioned that rates of GST cannot be fixed in the Constitution, as this is a dynamic variable. The rates of GST would have to be recommended by the GST Council depending on various factors such as economic conditions, revenue buoyancy, etc. To allay fears of revenue loss a provision of compensation to States has been provided in the Bill. At the same time, every effort would be taken to ensure that the rate of GST is reasonable. Further, there may be certain demerit goods such as tobacco, or luxury goods, that may attract a higher rate of GST.

#### **Views of the Stakeholders**

2.11 Most of the State Governments in their written replies have objected to bringing petroleum products under the ambit of GST. Another suggestion was to include Aviation Gasoline in that list.

2.12 However, the Experts/stakeholders were of the considered opinion that it needs to be emphasised that since a large part of the petroleum and petroleum products are important intermediate inputs, it is absolutely necessary to bring them

under the GST ambit sooner than later to eliminate cascading effect and its associated inefficient economic cost. Even in a GST regime, these could be taxed at higher rate if revenues have to be protected. It is well known that petroleum and petroleum products and alcohol together contribute around 40 to 45 per cent of VAT/Sales tax revenues of States. The share of excise duty collection from petroleum and petroleum products is substantial for Central Government as well. It appears that revenue consideration alone is holding back inclusion of these items in GST. It is necessary for the Bill to specify a specific date for inclusion of these items under GST especially when the economic efficiency benefit from inclusion is much more than the direct short run revenue impact to the Central and the State Governments.

### **Recommendation**

**2.13 The clause has been adopted with no change.**

### **Clause 3**

2.14 This clause seeks to make consequential amendments in article 248 of the Constitution in view of the proposed amendment in clause 2 of the Bill. Since Union has residuary power to make laws on subjects not mentioned in any of the Lists, it is proposed to make it clear that if anything is not covered specifically then, as per Constitutional Scheme, it would fall under article 248.

### **Recommendation**

**2.15 This clause has been adopted with no change.**

### **Clause 4**

2.16 This clause seeks to make consequential amendments in article 249 of the Constitution in view of the proposed amendment in clause 2 of the Bill. This amendment enables Parliament to make laws in national interest, if so required as per the procedure laid therein.

**Recommendation**

2.17 **This clause has been adopted with no change.**

**Clause 5**

2.18 This clause seeks to make consequential amendments in article 250 of the Constitution in view of the proposed amendment in clause 2 of the Bill. The amendment makes it clear that Union may legislate as in other cases if a proclamation of emergency is in operation.

**Recommendation**

2.19 **This clause has been adopted with no change.**

**Clause 6**

2.20 This clause seeks to amend article 268 of the Constitution to omit the duties of excise on medicinal and toilet preparations from the purview of the power of the Government of India in view of the proposed imposition of goods and services tax on goods and services.

**Recommendation**

2.21 **This clause has been adopted with no change.**

**Clause 7**

2.22 This clause seeks to omit article 268A of the Constitution as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003. The said article empowers the Government of India to levy taxes on services. As it is proposed to bring tax on services under GST, such a provision would no longer be required for the reason that the provision though enacted, it is yet to be notified so far.

**Recommendation**

**2.23 This clause has been adopted with no change.**

**Clause 8**

2.24 This clause seeks to amend clause (1) of article 269 of the Constitution to insert after the words “consignment of goods” the words, figures and letter “except as provided in article 269A” in view of the new article 269A which provides for levy of goods and services tax on supplies in the course of inter-State trade or commerce and apportionment of such tax between the Union and the States in the manner provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

**Recommendation**

**2.25 This clause has been adopted with no change.**

**Clause 9**

2.26 This clause seeks to insert a new article 269A which provides for goods and services tax on supplies in the course of inter-State trade or commerce which shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. It also provides that Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

2.27 As regards this clause, Members sought clarifications about the distinction between “supplies, sales and purchase; and consignment”.

2.28 Some Members suggested that that after 269A (1), the following proviso may be added:-

2.29 “Provided that the expression “supplies” shall not apply to goods and services supplied by one unit of a firm to another unit of the same firm under the same ownership in another location or State.

Provided further that if two or more firms are together engaged in the supply of the same end product, the expression “supplies” shall not apply to such transactions.”

#### **Views of the Government**

2.30 In this regard, the Ministry of Finance, Department of Revenue stated that while “sale” is for consideration, “consignments” are in the nature of branch transfers. “Supplies” would constitute both “sale” as well as “consignment” transactions. Further, since GST charged on supply of goods and services would be VATable, this would not have any cascading impact. Since input tax credit would be available for GST paid on both sales as well as consignments in the course of inter-State trade, there would be no cascading impact of levying GST on supplies of goods and services in the course of inter-State trade.

2.31 The words ‘on the recommendations of the GST Council’ have been added to proposed article 269A (1) vide this clause. This would ensure that the law made by Parliament for apportioning the proceeds of IGST between the Union and the States will be made on the recommendation of the GST Council. This has been done as per the recommendations of the Empowered Committee after their meeting in Shillong in November 2013.

#### **Views of the Stakeholders**

2.32 The stakeholders were of the view that proceeds of IGST shall be used for settlement of accounts among the States for flow of input tax credit in inter-State transactions, and in theory, there should be zero balance in the proceeds of IGST in a fiscal year. But, in practice, there may be a distinct possibility of a positive

balance in the proceeds of IGST at the end of a fiscal year. In that event, there should be a constitutionally appropriate mechanism for distribution of these remaining proceeds in a year, to be provided in terms of suitable provision in article 269A in clause 9.

**Recommendation**

**2.33 The Committee feels that since imposition of GST on the supplies of goods and services in the course of inter-State trade would not lead to cascading of taxes, hence the Clause has been adopted with no change.**

**Clause 10**

2.34 This clause seeks to amend clause (1) of article 270 of the Constitution to substitute the words, figures and letter “article 268, 268A and 269”, the words, figures and letter “article 268, 269 and article 269A” in view of the proposed amendments referred to above; to insert a new clause (1A) after the existing clause (1) of article 270 to provide that the goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).

**Views of the Stakeholders**

2.35 It was proposed by one of the State Government that the words “not apportioned” should be replaced with “not appropriated ” in order to be in sync with the term used in the proposed Article 269A(1). Likewise, the word “distributed” should be replaced with the expression appropriated”.

**Recommendation**

**2.36 This clause has been adopted with no change.**



### **Clause 11**

2.37 Clause 11 of the Bill seeks to amend article 271 of the Constitution to insert after the words “in those articles”, the words “except the goods and services tax under article 246A”, with a view to put restrictions on the powers of Parliament to levy surcharge for the purposes of the Union on the GST. In other words, it provides that goods and services on which GST is levied shall not be subject to any surcharge under article 271.

### **Recommendation**

2.38 **This clause has been adopted with no change.**

### **Clause 12**

2.39 Sub-clause (1) of this clause seeks to provide for insertion of a new article 279A which empowers the President to constitute, by order, a Council to be called the Goods and Services Tax Council consisting of the Members referred to in sub-clause (2) of this clause.

2.40 Sub-clause (2) of the said clause seeks to provide that the Goods and Services Tax Council shall consist of the Union Finance Minister as Chairperson; the Union Minister of State in charge of Revenue or Finance as Member; the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as Members.

2.41 Sub-clause (3) of the said clause seeks to provide that the Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

2.42 Sub-clause (4) of the said clause seeks to provide that the Goods and Services Tax Council shall make recommendations to the Union and the States on the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax; the goods and services that may be subjected to, or exempted from the goods and services tax;

model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply; the threshold limit of turnover below which goods and services may be exempted from goods and services tax; the rates including floor rates with bands of goods and services tax; any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster; special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and any other matter relating to the goods and services tax, as the Council may decide.

2.43 Some Members proposed that under clause 4 (c), among the "principles" to be considered by the GST Council while preparing GST laws the principle of "share of local bodies in revenue buoyancy and compensation for losses sustained through taxes subsumed" should be included as articles 243H and 243X provide for State Legislatures to, by law, ensure the "sound finances" of the local bodies. This would also enable State Finance Commissions set up under articles 243 I and 243 Y to provide for augmenting the share of local bodies in revenue buoyancy generated by the adoption of GST.

2.44 With reference to sub-clause (4) (g) which provides for "special consideration" to certain States, some Members proposed, in keeping with article 243 B (2), that "special consideration" may also be extended to States like Goa and Union territories like Puducherry by adding at the end of 4(g) " and any State or Union territory having a population not exceeding twenty lakhs".

2.45 Sub-clause (5) of the said clause seeks to provide that the Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. These items have been kept out of GST to protect the revenue interest of the States.

2.46 Some members sought the inclusion in clause 12(5) of highly revenue-generating products like tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption within a period not later than five years so that India, within a few years, fulfills the fundamental GST objective of making the entire nation a single common market for all products.

2.47 Sub-clause (6) of the said clause seeks to provide that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

2.48 Sub-clause (7) of the said clause seeks to provide that one half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings so that the States have say in the matters of their interest.

2.49 Sub-clause (8) of the said clause seeks to provide that the Goods and Services Tax Council shall determine the procedure in the performance of its functions.

2.50. Sub-clause (9) of the said clause seeks to provide that every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the vote of the Central Government shall have a weightage of one-third of the total votes cast, and the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting. Sub-clause (10) of the said clause provides that No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of— any vacancy in, or any defect in, the constitution of the Council; or any defect in the appointment of a person as a member of the Council; or any procedural irregularity of the Council not affecting the merits of the case. Sub-Clause (11) of the said Clause provides that the Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.

2.51 In respect of this clause some Members proposed amendment that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the destination based taxation principle and need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

2.52 Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:-

(a) The vote of the Central Government shall have a weightage of one-fourth of the total votes cast, and

(b) The votes of all the State Governments taken together shall have a weightage of three-fourth of the total votes cast, in that meeting. And the vote of each state shall have a weightage proportionate to the population of that State.

After 279A, add the following new article 279B:

2.53 (1) Parliament may, by law, provide for the establishment of a Goods and Services Tax Dispute Settlement Authority to adjudicate any dispute or complaint referred to it by a State Government or Governments of the Government of India arising out of a deviation from any of the recommendations of the Goods and Services Tax Council constituted under article 279A that results in a loss of revenue to a State Government or Governments or the Government of India or affects the harmonized structure of the Goods and Services Tax.

2.54 (2) The Goods and Services Tax Dispute Settlement Authority shall consist of a Chairperson and two other Members.

2.55 (3) The Chairperson of the Goods and Services Tax Dispute Settlement Authority shall be a person who has been Judge of the Supreme Court or Chief

Justice of a High Court to be appointed by the President on the recommendation of the Chief Justice of India.

2.56 (4) The two other members of the Goods and Services Tax Dispute settlement Authority shall be persons of proven capacity and expertise in the field of law, economics or public affairs to be appointed by the President on the recommendation of the Goods and Services Tax Council.

2.57 (5) The Goods and Services Tax Dispute Settlement Authority shall pass suitable orders including interim orders.

2.58 (6) A law made under clause (1) may specify the powers which may be exercised by the Goods and Services Tax Dispute Settlement Authority and provide for the procedure to be followed by it.

2.59 (7) Notwithstanding anything in this Constitution, Parliament may, by law, provide that no Court other than the Supreme Court shall exercise jurisdiction in respect of any such adjudication or dispute or complaint as is referred to in clause (1).

2.60 Explanation- For the purposes of this article, "State" includes a Union territory with Legislature.

### **Views of the Government**

Proposed article 279A (4)(c):

2.61 The GST Council would now make recommendations on the model GST laws, principles of IGST apportionment, and place of supply rules. This has been done as per the recommendations of the Empowered Committee after their meeting in Shillong in November 2013. It may not be appropriate for the GST Council or any other body to stipulate the share of local bodies in the revenues collected by the respective States. 73<sup>rd</sup> Amendment of the Constitution provides for setting up of State Finance Commissions which have been given the responsibility to make recommendations on principles which govern distribution

of finances between the States and local bodies i.e., Panchayats and Municipalities. Deficiencies, if any, in functioning of State Finance Commissions in individual States may have to be dealt with separately.

2.62 The Department further clarified that taxing powers of local bodies -- Panchayats and Municipalities -- are derived from Acts and laws passed by the State Legislatures. The State Legislatures, under Article 243H and 243X of the Constitution, are authorized to make laws, which are the taxes that the local bodies will levy. This power has not been interfered with and the current structure in the Constitution remains intact.

2.63 So far as other arrangements which are currently provided under the Constitution with regard to formation of the State Finance Commissions and with regard to devolution which the State Governments should make are concerned, they also remain intact in the Constitution. These have not been interfered with.

Proposed article 279A (4)(e)

2.64. To give flexibility to the States, the provision of 'bands' over the GST floor rates, to be recommended by the GST Council, has been introduced. Depending on the local situations and requirements, the States have the option to levy slightly higher tax within this band. This shall also enable the States to cushion the impact of any potential loss of revenue arising out of implementation of GST. The word "band" does not need to be defined in the Constitution but would need to be defined in the model State tax law or the SGST law and the CGST law which shall be recommended by the GST Council. This provision has been made as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendations of the Parliamentary Standing Committee.

Proposed article 279A (4) (f), (g)

2.65 Special category status has been granted to 11 States by the National Development Council comprising the Prime Minister, Union Ministers, Chief Ministers and members of the erstwhile Planning Commission (Now NITI Aayog). Provision of special category States is not based on population but on specific issues such as hilly and difficult terrain, strategic location along borders with neighbouring countries, economic and infrastructural backwardness, and non-viable nature of state finances. The proposed amendment shall mean inclusion of the State of Goa and UT of Puducherry in the list of States with special provisions. Goa has the highest per capita income in the country while Puducherry has fifth highest per capita income in the country. Neither of them have any of the specific problems listed in the criteria above.

Proposed article 279A (5)

2.66 Initially, as recommended by the Parliamentary Standing Committee on Finance and the Empowered Committee in its Bhubaneswar meeting in January 2013, 'petroleum products' had been proposed to be subsumed in GST. However, since taxes on petroleum products constitute a major portion of State revenues, many States expressed apprehension over possible revenue loss in case petroleum products are subsumed under GST. Hence, these products have been constitutionally brought under GST and it has been provided that they would not be subject to GST till notified at a future date on the recommendation of the GST Council. It may be mentioned that petroleum products constitute a major input in most manufacturing industries and their non inclusion would mean these industries would not be able to claim input tax credit for such inputs resulting in cascading of taxes and increased cost of production. It is expected that once GST regime is stabilised, the States may want to include petroleum under GST after two or three years itself. As per the proposed amendment, the GST Council shall not be able to make any recommendation before five years to include petroleum products under GST. Hence, it is better to keep the option open for Council to decide rather than binding the GST Council for five years.

2.67 Further, the Bill leaves it to the GST Council to recommend the date on which GST shall be applicable on petroleum products. Since the States would have 2/3<sup>rd</sup> vote share in the Council, if the States do not want GST to be imposed on petroleum products, in any case it would not be possible for GST to be imposed on petroleum products as long as the States do not agree. Further, losses, if any suffered by the States, will be compensated by the Centre.

Proposed article 279A (9)

2.1 2.68 The structure of GST Council represents the federal nature of governance in this country. This has been done as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendations of the Parliamentary Standing Committee. This provision has been consciously adopted to ensure the federal balance in the functioning of the GST Council, and also to enhance co-operative federalism. The

existing pattern of vote-share in the GST Council ensures that no decision can be taken by the Council either by the Centre or the States acting on their own. Hence, neither the States nor the Centre alone can take a decision in the Council. Providing 3/4th weightage to the States would upset the federal balance between the Centre and the States. Presently, in the concurrent list, in case of any difference between Central and State legislation, the Central legislation prevails. The present weightage of votes in the GST Council would ensure that neither the Centre nor the States are able to take a decision without the support of the other. In other words both would enjoy a veto.

2.2 Further, with Centre holding only 1/3<sup>rd</sup> of the votes, the Centre would require support of 20 States/Union Territories to get a resolution passed. This shows that Centre would need co-operation of States to get any decision taken at the GST Council.

Proposed article 279A (11)

2.70 The hitherto proposed article 279B for the creation of a GST Dispute Settlement Authority *has been omitted*, and a provision has been made in Article



279A itself empowering the GST Council to decide about the modalities to resolve the disputes arising out of its recommendations. The States were apprehensive that the proposed GST Dispute Settlement Authority under proposed article 279B would affect the fiscal powers of the States and the Union. Hence, this provision has been done away with. This has been done as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendation of the Parliamentary Standing Committee.

2.71 It may further be mentioned that Article 279A (11) only provides that GST Council may decide the 'modalities' to resolve disputes arising out of its recommendations. The 'modalities' could include any dispute resolution mechanism which could be *inter-alia* negotiation, mediation, arbitration or even a judicial authority as deemed appropriate by the GST Council depending on the nature of dispute before it. Thus, as per the proposed Bill, the GST Council shall, by itself, not be resolving the disputes but decide on the modalities for resolving the disputes.

#### **Views of the Stakeholders**

2.72 The Stakeholders were of the view that vote of the Central Government and State Government shall have the weightage of 1/4<sup>th</sup> and 3/4<sup>th</sup> respectively otherwise it would be difficult to get the proposals approved, in the constitution of GST Council instead of the words 'Union Minister of State in charge of Revenue or Finance' it should be 'Ministers' in charge for these functions, as these positions are not explicitly mandated in the Constitution, No dispute resolution mechanism can be meaningful and effective without an explicit linkage between the empowerment clause for the levy of GST (Articles 246A and 366(12A)) and the GST Council recommendations, Goods and Services Tax Council shall be guided by the destination based taxation principle and need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services, Requisite provisions may be incorporated to make the decisions of the GST Council binding on the States and

the Union, Include the State/UT of Goa and Puducherry in Article 279A (4) (G), The Threshold limit for applicability of GST may be fixed at Rs. 50 Lacs, GST Rate may be kept in the range of 16-18%, Tax rate on Goods and Services is to be same to avoid disputes, Tax on interstate supply of goods from one state to other of the same company may be exempted from the purview of GST, The Input taxes paid by the exporters are to be refunded automatically, etc.

### **Recommendation**

**2.73 After having deliberated on the issue of finances of local bodies, the Committee strongly feels that the revenues of local bodies need to be sustained and protected for ensuring that standards of local governance are maintained. The Committee, thus, strongly recommends that the State Governments take adequate measures to ensure that adequate revenues flow to the local bodies, and their resources are not adversely affected. The Committee noted that Article 243H and 243X contain provisions for State Legislatures to authorize Panchayats and Municipalities to collect and appropriate taxes in the State list. The Committee further noted that Article 243I and 243Y provide for setting up of State Finance Commissions to make recommendations regarding devolution of funds to local bodies. The Committee noted that the above provisions notwithstanding, local bodies find managing their resource requirements quite challenging.**

**2.74 In light of above, with respect to Article 279 A 4(e), the Committee strongly recommends that the word 'band' used in the proposed Article may be defined in GST laws. The Committee recommends the following definition of 'band':**

***“Band” : Range of GST rates over the floor rate within which Central Goods and Service Tax (CGST) or State Goods and Services Tax (SGST) may be levied on any specified goods or services or any specified class of***

*goods or services by the Central or a particular State Government as the case may be.*

2.75 With respect to Article 279A(5), taking note of the provision that inclusion of petroleum products into GST can take place only on recommendation of GST Council which could happen only with the consent of both the Centre and the States, the Committee recommended that the clause be adopted with no change.

