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Minutes of the 7th GST Council Meeting held on 22-23 December 2016

The seventh meeting of the GST Council (hereinafter referred to as 'the Council') was held on 22 and 23 December 2016 in the Parliament House Annexe, New Delhi under the Chairpersonship of the Hon'ble Union Finance Minister, Shri Arun Jaitley. The list of the Hon'ble Members of the Council who attended the meeting is at **Annexure 1**. The list of officers of the Centre, the States, the GST Council and the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure 2**.

2. The following agenda items werelisted for discussion in the seventh meeting of the Council –

1. Confirmation of the Minutes of the 6th GST Council meeting held on 11th December 2016.

2. Approval of the Draft GST Law, Draft IGST Law and Draft GST Compensation Law

2A. GST Treatment of Land and Building (Real Estate)

2B. Definition of State, Imposition of Tax on Goods and Services in UTs without Legislature, Territorial Waters and Exclusive Economic Zones and Provisions for authorization of proper officers in States

3. Provision for Cross-Empowerment to ensure Single Interface under GST

4. Date of the next meeting of the GST Council

5. Any other agenda item with the permission of the Chairperson

3. In his opening remarks, the Hon'ble Chairperson of the Council welcomed all the Members and informed that during this meeting, they would continue to discuss the draft Model GST Law (hereinafter called 'the GST Law'). However, before commencing discussion on the GST Law, he invited comments of the Members on the draft Minutes of the 6th Council Meeting held on 11 December, 2016 before the confirmation of the same.

Discussion on Agenda Items

Agenda Item 1: Confirmation of the Minutes of the 6th GST Council Meeting held on 11 December, 2016:

4. Only one Member suggested the following amendment to the draft Minutes of the 6th meeting of the Council (hereinafter referred to as 'the Minutes') –

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i. Para 6 (xiv) of the Minutes: The Secretary to the Council informed that a letter had been received from the Government of Rajasthan to replace the version of the Hon'ble Minister of Rajasthan recorded in this paragraph with the following version: 'The Hon'ble Minister from Rajasthan stated that penalty should not be considered as a source of revenue, rather it should be used as deterrent.' The Council agreed to the suggestion to replace the version of the Hon'ble Minister from Rajasthan.

5. In view of the above discussion, for Agenda item 1, the Council decided to adopt the draft Minutes of the 6th meeting of the Council with the following change –

i. To replace the version of the Hon'ble Minister of Rajasthan recorded in paragraph 6(iv) of the draft Minutes with the following – 'The Hon'ble Minister from Rajasthan stated that penalty should not be considered as a source of revenue, rather it should be used as deterrent.'

Agenda Item 2: Approval of the Draft GST Law, the Draft IGST Law and the Draft GST Compensation Law:

Discussion on the Draft Model GST Law

6. The Hon'ble Chairperson observed that in the last meeting, the Council had discussed up to Section 99 of the GST law. However, before taking up the discussion on Section 100 onwards of the GST law, he informed that based on the guidelines agreed upon in the last meeting of the Council in respect of Arrest and Prosecution provisions, the provisions of Sections 81 and 92 had been redrafted and circulated to the Members in advance and this could be discussed first.

7. After discussing the provision of Arrest and Prosecution, a section-wise discussion took place from Section 100 to Section 197 and Schedules I to V of the GST Law. The important points discussed in respect of Arrest and Prosecution (Section 81 and 92) as well as the Section 100 to 197 and Schedules I to V are as follows –

i. **Section 81 (*Power to arrest*) and Section 92 (*Prosecution*)**: Shri M.K. Sinha, Commissioner, GST Council explained the changes made in these two provisions. He stated that arrest was proposed in only three instances, and out of these, two related to cases where either only invoice had been issued without any supply of goods or services or where goods or services had been supplied without issue of invoice and the third related to collecting tax but not depositing it with the Government. He also informed that the provision regarding gross mis-declaration in the description of the supply on invoices had been deleted keeping in view the guideline agreed upon in the last meeting that no arrest should be made in a case relating to any grey area in assessment. He also pointed out that the threshold for arrest was tax evasion of Rs. 2 Crore or more and arrests relating to tax evasion up to Rs. 5 Crore were bailable and arrests for tax evasion beyond Rs. 5 Crore were non-bailable.

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ii. The Hon'ble Deputy Chief Minister of Gujarat stated that there should not be a situation of arrest in a case where if by chance any truckload of goods for some reason moves without a document. The Hon'ble Chairperson observed that this would not be the case as the threshold for arrest was tax evasion of Rs. 2 Crore or more. The Hon'ble Minister from Bihar observed that all tax evaders needed to be punished and he expressed strong support for the original draft relating to arrest. The Hon'ble Minister from Assam also supported the original arrest provisions. The Principal Secretary, Finance, Maharashtra, stated that their State had expressed reservation on the arrest provision earlier on the ground that there was no arrest provision in the Value Added Tax (VAT) Law and that this provision could be misused by the officers. He also expressed that it would hinder the ease of doing business. The Hon'ble Minister from Bihar observed that there would be administrative check and control over misuse of arrest provision as was the case with the police department. He further observed that the Commissioner could also be punished for misusing this provision. The Hon'ble Minister from Assam also supported this view.

