Agenda Item 2B for the 5th GST Council Meeting on 2-3 December 2016

I. Definition of "State" in Model GST Law and IGST Law

1.1 The Model Central Goods and Services tax(CGST) Act provides for the levy of CGST on intra State supply of goods and services. The Integrated Goods and Services tax(IGST) Act provides for the levy of IGST on inter State supply of goods and services. There is a need to define the term "State" in both these Acts.

Insertion of Definition of State:

The following definition of "State" is proposed to be introduced as sub-section (93A) of section 2 of the Model GST Act as well as sub-section (25) of section 2 of IGST law:

"State" includes:

a. States mentioned in the First Schedule to the Constitution.

b. Union Territories described as follows :

(i) Union Territories with Legislature mentioned in the First Schedule to the Constitution.

(ii) Union Territories without Legislature mentioned in the First Schedule to the Constitution.

(iii) Territorial Waters as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976).

(iv) Any other territory comprised within the territory of India but not included in sub clauses (i), (ii) or (iii) above.

c. Exclusive Economic Zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976).

1.2 Reasoning:

1.2.1 Union Territories

Article 366 (30) of the Constitution defines 'Union Territory' as follows:

"(30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule."

1.2.2 Territorial Waters and Exclusive Economic Zones:

Article 297 of the Constitution specifically mentions that all land, mineral and other things of value underline the ocean with the territorial waters or the continental shelf or EEZ shall vest in the Union.

Further, section 3(1) of the Territorial waters, continental shelf, Exclusive economic zone and other Maritime Zones Act, 1976, reads as follows:

"3. (1) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the air space over, such waters."

With respect to Exclusive Economic Zone, the Maritime zones Act, 1976, referred to above provides as follows under section 7(6):

"7(6) The Central Government may, by notification in the Official Gazette ... make such provisions as it may deem necessary with respect to .... customs and ***other fiscal*** *matters in relation to such designated area."*

The above provisions provide exclusive powers to the Union Government to impose taxes on territorial waters and also in Exclusive economic zone.

1.2.3 Powers of States to tax in "territorial waters"

The following additional points are also raised w.r.t. the powers of taxation of the States:

- In case of Great Eastern Shipping Company ... vs State of Karnataka and Ors. on 23 January, 2004 before Karnataka High Court, the Court held that State of Karnataka had taxation powers over territorial waters. The matter was appealed against before the Supreme Court and the Supreme Court in Civil Appeal No. 3383/2004 has stayed the order of the High Court.
- According to Article 1 of the Constitution, the first schedule to the Constitution, as well as the State Reorganisation Act, 1956, Territorial Waters adjacent to the states do not form part of the territory of the concerned states.
- Entry 56 of list II of Seventh Schedule gives the States the power to tax on goods and passengers carried by "road or on inland water ways". It is pertinent to note that there is no mention of "territorial waters" with regard to power to tax on goods.
- Entry 21 of State list relating to "Fisheries", Some States have passed laws under this Entry of State List defining State to include "territorial waters'. For example, the definition of "State" given under Section 2(j) of the Marine and Fishing Act also makes territorial waters as part of the State of Karnataka. The said definition reads :

  "2(j). 'State' means the State of Karnataka and includes the territorial waters along the entire coast line of the State."

  It may however be mentioned that Entry No. 21 relating to "Fisheries" does not give taxation powers.

It is pertinent to quote the observations made by Supreme Court on 13.1.2016 while hearing Civil Appeal No. 3383/2004Great Eastern Shipping Company ... vs State of Karnataka and Ors wherein the Supreme Court had observed as follows:
"any pronouncement of the court would have far reaching implications not only for central state relationship but the federal character and separation of legislative powers of the union and the States".

Therefore, it is proposed that till the pendency of this matter before the Supreme Court in the case referred to above, the Union alone shall levy GST in all territorial waters, and the exclusive economic zone. The matter could be reviewed after a final order of Supreme Court in this case is received.

II. Rate of tax on goods and services in Union Territories without Legislatures, Territorial Waters and Exclusive Economic Zones:

Provisions need to be made for imposition of Goods and services tax in territories referred to in clauses b(ii), b(iii), b(iv) and (c) of sub section (93A) of section 2. Accordingly, the following amendments are proposed in section 8 of the Model GST Act:

"8. Levy and collection of Central/State Goods and Services Tax and Union Territory Goods and Services Tax

"(5) Notwithstanding anything contained in sub-section (1), in the case of supplies of goods and/or services within the territories referred to in clauses b(ii), b(iii), b(iv) and (c) of sub section (93A) of section 2, there shall be levied a tax called the Union Territory Goods and Services Tax at such rates as may be notified by the Central Government in this behalf, but not exceeding fourteen percent, on the recommendation of the Council and collected in such manner as may be prescribed.

Explanation: For the purpose of this Act, all provisions applicable to State Goods and Services Tax shall apply mutatis mutandis to Union Territory Goods and Services Tax."

III. Suitable provisions for Authorisation of proper officers in the "State" defined at clause b(ii) under definition of "State" referred to in Para 1.1 above.

Union territories of Daman & Diu, Dadra and Nagar Haveli and Chandigarh presently have their own VAT administrations. To enable them to be suitably authorised under the CGST Act the following amendments are proposed in section 5 of the CGST Act.

Propose section 5(3) of CGST Act

"(3) The Central Government may appoint such persons as it may think fit to be the officers under the Central Goods and Services Tax Act for the purposes of levy, collection and other matters relating to administration of Union Territory Goods and Services Tax in the territories referred to in clause b(ii) of sub section (93A) of section 2 of this Act."

IV. GST Compensation Law:

The GST Compensation Law provides for levy of Cess to raise revenues for payment of Compensation to the States. Based on discussions and comments received on the circulated Draft Compensation law, it was felt that provisions need to be made with respect to following issues in the draft law:

(i) For Cess to be imposed on imports valuation as per Customs Tariff Act 1975 had to be provided for.

(ii) Certain drafting changes have been made for more clarity.

Accordingly, the following amendment is proposed to section 8 of the draft GST Compensation Law:

"(8) Levy and Collection of GST Compensation Cess

(1) There shall be levied a cess to be called the GST Compensation Cess on such supplies of goods and/or services, including imports of goods and/or services, and those supplies on which tax is payable on reverse charge basis, as may be prescribed on the recommendations of the Council and collected in such manner as may be prescribed, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax w.e.f. the date from which the CGST Act is brought into force, for a period of five years.

Provided that no such cess shall be leviable under this section on supplies made by a taxable person who has been permitted to opt for composition levy under section 9 of the CGST Act, 2016.

(2) The GST Compensation Cess shall be levied at such rate as may be notified by the Central Government, but not exceeding…. per cent, on the value determined under section 15 of the CGST Act, 2016 for all intra-State and inter-State supplies of goods and/or services.

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