2.76 The Committee is aware that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

2.77 In view of the clarifications submitted by the Department of Revenue and Legislative Department, the Committee finds no merit in disturbing the voting pattern proposed in the Bill, as the same has been worked out on a formula where no one is at an disadvantageous or dominating position be it Centre or States. Moreover, under clause 2 Parliament and the Legislature of every State shall have power to make laws with respect to GST simultaneously.

2.78 In the GST Council, all the decisions have to be taken collectively by the Centre and States and in order to take decision on any issue 75% votes are necessary. So, in order to strike a fine balance Centre vote share has been kept at 1/3<sup>rd</sup> and that of the States at 2/3<sup>rd</sup>. In that backdrop, the Committee recommends that these amendments may not be necessary since our Constitution is a federal Constitution and so, it is necessary to make the provisions providing for a manner that disallow the dominance of one over the other. Keeping this in view, the voting formula has been worked out. Hence, the clause has been adopted with no change.

**2.79 The Committee, having noted the point mentioned by the Department of Revenue that the GST Council shall decide only the ‘modalities’ to resolve disputes, did not agree to recommend inclusion of Article 279B as was proposed in Constitution(115<sup>th</sup> Amendment) Bill, 2011.**

### **Clause 13**

2.80 This clause seeks to amend clauses (1) and (2) of article 286 of the Constitution which is a consequential amendment in view of the proposed amendments in clause 2 of the Bill.

2.81 One Member proposed insertion of a new clause (1A) in article 286 of the Constitution to provide as under-

“No law of a State shall impose, or authorize the imposition of, any restriction on reimbursement of a tax levied under the law of a State in respect of any supply of goods or of services of both inside the State, when such goods or services or both are supplied in the course of inter-State trade or commerce or export outside the territory of India.

Explanation.– For the purpose of this clause, consumption or use of goods or services or both whether partly or wholly, in supply of any other goods or services or both in the course of inter-State trade or commerce or export outside the territory of India, shall be deemed to be supply of goods or services or both in the course of inter-State trade or commerce or export outside the territory of India to the extent of such consumption or use.”

### **Views of the Government**

2.82 Article 286 put restriction on the imposition of tax on the sale or purchase of goods if such sale or purchase takes place outside the States or in the course of import of goods into or export of goods outside the territory of India. By making amendments so as to substitute the words “sale or purchase of goods” the words

“supply of goods or services or both”, the restrictions would continue to apply any IGST or CGST and therefore it may not be necessary to go for the above amendment.

2.83 Some Members sought the definition in the Constitution amendment Bill itself of the term "supply" in proposed clause I (A) of article 286.

### **Recommendation**

**2.84 The term 'supply' would be defined in the various GST laws relating to CGST and SGST. Hence, the Committee feels that it would not be appropriate to insert the definition of supply in this clause. This clause has been adopted with no change.**

### **Clause 14**

2.85 Clause 14 of the Bill seeks to insert a new definition clause (12A) in article 366 of the Constitution to define the words “goods and services tax”. It also seeks to insert two clauses (26A) and (26B) to define the words “Services” and “State”, respectively.

2.86 Some Members proposed amendments in clause ( 12A) to delete the word “any” and the words “except taxes on the supply of alcoholic liquor for human consumption so as to progressively ensure a true common market for all goods”.

2.87 In (26A) delete “anything other than good?” and substitute with “commercial transactions in intangibles so as to avoid the circular definition of 'services' meaning 'anything other than goods.'”

### **Views of the Government**

2.88 In this regard the Ministry of Finance, Department of Revenue has stated that term ‘services’ has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes.

2.89 On the issue of inclusion of Petroleum and petroleum products under GST constitutionally, Department of Revenue in their written submission stated that:

2.90 Petroleum and petroleum products have been included under GST constitutionally by keeping only “alcoholic liquor for human consumption” outside of definition of “goods and services tax” given in newly introduced clause (12A) of article 366. However, GST would be leviable on these products only w.e.f. the date recommended by the GST Council. This has been done taking into consideration the concern expressed by Empowered Committee in their various meetings about the likely loss of Revenue, if the Petroleum products are included in GST. Parliamentary Standing Committee had recommended that there should be no exclusions from GST provided under the Constitution Amendment Bill.

2.91 The Department of Revenue mentioned that petroleum products constitute a major input in most manufacturing industries and their non inclusion would mean these industries would not be able to claim input tax credit for such inputs resulting in cascading of taxes and increased cost of production. It is possible that once GST regime is stabilised, the States may want to include petroleum under GST after two or three years itself. In such a situation, since petroleum products have been included Constitutionally, including petroleum products under GST would not require a Constitution amendment.

#### **Views of the Stakeholders**

2.92 The Experts/Stakeholders were of the considered views that:

#### **Definition of Services**

2.93 “Supply of Services’ means any business activity which is not supply of goods.”

2.94 In view of Article 246A empowering both Centre and States to levy tax on supply of goods and services, it is the view that the Clause (29A) of Article 366 may be considered for deletion as this would become redundant.

## **Petroleum**

2.95 The international practice is to include petroleum in the GST base, and then apply a supplementary excise on selected petroleum products (e.g., petrol and diesel). A credit is allowed for the GST portion of the tax to commercial or industrial use of the fuels, but not for the supplementary excise. It would be advisable for India also to adopt this structure.

2.96 Thus, it is recommended that the provisions limiting the scope of GST (to exclude petroleum products) be deleted. Specifically, Explanation to Article 246A is redundant. The GST Council has the powers in any case to exclude any products from the GST base, if it so decides.

## **Goods and Services Tax**

2.97 It is advisable to change the definition of 'goods and services tax' in Article 366 (12A) as follows. Further, goods in Article 366(12) need to be redefined to include real property.

2.98 "goods and services tax" means a multi-stage destination-based value added tax on supply of goods, or services, or both, and levied as per the framework recommended by the GST Council.

2.99 "goods" includes, for purposes of the goods and services tax, all materials, commodities, articles, and immovable property

## **Recommendation**

**2.100 Endorsing the view of the Department, the Committee feels that 'services' has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes. Further, having noted the points mentioned by the Department of Revenue regarding inclusion of petroleum products under GST, the clause has been adopted with no change.**

### **Clause 15**

2.101 This clause seeks to amend article 368 of the Constitution in view of the proposed amendments referred to in clause 12 of the said Bill so as to apply the special procedure provided in the proviso to clause (2) thereof which requires the ratification of the Bill by the Legislatures of not less than one half of the States in addition to the method of voting provided for amendment of the Constitution.

#### **Recommendation**

2.102 **This clause has been adopted with no change.**

### **Clause 16**

2.103 This clause seeks to amend the sub-paragraph (3) of paragraph 8 of the Sixth Schedule to the Constitution with a view to empower the District Council for an autonomous district to have the power to levy and collect taxes on entertainment and amusements within such district.

#### **Recommendation**

2.104 **This clause has been adopted with no change.**

### **Clause 17**

2.105 This clause seeks to amend the Seventh Schedule of the Constitution to substitute the items under entry 84 of the List I and to omit entries 92 and 92C; to omit entries 52 and 55 of List II and substitute the entries 54 and 62 of List II of the Seventh Schedule to the Constitution. These amendments are consequential to the insertion of new article 246A.



2.106 With a view to progressively promoting a common market in all goods and services, some Members proposed amendment to Entry 84 of Union List as follows:

- (g) sale and consumption of electricity'
- (h) alcohol for human consumption.

2.107 Some Members also sought clarifications as it does not figure in the Constitution (a) (ii): What is entry 92C?

### **Recommendation**

**2.108 Regarding the aforesaid Entry, the Committee is of the view that Entry 92C was inserted by the Constitution (Eighty-Eighth Amendment) Act, 2003 to empower the Union to impose service tax on certain services read with article 268A of the Constitution.**

**2.109 Notwithstanding, the service tax levied under the Finance Act, 1994 were continuing as such. The amendment was carried out in the Constitution but the provision was never brought into force. Since Parliament has enacted the said constitutional provision and as such the provision stands as the part of Constitution; and therefore, unless it is omitted by a Constitution Amendment Act by Parliament, it will continue to sit in the Constitution. On the need for formal repeal, the Law Commission, in its One Hundred and Forty-eighth Report on "Repeal of Certain Pre-1947 Central Acts", has observed that "the statues, unlike human beings, do not die a natural death, with the possible exception of statute whose life is pre-determined by the Legislature at the time of their enactment. A statute, unless it is expressly enacted for a temporary period, survives until it is killed by repeal. To this extent, statutes enjoy immortality." Therefore, it is necessary to omit the said provision to ward of any future doubts about GST.**

(iii) After Clause 17(b)(i), **add:**

Entry 53 shall be omitted

(iv) Further amend entry 54 to add between “alcoholic liquor for human consumption,” and “but not including sale” the words: and tobacco and tobacco products and sale and consumption of electricity,

(v) Further amend Clause 17(b)(iv) to read as follow:

2.110 “Entry 62. Taxes on entertainment and amusements and any other taxes, duties, tolls, levies, or royalties devolved by State legislatures to institutions of local self-government under articles 243 H and 243 X to the extent levied, collected and appropriated by a Panchayat or a Municipality or a Regional Council or a District Council”.

### **Views of the Government**

2.111 Inclusion of electricity under GST has not been envisaged ever since the First Discussion Paper was published in 2009 on GST. Neither the Empowered Committee, nor the Parliamentary Standing Committee ever recommended inclusion of electricity under GST. Taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution. Entry 53 of List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122<sup>nd</sup> Amendment) Bill, 2014.

2.112 Further, in the case of alcohol, the States have been consistently opposing the inclusion of alcohol under GST. Even in the First Discussion Paper, it had been recommended that alcohol be excluded from GST. This is also as per the recommendations of the Empowered Committee.

2.113 Under the proposed Constitution scheme, the Centre has the power to tax one demerit good (tobacco), while the States have the power to tax the other demerit good (alcohol). Tobacco, unlike alcohol has been subsumed in GST, and

the States will have the right to levy SGST on it. This arrangement was specifically recommended in this light where alcohol, being the other demerit good, has not been subsumed into GST, and States retain the powers to levy excise duty as well as sales tax on alcohol. Centre has no powers *vis-à-vis* alcohol.

### **Views of the Government**

2.114 As regards petroleum and petroleum products, the views of the Department have been recorded while dealing with the proposed Article 279A (5).

2.115 In their written replies, the Department of Revenue stated that all forms of Entry Tax have been subsumed under GST by omitting Entry 52 of List II (State list) of Seventh Schedule. The Parliamentary Standing Committee had recommended Entry tax to be subsumed under GST. At the same time, a Constitutional commitment has also been given to the States that their losses caused due to introduction of GST would be compensated for five years. The Department has also mentioned that provision of Entry tax is an impediment to creation of common market, which is a goal of GST, as it acts like a tariff barrier on movement of goods into a local area and discriminates between goods produced within and outside the area. It impedes free movement of goods and also increases compliance cost for business.

### **Views of the Stakeholders**

Clause 17 (b) (ii) in List II-State List

2.116 For Entry 54, the following entry shall be substituted, namely:-

“54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel, tobacco and tobacco products and alcoholic liquor for human consumption, but not including

sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

2.117 State Governments may be allowed to levy higher taxes on tobacco and tobacco products; betting and Gambling activity may be kept out of the purview of GST; retain Entry 52 and Omit Entry 55; Insert a new Entry 54A "other polluting goods and services to be notified by GST Council.

2.118 Clause 17 (b) (iii) in List II-State List

2.119 "55. Taxes on advertisement other than advertisements published in the newspapers and advertisements broadcast by radio or television,"

### **Electricity**

2.120 Electricity must form an integral part of the GST base, as is any other normal good. It is therefore suggested that electricity duty also be subsumed within the GST framework. This approach can reduce the cost of electricity by 20%, significantly enhancing the competitiveness of our domestic manufacturing sector.

2.121 The GST need not be a full replacement of the electricity duty. Only a part of the duty can be replaced by GST, which should be fully creditable to industrial/commercial users of electricity.

2.122 Given that Article 246A empowers the Union and States impose GST, notwithstanding anything contained in articles 246 and 254, GST can be extended to electricity even if Entry 53 in List II – State List (Taxes on the consumption or sale of electricity) is not omitted. Continuing this entry would allow States the flexibility to levy a supplementary tax to electricity in addition to GST, if they consider it necessary or desirable.

### **Real Estate**

2.123 Real Estate merits inclusion in GST from another significant perspective, i.e., to bring transparency to the sector. Real estate is known to be the breeding ground of corruption. Bringing this sector into GST will significantly reduce tax evasion through more efficient transactions tracking and improved enforcement and compliance.

2.124 For inclusion of real Estate in the GST base, the definition of 'goods and services tax' under Clause 14 of the Bill should be broadened to include property, movable or immovable as suggested below.

2.125 Given the practice in other jurisdictions to levy supplementary taxes in the form of land transfer taxes, levy stamp duties, and registration fees on real property transactions, the existing entries in the Union and State Lists relating to these taxes on land and buildings can be left unchanged. The tax rates and base for these levies can be adjusted (including reducing them to zero) as per the recommendations of the GST.

### **Alcohol**

2.126 Any explicit restrictions on the application of GST to alcohol in the Constitution itself are thus not appropriate. Accordingly, a change in the definition of GST in Article 366(12A) is recommended.

2.127 Alcohol should be given the same treatment as is being given to Petroleum and its products. In that case, the clause 'except taxes on the supply of the alcoholic liquor for human consumption' would have to be deleted from the definition of GST at Clause 12A of the Bill. Further, as has been done in the case of Petroleum and its products, the levy of GST on Alcohol may be postponed to a later date to be decided by the GST council. Till that time, the States will continue to levy State Excise duty and State VAT on Alcohol. The advantage would be that no further amendment of the Constitution would be needed, when the States agree to bring in Alcohol within GST at a later date.

## **Entertainment Tax**

2.128 The Bill proposes that local levies such as octroi and entry taxes should be fully subsumed under the GST. This is necessary to ensure free flow of goods and services within the common market of India. This is equally true of the entertainment tax. The funding needs of the local bodies can be better addressed through vertical devolution of State GST revenues to local bodies, as opposed to such nuisance taxes which are difficult to administer and comply with, and do not yield much revenue. The quantum of revenues earned by local bodies from entertainment tax levied and collected by them is insignificant and constitutes a miniscule fraction of their budgets. For smaller towns and cities, the revenues from the tax might not cover even the cost of administration and enforcement.

2.129 It is recommended that Entry 62 in List II – State List be omitted.

## **Entry 84**

2.130 List I Union List, the powers of the Union to levy supplementary taxes on petroleum and tobacco are limited to excise on the manufacture or production of these goods. By contrast, the powers of States for levy of supplementary taxes extend to purchase or sale of the specified products. It is desirable that the Union powers also be likewise extended to sale or purchase of the specified goods.

2.131 Purchase Tax/Entry Tax/Octroi are to be allowed as input Tax credit.

## **Recommendation**

**2.132 The Committee is of the view that the entry in the list II- State List empowers the State Government to make laws in respect of the subjects mentioned therein. The Committee is also of the considered view that taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution. Entry 53 of the List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122nd Amendment) Bill, 2014. The**

**Committee also noted the rationale for the provisions relating to alcohol for human consumption and tobacco as provided by the Department of Revenue. Hence, the clause has been adopted with no change.**

**Clause 18**

2.133 Sub-clause (1) of this clause seeks to provide that an additional tax on supply of goods, not exceeding one per cent in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

2.134 Sub-clause (2) of this clause seeks to provide that the net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.

2.135 Sub-clause (3) of this clause seeks to provide that the Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

2.136 Sub-clause (4) of this clause seeks to provide that Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

2.137 Some Members of the Committee proposed to delete this clause because under clause 19, 100 percent compensation be provided for a period not less than five years. In view of guaranteed compensation for any loss incurred by any State or Union Territory, there is no need to levy a market-distorting 1% additional levy.

### **Views of the Government**

2.138 In this regard the Ministry of Finance, Department of Revenue has explained that since GST is a destination based tax, the manufacturing States were apprehensive of their loss in revenues. To allay their fears, and to bring them on board, a provision has been made for the levy of 1% additional tax on the supply of goods. This tax shall be credited to the exporting State. Since it is expected that in the medium and long run, the revenues of all the States would increase due to better compliance and enforcement under GST, this provision of 1% additional tax has been made only for the first two years. The GST Council would have the power to recommend continuation of this tax at the end of 2 years, if it so deems fit. This was decided in view of the consultations with State Finance Ministers by FM on 15.12.2014. It is also in line with the recommendations made by the Empowered Committee in their various meetings for the protection of the revenues of the manufacturing States. Clause 18 in itself does not make any distinction of a “manufacturing state” and this tax shall be levied by all States who send their produce outside the State.

### **Views of the Stakeholders**

- In place of “An Additional Tax” in Clause 18(1) and “additional tax” in Clause 18(2), it may be “Central Sales Tax.” Instead of introducing a new additional tax, the same purpose may be served by “Central Sales Tax,” which is already known to the Centre, the States, in industry, trade and others.
- 1% levy against the spirit of GST.
- Any specific reference to a period of two years would be arbitrary and unnecessary. The portion, “a period of two years”, may therefore be considered for deletion.
- It is important to recognize that GST is a destination based tax levied at the point of consumption. Introduction of an additional tax on



supply of goods, not exceeding one per cent for two years would make the tax partly origin based and partly destination based. Allowing continuation of origin based tax system would be a major distortion and continuation of significant tax exportation from the richer producing states to the poorer consuming states.

- In fact, this method of compensating the manufacturing states through one percent origin based tax is not at all necessary, since in any case the Bill itself envisages compensation by Centre for the states in case of revenue loss. Therefore, the view is that this provision would need to be deleted.
- Since, the Bill already contains a provision for compensating the States for any losses under GST for five years, it would result in no net revenue gain to the States where they indeed suffer a revenue loss under the GST and are recipient of compensation from the Centre. It would effectively mean an extra profit to the States who gain revenues from the GST. If so, it does not serve its intended purpose. These concerns warrant a removal of the 1% origin based tax.
- Restricting the levy only to 2 years, with no powers to extend the same for any further period. Restricting levy only to interstate sale and purchase of goods. This means that no such additional tax should be levied on interstate supply of goods other wise than by way of sale and purchase.

### **Recommendation**

**2.139 The Committee feels that the provision of 1% additional tax in its present form is likely to lead to cascading of taxes. Therefore, the Committee strongly recommends that in the concerned GST law, an explanation should be given that for the purpose of Clause 18, the word ‘supply’ would mean:**

***Supply: "All forms of supply made for a consideration".***

## Clause 19

2.140 This clause seeks to provide that Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

In this clause some Members proposed amendments by adding the words “100 per cent” in the second line between “provide for” and “compensation to the States” and by **deleting** “such period which may extend to five years” and **substituting** with “a period not less than five years” **and to insert a new clause in clause 19 that–**

2.141 19(1) To this end, there shall be established a Goods and Services Compensation Fund under the administrative control of the Goods and Services Tax Council into which the Central Government shall deposit the Goods and Services Tax Compensation.