iii. The Hon'ble Chief Minister of Puducherry observed that proportionality should be maintained for large and small tax evaders and punishment should be in proportion to the amount of tax evasion involved. The Hon'ble Minister from Madhya Pradesh also observed that the big and small crime should not have the same punishment. The Hon'ble Minister from West Bengal observed that economic offences were not the same as offences under the Indian Penal Code (IPC). He further observed that arrest was a serious issue and its provisions were to be used as a last resort. He supported the principle of making a distinction between small and big tax offenders and also expressed support for removing any interpretational clause as a ground for arrest. He also pointed out that even for tax evasion below Rs. 2 Crore, all procedures would be carried out but no arrest could be made. The Hon'ble Minister from Bihar pointed out that if tax collected by a taxpayer was not paid to the Government, it seriously affected the interest of the State as this money could be spent for the benefit of the poor. The Hon'ble Chairperson summed up the two competing viewpoints expressed by the Members: the first view point expressed by Maharashtra and a few others was that if arrest provisions were excessive, it would hurt the sentiment regarding ease of doing business; the second view point expressed by the Hon'ble Minister from Bihar and a few others was that as resources of States were required for economic development, anyone evading taxes should not be shown sympathy. He further added that it was useful to keep into account the statement of the Hon'ble Minister from Bihar that the States and the Central tax laws were being merged and that though VAT laws did not have arrest provision, the Central laws, namely Central Excise and Service Tax had provisions of arrest. He further added that grounds of arrest had been whittled down under Service Tax and a similar approach was being followed in the GST regime and the circumstances of arrest were being limited to those violations which were similar to those in

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criminal law, namely for forgery (fake invoices), breach of trust (failing in the duty to act as agent of the Government to collect and deposit tax into government account) and cheating (moving goods without paying tax). He pointed out that in the new text, no arrest could be made where non-payment of tax was due to dispute in interpretation and that there were sufficient safeguards against harassment, namely that arrest could be only authorized by the Commissioner and tax evasion threshold for arrest was Rs. 2 Crore or more and it was bailable for evasion up to an amount of Rs. 5 Crore.

iv. The Hon'ble Minister from Bihar pointed out that the Officers' Committee had drafted the law after taking into account the difficulties faced by them. The Hon'ble Minister from Assam observed that arrest should be non-bailable in respect of repeat offenders. The Commissioner, GST Council pointed out that a person could be arrested irrespective of the quantum of tax evasion if he had been convicted earlier for tax evasion. The Hon'ble Chairperson observed that this provision could be revisited and arrest could be provided for repeat offences. The Council agreed to this suggestion. The Hon'ble Deputy Chief Minister of Delhi supported the principle of gradation for taking action and observed that power be available with officers for inflicting punishment even for lower grade of offences so that there was a real fear of punishment against the errant taxpayers.

v. The Hon'ble Deputy Chief Minister of Delhi raised another issue in relation to the proviso to the explanation contained in revised Section 92(1). He pointed out that this required prosecution to be instituted after the previous sanction of the Central Government which was not desirable in a case where action was initiated by the State tax administration. The Hon'ble Chairperson observed that sanction of the Central Government would be required if action was initiated under the CGST Act and if action was initiated under the SGST Act, sanction of the State Government would be required.

vi. The Hon'ble Deputy Chief Minister of Puducherry observed that for sanctioning prosecution, a prosecution wing would be needed to decide whether prosecution was legally justified. The Hon'ble Chairperson observed that the States would need to set up internal mechanisms for sanctioning prosecution and could also take the help of legal advisors. The Secretary to the Council explained that while arrest was to be authorised by the Commissioner, prosecution could be launched for other offences where no arrest had been made and for all prosecutions, sanction of a designated authority would be needed. He added that the designated authority could be decided by a notification. The Hon'ble Deputy Chief Minister of Gujarat raised a question whether the designated authority had to mandatorily sanction prosecution in respect of every proposal. The Secretary to the Council clarified that in normal course, the investigating wing would move the proposal to the designated authority who would apply his mind whether or not to sanction prosecution. The Hon'ble Deputy Chief Minister of Gujarat also raised a question whether before sanctioning prosecution, the taxpayer could be given time to pay the

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evaded tax amount. The Commissioner, GST Council clarified that there was a provision of compounding of offences under Section 97 of the GST Law under which prosecution could be waived if the evaded amount, as determined by the competent authority, was paid by the accused person as the compounding amount but this facility could be used only once.

vii. The Hon'ble Minister from Andhra Pradesh observed that there was no arrest provision under the VAT law and incorporating arrest provision under SGST Act, even with the prescribed threshold, would adversely affect the ease of doing business and could create a fear psychosis amongst the traders. He added that this could also cause political problems. The Hon'ble Minister from Karnataka stated that in the last meeting, it was decided to make the arrest provisions more restrictive, and the revised formulation was acceptable, as also was the original formulation. He added that in the proviso to the explanation in the revised Section 92(1), the expression 'Central Government' should be replaced by the expression 'designated authority.' The Council agreed to this proposal.

viii. The Hon'ble Minister from Kerala observed that it was important to have an understanding whether the provision for arrest was proposed for a commercial offence or a criminal offence. The Hon'ble Chairperson observed that the breaches of the provisions, which attracted arrest, were both commercial and criminal offence, as was the case with smuggling activities. The Hon'ble Minister from Kerala stated that arrest for criminal offence was acceptable and suggested that these could be specified as criminal offences. The Hon'ble Chairperson observed that in the law they were being treated as criminal offence. The Hon'ble Minister from West Bengal supported the view of the Hon'ble Minister from Kerala and observed that arrest should be for such offences which were akin to criminal offence. The Hon'ble Chairperson observed that an alternative way of discussing this issue was that commercial dispute should not lead to arrest and revised draft took care of this concern. After the discussion, the revised formulation presented during the meeting in respect of Section 81 (power to arrest) and Section 92 (prosecution) was approved by the Council with two amendments, namely, (a) arrest could be made for repeat offences; and (b) in Section 92(1), the expression 'Central Government' to be replaced by the expression 'designated authority.'

ix. **Section 100 (*Constitution of the National Appellate Tribunal*), Section 101 (*Appeals to the Appellate Tribunal*), Section 102 (*Orders of Appellate Tribunal*) and Section 103 (*Procedure of Appellate Tribunal*)**: The Secretary to the Council explained that these provisions related to the Appellate Tribunal (hereinafter called the 'Tribunal') and that the Union Law Ministry had suggested some changes to the existing draft. He invited Shri Upender Gupta, Commissioner (GST), CBEC to explain the proposed changes. The Commissioner (GST), CBEC explained that the changes suggested by the Union Law Ministry related to Section 100 of the GST Law. The first proposed change was that the National Goods and Service Tax Appellate Tribunal

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headed by the National President could not be created without assigning it any work and the second proposed change was that the qualifications, eligibility conditions and manner of selection of the Members of the National and the State Tribunals should be prescribed in the GST Law itself and not under the Rules as proposed in the existing draft. He further informed that the Central Government had suggested to the Union Law Ministry that the existing provision under Section 106 of the GST Law under which an appeal against the Tribunal's order relating to the dispute between two or more States or between the Centre and one or more State regarding a transaction being intra-State or inter-State or regarding place of supply, would directly lie before the Supreme Court could be changed and such disputes could be adjudicated by the National President and appeal against it could lie before the Supreme Court. The Hon'ble Minister from Haryana suggested that disputes relating to subject matters of Union Territories could also be handled by the National Tribunal.

x. The Hon'ble Minister from West Bengal stated that under the existing provision of Section 100 and Section 103 of the GST Law, each State Tribunal was to be headed by a President and that he was to be appointed by the State Government under the SGST Law. Commissioner (GST), CBEC informed that the Union Law Ministry had observed that there could not be a National President and a State President and it had suggested to rename the heads of State Tribunals as Vice President but they would be appointed by the State Government and the State Tribunals could have as many benches as required. The Deputy Chief Minister of Delhi suggested that the head of the State Tribunal should also be called President as otherwise, the structure appeared to be hierarchical with a National President and State Vice Presidents. The Hon'ble Minister from Kerala also suggested that the Presidents of the Tribunal should be appointed by the respective States. The Hon'ble Chief Minister of Puducherry observed that as the Vice President of the State Tribunal was not subordinate to the President of the National Tribunal, he should not be called Vice President. The Hon'ble Deputy Chief Minister of Delhi stated that under the RTI Act, there was State and Central Information Commission and both drew their power from the same law. The Hon'ble Minister from Punjab observed that the jurisdiction of the National and the State Tribunal would be different. The Secretary to the Council explained that it was proposed to have a National Tribunal with State level benches to facilitate creation of coordinate benches whose judgments would have persuasive value for each other and this would help to settle the jurisprudence faster.

xi. The Hon'ble Minister from Tamil Nadu observed that instead of creating work for a National Tribunal, it could be removed altogether and all disputes could go to the State Tribunals. The Commissioner (GST), CBEC explained that if Tribunals were created under SGST Acts, the CGST Act would need to adopt thirty-one State Tribunals under the CGST Act and instead, it was proposed to create one Tribunal under the CGST Act which could be adopted the by States

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to create State Tribunals under the respective SGST Acts. The Hon'ble Chairperson observed that the option of incorporating State Tribunals under the CGST Act should also be explored and cautioned against creating superfluous Tribunal causing a drain on the public exchequer. The Hon'ble Minister from Haryana pointed out that a National Tribunal would also be needed for disputes relating to Union Territories. The Hon'ble Minister from Bihar suggested that the expression "President of the Tribunal" should be replaced by the term "Chairperson". The Hon'ble Deputy Chief Minister of Gujarat stated that if disputes of Union Territories were heard by the National Tribunal, then the appeal would lie before the Supreme Court and thus the Union Territories would miss out on one level of appeal before the High Court. The Secretary to the Council observed that it would be examined whether appeal in relation to Union Territories should also first go to the High Court before reaching the Supreme Court.

xii. The Secretary to the Council stated that the selection of the Vice Chairperson of the State Tribunals should be done jointly by the Centre and the concerned State, as appeal against both taxes were to be heard by the State Tribunals. The Council agreed to this suggestion. He further observed that the revised draft relating to the Appellate Tribunal would be shared with the States in advance.

xiii. The Hon'ble Minister from Haryana raised an issue regarding the status of the Tribunals created under the State VAT Acts. The Hon'ble Chairperson observed that the Tribunals created under the State VAT Acts as well as the Customs Excise and Service Tax Appellate Tribunal (CESTAT) could deal with the old cases.

xiv. The Hon'ble Minister from West Bengal suggested to give the State Tribunals in law the power of a single bench of the High Court in order to avoid the matters from Tribunals being heard by a single bench of the High Court and then being subjected to an appeal before the Division bench of the same High Court. He therefore suggested to create Tribunal under Article 323 B of the Constitution. Shri Ritvik Pandey, the Commissioner Commercial Tax (hereinafter referred as CCT), Karnataka pointed out that under Section 106 (9) of the GST Act, it was provided that appeal in the High Court shall be heard by a bench of not less than two Judges of the High Court.