2.142 **By inserting** the words, “as well as the pancha yats and Municipalities through States” between the words “to the States” between the words “to the States” and “for the loss of the revenue”

2.143 Further, some of the Members proposed amendments that for the words “Parliament may”, the words “Parliament shall” should be substituted.

2.144 Some Members proposed the addition of the words “as well as the Panchayats and the Municipalities through State Legislatures” so as to ensure the “sound finances” of the local bodies while respecting the Constitutional order that as local bodies are in the State List it is for State Legislatures, by law, to “authorise a Panchayat/Municipality to levy, collect and appropriate” such taxes.

### **Views of the Government**

2.145 Regarding the said amendments the Ministry of Finance, Department of Revenue has stated that it may not be appropriate to stipulate that States would compensate the local bodies for any losses caused to them. 73rd Amendment of the Constitution provides for setting up of State Finance Commissions which have been given responsibility to make recommendations on principles which would govern distribution of finances between the States and local bodies i.e., Panchayats and Municipalities. Deficiencies, if any, in the functioning of State Finance Commissions in individual States may have to be dealt with separately.

2.146 Further, one of the Members proposed amendments that for the words “Parliament may”, the words “Parliament shall” should be substituted.

2.147 Regarding the proposed amendment to substitute the words “for a period of not less than five years”, in place of the words “which may extend to five years”, the Ministry of Finance, Department of Revenue has stated that to bridge the trust deficit with the States, and to ensure no revenue loss to them, it has been Constitutionally provided that the States shall be compensated for five years for their losses caused due to introduction of GST. This has also been recommended by the 14<sup>th</sup> Finance Commission.

#### **Views of the Government**

2.148 Regarding substitution of word 'may' by 'shall', the Legislative Department has clarified that under the Constitution, wherever law making power is conferred on Parliament, the language used is “may” in view of the fact that within the constitutional parameters Parliament is supreme. However, in contrast, wherever, the power to make law is subject to certain contingency, then in such situation like Proclamation of Emergency, the provisions of the Constitution, uses the word “shall”. (as used in article 250 below). In view of this, it may not be necessary to substitute the word "may" with the word "shall"

2.149 In this connection, it would be appropriate to reproduce the provisions of the following articles, namely:—

2.150 “2. Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

2.151 Formation of new States and alteration of areas, boundaries or names of existing States.—Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State....

2.152 Art 245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

2.153 Art 247. Power of Parliament to provide for the establishment of certain additional courts.—Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

2.154 Art 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.—(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

2,155 Art 368. Power of Parliament to amend the Constitution and procedure therefor.— (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal

any provision of this Constitution in accordance with the procedure laid down in this article.”.

2.156 On the issue of period of GST Compensation, Department has stated that:-

"It is expected that the revenues of the Central and State Governments will not be impacted in the long run. However, due to a shift from origin-based to destination-based indirect tax structure, some States might face drop in revenue in the initial years. To help the States in this transition phase, a number of provisions have been incorporated in the Bill as enumerated in Para I, points (a) to (e), above. In the medium and long run, the revenues of all States and Centre are expected to grow due to widening of tax base, better tax compliance and enforcement, and growth in the economy".

2.157 Further, the smaller and weaker States will benefit from GST from the start. Since these are primarily consuming States, all SGST collected on goods and services will flow to the consuming States under the GST regime. Hence, the revenue of these States will increase and they are not likely to suffer any loss even during initial years.

#### **Views of the Stakeholders**

Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period not less than five years.

In place of “protection to,” it may be ‘protection of 100 percent to’. This will provide required comfort fully to the States and shield against anxiety during the initial phase of introduction of GST.

On the basis of past experience, the need for timely payment of compensation, without delay, in every financial year.

As the Bill made a provision for compensation in the event of revenue loss to the States after the introduction of GST, on the recommendations of the GST council, for such period which may extend to five years, this should provide comfort to the States. Since Union government eventually by law would be committed to compensation for revenue loss, it may be proper to eliminate tax on interstate supply of goods as proposed in the new Bill during the first two years of GST regime to introduce a destination based tax system.

Having agreed to give compensation, there is no harm in Centre agreeing to give 100% compensation for all five years, in case of loss of revenue; – that would raise the comfort level of the States, and bridge the evident trust-deficit between Centre and the States.

**2.158 In view of the clarifications given by the Legislative Department, the Committee feels that there is no justification for substitution of the word ‘may’ with ‘shall’.**

**2.159 Having regard to the concerns expressed by the various States and some of the Members of the Committee in their submissions made before the Select Committee, the Committee recommends amendment in clause 19. The amended clause 19 should read as follows:**

*“19. Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for the loss of revenue arising on account of implementation of the Goods and Services Tax for a period of five years.”*

#### **Clause 20**

2.160 This clause seeks to provide for transitional provisions which provides that notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the

commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

2.161 This clause prescribe a timeframe within which the subsuming of different indirect taxes into GST would take place and enable the competent Legislature to amend or repeal their existing laws to pave the way for imposition of SGST in the States.

**Recommendation**

**2.163 This clause has been adopted with no change.**

**Clause 21**

2.164 This clause seeks to provide that if any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty.

2.165 However, no such order shall be made after the expiry of three years from the date of such assent. It also seeks to provide that every order made under sub-clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

**Recommendation**

**2.166 This clause has been adopted with no change.**

## **CHAPTER -III**

### **OTHER RELATED ISSUES IN CONTEXT OF THE BILL**

3.1 The Committee, thereafter, discussed plethora of inter-connected issues like source of revenue of Panchayats and Municipalities, Losses to Municipalities on account of deletion of Entry 52, creation of National Compensation Fund, non-functioning of State Finance Commissions, provision of Dispute Settlement Authority, inclusion of enabling clause to bring alcohol at a later stage to avoid constitutional amendment, GST Rate and Revenue Neutral Rate (RNR), etc. which have been dealt separately in the succeeding paras.

#### **Issue of Legislative Competence**

3.2 Concerns were raised before the Committee on the adverse impact which the Constitution (122<sup>nd</sup> Amendment) Bill, 2014, may have on the finances of local bodies.

***3.3 Competence of States to authorize local bodies to levy, collect and appropriate taxes, duties, tolls and fees***

3.4 The Constitution makes elaborate provisions to deal with powers, authority and responsibilities of Panchayats, their power to impose taxes and Constitution of Finance Commission to review their financial position (articles 243G, 243H and 243-I). Similar provisions exist in case of Municipalities (articles 243W, 243X



and 243Y). These provisions speak of powers, functions, responsibilities, power to levy and collect tax by Panchayats and Municipalities. The powers to levy and collect taxes is delegated by State Legislatures by enacting law for the purpose and thus enabling them to perform the Constitutional functions and duties entrusted to them.

3.5 Articles 243H and 243X speak of power that the State Legislatures may give to Panchayats and Municipalities to levy collect and appropriate taxes, duties, tolls and fees and also of assigning such of them as are levied and collected by the State Government and to provide grants-in-aid from the Consolidated fund of the States.

3.6 From the provisions, it may be seen that the State's power to levy taxes is derived from the Constitution and the Panchayats and Municipalities power to tax is derived from the State Legislature which it would delegate in the manner Constitution permits. Those articles make it clear that the concerned State Legislature has to pass a law to confer taxing power on Panchayats and Municipalities. Further, it may be seen that the source of power rests with State Legislatures and the Constitution has not empowered the Panchayats and the Municipalities to impose taxes on their own. In the present set up there are State laws which enable the Panchayats and Municipalities to levy and collect the taxes.

3.7 In conclusion, it can be submitted that the provisions of articles 243H and 243X bestow a Constitutional obligation and responsibility on the State to enable revenue generation of Panchayats and Municipalities by enacting laws; which shall continue to apply when the States get the simultaneous power to levy GST under the proposed article 246A once the indirect taxes are subsumed into GST. The present Constitutional Amendment also requires enactment of State laws on the basis of Model GST Laws recommended by the GST Council and while making such laws States would abide by the Constitutional provisions relating to Panchayats and Municipalities.

### **Subsuming of Entry 52 under GST**

3.8 Thereafter, the Committee discussed the rationale for deletion of Entry 52, State List and its possible impact on the revenue sources of the local bodies. Entry 52, State List provides for “Taxes on the entry of goods into a local area for consumption, use or sale therein.”

3.9 The Committee felt that municipal-level taxes are an important source of revenue for many local bodies. If, we take the example of city of Mumbai, municipalities’ main source of revenue is octroi. The revenue collection in 2014-15 on octroi in the city of Mumbai was somewhere around Rs. 6733 crores which is individually around 42% of the entire finance generated there. If that is taken away how development would be ensured. Although the Government of India is assuring that compensation would be given to State Governments for the losses incurred by them but that too would be through State Government.

3.10 In his submission, Secretary, Department of Revenue stated that ‘Entry tax is an impediment to the free flow of goods and services in India. It creates inefficiencies in the supply chain. Further, in many States, Entry tax is not VATable, and hence, results in compounding and cascading of taxes. Therefore, 13<sup>th</sup> Finance Commission headed by Dr Vijay Kelkar had recommended that Entry tax should be fully subsumed under GST. The same view was endorsed by the Standing Committee on Finance, while examining the Constitutional 115<sup>th</sup> Amendment Bill, 2011. Keeping that in mind, in the proposed Bill, a provision of “floor rate with bands” has been made, under which the States may levy additional SGST within the band to raise additional resources for passing on to the local bodies.

### **Impact of subsuming of Entry Tax on the financial independence of local bodies**

3.11 He further stated that ‘It has been seen that Entry tax in lieu of octroi or Octroi is only collected by local bodies in Maharashtra. Most States like Gujarat,

Karnataka, and Punjab already levy and collect Entry tax for distribution to local bodies. As stated above, under the GST regime, provision of “floor rate with bands” has been provided in the Bill which shall enable the States to raise additional resources through levy of additional SGST within the band, for passing it on to the local bodies.

3.12 Since Mumbai is the largest beneficiary of revenue collected from octroi, the case of Mumbai has been presented in detail. All other local bodies in the country are not so dependent on Entry tax or octroi for their revenue. In their 2015-16 budget, the Municipal Corporation of Greater Mumbai (MCGM) has estimated that they would earn about Rs. 7900 crores from octroi, out of a total revenue income of Rs. 19,255 crores, or about 41%. The other sources of revenue for MCGM are property tax, receipts from development plan, various user fees and charges, etc, which are not being affected by the Constitutional Amendment, and will continue to accrue to MCGM.

3.13 Further, in their 2015-16 budget, the MCGM has identified that they would need to introduce new taxes such as property tax on slums, transport cess, conservancy cess and fire cess. Incidentally, Mumbai is expected to yield very high revenues from service tax to the State of Maharashtra. It is open to the State to devolve suitable amount there from to the MCGM. Further, under Articles 243 H and 243 X of the Constitution, the State Government can also empower the local bodies to collect certain other levies such as profession tax or other taxes in the State List in the concerned Jurisdiction.

#### **Devolution of funds to the local bodies by the State Government**

3.14 The issue of devolution of funds to the local bodies and Municipalities by the respective State Government engaged the attention of the Committee from the day the Bill was referred to the Select Committee. Apprehensions and concerns were expressed from all quarters, even after the clarifications given by the Department of Revenue and Legislative Department, that the bodies which were

actually doing the work at the ground level may find it difficult to cope up with their requirements in the post GST era. Concerned over the availability of funds to them, several points were raised i.e how much funds would be allocated to them, how it would be done, whether the funds would ultimately be passed on to them, whether the amount so received would be enough to run their day today activities, there has to be a mechanism in the Bill to protect their interests, how constitutional provisions related to them would be protected and taken care of, etc. otherwise these bodies where actual activity is done would be at the sheer mercy of the Governments in their States. Here, the role of the State Finance Commissions becomes all the more important because while submitting their report they have to give due impetus to this fact that these bodies may not be deprived of their legitimate right guaranteed by the Constitution of India

3.14 The Committee felt that there is no question at all that the concerned State Governments have to devolve funds to the local bodies for their smooth functioning, and in order to do that they have to accept the recommendations of the State Finance Commissions, but what concerned most of the Members was that, either the State Finance Commissions are non-existent or even when they exist their recommendations were not followed in right spirit/ accepted. So, ultimately the local bodies suffer and this in turn hampers the various development works to be undertaken by them.

3.15 In his clarifications, Secretary Revenue stated that Constitution 73<sup>rd</sup> Amendment provides for setting up of State Finance Commissions which have been given responsibility to make recommendations on principles which would govern distribution of finances between the States and local bodies i.e. Panchayats and Municipalities. Deficiencies, if any, in the functioning of State Finance Commissions in individual States may have to be dealt with separately.

### **Recommendation**

**3.16 The Committee feels that the concerns expressed by all the Members of the Committee related to local bodies and Municipalities are not**

unwarranted. Based on the years of experience and being witnessed to their work in their respective constituencies they were of the view that their interest needs to be protected. The same view was also endorsed by nearly all the stakeholders who have either submitted their memorandum or appeared before the Committee on the Bill.

3.17 But, at the same time we may not forget that the Constitution of India clearly defines the ambit under which the Centre and each of the State has to function. Any encroachment into the State List would disturb the whole system and could strain the Centre-State relations.

3.18 The Committee feels that although the issues raised by the Members to protect and preserve the interest of local bodies are valid, it would not be appropriate for the Committee to advise, recommend and guide the State Governments what they have to do with regard to the interests of the local bodies.

3.19 As per the provisions of the Bill, while the Parliament would pass law relating to CGST, every State Government has to pass a similar law relating to SGST. Hence, while drafting the SGST, the role of the drafters and the concerned State Governments becomes all the more important as they have a duty to protect the revenue sources of the Panchayats, Municipalities, etc, enshrined under Constitution of India. The Committee also feels that here the role of the GST Council is also very important, because while recommending to the Centre and State Governments for subsuming of the taxes, cesses and surcharges levied by the Union, the States and the local bodies in the goods and services tax under article 279 (4) (a), it may also ensure protection of revenue sources of local bodies under provisions of article 279 (4) (c) and (h).

3.20 In the light of the above, the Committee feels that in a cooperative federalism, each unit of it interacts cooperatively and collectively resolves their problems by taking appropriate action at their end. On the same

analogy, Government at the helm of the affairs is duty bound both morally and constitutionally to protect the interest of local bodies by giving them suitable space of functioning and power to levy and generate taxes for their day today functioning. Having full faith in our Constitution from where each tier of the Government draws its powers, the Committee believes that all the State Governments would enact laws on the basis of Model GST Laws recommended by the GST Council and while making such laws States would abide by the constitutional provisions relating to Panchayats and Municipalities.

3.21 Concerned about the very existence and survival of local bodies, the Committee feels that Local government is a State subject figuring as item 5 in List II of the Seventh Schedule to the Constitution. Article 243 G of the Indian Constitution enshrines the basic principle for devolution of power to the local bodies. In the nation's journey towards becoming an economic power, local bodies play an important part in enabling infrastructure availability to the citizens. Local bodies are institutions of the local self governance, which look after the administration of an area or small community such as villages, towns, or cities. The local bodies in India are broadly classified into two categories. The local bodies constituted for local planning, development and administration in the rural areas are referred as Rural Local Bodies (Panchayats) and the local bodies, which are constituted for local planning, development and administration in the urban areas are referred as Urban Local Bodies (Municipalities) and the Constitution of India gives protection to them through various articles, so while drafting the SGST laws due consideration should also be given to this fact. In that backdrop, the Committee strongly recommends that while drafting the SGST laws due consideration to the third tier of the Government as has been guaranteed by the Constitution be given and provisions of devolution of taxes to the local bodies be made.

3.22 The Committee is perturbed to know that State Finance Commissions (SFC) in some of the States are either non-existent or even when exist their recommendations were not accepted by the respective State Governments. The Committee understands that each tier of the Government draws its powers through the Constitution and there is a clear demarcation of fields through List I, II and III within which each tier has to function. Any encroachment by any of them would paralyze the whole system and defeat the very foundation of our Constitution. Hence, the Committee while not venturing into the domain of the State List desires that for the betterment of our States in general and country in particular it would be prudent to abide by the recommendations of the SFCs.

#### **Creation of National Compensation Fund**

3.23 The issue of creation of National Compensation Fund on the lines of National Calamity Fund also engaged the attention of the Committee. One of the Members opined that once the Government of India has decided to compensate the State Governments for any losses incurred by them after the introduction of GST, it would be judicious enough to make National Compensation Fund be part of the Bill. This would act as a confidence building measure and allay their fears as well to a great extent. The Standing Committee on Finance had in their report recommended for creation of such fund.

3.24 In their response, Secretary, Department of Revenue stated that to bridge the trust deficit of the States vis-à-vis the Centre, and to ensure that there is no revenue loss to them, a provision has been made in the Bill to provide compensation to States through a Central Legislation for loss of revenue arising on account of implementation of GST for a period which may extend up to five years on the recommendation of GST Council.

3.25 He further stated that as noted by the Fourteenth Finance Commission, GST Compensation would be a temporary feature, and hence, there is no need to create

a GST Compensation Fund through Constitutional Amendment. It is therefore proposed to consider creation of a GST Compensation Fund through Central Legislation.

### **Recommendation**

**3.26 Endorsing the view envisaged by Fourteen Finance Commission, the Committee feels it would be wise to keep the GST Compensation Fund out of the purview of the Bill as has been done in the present case, because it is a temporary component and that too only for five years.**

### **Dispute Settlement Authority**

3.27 Some of the Members were of the opinion that disputes arising out of the recommendations of the GST Council will be decided by a system to be evolved by GST Council. They were of the view that as the principles of natural justice hold that a party to a dispute cannot be a judge in its own cause, leaving disputes to be settled in accordance with the directives of the GST Council would be tantamount to allowing all disputes, which would necessarily involve one or more members of the GST Council as judges in disputes to which they are party.

3.28 With regard to the Dispute Settlement Authority, the Ministry of Finance (Department of Revenue) clarified that the States were apprehensive that the earlier proposed GST Dispute Settlement Authority under proposed new Article 279B will have powers of overriding the supremacy of the Parliament and the State Legislatures and will, thus, affect the fiscal autonomy of the States. The Parliamentary Standing Committee had, therefore, recommended that proposed Article 279B be omitted. On the recommendations of the Parliamentary Standing Committee on Finance and the Empowered Committee, it was decided to delete this provision, and instead, clause (11) in the proposed Article 279A was inserted to enable the GST Council to decide the modalities to resolve disputes arising out of its recommendations.



3.29 In the proposed Bill, every State would enjoy one vote in the GST Council. Thus there would be no possibility of 'crowding out' of small States in the GST Council.