xv. The Commissioner (GST), CBEC raised the issue that the quantum of pre-deposit for filing appeal in Tribunals could be the same as agreed in the last meeting of the Council for the appeal to be filed before the First Appellate Authority, i.e. 20% of the amount of tax in dispute. The Secretary to the Council suggested that logically, pre-deposit at the level of the First Appellate Authority should be lower, i.e. 10% of the disputed tax amount as sometimes assessments at the original level were excessive, whereas if the case had been upheld at the level of the First Appellate Authority, there was a reasonable presumption that the case was strongly in favour of revenue and therefore a higher pre-deposit could be taken for filing appeal before the Tribunal. The Hon'ble Minister from Odisha suggested to keep pre-deposit for appeal in

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Tribunal at 5%. The Hon'ble Minister from West Bengal suggested to keep pre-deposit at 10% each for appeal before the First Appellate Authority and the Tribunal. The Hon'ble Minister from Punjab suggested to keep a higher pre-deposit in order to discourage frivolous appeals and informed that presently, under their VAT Act, it was 25%. The Hon'ble Minister from Karnataka suggested to keep pre-deposit at 20% of the disputed tax amount for appeal before the First Appellate Authority and 10% for appeal before the Tribunal. He observed that for filing appeal in Tribunal, pre-deposit would be effectively 30%. The Hon'ble Chairperson observed that taking pre-deposit of 20% at both levels of appeals made the pre-deposit amount too high. The Hon'ble Minister from West Bengal stated that this would deter frivolous appeals. The Hon'ble Chairperson observed that another option could be to keep pre-deposit at 20% each at the level of the First Appellate Authority and the Tribunal respectively but the Tribunal could be given the power to waive pre-deposit in deserving cases. The Secretary to the Council cautioned that if the Tribunal was given such a discretion, a lot of time would be spent in deciding stay applications before the Tribunal. The Hon'ble Minister from Haryana suggested pre-deposit to be 20% at the level of the First Appellate Authority and 10% at the level of the Tribunal. The Hon'ble Minister from Telangana suggested to keep pre-deposit at 12.5% for filing appeal before the First Appellate Authority and 25% for filing appeal before the Tribunal in order to ensure that only people serious about pursuing an appeal availed this remedy. The Hon'ble Minister from Tamil Nadu enquired regarding the provision of pre-deposit in the Central Excise and Service Tax laws and it was informed that pre-deposit was 7.5% each at the level of the First Appellate Authority and the Tribunal. He observed that raising the pre-deposit amount very high would cause difficulty to traders in view of the existing provisions in the Central Law and suggested to keep pre-deposit as 10% of the disputed amount each at the level of the First Appellate Authority and the Tribunal. The Hon'ble Minister from Karnataka observed that the original adjudication order might suffer from revenue bias but the order at the second level was expected to be more balanced and therefore, for the next appeal, the amount of pre-deposit should be higher. The Hon'ble Minister from Punjab observed that keeping 10% pre-deposit at both the levels would give a big relief to the VAT assessees and he suggested to keep the pre-deposit as 10% for appeal before the First Appellate Authority and 20% for appeal before the Tribunal. The Hon'ble Deputy Chief Minister of Gujarat suggested to keep the pre-deposit at 10% at both the levels. The Hon'ble Chief Minister of Puducherry and the Hon'ble Ministers from Andhra Pradesh, Bihar and Chhattisgarh supported pre-deposit of 10% for appeal before the First Appellate Authority and 20% for appeal before the Tribunal. The Council agreed that pre-deposit for appeal before the First Appellate Authority shall be 10% of the disputed amount and that for the Tribunal it shall be 20% of the disputed amount.

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xvi. The Hon'ble Chief Minister of Puducherry suggested to prescribe a time-limit for disposing of appeals. The Secretary to the Council informed that a period of one year had been provided in the law for disposing of an appeal but with a rider that this time limit would apply only in cases where it was possible to do so. The Hon'ble Minister from West Bengal suggested that delay in decision beyond the prescribed period of one year should lead to an automatic decision in favour of the appellant, which was an existing provision in the West Bengal VAT Law. The Hon'ble Chairperson observed that this would not be a desirable provision as delays could be for various reasons, including deliberate acts of the appellant and substantive benefit should not accrue on this basis. The Hon'ble Minister from Telangana suggested to charge a higher amount of pre-deposit if the appellant deliberately prolonged the litigation. The Secretary to the Council observed that it would be difficult to establish deliberate delay. The Commissioner (GST), CBEC further pointed out that there was already a provision of not granting more than three adjournments during an appeal.

xvii. **Section 105 (*Appearance by authorised representative*):** The Hon'ble Minister from Tamil Nadu suggested to replace the expression 'Tax Return Preparer' in Section 105 (2)(e) with the expression 'GST Practitioner' as agreed in the 6th GST Council meeting held on 11 December 2016. The Council agreed to the suggestion.

xviii. **Sections 113 – 124 (Advance Ruling)**: The Hon'ble Chairperson introducing this provision, explained that the provision of Advance Ruling was often used by those making new investment, say in a manufacturing activity, to determine the rate of duty on the new product with certainty and it helps them in their financial planning. The Secretary to the Council further explained that it was not to be headed by a Judge but to consist of a Committee of tax officers and it also had an appeal provision. He observed that the experience in Income Tax was that advance ruling took a long time to settle as it had become a formal judicial process and he hoped that the proposed arrangement under the GST Law would lead to faster decisions. The Hon'ble Chairperson observed that paucity of Judges had hindered effective functioning of the Advance Ruling Authority in the Central taxation laws and it was hoped that officials familiar with the taxation matters would be able to function more effectively. The Hon'ble Minister from Telangana pointed out that the existing provision under Section 117(7), namely that where the Members of the Appellate Authority for Advance Ruling differed on any point referred to them, it shall be deemed that no Advance Ruling shall be issued, should be changed and that such cases could go to the Tribunal for a decision. Shri P.K. Mohanty, Consultant (GST), CBEC pointed out that the international practice was not to subject decisions of Advance Ruling Authority to appeal before a Tribunal and that after one level of appeal before the Appellate Authority for Advance Ruling, if there was no agreement between the two members of the Appellate Authority, then it would be deemed that no Advance Ruling could be given. The Secretary to the