### **Recommendation**

3.30 The Committee feels that each and every State is being represented in the GST Council by their Revenue/Finance/Taxation Minister. Be it a small State or a big State, in the GST Council, all of them enjoy equal status and power to cast one vote. In the event of difference, it can very well be presumed that the GST Council will try to evolve consensus on contentious issues before going for casting of votes, as all the States are members of the Council. Thus, modality to resolve any differences internally lies with the Council. If any Dispute Settlement Authority is created separately it will certainly hamper the functioning of the GST Council in general and Legislatures (Parliament and States) in particular. Thus, it would be judicious not to have a separate and distinct authority having far reaching powers and which could preempt and supersede the powers of Parliament and State Legislatures in the long run.

3.31 The Committee also feels that when concept of Empowered Committee (EC) was coined for the first time, it may not have been presumed how it would function, whether it would serve the purpose for which it would be created, how States would be represented/heard, how issues would be taken up and resolved, etc. But experience has shown that the faith with which the concept of EC was coined has actually delivered. Empowered Committee headed by one among the State Finance/ Revenue Ministers of all States deliberate meticulously on each of the issues raised by its Members and with the passage of time it had taken the shape of arbitration centre where disputes related to them or between two or many States are raised, deliberated and settled amicably without any arbitration charges or fees borne by the disputant States. It would not be over exaggeration of facts if the Committee would say that on the one hand EC had worked as a forum

where any issue of State importance could be raised and on the other hand it had gained the confidence of States in solving their problems and allaying their fears. Such confidence building measure had been initiated by the EC that it could well be termed as a forum where disputes are settled broadly with consensus.

#### **Benefit to Consumers**

3.32 GST will largely eliminate cascading of taxes and this will benefit the consumers because manufacturers, traders and service providers are expected to be forced to pass on the benefit to ultimate consumers due to operation of market forces and competition. Simplification and automation under GST regime will reduce transaction cost, improve compliance and transparency and will curb undue rent seeking and profiteering in the long run. Such efficiency gains are expected to have beneficial effects on prices which will also ultimately benefit the consumers.

#### **Results of studies conducted in other countries like Australia, Canada and New Zealand on the impact of GST on consumer prices**

3.33 Ministry of Finance (Department of Revenue) in their written submission before the Committee stated that 'Results of studies conducted in other countries cannot be directly applied to the Indian economy as India is at a different stage of development and has its own unique features. A study by National Council of Applied Economic Research (NCAER) commissioned by the Thirteenth Finance Commission has projected that after introduction of GST, the overall price levels will go down due to more efficient allocation of factors of production. It also projects that introduction of GST would lead to GDP growth in the range of 0.9 to

#### **Recommendation**

3.34 **The Committee feels that it would be too early to presume as to whether the price levels will go down or up in the post GST era. What has to be seen and watched by the Government with eyes open is whether the**

**benefit, if any, arises would certainly be passed on to the consumers or not. Hence, the Committee feels that at the most if price stability is achieved it would serve the very purpose of GST in the entire country as inflation, nowadays has not left even a single field untouched.**

#### **Role of Financial Institutions in post GST era**

3.35 The Committee was of the considered opinion that concerns of the Financial Institutions must be given due weightage as their views would be equally important as those expressed by other stakeholders in forming an opinion on the Bill.

3.36 In that backdrop, the Committee interacted with the representatives of various Financial Institutions during its study visit to Chennai, Kolkata and Mumbai. When the question was raised by the Committee as to whether the financial institutions were willing to play the role of nodal bank, receive the CGST and SGST and act as a 'clearing house' for the tax, all the financial institutions expressed their willingness to do so. The public Sector Banks informed the Committee that they should given a greater role under GST. The Committee asked the financial institutions to submit their written views on it.

3.37 In response thereto, the views received from United Bank of India and State Bank of India are as under:-

#### **United Bank of India**

3.38 GSTN which is a special purpose vehicle set up under u/s 125 of the Companies Act to provide IT infrastructure and services support to the Central and State Governments for implementation of GST has shareholders other than Government of India and State Government, three Banks, viz. ICICI Bank HDFC Ltd., HDFC Bank constitute 30% of the total shareholding of the company. No public sector bank is a stakeholder in the company. As the bulk of tax collection is undertaken by public sector banks, including State Bank of India, we hereby

submit to kindly consider inducting at least one of the public sector banks as stakeholder in the GSTN. However, if the same is not possible due to any administrative reason, at least a representation of public sector bank should be given in the Board of GSTN.

Since the fee earned on services being provided by the banks to customer may also be covered under the proposed GST, we submit before the Committee that filing of return and deposit of GST so collected be made applicable in the centralized manner as is being currently done by the Bank while levying service tax on the fees earned on services rendered to the customer.

### **State Bank of India**

3.39 (i) Financial services are exempt from GST/VAT in almost all countries. However, In India, service tax is leviable on fee based services provided by the banks and financial institutions. Presently, the tax is applicable on all fee based activities including the services provided to weaker section of society, whose accounts were opened for financial inclusion to achieve the social goal of the Government. Retail transactions, in terms of volume, constitute more than 90% in banks. The value of service for most of these transactions does not exceed Rs. 100/- considering the larger goal of the Government, it is requested that GST should not be applicable on services rendered to retail depositors. In case the Government wishes to levy GST on such services, some abatement may be considered so that the cost of services to retail customers does not go up, as GST rate is likely to be substantially higher than the present service tax rate. This will go a long way in continuing with affordable banking services to all.

3.40 (v) Considering the huge network of branches/ATM and also considering the complexities involved, we request that banks should be permitted to have a single registration and discharge GST liability centrally and credits of SGST should be available across States.

3.41 (xi) Newspaper reports that the GST rate is likely to be 20-22% as against service tax rate of 14%. Considering that in most of the countries, banking

services are outside GST, the increase in the tax rate will further increase the cost of banking services. This results into cost of doing business to be much higher in India as compared to other competing countries. To be internationally competitive, the GST rate for banking industry should be minimum and in no case should it be more than what is being levied today.

3.42 We request that the best practices followed internationally may be followed and banking services are kept outside GST. If this is not possible then, interest, trading in securities and foreign currency and services to retail customers should not be liable to GST and suitable provision should be there to avail of CenVAT credit of input services taken to provide activities involved in such services. Further, single registration coupled with IGST provision should be made available to enable CenVAT credit for consumers of banking services.

### **Recommendation**

**3.43 The Committee feels GSTN shall play a crucial role in implementation of GST as it shall provide the IT infrastructure for implementation of GST. It noted that Non Government shareholding of GSTN is dominated by private banks. This is not desirable because of two reasons . Firstly, public sector banks have more than 70% share in total credit lending in the country. Secondly, GSTN's work is of strategic importance to the country and the firm would be a repository of a lot of sensitive data on business entities across the country. In light of above, the Committee strongly recommends that Government may take immediate steps to ensure Non Government financial institution shareholding be limited to public sector banks or public sector financial institutions.**

**3.44 Endorsing the views of the SBI, the Committee having same feeling as the bank recommends that the best practices followed internationally may be followed and if possible banking services may be kept outside GST. Furthermore, if this is not possible then, interest, trading in securities and foreign currency and services to retail customers should not be liable to GST**

**and suitable provision should be there to avail of CenVAT credit of input services taken to provide activities involved in such services. Further, single registration coupled with IGST provision should be made available to enable CenVAT credit for consumers of banking services.**

**3.45 The Committee is of the considered opinion that if the GST rate is more than the service tax rate of 14%, the increase in the tax rate will further increase the cost of banking services. This results into cost of doing business to be much higher in India as compared to other competing countries. Therefore, the Committee recommends that to be internationally competitive, the GST rate for banking industry should be minimum.**

3.46 On a point raised during the meetings about the differential treatment to alcoholic liquor for human consumption, efforts made to encourage manufacturing activity and Floor Rates with Bands, the Department of Revenue in their written submission stated that:

#### **Treatment of alcoholic liquor for human consumption**

3.47 Only alcoholic liquor for human consumption has been excluded from the ambit of GST Constitutionally. All other forms of alcohol like alcohol for industrial use and medicinal and toilet preparation containing alcohol which falls in the taxing domain of the Central Government have been included in GST. This exclusion has been done to address the strong concern of the states regarding loss of revenue if potable alcohol was to be subsumed under GST.

#### **Incentives to State Government to encourage manufacturing activities**

3.48 The very nature of GST has features to incentivize manufacturing activity. As GST is a destination based consumption tax, higher the consumption of goods and services in a state, higher would be tax collection. It is well known that higher level of manufacturing activity results in a host of ancillary benefits such as creation of more jobs, higher earnings and higher standard of living, all of which

encourage higher consumption of goods and services within the state leading to higher tax collection.

### **Floor Rates with Bands**

3.49 To give flexibility to the States, the provision of 'bands' over the GST floor rates, to be recommended by the GST Council, has been introduced. Depending on the local situations and requirements, the States have the option to levy slightly higher tax within this band.

### **GST Rate**

3.50 I. On the aforesaid issue, experts in their written comments stated the following:

3.51 Once the enabling framework is created for the levy of GST, the next most crucial step in its implementation is the determination of the tax base and tax rate. This issue has been discussed in detail in the "Report of the Task Force on GST" that was submitted to the 13<sup>th</sup> Finance Commission. The Report recommends a broad base for the GST, and a combined Centre and State revenue neutral rate of 12%.

3.52 A broad base and moderate rate is an essential feature of a good tax system. Multiplicity of tax rates is also to be avoided. A majority of the VAT/GST system introduced in the last three decades embrace these features. For example, VAT/GST in New Zealand is levied on a comprehensive base at a single rate of 12.5% (at inception), in Singapore at 3%, Japan at 3%, Australia at 10%, South Africa at 16%, and Malaysia at 6% (most recent, implemented in 2015). Levy of GST on a comprehensive base makes it an economically efficient and productive source of revenue. In each of the examples cited, the revenue yield as a percent of GDP is estimated to be 0.5% or more for each percentage point of the GST rate. In New Zealand, the GST yield was the highest, at 0.74% of GDP (i.e., 12.5% GST was yielding revenues in excess of 9% of GDP).

3.53 The Centre and State revenues in India to be replaced by GST are a little less than 6% of GDP. The international benchmark revenue productivity of 0.5% of GDP yields a target revenue neutral rate for India of less than 12%. In their view, this remains a realistic option for India, which would be politically appealing, catalyse voluntary compliance, and provide a significant boost to investment and economic growth. While the tax base and rates are to be decided by the GST Council, the Bill should not create any barriers to levy of such a tax, i.e., it should allow the levy of tax to the broadest possible base.

#### **GST Rate – it must not be inflationary**

3.54 II. In terms of the proposed Article 279A (4)(e), the GST Council shall make recommendations to the Union and the States on ‘the rates including floor rates with bands of goods and services tax’. The GST rate is a very important factor in earning the trust of the tax payers. Howsoever efficient the GST machinery may be, the tax-payers won’t welcome GST happily if the GST rate is kept high because that will lead to high inflation. Even in developed countries like Australia and Canada, GST was opposed by the poorer sections of the taxpayers because of high GST rate.

#### **GST and Revenue Neutral Rate (RNR)**

3.55 The GST rate would normally be based on the Revenue Neutral Rate (RNR). In the present circumstances, the RNR is expected to be high because Petroleum and its products and Alcohol have been kept out of GST and consequently, the tax base would shrink. But, a high GST rate in line with high RNR would definitely lead to high inflation. India can not afford to have high inflation at this stage of the economy. Therefore, it is submitted that **not to go strictly by the RNR while fixing the GST rate**. The newspaper reports suggested first a RNR of around 27%, and later it was reported to be somewhere between 20 and 23%. Internationally, GST rate normally varies between 16 to 20%, with exceptions like Australia at 10%, New Zealand at 15%, Japan at 8%,



Germany at 23% and Malaysia at 6%. France has four rates, the highest 20% and lowest 2.1%, while UK has two rates 20% and 5%. To start with, **India's GST rate should not go beyond 20% for standard rate and perhaps 14% for reduced rate.**

### **Recommendation**

3.56 The Committee feels that although the GST Council has been entrusted with the task of fixing the rate including floor rates with bands in mutual consent with other State Governments who are part and parcel of the Council. But implementation of GST in other countries has shown GST rate is a very important factor in earning the trust of the consumers. If the GST rate is kept high, it will surely erode the confidence of the consumers badly and may lead to high inflation. Therefore, the Committee is of the considered view that while fixing the rate, the GST Council may opt for a broad base and moderate rate as it is an essential feature of a good tax system and as far as possible multiplicity of tax rates may be avoided.

### **Non-Interference in the State Governments powers stated in Concurrent List**

3.57 The issue as to whether the proposed Article 246 A intends to interfere in the State Governments powers mentioned under in the Concurrent List was also raised during the meeting of the Committee held on 3<sup>rd</sup> July, 2015. Replying to the Query, the Secretary, Department of Revenue informed the Committee that *“GST is a composite tax. Both the Centre and the States will have the power to levy it. Therefore, a separate specific provision is being made in Article 246A to enable both the Parliament and the State Legislatures to enact a proposal to levy and collect this tax. In no way this is diluting the powers of the States.” This will in no way interfere with the powers of the States under the Concurrent list.*

### **IT Preparedness**

3.58 Building IT infrastructure and developing IT services through GSTN: Central and State Governments have jointly registered Goods and Services Tax Network (GSTN) as a not-for-profit, non-Government Company to provide shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST. GSTN was incorporated in March 2013. GSTN is working on creating a GST portal and related ICT infrastructure together with an interface with State IT systems. To support the States, GSTN will prepare the necessary software for front-end modules which would include Registration and Returns. GSTN would also prepare back end processing modules like assessment, audit, etc. which would be required by the various States. In case the States want to develop their own software for backend modules, they shall be free to do so and in case they want to use the backend modules prepared by GSTN, they shall be provided the same.

3.59 The Committee was given to understand that an 'As-Is' Study was conducted by the NSDL to assess the capacities of the existing State IT systems and operational procedures, and to identify gaps with respect to the envisaged GST system. It is also expected that development of IT infrastructure and services is to complete by March, 2016.

3.60 The Committee is aware that Goods and Services Tax Network (GSTN) a not-for-profit, non- Government Company has been jointly set up by the Central and State Governments and it will provide shared IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders. Further, it is expected that GSTN would complete the development of IT infrastructure and services by March, 2016 i.e. exactly one month before the date from which the Government of India intends to implement it throughout the country.

3.61 Apprehensions related to level of IT preparedness have been expressed at various fora together with concerns related to its implementation. There are many questions to be answered and many more will arise at the time of its implementation and how it is to be linked with the system available with states,

but at the very same time what has to be seen is its long lasting benefits that would accrue to the nation in the years to come.

3.62 The Committee feels that together with IT preparedness, training would be a crucial element to look for. Our is a society where most of the population is not techno savvy and there would be hitch in using it by those who are at the helms of affairs. Hence, to overcome all these apprehensions it would be imperative to impart training to the personnel's at all levels and at the very onset so that their fear about its usage, implementation, affects, etc may be removed and results in building their confidence in doing or performing various tasks.

### **Recommendation**

3.63 **In that backdrop, the Committee recommends that all out effort should be made to improve upon the IT preparedness of the States, so that the apprehensions related to its level of preparedness may gets addressed. For its smooth implementation, the Committee immediately recommends implementation of comprehensive training programmes at all levels to allay the fears of consumers, stakeholders, organisations, etc. A message should go loud and clear to all that we as a country are ready to adopt tax reform of unparallel nature. The Committee also recommend s that for having no discernible blemishes in the implementation of GST, i t is imperative that not only IT preparedness is at very high level but also prerequisites like IT infrastructure, unificd tax credit clearing mechanism, etc may be put in place for its implementaton.**

### **Apprehension among State Governments**

3.64 Many State Governments/UTs either submitted their written views or appeared before the Committee on the Bill. Doubts clubbed with apprehensions of numerous types were raised and brought to the notice of the Committee. Apprehensions were cast over the losses in revenue and their sources after the implementation of Goods and Services Taxes in India. Similarly, there were apprehensions relating to/ demands from all corners that whether States may be

empowered to levy higher taxes on tobacco and tobacco products, 100% compensation for a period of 5 years should be given, Abrupt deletion of entry 52 from the state list may financially cripple the local bodies, Flexibility may be given to the states to fix SGST rates as per their needs from time to time, to protect the revenue of the local bodies special category states may be allowed to levy entry tax, Inclusion of petroleum products in the present bill with the safeguard that it shall be operationalised on the recommendation of GST Council on a date later than five years, In clause 19 of the Bill, instead of the words “for such period which may extend to five year” words “for a period not less than five years” may be replaced. Similarly, for the words “Parliament may” the words “Parliament shall” be substituted, Amend the entry 62 to read it as under 62 taxes on entertainment, betting and gambling”. Similar demands in respect of Entertainment, Amusement, Betting & Gambling that proposed Amendment by way of insertion of clause 16 (e) be omitted, Taking into consideration of adverse impact on environment, proposes for levy of an additional non-rebatable cess subject to suitable framing of guidelines, “Taxes on food grains contributed by the States to National Food Grains Pool subject to any limitations imposed by Parliament by law”, etc.

### **Recommendation**

**3.65 Having heard the views of the main stakeholders i.e. State Governments/UTs, the Committee feels that States are like the arteries of the India and if the arteries find themselves choked the whole body will fall. Hence, for the sake of our survival, what needs to be done is to protect and preserve our arteries. Based on that analogy, the Committee feels that although the apprehensions brought to the notice of the Committee are not unwarranted but due care have been taken constitutionally to overcome any constraints come in their way. All these initiatives ushered by the Government of India having been evolved and brought in the form of current Bill are based on the views expressed in the Empowered Committee meetings. To allay the fear of all State Governments in general and manufacturing**

states in particular, safeguards like 1% additional tax on supply of goods, compensation to States/UTs for losses in the revenue, States have been given the voting weightage of 2/3rd , decision in GST Council to be arrived at by the majority of not less than 3/4th , etc on the recommendation of the GST Council have been provided. More so, all this has been done constitutionally so that there may not be any doubt in the minds of the States/UTs.

3.66 Therefore, the Committee feels due consideration has been given by the Government of India to the aforesaid apprehensions raised by the States/UTs while coming forward with this comprehensive Constitutional Amendment Bill. The Committee feels that apprehensions cast over the introduction of goods and services taxes are early hiccups and with the introduction of it, the States/UTs would realise that they have many more options available to them to generate and augment their revenue source. Survival of the Union is on the States, the Committee close by saying that would the body (Centre) survive if arteries get choked, so vibrancy of the States comes first for the survival of the Centre.

THE CONSTITUTION (ONE HUNDRED AND TWENTY-  
SECOND AMENDMENT) BILL, 2014

AS REPORTED BY THE SELECT COMMITTEE  
No.- of 2015

	<p style="text-align: center;">THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) BILL, 2015</p> <p style="text-align: center;"><i>[Words underlined indicate the amendments suggested by the Select Committee and asterisks indicate omissions ]</i></p>	
	<p>A</p> <p>BILL</p>	
	<i>further to amend the Constitution of India.</i>	
	BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—	
	<b>1.</b> (1) This Act may be called the Constitution (One Hundred -----Amendment) Act, 2015.	Short title and commencement.
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.	
	<b>2.</b> After article 246 of the Constitution, the following article shall be inserted, namely:—	Insertion of new article 246A.
	"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with	Special provision with respect to goods and services tax.

	respect to goods and services tax imposed by the Union or by such State.	
	<p>(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.</p> <p><i>Explanation.</i>—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."</p>	
	<b>3.</b> In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.	Amendment of article 248.
	<b>4.</b> In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.	Amendment of article 249.
	<b>5.</b> In article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.	Amendment of article 250.
	<b>6.</b> In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.	Amendment of article 268.
	<b>7.</b> Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.	Amendment of article 268A.
	<b>8.</b> In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.	Amendment of article 269.
	<b>9.</b> After article 269 of the Constitution, the following article shall be inserted, namely:—	Insertion of new article 269A.

	<p>"269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.</p> <p><i>Explanation.</i>—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.</p>	Levy and collection of goods and services tax in course of inter-State trade or commerce.
	(2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."	
	<b>10.</b> In article 270 of the Constitution,—	Amendment of article 270.
	(i) in clause (1), for the words, figures and letter "articles 268, 268A and article 269", the words, figures and letter "articles 268, 269 and article 269A" shall be substituted;	
	(ii) after clause (1), the following clause shall be inserted, namely:—	
	"(1A) The goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2)."	
	<b>11.</b> In article 271 of the Constitution, after the words "in those articles", the words, figures and letter "except the goods and services tax under article 246A," shall be inserted.	Amendment of article 271.
	<b>12. After article 279 of the Constitution, the</b>	Insertion of new



	<b>following article shall be inserted, namely:—</b>	article 279A.
	<b>'279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred ----- Amendment) Act, 2015, by order, constitute a Council to be called the Goods and Services Tax Council.</b>	Goods and Services Tax Council.
	<b>(2) The Goods and Services Tax Council shall consist of the following Members, namely:—</b>	
	<p><b>(a) the Union Finance Minister .....Chairperson;</b></p> <p><b>(b) the Union Minister of State in charge of Revenue or Finance.....Member;</b></p> <p><b>(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.</b></p>	
	<b>(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.</b>	
	<p><b>(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—</b></p> <p><b>(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;</b></p> <p><b>(b) the goods and services that may be subjected to, or exempted from the goods and services tax;</b></p> <p><b>(c) model Goods and Services Tax Laws, principles of levy, apportionment</b></p>	

	<p><b>of Integrated Goods and Services Tax and the principles that govern the place of supply;</b></p> <p><b>(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;</b></p> <p><b>(e) the rates including floor rates with bands of goods and services tax;</b></p> <p><b>(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;</b></p> <p><b>(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and</b></p> <p><b>(h) any other matter relating to the goods and services tax, as the Council may decide.</b></p>	
	<p><b>(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.</b></p>	
	<p><b>(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.</b></p>	
	<p><b>(7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its</b></p>	

	<b>meetings.</b>	
	<b>(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.</b>	
	<p><b>(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the Members present and voting, in accordance with the following principles, namely:—</b></p> <p><b>(a)the vote of the Central Government shall have a weightage of one-third of the total votes cast, and</b></p> <p><b>(b)the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast,in that meeting.</b></p>	
	<p><b>(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—</b></p> <p><b>(a)any vacancy in, or any defect in, the constitution of the Council; or</b></p> <p><b>(b)any defect in the appointment of a person as a Member of the Council; or</b></p> <p><b>(c)any procedural irregularity of the Council not affecting the merits of the case.</b></p>	
	<b>(11) The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendations.".</b>	
	<b>13. In article 286 of the Constitution,—</b>	Amendment of article 286.
	<p><b>(i)in clause (1),—</b></p> <p><b>(A)for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of</b></p>	

	<p>services or both, where such supply takes place" shall be substituted;</p> <p>(B)in sub-clause (b), for the word "goods", at both the places where it occurs, the words "goods or services or both" shall be substituted;</p> <p>(ii) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;</p> <p>(iii)clause (3) shall be omitted.</p>	
	<b>14.</b> In article 366 of the Constitution,—	Amendment of article 366.
	<p>(i)after clause (12), the following clause shall be inserted, namely:—</p> <p>'(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;'</p> <p>(ii)after clause (26), the following clauses shall be inserted, namely:—</p> <p>'(26A) "Services" means anything other than goods;</p> <p>(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;'</p>	
	<b>15.</b> In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "article 162 or article 241", the words, figures and letter "article 162, article241 or article 279A" shall be substituted.	Amendment of article 368.
	<b>16.</b> In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—	Amendment of Sixth Schedule.
	(i)in clause (c), the word "and" occurring at	

	<p>the end shall be omitted;</p> <p>(ii) in clause (d), the word "and" shall be inserted at the end;</p> <p>(iii) after clause (d), the following clause shall be inserted, namely:—</p> <p>"(e) taxes on entertainment and amusements."</p>	
	<p><b>17. In the Seventh Schedule to the Constitution,—</b></p>	Amendment of Seventh Schedule.
	<p>(a) in List I — Union List,—</p> <p>(i) for entry 84, the following entry shall be substituted, namely:—</p> <p>"84. Duties of excise on the following goods manufactured or produced in India, namely:—</p> <p>(a) petroleum crude;  (b) high speed diesel;  (c) motor spirit (commonly known as petrol);  (d) natural gas;  (e) aviation turbine fuel; and  (f) tobacco and tobacco products.";</p> <p>(ii) entries 92 and 92C shall be omitted;</p>	
	<p>(b) in List II — State List,—</p> <p>(i) entry 52 shall be omitted;</p> <p>(ii) for entry 54, the following entry shall be substituted, namely:—</p> <p>"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale</p>	

	<p>in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";</p> <p>(iii)entry 55 shall be omitted;</p> <p>(iv)for entry 62, the following entry shall be substituted, namely:—</p> <p>"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council."</p>	
	<p><b>18.</b> (1) An additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in sub-section (2).</p>	<p>Arrangement for assignment of additional tax on supply of goods to States for two years or such other period recommended by Council.</p>
	<p>(2) The net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.</p> <p>(3) The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under sub-section (1).</p> <p>(4) Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.</p> <p>(5) For the purposes of this section, "State" shall have the meaning assigned to it in clause (26B) of article 366 of the Constitution.</p>	

	<p><b>19.</b> Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a* period **** of five years.</p>	<p>Compensation to States for loss of revenue on account of introduction of goods and services tax.</p>
	<p><b>20.</b> Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.</p>	<p>Transitional provisions.</p>
	<p><b>21.</b> (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:</p> <p style="padding-left: 40px;">Provided that no such order shall be made after the expiry of three years from the date of such assent.</p> <p>(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.</p>	<p>Power of President to remove difficulties.</p>

**RAJYA SABHA SELECT COMMITTEE ON THE GOODS AND SERVICES  
TAX**

**NOTE OF DISSENT BY  
MADHUSUDAN MISTRY, MANI SHANKARAIYAR, BHALCHANDRA  
MUNGEKAR**

**New Delhi, 20 July 2015**

We are in favour of a Goods and Services Tax that is simple and comprehensive. The Constitution (122nd) Amendment Bill, 2015 is neither. It is pitted with compromises, exclusions and exceptions that make it impossible for us to extend our support to the Bill in the absence of the amendments we have proposed being incorporated in the Bill, as drafted at present.

**First**, to ensure that GST rates are moderate and reasonable and do not impose an unfair burden on consumers, particularly poor consumers, it is necessary that a ceiling rate be specified in Article 246A so that, in the pursuit of higher revenues, the GST Council desists from crossing the ceiling. We have proposed a ceiling of 18% as a reasonable, moderate, adequately revenue-generating GST rate.

Second, we find the proposal to levy an additional 1% tax to be market-distorting, especially in view of the fact that we have proposed 100% compensation for a minimum of five years to States that might lose revenues. Further, in our view, the compensation should be deposited in a GST Compensation Fund, under the administrative control of the GST Council, as proposed by the Standing Committee on Finance

**Third**, the single most crucial word in the Bill is "supply lies", which is used in clause 9 and clause 18 without being defined. We have, therefore, sought to amend clause 9 through two provisos to article 269 (A) to clarify that goods moving from one unit to another unit of a firm in



different States under the same ownership, or when two or more firms are collaborating in units located in different States for the manufacture of the same end-product, should be excluded from the term "supply Isupplies". This would also apply to the same term used in clause 18. However, representatives of the Government have failed to define this term in the Committee on the ground that three governmental committees are engaged in defining the term in preparing Bills fro GST, SGST and IGST. We believe that a Select Committee of the Rajya Sabha cannot be subordinated to bureaucratic committees and that it would not be proper for the Select Committee to commend a draft Constitution amendment to Parliament without a proper agreed definition of this key term.

**Fourth,** given that the fundamental aim of GST is to establish a common market for the whole country, we are unable to support a GST Bill that excludes indefinitely from the purview of the GST tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption. We propose that all three be included in clause 12 of the Constitution amendment bill with the condition that the GST Council take a decision for their inclusion in GST within a period of five years.

**Fifth,** we cannot support a GST Council that is unduly weighted in favour of the Centre. In the interests of true "cooperative federalism", the share of the States in voting in the GST Council must be enhanced to 75% and the share of the Centre brought down to 25%.

**Sixth,** we cannot support a Bill that transgresses the elementary principle of law that parties to a dispute cannot be judges in their own cause. The failure to incorporate a GST Disputes Settlement Authority, as was provided

for in the 2011 Bill, is a serious lacuna that must be filled. The GST Council, comprising members who will necessarily be party to any dispute relating to the implementation of GST, must be supplemented and reinforced with a GST Disputes Settlement Authority in toto as provided for in the 2011 Bill.

**Seventh,** the sources of revenue of the Panchayats and Municipalities, as provided for in Parts IX and IXA of the Constitution, must be safeguarded and they must be assured of their due share in the revenue buoyancy that is expected to arise from the enactment and implementation of the GST. It is only with such assurance, through the amendments we have suggested in this regard to the Bill, that we might find it possible to support the proposed legislation.

**Eighth,** special consideration might be given by the GST Council to any State or Union territory, with or without a Legislature, such as Goa and Puducherry, whose population does not exceed twenty lakh.

Further, we strongly protest the failure to include in the Report of the Committee the detailed rationale for the various amendments we have moved to the Constitution (One Hundred and Twenty Second) Amendment Bill, 2015, while providing ample space for the Government to explain its rationale. Accordingly, we attach in the Annexe to this Note of Dissent the amendments we have moved to the draft Report of the Select Committee.

This Note of Dissent is submitted in view of the failure of the Select Committee to take our points adequately into account.

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(Madhusudan Mistry) Mani Shankar Aiyar (Bhalchandra Mungekar

## **Annexe**

to

Note of Dissent submitted by  
Madhusudan Mistry, Mani Shankar Aiyar and Bhalchandra Mungekar

**Text of amendments to the draft Report submitted by  
Madhusudan Mistry, Mani Shankar Aiyar, Bhalchandra Mungekar**

### **Clause 2**

#### **Paragraph 5.4**

In the third line, after "concerned" and before "the Ministry of Finance"  
**add:**

"the members moving the amendment stressed the need to keep GST rates moderate and reasonable so that consumers, particularly poor consumers, are not excessively burdened, and to this end proposed that the GST Council be bound by the Constitution to not exceed 18% as the rate for an adequately revenue-generating GST. They clarified that there is the precedent of a specific rate of taxation provided for

in article 276(2) as also in clause 18 of the Bill before the committee."

### **Clause 9**

#### **Paragraph 32.3A**

**Add** new paragraph to read as follows:

"These members rejected the argument made by Government representatives that as the definition of the term was being decided by three government committees working on GST, SGST and IGST there was no need to define the term in the Constitution, stating that a Select Committee of Parliament cannot be subordinated to ongoing work of governmental committees and, therefore, it would be improper to commend a Bill to Parliament that did not adequately define so crucial a term as "supply /supplies".

### **Clause 12**

#### **Paragraph 35.3A**

**Add** new paragraph to read as follows:

Some members proposed that under clause 4(c), among the "principles" to be considered by the GST Council while preparing GST laws the principle of "share of local bodies in revenue buoyancy and compensation for losses sustained through taxes subsumed" should be included as articles 243H and 243X provide for State Legislatures to, by law, ensure the "sound finances" of the local bodies. This would also enable State Finance Commissions set up under articles 243 I and 243 Y to provide for augmenting the share of local bodies in revenue buoyancy generated by the adoption of GST.

#### **Paragraph 35.38**

**Add** a new paragraph to read as follows:

With reference to sub-clause (4) (g) which provides for "special consideration" to certain States, some members proposed, in keeping with article 2438 (2), that "special consideration" may also be extended to States like Goa and Union territories like Puducherry by adding at the end of 4(g) "and any State or Union territory having a population not exceeding twenty lakhs". This proposal was made in response to the specific request of Goa and Puducherry to be given special consideration in view of their small size and limited sources of revenue.

#### **Paragraph 35.4**

**Amend** the last sentence to read: "These items have been kept out of GST **for the present** to protect the revenue interest of the States"

#### **Paragraph 35.4A**

**Add** the following paragraph to read as follows:

Some members sought the inclusion in clause 12(5) of highly revenue-generating products like tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption within a period not later than five years so that India, within a few years, fulfills the fundamental GST objective of making

the entire nation a single common market for all products.

### **Clause 13**

#### **Paragraph 39.3A**

**Add** the following new paragraph to read as follows:

Some members sought the definition in the Constitution amendment Bill itself of the term "supply" in proposed clause I(A) of article 286

### **Clause 14**

#### **Paragraph 40.1**

**Add** at the end of the draft sentence the words: "so as to progressively ensure a true common market for all goods"

#### **Paragraph 40.2**

**Add** at the end of the draft sentence the words: "so as to avoid the circular definition of 'services' meaning 'anything other than goods'."

### **Clause 16**

#### **Paragraph 46.1**

**Amend** the opening line to read as follows: "With a view to progressively promoting a common market in all goods and services," before "Some members"

#### **Paragraph 46.2**

**Add** at the end of the present draft sentence the following words: "as it does not figure in the Constitution?"

#### **Paragraph 46.8A**

**Add** the following new paragraph:

Some members did not accept Government's views as set out under paragraphs 46.6, 46.7 and 46.8 as the overarching objective of GST is to progressively render India a common market for all goods and services, including so-called 'demerit' goods. If a higher rate of tax has to be imposed on such goods, the GST Council may be authorised to do so.

## **Clause 18**

### **Paragraph 52.5**

**Add** at the end of the draft sentence the following words: "because these members have proposed that, under clause 19, 100 percent compensation be provided for a period not less than five years. In view of guaranteed compensation for any loss incurred by any State or Union territory, there is no need to levy a market-distorting 1% additional levy"

## **Clause 19**

### **Paragraph 53.4A**

**Add** the following new paragraph:

Some members proposed the addition of the words: ", as well as The Panchayats and The Municipalities through State Legislatures" so as to ensure the "sound finances" of the local bodies while respecting the Constitutional order that as local bodies are in the State List it is for State Legislatures, by law, to "authorise a Panchayat/Municipality to levy, collect and appropriate" such taxes. They held that a mere recommendation to this effect by the Select Committee would not be binding in the sense that an appropriate provision in the Constitution would be.

## **Chapter IV**

### **Dispute Settlement Authority**

#### **Paragraph 62.1**

**Amend** the second sentence to read as follows:

They were of the view that as the principles of natural justice hold that a party to a dispute cannot be a judge in its own cause, leaving disputes to be settled in accordance with the directives of the GST Council would be tantamount to allowing all disputes, which would necessarily involve one or more members of the GST Council as judges in disputes to which they are party.

9, OLD TAMIL NADU HOUSE,  
UTIL YA MARG,  
ANAKYAPURI, NEW DELHI.

A.  
NAVANEETHAKRISHNAN.  
MEMBER OF PARLIAMENT  
(RAJYA SABHA)

LEADER,  
AIADMK PARTY IN RAJYA SABHA.  
DELHI,

NEW

21.07.2015.

The Hon'ble Chairman,  
Select committee on Constitution (One Hundred and Twenty -  
Second Amendment) Bill,2014, Rajya Sabha, New Delhi

Respected Sir, Vanakkam,

A Dissent Note by AIADMK party on the report of  
the Select Committee on the Constitution ( One Hundred  
and Twenty-Second Amendment) Bill,2014 is submitted after  
having gone through the report.

Than  
king  
You,

Yours Sincerely,

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(A. NAVANEETHAKRISHNAN)

**DISSENT NOTE BY AIADMK PARTY ON THE REPORT OF  
THE SELECT COMMITTEE ON THE CONSTITUTION  
(ONE HUNDRED AND TWENTY-SECOND AMENDMENT)  
BILL, 2014**

The views of the AIADMK Party on the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 on Goods and Services Tax (GST) passed by the Lok Sabha on 6th May, 2015, and which is presently under consideration of the Select

Committee by the Rajya Sabha, are in consonance with the letters dated 17.8.2014 and 19.12.2014 addressed by our Leader and the Hon'ble Chief Minister of Tamil Nadu to the Hon'ble Prime Minister and the letter dated 10.9.2014 addressed to the Union Finance Minister, in so far as they impinge upon the fiscal autonomy of States, and are as follows: -

**I. PROVISIONS RELATING TO GOODS AND SERVICES TAX COUNCIL:**

GST Council as a constitutional body impinges on the legislative sovereignty of both Parliament and the State Legislatures.

It also completely jeopardizes the autonomy of the States in fiscal matters. In spite of our repeated objections, the present Bill also envisages the formation of the GST Council. We strongly object to the provision for the GST Council.

Ideally it should not exist. The existing mechanism of the Empowered Committee of State Ministers which dealt with VAT issues is adequate. No statutory GST Council is required.

Furthermore, the decision making rule and voting weightage in the proposed Council are completely unacceptable. They give the Government of India an effective veto in the GST Council and no distinction is sought to be made amongst the States in weightage. Hence, if at all a Council is formed, the weightage of the vote of the Central Government should be reduced to **one-**



**fourth** of the total votes cast and that of the States should be increased to **three-fourths** of the total votes cast. Further, the weightage of each State's vote should be in proportion to the representation of each State in the Council of the States. This is important as the changeover to GST has different implications for different States based on their size and reliance on own tax revenues.

However, the Select Committee has not considered these views on the GST Council and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

## II. PROVISIONS RELATING TO PETROLEUM AND PETROLEUM PRODUCTS:

Petroleum and Petroleum products, which are currently outside the purview of State VAT in most States, are proposed to be covered under GST in the Constitution Amendment Bill though the date on which such tax will be levied on these products has been left to the recommendation of the GST Council. Bringing these products under the ambit of GST will entail huge revenue loss to the States as Input Tax Credit will have to be provided eventually. Further, there is no guarantee that GST will not be prematurely imposed on these products. Hence, considering the limited revenue resources of the State, as has been repeatedly insisted upon by our Leader, the Hon'ble Chief Minister of Tamil Nadu Puratchi Thalaivi Amma, Petroleum and Petroleum products should be totally kept outside GST.