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Council observed that such cases would be rare and it would be prudent for such matters to go for regular assessment.

xix. The Hon'ble Minister from Tamil Nadu said that under Section 121, Advance Ruling should also apply to other similar cases within the jurisdiction of the Commissioner of Commercial Tax and suggested to make a suitable amendment in this regard in Section 157. The Hon'ble Chairperson explained that the rulings were given *in personem* and not *in rem*, that is, not to the whole world and therefore, rulings could not apply to other similar cases. The Secretary to the Council further clarified that each ruling was based on the facts of a particular case and it could not be applied to other cases. The Council approved the provisions of Advance Ruling without any change.

xx. **Sections 125 and 126 (Presumption as to Documents)**: The Hon'ble Chairperson explained that this was a standard provision of law that if a document was seized from the custody of a person, its truthfulness was presumed unless proven otherwise. The Council approved these two Sections.

xxi. **Sections 127 – 136 (Liability to pay in certain cases)**: The Council approved these Sections.

xxii. **Section 137 (*Special Procedure for certain processes*)**: The Hon'ble Minister from West Bengal observed that this provision permitted 'special procedure' for 'certain classes of taxable persons' which was discriminatory amongst the taxpayers. He observed that this provision was to facilitate centralized registration through Integrated Goods and Services Tax (IGST) to encourage ease of doing business, but it was pertinent to remember that in the Goods sector, a taxpayer operating in multiple States was registered in every State. He added that it was not advisable to create an artificial distinction between goods and services, particularly when audit was envisaged for only 5% of taxpayers. He cautioned that providing special treatment to a certain category of taxpayers could lead to litigation by those who were denied such special treatment. In this view, he suggested to delete this provision. The Secretary to the Council explained that sectors like Telecommunication, Financial Services (Banking and Insurance), Airlines, Railways, IT and ITeS had raised several issues relating to registration in individual States. He explained that their main concern was that under GST law, they should be allowed to pool their Input Tax Credit (ITC) so that surplus ITC in one State could be used for payment of tax in another State. He added that as no unanimity could be reached on this issue, it was proposed to have an enabling power for the Council to prescribe a different procedure for certain classes of taxable persons. He suggested that the Council could hear these sectors in the next meeting and then take a decision on the issues raised by them. The Hon'ble Minister from West Bengal stated that if certain sectors of business were allowed to make representations before the Council, then, other sectors should also be allowed to make representations before the Council. He suggested that instead, written representations could be called from them and these could be shared with the Council. Dr. P.D. Vaghela, CCT, Gujarat explained that the Law Committee had discussed the

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issue regarding centralized registration and it was agreed that for multi-State operators like telecom companies, processes like registration and payment of tax would be done in each State but there would be a single return-filing containing details of taxes paid in each State and that there would be a single audit by a team consisting of tax officials of the Central Government and a few State Governments. He added that no agreement could be reached regarding cross-utilization of input tax credit of SGST between States. The Hon'ble Minister from Tamil Nadu observed that if pooling of ITC was the only issue, a separate provision could be made for this and not for other processes like registration, etc. mentioned in Section 137 of the GST Law. The Hon'ble Chairperson stated that the Indian Bank Association (IBA) had made a strong representation for permitting centralized registration. He stated that such a provision could be considered for those sectors whose nature of business was such as to make it a necessity, but no special dispensation was desirable only for certain categories of big taxpayers. The Hon'ble Minister from Jammu & Kashmir observed that the nature of service provided by banks made centralised registration a necessity for them as a credit card could be swiped in one city, the IT Centre could be located in another city and the payment might be made in a third city. He further pointed out that financial services was a growing sector and needed support. The Hon'ble Minister from Haryana observed that keeping an enabling provision for certain categories of taxpayers would be wise as future complexities of the business enterprises could not be envisaged at this stage. The Hon'ble Minister from Tamil Nadu observed that the provision should not be so overarching as to bring all types of taxpayers within its fold. The Hon'ble Chairperson observed that any special procedure could not be size-centric, rather it would depend on the nature of business. The Hon'ble Minister from West Bengal stated that the sectors highlighted for coverage under this provision accounted for a very large per cent of Gross Domestic Product (GDP) of the country and States must have a say in the administration of such sectors. He also observed that the model suggested by Gujarat had not been discussed in the Council. The Hon'ble Chairperson stated that the Council could hear the stakeholders from Banking, Insurance, Information Technology (IT and ITeS), Telecom, Airlines and Railways for one hour in the next Council meeting. The Hon'ble Minister from Kerala stated that the proposal to have a separate special treatment for a class of taxpayers was discriminatory. The Hon'ble Chairperson observed that for a distinct class of persons, a separate procedure was possible but there could be no discrimination between two equally placed persons. The Hon'ble Minister from West Bengal posed a query whether they could be considered as a separate class and the Hon'ble Chairperson observed that if they were unable to show that they were a separate class, then, no separate procedure could be allowed.

xxiii. The Hon'ble Minister from Tamil Nadu suggested that keeping in view the need not to make a distinction between goods and services, this issue presented an opportunity to redefine the provisions relating to place of supply and ITC-

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related aggregation. He suggested that the officers could make a revised provision on these two subjects and make a presentation to the business stakeholders and seek their comments. The Hon'ble Chairperson observed that the officers' viewpoint could be heard later but as this section of taxpayers was very important, there would be a value addition if the Council listened to them. The Secretary to the Council explained that the problem for some service sectors arose because of dual administration under GST and that place of supply rules were very well-drafted by the officers of the Law Committee. The concern was regarding excess credit accumulation and multiple auditing and this needed to be addressed. He pointed out that any special procedures made under Section 137 would be on the recommendation of the Council. The Hon'ble Chairperson stated that this section be kept in abeyance and that the stakeholders from Banking, Insurance, Information Technology (IT & ITeS), Telecom, Airlines and Railways could be heard in the next Council meeting. The Council agreed to this suggestion.

xxiv. **Section 138 (*GST compliance rating*)**: The Secretary to the Council explained the rationale of GST compliance rating for taxpayers provided for in this Section. He pointed out that in the GST Law, there was a provision of reversal of ITC in the hands of the recipients where suppliers did not upload invoices within a fixed period of time. He explained that it would help traders if defaulters were identified in advance to alert prospective customers, and keeping this in view, every GST-registered taxpayer would be given a compliance rating. He suggested to replace the word 'shall' with the word 'may' in Section 138(1). The Hon'ble Minister from Tamil Nadu suggested to retain the word 'shall' and pointed out that this provision would be a powerful selling point for GST. The Secretary to the Council explained that GST compliance rating could be given only after one year of implementation of GST once the data had been collected and lack of a compliance rating for one year might be treated as a default if the word 'shall' was used. The Hon'ble Minister from Assam supported the proposal to replace the word 'shall' with the word 'may'. The Council agreed to replace the word 'shall' with the word 'may' in Section 138(1). The Hon'ble Minister from West Bengal stated that different rating bodies assigned different aggregate rates and enquired as to what rating principle would be followed for the taxpayers. The Secretary to the Council explained that such rating would be done by the Goods and Services Tax Network (GSTN) on the basis of the track record of each registered taxpayer. The Hon'ble Minister from Tamil Nadu stated that the Council should have access to the metrics to be used to determine the rating. The Council agreed to this suggestion and it was agreed to amend Section 138(2) by adding the phrase 'by the GST Council' at the end of the sentence.

xxv. **Section 142 (*Disclosure of information required under section 141*)**: The Secretary to the Council pointed out that in Section 142(3), the maximum limit set for imposing fine was only Rupees One Thousand which was too low and suggested to enhance it to Rupees Twenty-Five Thousand. The Council agreed

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to this suggestion. The Hon'ble Minister from Tamil Nadu observed that the State Government should have equal power to call for information and collect statistics. The Commissioner (GST), CBEC clarified that the law was common for both CGST and SGST and that reference to Commissioner in Section 141 of the SGST Law would mean Commissioner of SGST.

xxvi. **Section 145 (*Burden of Proof*)**: Shri Vivek Kumar, Additional Commissioner, Commercial Taxes, Uttar Pradesh observed that in the original text, the burden of proof was on the taxpayer where he claimed exemption from tax and this provision should be retained. He explained that if a supplier made one supply valued at Rs. 15 Lakh and he was within the threshold limit, there would be no prescribed records to check the value of his other supplies and in this situation, the burden of proof should lie with him to prove that his earlier supplies in the same financial year amounted to less than Rs. 5 Lakh. The Hon'ble Chairperson observed that the burden of proof in such a situation would lie with the Department and observed that there were several judgements of Courts that assessments were quasi-criminal in nature and so, the onus of proof lay on the department. The Council agreed not to make any change in the provision.

xxvii. **Section 155 (*General power to make Regulations*)**: The CCT Tamil Nadu pointed out that there were certain blanks in Section 155(2) which needed to be filled up. The CCT, Karnataka explained that this sub-section was kept for any Regulation that might be made in respect of the Tribunal and the Advance Ruling Authority and that the relevance of this Section would be determined after the GST Law was finalized.

xxviii. **Section 163 (*Anti-profiteering Measure*)**: Introducing this section, the Secretary to the Council explained that while implementing GST, some taxpayers could indulge in profiteering in two different ways. One situation was that a retailer might not pass on the benefit of ITC of the embedded Central Excise duty component on a good allowed under the transitional provision of the GST Law and charge the customer the cumulative tax of CGST and SGST claiming that both taxes had been imposed under the new GST Law. Second situation could be a case where tax rate on a commodity was lowered in GST as compared to the existing combined rate of tax of Central Excise and VAT but the benefit of lower tax was not passed on to the customer by a commensurate reduction in the price of the commodity. He pointed out that the Malaysian GST Law also had an anti-profiteering provision which provided that the margin of profit of traders after introduction of GST should be the same as before its introduction. He explained that this provision was not successful because the Malaysian GST Law was passed a few months before the actual GST rollout and the traders used this time to doctor their books of account to show a higher margin of profit during the period before the GST rollout. He stated that this Section was only an enabling provision, which could serve as a warning to traders. The Council could also decide to entrust this work to the District Consumer Forum or to the Competition Commission at the national level. The Hon'ble Minister from Haryana stated that this clause was