However, the Select Committee has not considered these views on the provisions relating the petroleum and petroleum products and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

### **III. PROVISIONS RELATING TO TOBACCO AND TOBACCO PRODUCTS:**

States should also be empowered to levy higher taxes on Tobacco and Tobacco products over and above SGST similar to what has been allowed to the Centre.

However, the Select Committee has not considered these views on the provisions relating to tobacco and tobacco products and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

### **IV. PROVISIONS RELATING TO ADDITIONAL LEVY OF 10/0 IN THE COURSE OF INTER-STATE TRADE OR COMMERCE:**

Manufacturing States like Tamil Nadu stand to permanently lose substantial revenue if GST is implemented, as GST will be based on the destination principle. Though the Bill envisages that an additional tax on supply of goods to the extent of 1% in the course of inter-State trade or commerce for a period of 2 years or such other period as the GST Council may recommend, it also empowers the Government of India to exempt goods from this additional levy of 1%. The Select Committee has recommended that this additional levy of 1 per cent shall be restricted to "all forms of supply made for a consideration".

None of these formulations relating to the levy of 1 per cent additional tax really meet the requirements of a manufacturing State

like Tamil Nadu. **Instead, the States should be permitted to retain 4% of CGST part of the IGST on all inter-State sales/transfer of both goods and services.** This will enable a substantial reduction in the compensation payable to the States. At the same time, since it would come out of the CGST part of the IGST, hence it would not place the destination States at any disadvantage with regard to revenue flow.

However, the Select Committee has not considered these very valid views on the issue of taxation of interstate rate and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

#### **V. PROVISIONS RELATING TO COMPENSATION OF REVENUE LOSS TO THE STATES:**

The Bill provides for Parliament to enact a law to provide for compensation to the States for such period which may extend to 5 years on the recommendation of the GST Council.

The Select Committee has suggested a modification indicating provision of compensation for a period of five years. While this removes the uncertainty regarding the period for which the compensation would be provided, it still falls short of the demands of the States regarding the extent of compensation.

In the 14<sup>th</sup> Finance Commission's Report it has been recommended that 100% compensation may be provided for the first 3 years, 75% for the 4th year and 50% for the 5<sup>th</sup> year. In discussions it appears that the Government of India is in line with this view.

However, taking into account the permanent loss that would accrue to the States, the AIADMK party suggests that **1000/0 compensation should be provided for a period of not less than 5 years** and a consensus should be arrived at on the methodology of computation of compensation and the mechanism to administer the compensation. As the Select Committee's report falls short of the expectations of the AIADMK Party we dissent from the report of the Select Committee.

## **VI. CONSENSUS ON IMPORTANT ISSUES RELATING TO GOODS AND SERVICES TAX:**

As our Leader, the Hon'ble Chief Minister of Tamil Nadu has pointed out, it would be appropriate to arrive at a **broad consensus** on a number of other important issues relating to GST like revenue neutral rates, floor rates with bands, commodities to be excluded from GST, IGST model and clarity on dual administrative control before proceeding further with the enactment, so as to allay the genuine fears of the States over loss of fiscal autonomy and permanent revenue loss.

The Select Committee has also gone beyond its brief on the issue of Revenue Neutral Rate (RNR) and recommended that to start with, India's GST rate should not go beyond 20% for standard rate and perhaps 14% for reduced rate. This is a matter for the Empowered Committee of State Finance Ministers/ GST Council on which to take an appropriate view. Hence the AIADMK Party is unable to accept this recommendation in the Select Committee's report.

On behalf of the AIADMK Party, the Select Committee of the Rajya Sabha was requested to duly take into account the above serious concerns relating to the Constitution (One Hundred and Twenty-second

Amendment) Bill, 2014 while finalizing the report of the Committee.

As these views have not been duly considered by the Select Committee, this note may be appended to the Report as a dissent note containing the views of the AIADMK Party.

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## **Dissent Note to the Select Committee Report on Constitution 122<sup>nd</sup> Amendment (GST) Bill**

Some provisions of the Constitution (One Hundred and Twenty Second Amendment) Bill i.e. Goods and Services Tax Bill are likely to adversely impact the federal structure of the country.

There is a need for decentralization of powers and devolution of the taxes in favour of the States and further to the Local bodies. Fiscal Federalism and protection of the powers of the states is important while a frame work is created for a Pan Indian Common Economic Zone and market through goods and services Tax Structure.

The key issue arises in Clause XII of the Bill is the formation of a GST Council. According to the Clause, every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:-

- (a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
- (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast. Naturally, the Centre will have enormous power in the GST Council, given its structure prescribed in the Bill. So, the weight age of the Centre in the council should be reduced to at least one-fourth of the total votes cast and that of the States should be increased to at least three-fourth of the total votes cast. The clauses are designed in a way that the Centre will have absolute powers in deciding tax proposals. This is likely to harm the concept of Union and States. It will be turning into a structure of Union alone.

While special provision with respect to the states of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Mizoram, Nagaland,

Sikkim, Tripura, Himachal Pradesh and Uttarakhand is made. Similar provision could have been made in case of Puducherry.

For protecting a particular local brand of MSME product and protecting Agri-based products, for promoting farmers and industry, States should have leverage.

GST should not be in the interest of big corporate houses, who want a free flow of goods and services with the technology promoted and owned by them. With the Centre having an absolute say over the decision making process on the GST, the States will lose its financial independence in the long run and corporate will dictate the policies of even the local Governments. So, these concerns must be given due consideration in the Bill.

21.7.15

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## **Recommendations/Observations at a Glance**

1. **CLAUSE 1 TO CLAUSE 8 : THESE CLAUSES HAVE BEEN ADOPTED WITH NO CHANGE.**
  
2. **Clause 9 - The Committee feels that since imposition of GST on the supplies of goods and services in the course of inter-State trade would not lead to cascading of taxes, the Clause may be adopted with no change.**
  
3. **CLAUSE 10 & CLAUSE 11 : THESE CLAUSES HAVE BEEN ADOPTED WITH NO change.**
  
4. **Clause 12 - After having deliberated on the issue of finances of local bodies, the Committee strongly feels that the revenues of local bodies need to be sustained and protected for ensuring that standards of local governance are maintained. The Committee, thus, strongly recommends that the State Governments take adequate measures to ensure that adequate revenues flow to the local bodies, and their resources are not adversely affected. The Committee noted that Article 243H and 243X contain provisions for State Legislatures to authorize Panchayats and Municipalities to collect and appropriate taxes in the State list. The Committee further noted that Article 243I and 243Y provide for setting up of State Finance Commissions to make recommendations regarding devolution of funds to local bodies. The Committee noted that the above provisions notwithstanding, local bodies find managing their resource requirements quite challenging.**

**In light of above, with respect to Article 279A 4(e), the Committee strongly recommends that the word 'band' used in the proposed Article may be defined in GST laws. The Committee recommends the following definition of 'band':**



*“Band” : Range of GST rates over the floor rate within which Central Goods and Service Tax (CGST) or State Goods and Services Tax (SGST) may be levied on any specified goods or services or any specified class of goods or services by the Central or a particular State Government as the case may be.*

With respect to Article 279A(5), taking note of the provision that inclusion of petroleum products into GST can take place only on recommendation of GST Council which could happen only with the consent of both the Centre and the States, the Committee recommended that the clause be adopted with no change.

The Committee is aware that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

In view of the clarifications submitted by the Department of Revenue and Legislative Department, the Committee finds no merit in disturbing the voting pattern proposed in the Bill, as the same has been worked out on a formula where no one is at an disadvantageous or dominating position be it Centre or States. Moreover, under clause 2 Parliament and the Legislature of every State shall have power to make laws with respect to GST simultaneously.

In the GST Council, all the decisions have to be taken collectively by the Centre and States and in order to take decision on any issue 75% votes are necessary. So, in order to strike a fine balance Centre vote share has been kept at 1/3<sup>rd</sup> and that of the States at 2/3<sup>rd</sup>. In that backdrop, the Committee recommends that these amendments may not be necessary since our Constitution is a federal Constitution and so, it is necessary to make the provisions providing for a manner

that disallow the dominance of one over the other. Keeping this in view, the voting formula has been worked out. Hence, the clause may be adopted with no change.

The Committee, having noted the point mentioned by the Department of Revenue that the GST Council shall decide only the 'modalities' to resolve disputes, did not agree to recommend inclusion of Article 279B as was proposed in Constitution(115<sup>th</sup> Amendment) Bill, 2011.

5. Clause 13 - The term 'supply' would be defined in the various GST laws relating to CGST and SGST. Hence, the Committee feels that it would not be appropriate to insert the definition of supply in this clause. This clause has been adopted with no change.

6. Clause 14 - Endorsing the view of the Department, the Committee feels that 'services' has been so defined in order to give it wide a mplitude so that all supplies that are not goods can potentially be covered within th e ambit of services and no activity remains o outside the taxable net. This woul d also minimize disputes. Further, having noted the points mentioned by the Department of Revenue regarding inclusion of petroleum products under GST, the clause may be adopted with no change.

7. Clause 15 & Clause 16 -These clauses have been adopted with no change.

8. Clause 17- 2.108 Regarding the aforesaid Entry, the Committee is of the view that Entry 92C was inserted by the Constitution (Eighty-Eighth Amendment) Act, 2003 to empower the Union to impose service tax on certain services read with article 268A of the Constitution.

Notwithstanding, the service tax levied under the Finance Act, 1994 were continuing as such. The amendment was carried out in the Constitution but the provision was never brought into force. Since Parliament has enacted the said

constitutional provision and as such the provision stands as the part of Constitution; and therefore, unless it is omitted by a Constitution Amendment Act by Parliament, it will continue to sit in the Constitution. On the need for formal repeal, the Law Commission, in its One Hundred and Forty-eighth Report on “Repeal of Certain Pre-1947 Central Acts”, has observed that “the statutes, unlike human beings, do not die a natural death, with the possible exception of statute whose life is pre-determined by the Legislature at the time of their enactment. A statute, unless it is expressly enacted for a temporary period, survives until it is killed by repeal. To this extent, statutes enjoy immortality.” Therefore, it is necessary to omit the said provision to ward off any future doubts about GST.

The Committee is of the view that the entry in the List II- State List empowers the State Government to make laws in respect of the subjects mentioned therein. The Committee is also of the considered view that taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution. Entry 53 of the List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122nd Amendment) Bill, 2014. The Committee also noted the rationale for the provisions relating to alcohol for human consumption and tobacco as provided by the Department of Revenue. Hence, the clause may be adopted with no change.

9. **Clause 18- 2.139** The Committee feels that the provision of 1% additional tax in its present form is likely to lead to cascading of taxes. Therefore, the Committee strongly recommends that in the concerned GST law, an explanation should be given that for the purpose of Clause 18, the word ‘supply’ would mean:

*Supply: "All forms of supply made for a consideration".*

10. **Clause 19 - 2.158** In view of the clarifications given by the Legislative Department, the Committee feels that there is no justification for substitution of the word 'may' with 'shall'.

Having regard to the concerns expressed by the various States and some of the Members of the Committee in their submissions made before the Select Committee, the Committee recommends amendment in clause 19. The amended clause 19 should read as follows:

*“19. Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for the loss of revenue arising on account of implementation of the Goods and Services Tax for a period of five years.”*

11. **Clause 20 & Clause 21** : This clause has been adopted with no change.

12. The Committee feels that the concerns expressed by all the Members of the Committee related to local bodies and Municipalities are not unwarranted. Based on the years of experience and being witnessed to their work in their respective constituencies they were of the view that their interest needs to be protected. The same view was also endorsed by nearly all the stakeholders who have either submitted their memorandum or appeared before the Committee on the Bill.

But, at the same time we may not forget that the Constitution of India clearly defines the ambit under which the Centre and each of the State has to function. Any encroachment into the State List would disturb the whole system and could strain the Centre-State relations.

The Committee feels that although the issues raised by the Members to protect and preserve the interest of local bodies are valid, it would not be

appropriate for the Committee to advise, recommend and guide the State Governments what they have to do with regard to the interests of the local bodies.

As per the provisions of the Bill, while the Parliament would pass law relating to CGST, every State Government has to pass a similar law relating to SGST. Hence, while drafting the SGST, the role of the drafters and the concerned State Governments becomes all the more important as they have a duty to protect the revenue sources of the Panchayats, Municipalities, etc, enshrined under Constitution of India. The Committee also feels that here the role of the GST Council is also very important, because while recommending to the Centre and State Governments for subsuming of the taxes, cesses and surcharges levied by the Union, the States and the local bodies in the goods and services tax under article 279 (4) (a), it may also ensure protection of revenue sources of local bodies under provisions of article 279 (4) (c) and (h).

In the light of the above, the Committee feels that in a cooperative federalism, each unit of it inter acts cooperatively and collectively resolves their problems by taking appropriate action at their end. On the same analogy, Government at the helm of the affairs is duty bound both morally and constitutionally to protect the interest of local bodies by giving them suitable space of functioning and power to levy and generate taxes for their day today functioning. Having full faith in our Constitution from where each tier of the Government draws its powers, the Committee believes that all the State Governments would enact laws on the basis of Model GST Laws recommended by the GST Council and while making such laws States would abide by the constitutional provisions relating to Panchayats and Municipalities.

Concerned about the very existence and survival of local bodies, the Committee feels that Local government is a State subject figuring as item 5 in List II of the

**Seventh Schedule to the Constitution. Article 243 G of the Indian Constitution enshrines the basic principle for devolution of power to the local bodies. In the nation's journey towards becoming an economic power, local bodies play an important part in enabling infrastructure availability to the citizens. Local bodies are institutions of the local self governance, which look after the administration of an area or small community such as villages, towns, or cities. The local bodies in India are broadly classified into two categories. The local bodies constituted for local planning, development and administration in the rural areas are referred as Rural Local Bodies (Panchayats) and the local bodies, which are constituted for local planning, development and administration in the urban areas are referred as Urban Local Bodies (Municipalities) and the Constitution of India gives protection to them through various articles, so while drafting the SGST laws due consideration should also be given to this fact. In that backdrop, the Committee strongly recommends that while drafting the SGST laws due consideration to the third tier of the Government as has been guaranteed by the Constitution be given and provisions of devolution of taxes to the local bodies be made.**

**The Committee is perturbed to know that State Finance Commissions (SFC) in some of the States are either non-existent or even when exist their recommendations were not accepted by the respective State Governments. The Committee understands that each tier of the Government draws its powers through the Constitution and there is a clear demarcation of fields through List I, II and III within which each tier has to function. Any encroachment by any of them would paralyze the whole system and defeat the very foundation of our Constitution. Hence, the Committee while not venturing into the domain of the State List desires that for the betterment of our States in general and country in particular it would be prudent to abide by the recommendations of the SFCs.**

**13. Endorsing the view envisaged by Fourteen Finance Commission, the Committee feels it would be wise to keep the GST Compensation Fund out of the purview of the Bill as has been done in the present case, because it is a temporary component and that too only for five years.**

**14. The Committee feels that each and every State is being represented in the GST Council by their Revenue/Finance/Taxation Minister. Be it a small State or a big State, in the GST Council, all of them enjoy equal status and power to cast one vote. In the event of difference, it can very well be presumed that the GST Council will try to evolve consensus on contentious issues before going for casting of votes, as all the States are members of the Council. Thus, modality to resolve any differences internally lies with the Council. If any Dispute Settlement Authority is created separately it will certainly hamper the functioning of the GST Council in general and Legislatures (Parliament and States) in particular. Thus, it would be judicious not to have a separate and distinct authority having far reaching powers and which could preempt and supersede the powers of Parliament and State Legislatures in the long run.**

**The Committee also feels that when concept of Empowered Committee (EC) was coined for the first time, it may not have been presumed how it would function, whether it would serve the purpose for which it would be created, how States would be represented/heard, how issues would be taken up and resolved, etc. But experience has shown that the faith with which the concept of EC was coined has actually delivered. Empowered Committee headed by one among the State Finance/ Revenue Ministers of all States deliberate meticulously on each of the issues raised by its Members and with the passage of time it had taken the shape of arbitration centre where disputes related to them or between two or many States are raised, deliberated and settled amicably without any arbitration charges or fees borne by the disputant States. It would not be over exaggeration of facts if the**

Committee would say that on the one hand EC had worked as a forum where any issue of State importance could be raised and on the other hand it had gained the confidence of States in solving their problems and allaying their fears. Such confidence building measure had been initiated by the EC that it could well be termed as a forum where disputes are settled broadly with consensus.

15. The Committee feels that it would be too early to presume as to whether the price levels will go down or up in the post GST era. What has to be seen and watched by the Government with eyes open is whether the benefit, if any, arises would certainly be passed on to the consumers or not. Hence, the Committee feels that at the most if price stability is achieved it would serve the very purpose of GST in the entire country as inflation, nowadays has not left even a single field untouched.

16. The Committee feels GSTN shall play a crucial role in implementation of GST as it shall provide the IT infrastructure for implementation of GST. It noted that Non Government shareholding of GSTN is dominated by private banks. This is not desirable because of two reasons . Firstly, public sector banks have more than 70% share in total credit lending in the country. Secondly, GSTN's work is of strategic importance to the country and the firm would be a repository of a lot of sensitive data on business entities across the country. In light of above, the Committee strongly recommends that Government may take immediate steps to ensure Non Government financial institution shareholding be limited to public sector banks or public sector financial institutions.

Endorsing the views of the SBI, the Committee having same feeling as the bank recommends that the best practices followed internationally may be followed and if possible banking services may be kept outside GST. Furthermore, if this is not possible then, interest, trading in securities and foreign currency and services to



retail customers should not be liable to GST and suitable provision should be there to avail of CenVAT credit of input services taken to provide activities involved in such services. Further, single registration coupled with IGST provision should be made available to enable CenVAT credit for consumers of banking services.

The Committee is of the considered opinion that if the GST rate is more than the service tax rate of 14%, the increase in the tax rate will further increase the cost of banking services. This results into cost of doing business to be much higher in India as compared to other competing countries. Therefore, the Committee recommends that to be internationally competitive, the GST rate for banking industry should be minimum.

17 The Committee feels that although the GST Council has been entrusted with the task of fixing the rate including floor rates with bands in mutual consent with other State Governments who are part and parcel of the Council. But implementation of GST in other countries has shown GST rate is a very important factor in earning the trust of the consumers. If the GST rate is kept high, it will surely erode the confidence of the consumers badly and may lead to high inflation. Therefore, the Committee is of the considered view that while fixing the rate, the GST Council may opt for a broad base and moderate rate as it is an essential feature of a good tax system and as far as possible multiplicity of tax rates may be avoided.

#### **Non-Interference in the State Governments powers stated in Concurrent List**

18. In that backdrop, the Committee recommends that all out effort should be made to improve upon the IT preparedness of the States, so that the apprehensions related to its level of preparedness may gets addressed. For its smooth implementation, the Committee immediately recommends implementation of comprehensive training programmes at all levels to allay the fears of consumers,

stakeholders, organisations, etc. A message should go loud and clear to all that we as a country are ready to adopt tax reform of unparalleled nature. The Committee also recommends that for having no discernible blemishes in the implementation of GST, it is imperative that not only IT preparedness is at very high level but also prerequisites like IT infrastructure, unified tax credit clearing mechanism, etc may be put in place for its implementation.

1. Having heard the views of the main stakeholders i.e. State Governments/UTs, the Committee feels that States are like the arteries of the India and if the arteries find themselves choked the whole body will fall. Hence, for the sake of our survival, what needs to be done is to protect and preserve our arteries. Based on that analogy, the Committee feels that although the apprehensions brought to the notice of the Committee are not unwarranted but due care have been taken constitutionally to overcome any constraints come in their way. All these initiatives ushered by the Government of India having been evolved and brought in the form of current Bill are based on the views expressed in the Empowered Committee meetings. To allay the fear of all State Governments in general and manufacturing states in particular, safeguards like 1% additional tax on supply of goods, compensation to States/UTs for losses in the revenue, States have been given the voting weightage of 2/3rd , decision in GST Council to be arrived at by the majority of not less than 3/4th , etc on the recommendation of the GST Council have been provided. More so, all this has been done constitutionally so that there may not be any doubt in the minds of the States/UTs.

Therefore, the Committee feels due consideration has been given by the Government of India to the aforesaid apprehensions raised by the States/UTs while coming forward with this comprehensive Constitutional Amendment Bill. The Committee feels that apprehensions cast over the introduction of goods and services taxes are early hiccups and with the introduction of it, the States/UTs

**would realise that they have many more options available to them to generate and augment their revenue source. Survival of the Union is on the States, the Committee close by saying that would the body (Centre) survive if arteries get choked, so vibrancy of the States comes first for the survival of the Centre.**

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## **8. Message from Lok Sabha - Reported**

Secretary-General reported to the House, a message from the Lok Sabha informing the Rajya Sabha that the Lok Sabha at its sitting held on the 12<sup>th</sup> May, 2015, had adopted a Motion informing that the Lok Sabha concurs in the recommendation of the Rajya Sabha that the Lok Sabha do agree to leave being granted to withdraw the Motor Vehicles (Amendment) Bill, 2014, which was passed by the Lok Sabha on the 18<sup>th</sup> of December, 2014 and laid on the Table of the Rajya Sabha on the 19<sup>th</sup> of December, 2014.

1-01 p.m.

*The House adjourned and re-assembled at 2-01 p.m.*

2-01 p.m.

## **9. Government Bill — Motion for Reference of the Bill to a Select Committee — Adopted.**

### **The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014.**

Shri Arun Jaitley, Minister of Finance, Corporate Affairs and Information and Broadcasting, moved the following motion:—

“That the Bill further to amend the Constitution of India, as passed by Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following Members:—

1. Shri Bhupender Yadav
2. Dr. Chandan Mitra
3. Shri Ajay Sancheti
4. Shri Madhusudan Mistry
5. Shri Mani Shankar Aiyar
6. Dr. Bhalchandra Mungekar
7. Shri Naresh Agrawal
8. Shri K. C. Tyagi

9. Shri Derek O'Brien
10. Shri A. Navaneethakrishnan
11. Shri Satish Chandra Misra
12. Shri K.N. Balagopal
13. Shri Dilip Kumar Tirkey
14. Shri C.M. Ramesh
15. Shri Praful Patel
16. Shrimati Kanimozhi
17. Shri Anil Desai
18. Shri Naresh Gujral
19. Mir Mohammad Fayaz
20. Shri D. Raja
21. Shri Rajeev Chandrasekhar

with instructions to report to the Rajya Sabha by the last day of the first week of the next Session.”

2-03 p.m.

The motion was adopted.

2-21 p.m.

#### **10. Statement by Minister**

Shri Nitin Jairam Gadkari, Minister of Road Transport, Highways and Shipping, made a statement regarding certain allegations against him made by some Members in the context of a CAG Report laid on the Table of the Rajya Sabha on the 30th of April, 2015

Thereafter, some Members sought clarifications.

2-57 p.m.

*The House adjourned and re-assembled at 3-12 p.m.*

List of Organisations heard during the visit of the “The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014”.

1. Gail (India) Limited
2. Oil India Limited
3. Oil and Natural Gas Corporation
4. Indian Overseas Bank
5. Indian Bank
6. UCO Bank
7. United Bank of India
8. Bank of Baroda
9. State Bank of India
10. Chambre de Commerce
11. Tamil Nadu Vanigar Sangankalin Peramaippu
12. Puducherry Trader's Federation
13. Karaikal Chamber of Commerce
14. Pondicherry Chamber of Industries
15. Tamil Nadu Chamber of Commerce & Industry
16. The Bengal Chamber
17. Tamil Nadu Small & Tiny Industries Association
18. The Tamil Nadu Automobile & Allied Industries Federation
19. The Tamil Nadu Food Grains Merchants Association Ltd
20. Tamil Nadu Chamber Brick Manufacturers Association
21. The Southern India Mills' Association
22. Salem City Chamber of Commerce
23. The Southern India Chamber of Commerce and Industry
24. FICCI
25. All India Federation of Tax Practitioners
26. The Film & Television Producers Guild of India Ltd
27. CII
28. Indian Broadcasting Foundation
29. Advertising Agencies Association of India
30. Express Industry Council of India
31. ASSOCHAM
32. SIAM
33. Indian Foundation of Transport Research and Training
34. All India Confederation of Commercial Taxes Associations

## 7 GST - International Scenario

10.1 Internationally, GST was first introduced in France and now more than 150 countries have introduced GST. Most of the countries, depending on their own socio-economic formation, have introduced National level GST or Dual GST. We have discussed below key features of GST prevalent in some of the countries.

### 10.2 United Kingdom<sup>15</sup>

Particulars	Details
Name	Value Added Tax
Date of introduction	01.04.1973
Scope	<ul style="list-style-type: none"> <li>▪ Supply of goods or services made in UK</li> <li>▪ Intra-community procurements from EU members</li> <li>▪ Importation of goods and services</li> </ul>
Standard Rate	20 %
Reduced rate	5 % and exempt and zero rated
Threshold exemption limit	£ 73,000
Liability arises on	<p><b>Accrual Basis:</b> On raising of invoice or receipt of consideration or supply (of goods or services), whichever is earlier.</p> <p><b>Cash basis</b> (if turnover is below £1.35 million): On receipt of consideration</p>
Payment	Usually quarterly returns. However, small business can opt for annual returns filing.
Export	Exports are 'Zero' rated.
Exempt services	<ol style="list-style-type: none"> <li>1. Medical and education</li> <li>2. Finance, insurance, postal services</li> </ol>
Innovative concept	To ease the VAT administration, the assessee is informed at the time of registration itself as to which of the three quarterly cycle it should follow for filling the VAT returns.

### 10.3 Canada<sup>16</sup>

Particulars	Details
Name	Federal Goods and Service Tax & Harmonized Sales Tax
Date of introduction	GST 01.01.1991 & HST 01.04.1997
Scope	Taxable supplies of goods and services

<sup>15</sup> Source [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

<sup>16</sup> Source [cra-arc.gc.ca](http://cra-arc.gc.ca)

Standard Rate	GST 5% and HST varies from 0% to 15%
Reduced rates	Exempt and Zero rated
Threshold exemption limit	Canadian \$ 30,000
Liability arises on	On accrual (date of invoice, date of issue of invoice) or receipt of consideration, whichever is earlier.
VAT returns and payments	Depending on the turnover, tax needs to be deposited either monthly, quarterly or annually.
Reverse charge mechanism	Reverse charge applies to importation of services and intangible properties.
Export	Exports are 'Zero' rated.
Exempt services	<ol style="list-style-type: none"> <li>1. Supply of real estate</li> <li>2. Financial Services and residential renting</li> <li>3. Supplies by charities</li> <li>4. Health, education services</li> </ol>
Innovative concept	A group concern can supply to another group concern at zero rate

#### 10.4 Australia<sup>17</sup>

Particulars	Details
Name	Goods and Service Tax
Date of introduction	01.07.2000
Scope	<ul style="list-style-type: none"> <li>▪ Taxable supplies of goods and services made which are connected with Australia and made for a consideration by a registered (or required to be registered) person in the course of business enterprises</li> <li>▪ Importation of goods</li> </ul>
Standard Rate	10 %
Reduced rate	0 %
Threshold exemption limit	\$ 75,000
Liability arises on	<p>Accrual basis: On raising of invoice or receipt of consideration, whichever is earlier.</p> <p>Cash basis [an option available to assessee having turnover below \$ 2 million]: On receipt of consideration.</p>
Payment	Depending on the turnover, the tax needs to be deposited either monthly, quarterly or annually.

<sup>17</sup> Source [www.ato.gov.au](http://www.ato.gov.au)



Due date for payment	Tax needs to be deposited on 21 <sup>st</sup> day following the end of the month/quarter/year.
Reverse charge mechanism	Reverse charge applies to supplies made by non-residents
Export	Exports are 'Zero' rated.
Exempt services	1. Government supplies such as water services, drainage services etc. 2. Health, education, religious supplies Financial Services and residential renting 3. Vegetable, fruit, meat
Innovative concept	'Group registration' wherein a single consolidated return for the group can be filed.

### 10.5 Republic of China<sup>18</sup>

Particulars	Details
Name	Value Added Tax
Date of introduction <sup>19</sup>	01.01.1994
Scope	<ul style="list-style-type: none"> <li>▪ Taxable supplies of goods and services for consideration in China by a taxable person in the course or furtherance of a business</li> <li>▪ Importation of goods</li> </ul> <p>The scope of VAT in China is particularly on 'goods'. At present, only two services (viz. Repair services &amp; Service of supply of goods as per customers requirement) attract VAT.</p>
Standard Rate	17 %
Reduced rates	13%, 6%, 4%, 3 % and 0%
Liability arises on	On raising of invoice or receipt of consideration, whichever is earlier. However, in case of payments in installments, the relevant date when the installment is due.
Payment	Depending on the turnover if it is monthly or quarterly then payment within 15 days from end of the month or quarter
Due date for VAT return	Within 15 days from end of the month/ quarterly
Export	Exports are 'zero' rated.
Exempt services	1. Agricultural products and fertilizers

<sup>18</sup> Source Chinatax.gov.cn

<sup>19</sup> Recently, China introduced Shanghai VAT Pilot Project

## 2. Contraceptives, Second hand goods (by individuals)

Innovative concept	Small businesses can pay VAT @ 3% (however input tax credit would not be available).
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### 10.6 New Zealand<sup>20</sup>

Particulars	Details
Name	Goods and Service Tax
Date of introduction	01.10.1986
Scope	<ul style="list-style-type: none"><li>Supply of goods or services made in New Zealand by a registered person</li><li>Importation of goods</li></ul>
Standard Rate	15 %
Reduced rate	Zero rated and exempt
Threshold exemption limit	NZ\$ 60,000
Liability arises on	On raising of invoice or receipt of consideration, whichever is earlier.
Returns	Depending on the turnover it is either monthly, bi-monthly or six-monthly
Due date for returns and payment	On 28 <sup>th</sup> day following the end of the month or bi-month or six-month. However, different date for the certain periods.
Reverse charge mechanism	Reverse charge applies to supply of services made by non-residents.
Export	Exports are 'zero' rated.
Exempt services	<ol style="list-style-type: none"><li>Real estate</li><li>Financial services</li><li>Residential rental</li></ol>
Innovative concept	The headline price in advertisement and stores must be always GST-inclusive except when supplies are to whole-sale clients.

### 10.7 Singapore<sup>21</sup>

Particulars	Details
Name	Goods and Service Tax
Date of introduction	01.04.1994
Scope	<ul style="list-style-type: none"><li>Supplies of goods and services in Singapore by a taxable person in the course or furtherance of a business</li></ul>

<sup>20</sup> Source ird.govt.nz

<sup>21</sup> Source iras.gov.sg

	▪ Importation of goods
Standard Rate	7 %
Reduced rate	Zero rated and exempt
Threshold exemption limit	Singapore \$ 1 million
Liability arises on	On raising of invoice or receipt of consideration or supply (of goods or services), whichever is earlier.
Returns	Usually quarterly returns. However, business can opt for monthly returns.
Due date for returns and payment	Last day of the month following the end of the month or quarter.
Reverse charge mechanism	Reverse charge applies to supply of services
Export	Exports are 'zero' rated.
Exempt services	Real estate, Financial services, Residential rental
Innovative concept	Divisional registration wherein if an assessee has several divisions he may register the said divisions separately. Each such division should submit its own return. The supplies between the divisions are ignored for GST purposes.

## 10.8 European Union

Particulars	Details
Name	Value Added Tax
Territory	Of the 27 states the prominent states are: United Kingdom, France, Germany, Sweden, Spain, Italy, Ireland, Poland, Austria, Belgium, Denmark, Netherland, Portugal, Hungary.  EU is a 'single market' meaning the goods and services can move freely in cross border trade between member states.
Scope	<b>Supplies to Taxable persons:</b> VAT is payable by the taxable person on acquisition (i.e. purchaser) at the rate applicable in his (acquirer's) country  <b>Supplies to non-taxable persons:</b> VAT is payable by supplier (i.e. seller)
Standard Rate	Minimum 15 %
Reduced rates	5 % and 0 %
For threshold exemption limit, payment, etc	Refer specific country



## 8 Basics - Indirect Taxes

8.3 Taxes are the main source of Government revenues. Taxes can be 'direct' taxes or 'indirect' taxes.

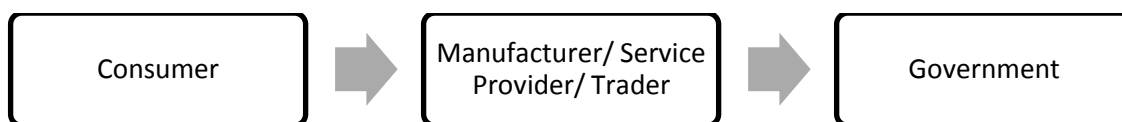
8.3.1 **Direct taxes** are the taxes which are levied and collected directly from the person, Company etc. When the Government collects money directly from the ultimate person/ consumer, who bears it, then it is called as 'Direct Tax'. Taxes such as Income Tax, Wealth tax are examples of direct taxes.

8.3.2 **Indirect taxes** are levied and collected from consumers **through** manufacturers, traders or service providers. Thus, in case, of the Government collects tax through a third person (such as manufacturers in excise, service providers in Service tax, traders in VAT) than the person who bears it ultimately, then it is called as 'Indirect Tax'.

In legal sense, the responsibility to pay an indirect tax rests with the manufacture/ seller/ service providers though finally the tax is collected from the consumer.

Indirect taxes are levied on activities such as manufacture, sale, trading of goods and provision of services by Central, State and Local Governments. Each time goods/ services exchange hands, typically, they are subjected to indirect tax levies and prescribed compliances<sup>22</sup>.

8.4 From recent trends, it can be observed that there is a trend that the indirect tax rates are increasing<sup>23</sup> and the tax base also is being widened<sup>24</sup>. The following picture depicts how money is collected by Government indirectly:



8.5 In the years to come, India proposes to revolutionise the present indirect tax system/ structure by introducing Goods and Service Tax ('GST') in India.

<sup>22</sup> Compliances will include , accounting of transaction, deposit of indirect taxes, filing of returns/ challan, exchange of declaration forms (such as C form, F form etc), claiming input tax credits, claiming available refund/ rebate, providing requested information to tax authorities etc

<sup>23</sup> W.e.f. 1 June 2014 rate of service tax increased from 12.36% to 14%.

<sup>24</sup> To broaden the tax base, w.e.f. 1 July 2012 the Central Government adopted 'Negative List approach' to tax services

8.6 From the revenue forecasts (refer table below) also it appears that going forward, the Governments at Central and State level will lay more emphasis on indirect taxes than direct taxes:

**11.** **Budget Estimates – 2014-15**

TAX	ACCOUNTS BOOK						
	12-13 Actuals*	13-14 BE*	13-14 RE*	Shortfall in RE from BE*	Increase % FY14RE over FY13 Actuals	14-15 BE*	In crease % (FY15BE over FY14RE)
Customs	165,346	187,308	175,056	12,252	5.87	201,314	15.00
Excise duty	176,535	197,553	179,537	18,016	1.70	200,585	11.72
Service tax	132,600	180,141	164,927	15,214	24.38	215,478	30.65
<b>Total indirect taxes</b>	<b>474,481</b>	<b>565,002</b>	<b>519,520</b>	<b>45,482</b>	<b>9.49</b>	<b>617,377</b>	<b>18.84</b>

\* Figures in ₹ cr; BE: Budget estimate, RE: Revised estimate

Source: Finance ministry

8.7 Given this, it is indispensable to understand the various current indirect taxes (being excise duty, VAT/sales tax, service tax, entry tax etc) and the future Indirect taxes (being Goods and Service Tax) if one wishes to take this opportunity to understand what the future indirect tax landscape offers and how to make most of it.

## 9 Existing Indirect Tax System in India

**9.3** As per Article 265 of Constitution of India ***“No Taxes shall be levied or collected except by authority of law”***.

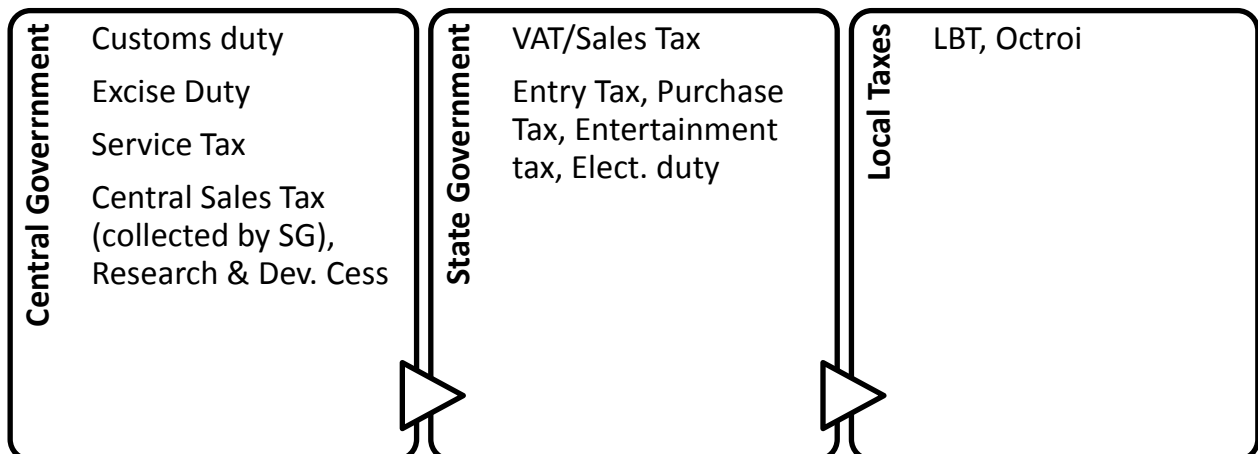
**9.4** On a high level basis, indirect taxes in the country can be categorised in three baskets

**9.4.1 Central Government**(‘CG’): CG’s power includes taxes on income (except agricultural income), excise duty on goods manufactured in India (other than alcohol for human consumption), customs duty, inter-state sale of goods etc.