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successfully implemented in Australia by the Australian Competition and Consumer Commission (ACCC) which maintained a list of items brought under GST and their prices were monitored on a daily basis through a software and this helped to check inflation and price-rise. He warned that without implementing this provision, GST could be a failure and suggested that in Section 163(1), the word 'may' should be replaced by the word 'shall'. He also stated that it was desirable to create a body like ACCC with a proper database. The Hon'ble Chairperson observed that if the anti-profiteering authority was not to be created under the GST Law, then the phrase 'by law' used in Section 163(1) could be replaced by the expression 'on the recommendation of the Council by a notification'. The Council agreed to this suggestion. The Hon'ble Minister from Tamil Nadu observed that it would be laudable to create this institution and suggested to replace the word 'may' in Section 163(1) with the word 'shall'. The Hon'ble Chairperson observed that the word 'may' coupled with the exercise of a duty would be read as 'shall' and that the authority could be created by a regulation under Section 163 or the responsibility could be entrusted to the Competition Commission of India. The Hon'ble Deputy Chief Minister of Gujarat wondered whether the provision would apply for all goods. The Hon'ble Chairperson observed that the provision would apply to goods where duty was reduced but the cost was not reduced. The Hon'ble Deputy Chief Minister of Gujarat observed that reduction in cost due to reduction in duty could only be a one-time phenomenon and in the long run, there would be increase in the cost of a product due to various factors like increase in input cost, labour cost, etc. and reduction of cost would not be possible under these circumstances. He added that this provision should be read in conjunction with the provision of Section 169(1)(ii) which stipulated that the taxable person would need to pass the benefit of ITC received for inputs held in stock by way of reduced prices to the customer. Shri Tuhin Kanta Pandey, Principal Secretary (Finance), Odisha observed that the objective was laudable but its implementation could be challenging as the authority could be swamped with representations in a situation of rising price which could be on account of various reasons and it would be a challenge to determine whether it was due to non-passing of the benefit of ITC. The Hon'ble Minister from Punjab stated that the provision could also create a fear amongst the traders that the government was monitoring the price situation. The Hon'ble Minister from Karnataka observed that there was an agreement in the Council about the need to pass the benefit of lower tax to the consumers and any challenge relating to verification could not be a reason to remove this provision altogether. He further added that the law was very specific that this provision would apply only when the rate of tax was altered and not in other circumstances. The Hon'ble Chairperson observed that difficulty in implementation could not be a ground to remove this provision. The Hon'ble Minister from Tamil Nadu suggested having a system of self-regulation entrusted to associations as was done in the micro-finance sector when the Reserve Bank of India reduced the

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rate of interest for micro-finance sector. The Hon'ble Minister from West Bengal stated that during stakeholder consultation, some big industrialists had stated that passing of the benefit of duty reduction would be addressed through competition in the market. He stated that the concern of the Hon'ble Deputy Chief Minister of Gujarat as to how prices of a large number of commodities would be monitored was valid. He stated that an institution like the Competition Commission of India might not have sufficient number of economists to do this job. He suggested that the law should contain the power and the authority and create the wherewithal to monitor prices of a large number of commodities when rates of taxes could shift between six slabs of tax rates. He further observed that in Australia, such a body could be successful as Australia has a formal market economy whereas India faced various challenges like a large segment of informal economy as also presence of a large number of small and medium enterprises, unregistered units and exempt farming sector and that if such a provision was to be adopted, it must be implemented with seriousness. The Hon'ble Minister from Kerala stated that there must be a mechanism for monitoring prices and it should be transparent. The Hon'ble Chairperson stated that at this stage, it was only an enabling provision and that the exact formulation of words would be done in the relevant Regulation. The Hon'ble Chief Minister of Puducherry observed that the Regulation should be brought back to the Council for approval. Shri P. Marapandiyan, Additional Chief Secretary, Kerala informed that during the introduction of VAT, the Empowered Committee (EC) had several meetings with traders who promised that the reduction in duty would be passed on to the consumers but it was not done and therefore, a body should be created to monitor this. The Secretary to the Council observed that the requirement for passing the benefit of ITC to the consumers was only in the transitional provision in Section 169(1)(ii) and that it would be advisable to mandate the requirement of passing the benefit of duty reduction to the consumer in the relevant provisions other than the transitional provisions. The Council agreed to this suggestion.

xxix. **Section 164 (*Repeal and saving*)**: The CCT, Andhra Pradesh questioned the logic of not mentioning the VAT Act and CST Act in Section 164(2). The CCT, Karnataka explained that VAT and CST on petroleum products and alcoholic liquor for human consumption would continue and therefore, it was kept in Section 164(1). The CCT, Andhra Pradesh also raised the issue of audit relating to VAT in the years subsequent to implementation of GST. The CCT, Karnataka pointed out that Section 164(1)(e) gave the enabling power for audit. The Hon'ble Minister from Haryana suggested to add the words 'or after' following the word 'before' in Section 164(1)(f). The Consultant (GST), CBEC pointed out that such a provision was already contained in Section 182. The Hon'ble Minister from Haryana suggested to harmonise the provisions of Section 164(1)(f) and Section 182. The Council agreed to this suggestion.

xxx. **Section 167 (*Amount of CENVAT credit carried forward in a return to be allowed as input tax credit)***: The Principal Secretary (Finance), Odisha pointed

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out that in Section 167 as also in Section 169 and 171, carry-forward of credit under VAT was allowed but they had no provision of carry forward of entry tax and therefore, rationale for keeping it under the SGST Law was not clear. The CCT, Karnataka explained that credit of entry tax was available in some States like Gujarat and therefore, it was indicated in brackets and it would be included in the SGST Laws only of those States.