**9.4.2 State Governments**(‘SG’): SG’s power includes the power to tax agricultural income, excise duty on alcohol for human consumption, sales tax on intra-State sale of goods etc.

**9.4.3 Local bodies** (such as municipal corporation, Panchayat etc): Local Bodies power include power to tax goods consumed in their respective area of consumption (such as Local Body Tax, Octroi etc)

**9.5** The following diagram captures the aforesaid discussion:



2.4 We have discussed below key features of the aforesaid indirect taxes

SR	Indirect Tax	Key features
1	Service Tax	<ul style="list-style-type: none"> <li>- Derives power from under Entry 97<sup>25</sup> of List I (Union List)</li> <li>- Service tax is levied and governed under the Finance Act, 1994 and the Rules made thereunder</li> <li>- Service tax is applicable on provision of all services</li> <li>- Service tax is not applicable on 'Negative list<sup>26</sup>' services and certain exempt services<sup>27</sup></li> <li>- Service tax is payable by Service provider. However, in certain case service recipient is also liable to pay service tax<sup>28</sup>.</li> <li>- Rate of Service Tax is 14%. Further, for certain services abatement is provided<sup>29</sup>. Further, 0.50% Swachh Bharat Cess is also applicable.</li> </ul>
2	Excise duty	<ul style="list-style-type: none"> <li>- Union List - Entry 84 <i>'Duties of excise on tobacco and other goods <b>manufactured or produced</b> in India <b>except</b></i></li> <li><i>(a) alcoholic liquors for human consumption;</i></li> <li><i>(b) opium, Indian hemp and other narcotic drugs and narcotics,</i></li> <li> </li> <li><i><b>but including</b> medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry'</i></li> <li>- Excise duty is applicable on 'manufacture' of goods in India</li> <li>- 'Manufacture' typically implies a process at end the end of which a new and different article, having a distinctive name, character or use, emerges.</li> <li>- Excise duty is payable by the manufacturer</li> <li>- Rate of Excise duty is specified in the Excise Tariff</li> <li>- Generic rate of Excise duty is 12.5%. Further, certain goods are liable to concessional rate of Excise duty</li> </ul>

<sup>25</sup> Entry 97 reads as 'All other matters not enumerated in List II or List III including any tax not mentioned in either of those Lists'

<sup>26</sup> Negative List of services comprises of 17 services and is specified under Section 66D of FA, 1994

<sup>27</sup> Exemption is provided to 39 services vide Not. No. 25/2012-ST

<sup>28</sup> Situations where service recipient is liable to pay service tax as a recipient of service is specified in Not. No. 30/2012-ST

<sup>29</sup> Abatement to various services is specified under Not. No. 26/2012-ST and Service Tax (Determination of Value of Services) Rules, 2006



		<ul style="list-style-type: none"> <li>- Excise duty is levied and governed under the Excise Act, 1944 and the Rules made thereunder</li> </ul>
<b>3</b>	Value Added Tax (VAT)/ Sales Tax	<ul style="list-style-type: none"> <li>- VAT / Sales tax is applicable on sale of goods within a State</li> <li>- VAT is payable by the seller</li> <li>- Rate of VAT is State specific and the same is specified in VAT schedule of the State</li> <li>- Typically, the rate of VAT varies from 0% to 15%</li> <li>- VAT is levied and governed under the State specific VAT Act and the Rules made thereunder</li> </ul>
<b>4</b>	Purchase Tax	<ul style="list-style-type: none"> <li>- Purchase tax is applicable on purchase of specified goods</li> <li>- It is a major source of revenue for Punjab and Haryana</li> <li>- In Punjab, Purchase Tax is levied under Punjab Value Added Tax Act, 2005</li> <li>- Maharashtra also introduced Purchase Tax on cotton and oil seeds</li> </ul>
<b>5</b>	CST	<ul style="list-style-type: none"> <li>- CST is applicable on inter –State sale of goods</li> <li>- CST is payable by the seller</li> <li>- Rate of CST is 2% provided the buyer issues C form. If the buyer doesn't issue C form then CST is applicable at the rate equal to rate of VAT in the State from which goods are sold</li> <li>- CST is levied and governed under The Central Sales Tax Act, 1956 and the Rules made thereunder</li> </ul>
<b>6</b>	Customs duty	<ul style="list-style-type: none"> <li>- Derives power from under Entry 83<sup>30</sup> of List I (Union List)</li> <li>- Customs duty is levied and governed under the Customs Act, 1962 and the Rules made thereunder</li> <li>- Customs duty is applicable on import of goods into India</li> <li>- Customs duty is payable by the importer on record</li> <li>- Rate of Customs duty is specified in the Customs Tariff</li> <li>- Generic rate of Customs duty is 28.85% which comprises the following: <ul style="list-style-type: none"> <li>a. Basic Customs Duty (generic rate is 10%)</li> <li>b. Additional Duty of Customs in lieu of excise<sup>31</sup> (generic rate is 12.5%)</li> <li>c. Additional Duty of Customs in lieu of VAT<sup>32</sup> (generic rate is 4%)</li> </ul> </li> </ul>

<sup>30</sup> Entry 83 reads as '*Duties of customs including export duties*

<sup>31</sup> Also known as Counter-Veiling Duty/ CVD

<sup>32</sup> Also known as Special Additional Duty of Customs / SACD

		d. Customs Education cess @ 2% and Secondary and Higher Education cess @ 1%
<b>7</b>	Research and Development Cess	<ul style="list-style-type: none"> <li>- Research and Development (R&amp;D) cess is applicable on <b>import</b> of technology through foreign collaborator</li> <li>- The rate of R&amp;D cess is 5%</li> <li>- R&amp;D cess is levied and governed under Research and Development Cess Act, 1986 and the Rules made thereunder</li> </ul>
<b>8</b>	Entry Tax	<ul style="list-style-type: none"> <li>- Entry tax is applicable on entry of specified goods in the State for sale, use or consumption</li> <li>- Entry tax is levied by various States in India</li> <li>- Entry tax is levied and governed under State specific Entry Tax Act and the Rules made thereunder</li> </ul>
<b>9</b>	LBT (earlier Octroi)	<ul style="list-style-type: none"> <li>- LBT is levied by the Municipal Corporation on entry of specified goods in their jurisdiction for sale, use or consumption</li> <li>- LBT is levied by various Municipal Corporations in the State of Maharashtra (such as Mumbai, Thane, Pune etc)</li> <li>- LBT is levied and governed under Rules made by the Municipal Corporations</li> </ul>
<b>10</b>	Entertainment tax	<ul style="list-style-type: none"> <li>- Entertainment tax is applicable on movie tickets, commercial shows etc</li> <li>- Entertainment tax is levied by the State Govt.</li> <li>- The rate of entertainment tax varies from 0% to 110%<sup>33</sup></li> <li>- This source of revenue has grown with the advent of Pay Television Services in India. Since, entertainment is being provided through the services such as Broadcasting Services, DTH Services, Pay TV Services, Cable Services, etc.</li> <li>- The component of entertainment is intrinsically intertwined in the transaction of service, that it cannot be separated from the whole transaction.</li> <li>- Given the nature of transaction of service, it is being subjected to tax by the SG and the CG both<sup>34</sup></li> </ul>

<sup>33</sup> Source [www.filmtvguildindia.org](http://www.filmtvguildindia.org)

<sup>34</sup> Source [www.en.wikipedia.org](http://www.en.wikipedia.org)

## 10 Indirect Tax Implications On Various Transactions

10.3 Transactions in an economy are subject to various types of indirect taxes.

10.4 The generic indirect tax implications on the various transactions that take place in an economy are provided below:

SR	Activity	Tax applicable
1	Trading – Sale to a customer located in same State (Intra-State sale)	Value Added Tax <sup>35</sup> (VAT) would be applicable
2	Trading – Sale to a customer located in different State (inter-State sale)	Central Sales Tax (CST) would be applicable where the said transaction occasions the inter-State movement of goods
3	Manufacturing and subsequently intra-State sale of goods	- Excise duty on manufacture of goods - VAT on sale of goods
4	Manufacturing and subsequently inter-State sale of goods	- Excise duty on manufacture of goods - CST on sale of goods
5	Provision of services	Service Tax <sup>36</sup>
6	Works contracts (i.e. transaction involving both goods and services)	- VAT on 'goods' portion in works contract - Service Tax on 'service' portion in the works contract
7	Transaction of sale of an <b>completed</b> <sup>37</sup> immovable property	Stamp duty
8	Other transactions (such as employment, donation etc)	Income from salary, donation etc is subject matter of Income Tax

10.5 Apart from the aforesaid taxes, certain States and Municipal Corporations also levy Entry Tax, LBT (earlier Octroi) for entry of goods for consumption/ sale in their respective jurisdiction.

10.6 From the aforesaid discussion, it can be observed from the above that currently the indirect tax system in the India is governed by the '**taxable events**' (such as manufacture, sale, provision of service etc).

<sup>35</sup> Also known as Sales tax

<sup>36</sup> However, certain specified services such as entertainment, advertisement etc, may be liable to State VAT

<sup>37</sup> Service Tax and VAT has been made applicable on sale of property before completion certificate is received for the same.

10.7 However, the above approach to levy and collect indirect tax has its own limitations and it results in inefficiency in certain cases due to non-availability of input tax credit.

10.8 Now, GST is proposed as a solution to the above problems.

## 11 Indirect tax inefficiencies in the current indirect tax regime

11.3 Under the GST regime, both Central Government and State Governments would levy GST on all transaction in goods and services made for a consideration. Introduction of GST will revamp the present indirect taxes (ie excise duty, VAT/sales tax, service tax, entry tax etc).

11.4 GST is different, in many ways, from the present indirect tax system. Introduction of GST is may also remove cascading effect of taxes, provide certainty in taxation and also go on to make India a preferable destination for investment.

11.5 Introduction of GST will present a window to an opportunity for the Companies which will strategically re-structure the supply chain (keeping the future changes in mind) to reduce the impact of indirect taxes.

4.1. A product or service passes through many stages till it reaches the consumer. Governments at Central and State level have, as and when the need arose, introduced many indirect taxes on various taxable events in this value chain (such as Excise duty on 'manufacture', VAT on 'sale' etc).

4.2. As these taxes are levied on different **taxable events** they have their limitations. To illustrate further, let's take example of Excise Duty. Excise duty is levied on 'manufacture' and thus it fails to tax the value addition at trader/retail sale level.

4.3. Additionally, at present, '**goods**' primarily suffer **two levies** (Excise duty and VAT) whereas '**services**' suffer only **one levy** i.e. Service tax. This leads to distortion: distortion arises because the relative prices of services would be lower as compared to goods.

4.4. Even though current indirect tax system treats goods and services **differently**, in certain cases there is double taxation. Software being one of such case where the industry has taken conservative stand and both VAT and Service Tax is being currently levied.

4.5. Also, there are restrictions on **availment of credit** such as a service provider cannot avail credit of VAT and a trader cannot avail credit of Service tax. Also, CST paid in case of inter-State purchase of goods is not available as set-off against output VAT liability.

4.6. Further there are multiple indirect tax compliances to be met by the client. For e.g. A manufacturer and service provider (say as a recipient of Goods Transport Agency service) will have typically following number of indirect tax deadlines to meet:

<b>Compliance</b>	<b>No.</b>
Monthly payment of excise duty	12
Monthly return of excise	12
Monthly payment of Service tax	12
Half-yearly return of service tax	2
Monthly payment of VAT (State-wise)	12
Monthly return of VAT (State-wise)	12
Monthly payment of CST (State-wise)	12
Monthly return of CST (State-wise)	12
Monthly Works Contract Tax (WCT) payment	12
Annual WCT return	1
Annual Assessment (say 1 each under Excise, VAT/CST and Service tax)	4
Departmental Audits, CERA audit etc (say 1 in a year)	1
Show cause Notice (say 1 each under Excise, VAT/CST and Service tax)	3
<b>Total</b>	<b>107</b>

4.7. From aforesaid it can be observed that currently multiple levies makes the assessee answerable to multiple Government Departments and meet multiple compliances/ deadlines. Surely, this adds to the cost of carrying out the business for assessee.

4.8. Check-posts<sup>38</sup>

*17. Most States have put in place a system of checkpoints on its road borders. Apart from other verifications which may take place, these checkpoints verify and document inter-state sales of goods carried by the vehicles which cross these borders. These details are then cross verified with the VAT returns of the importing dealers. The need for such an arrangement to continue in the GST regime has been emphasized, especially in view of the abolition of CST and the possibility of tax arbitrage. However, the fact remains that such checkpoints by the very nature of their*

<sup>38</sup> Relevant Extracts from the speech dated 29 June 2009 by Dr. Vijay Kelkar (Chairman, Finance Commission)

*operations, generate enormous delays in road traffic, sometimes upto three hours per checkpoint. A freight truck travelling by road between Delhi and Chennai will need to cross five State borders and ten checkpoints. Delivery times for goods may be extended significantly because of delays at checkpoints. The arrangement also encourages rent seeking behavior.*

*18. It may be difficult to eliminate checkpoints given the valid concerns of State governments which may extend beyond collection of taxes and movement of goods to vehicle fitness examination, prevention of trafficking, collection of local cesses, etc. But what appears to be egregious is that the same vehicle has to pass through two checkpoints while crossing one border –the exporting States checkpoint and the importing States checkpoint. Both these checkpoints are often located within a couple of kilometers of each other and a vehicle driver has to spend considerable time in both. Perhaps, it may be possible for both the States to put up a combined checkpoint. Officials of both States could sit together and conduct their verifications in one checkpoint. Or one State could handle traffic on one direction and the other State in the other direction. But essentially there would be only one check per border for a goods vehicle. Such an arrangement will significantly reduce travel time. The Finance Commission is prepared to support creation of such checkpoints if the respective State governments are willing to operate jointly.*

4.9. The above lacunas and multiple compliances affect free flow of goods and services. Additionally, it brings uncertainty in the trade which is not good for the economy as a whole.

4.10. GST is now being projected as a solution to all these problems.

4.11. It may be relevant here to note that as per Prof. Charles McClure, a well designed GST in the federal system, should have following six characteristics:

4.11.1. Uniform rate of GST

4.11.2. Minimum exemptions thereby ensuring maximum tax base

4.11.3. Sales should be taxed in the jurisdiction of consumption/ destination

4.11.4. Centre and State Government should set their own tax rate subject to agreed ceilings rate

4.11.5. Minimum compliance cost and administration

4.11.6. Co-operation between all levels of government

Let us see in the following chapters how many of the aforesaid six characteristics will Indian GST incorporate.



## 12 Committees on GST

### 9.1 Empowered Committee

Empowered Committee of 29 State Finance Minister. EC, on 10.11.2009, issued 'First Discussion Paper on GST'. This paper outlines why GST is being introduced and the basic structure of GST. Interestingly, this Discussion Paper has no statutory force.

### 9.2 The 13<sup>th</sup> Finance Commission (TFC) and its report

The Finance Commission is a Constitutional body set up every five years under Article 280 (1) of the Constitution of India. The 13<sup>th</sup> Finance Commission is headed by the former finance secretary Vijay Kelkar. In its report, released on 15<sup>th</sup> November 2009, TFC has made following important recommendations:

- CGST rate of 5% and SGST 7% on all goods and services
- Inclusion of all of the current indirect taxes, such as purchase tax, taxes on natural gas, electricity duty, stamp duty
- Emission fuels, tobacco products and alcohol should be subject to a dual levy of GST and excise with no input credit for excise
- Exemption to:
  - Public services of Union, state and local governments,
  - Service transaction between an employer and employee,
  - Unprocessed food articles sold under the public distribution system,
  - Educational and health services provided by non-government schools, college and agencies

This report now will be submitted to the President of India on 31<sup>st</sup> December 2009. Thereafter, the President will cause every recommendation made by the TFC with explanatory memorandum on the action taken thereon before each House of Parliament (Article 281 of Constitution). Further, as TFC is a statutory body, the views of the TFC will also need to be considered by the Finance Ministry before it finalises the structure of GST.

## 13 Illustrations

### Illustration A

The following example will illustrate how GST would work: Say, Mr A rents out his office to Allways Logistics Ltd. The taxable revenues and expenses are as follows:

#### Particulars

	Rs
<b><u>Income of Mr A</u></b>	
<b>Rent from commercial premises</b>	1,00,000
CGST @ 8%	8,000
SGST @ 8%	8,000
<b>Total</b>	<b>1,16,000</b>

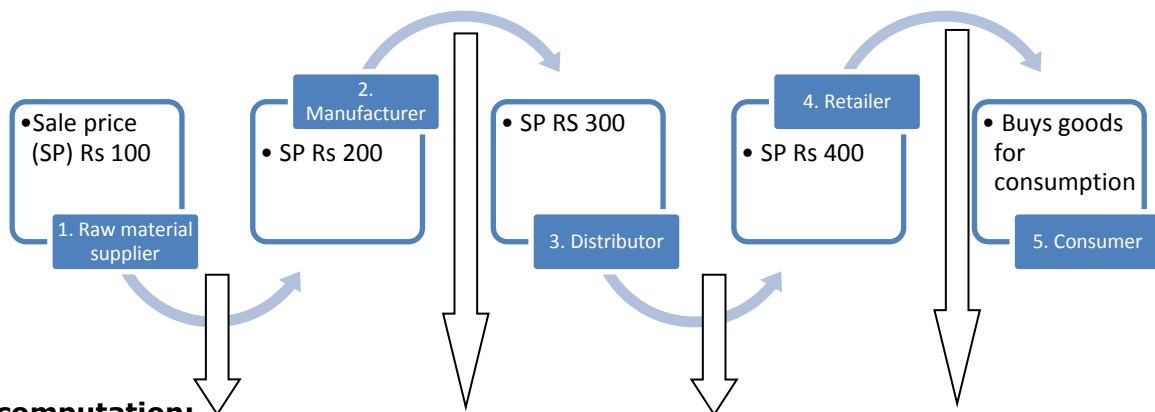
#### **Expenses of Mr A**

Telephone expense (including CGST Rs 40 and SGST Rs 40 )	580
Property maintenance charges (including CGST Rs 800 and SGST Rs 800)	11,600

#### **GST payable by Mr A = GST payable less GST paid on procurement**

Output CGST Rs 8,000 – CGST Rs 840 (Rs 40 + Rs 800) paid on procurements	<b>7,160</b>
Output SGST Rs 8,000 – SGST Rs 840 (Rs 40 + Rs 800) paid on procurements	<b>7,160</b>

### Illustration B



#### GST computation:

Particulars	Sale by Raw material	Sale by Manufacturer to Distributor to	Sale by Distributor to Retailer to	Sale by Retailer to
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	<b>supplier to Manufacturer</b>	<b>Distributor</b>	<b>Retailer</b>	<b>Consumer</b>
Selling price	100	200	300	400
GST payable on sale (CGST 10% + SGST 10%)	20	40	60	80
Input tax credit available (ie GST paid on purchases)	-	20	40	60
Net tax payable to Government	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>