xxxi. **Section 169 (*Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations*)**: The Hon'ble Minister from Punjab stated that in their State VAT Law, there was a single point of taxation for some Fast Moving Consumer Goods (FMCGs) and tax embedded in the stock of such goods in the retail chain should also be available as ITC. The CCT, Karnataka explained that excise duty was also embedded in the stock of goods lying with the retailers as it was part of the Maximum Retail Price (MRP) and that this Section had a provision for allowing ITC on deemed basis for such embedded excise duty. He stated that the Rules Committee of Officers could also look at allowing ITC of embedded VAT through Rules to be made in this regard.

xxxii. **Section 2(10) (*Definitions*)**: The Hon'ble Minister from West Bengal stated that the definition of works contract should cover both movable and immovable property as was the case in the original text of the Model GST Law. He gave an example that the building of bus body on a chassis was also a Works Contract. The Council agreed that the Law Committee of officers would look into it.

xxxiii. **Section 4 (*Classes of officers under the Central/State Goods and Services Tax Act*) and Section 5 (*Appointment of officers under the Central/State Goods and Services Tax Act*)**: The Hon'ble Minister from West Bengal pointed out that Section 4(2) relating to SGST provided that jurisdiction of officers other than Commissioner shall be specified by the Commissioner whereas in Section 5(2), it was provided that the jurisdiction of officers other than Commissioner shall be specified by the State and that this contradiction needed to be addressed. The Council agreed to this suggestion.

xxxiv. **Sections 165 – 197 (Transitional Provisions):** The Hon'ble Chairperson observed that these were technical provisions relating to transition from the existing Central and State tax laws to GST and these could be tentatively approved, and if there were any suggestions, these could be sent in writing before the next meeting of the Council. The Council agreed to this proposal.

xxxv. **Schedule I (*Matters to be treated as supply even if made without consideration*):** The Secretary to the Council explained that this Schedule specified that certain supplies made without consideration such as supplies within companies or by an employer to employee would be treated as supply under the GST Law. The Council approved the Schedule.

xxxvi. **Schedule II (*Matters to be treated as supply of goods or services*):** The Secretary to the Council explained that in order to avoid dispute, in this Schedule, certain supplies were designated as supply either of good or supply

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of service. The CCT Gujarat pointed out that in the 5th Council meeting held on 2-3 December 2016, it was decided that supplies of works contract (Clause 5(f) of Schedule-II) and restaurant (Clause 5 (h) of Schedule-II) shall be treated as composite supply on which all provisions relating to services shall apply. He therefore suggested to revisit the need for Clauses 5(f) and 5(h) of Schedule II. The Council agreed to the suggestion and approved the rest of the Schedule.

xxxvii. **Schedule III (*Activities or transactions which shall be treated neither as a supply of goods nor a supply of services*):** The Secretary to the Council explained that this Schedule treated certain transactions neither as a supply of goods nor as supply of services. The Commissioner, GST Council suggested an addition to Clause 4 of the Schedule namely, 'or any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947.' However, he later added that this could also be exempted by way of notification and the Council agreed to this suggestion.

xxxviii. **Schedule IV (*Activities or transactions undertaken by the central government, a state government or any local authority which shall be treated neither as a supply of goods nor a supply of services*):** The Secretary to the Council explained that under this Schedule, certain activities undertaken by any Government was to be treated as neither a supply of goods nor a supply of services. He recalled that the Hon'ble Minister from West Bengal had also made a suggestion for an addition in this Schedule. He explained that under the Finance Act, 2015, all services provided by the Government to private entities were made taxable on reverse charge basis except those exempted by various notifications as compiled in the Circular No. 192/02/2016-Service Tax dated 13 April 2016 issued by the Tax Research Unit (TRU), Department of Revenue. He gave an example of Service Tax leviable on the right of way given on Government land for laying pipelines. The Hon'ble Deputy Chief Minister of Gujarat informed that pipelines of companies like Gas Authority of India Limited (GAIL), Oil and Natural Gas Corporation (ONGC), etc. were permitted to be laid on Government land without charging any rent or charge. The Hon'ble Deputy Chief Minister of Delhi observed that the same principle was followed for laying fibre optic cables. The Secretary to the Council explained that exemption to Government activities/services through a Schedule in the Act was very inflexible and it would be desirable to operate these exemptions through a notification so that greater flexibility could be exercised in bringing certain services in the tax net at a future date without making an amendment to the GST Law. He, therefore, suggested to delete Schedule IV except the entry at Clause 4 (relating to exemption to Government Services for diplomatic or consular activities, citizenship, etc.) and to take a decision in the Council that all the Government services listed in Schedule IV shall be exempted through a notification. The Hon'ble Deputy Chief Minister of Gujarat observed that several Special Purpose Vehicles (SPVs) fully owned by the Government had been created to carry out work like State road services,

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metro planning, urban development planning, etc. and these should not be taxed. The Hon'ble Minister from West Bengal drew attention to his suggestion made in the 5th meeting of the Council held on 2-3 December 2016 that any licence fees, user charges, and other fees arising out of statutory compliances and related to State welfare and development measures should be included in Schedule IV, and that this was duly approved by the Council. He stated that this formulation took care of the new services that might be provided by the Government in the future. The Hon'ble Deputy Chief Minister of Gujarat supported this proposal and stated that in the Smart City Project, Government was to provide wi-fi to the cities and this should not be subject to Service Tax. The Secretary to the Council suggested that the clause suggested by the Hon'ble Minister from West Bengal, with suitable modification, could also be added in the exemption list under the proposed notification. The Hon'ble Minister from Tamil Nadu stated that there were certain services which should be legitimately attracting service tax like spectrum sale on which the Central Government had removed service tax only a few months back knowing fully well that GST was around the corner and this would lead to loss of Service Tax to the tune of about Rs. 10,000 Crore. He suggested to bring such services back in the Service Tax net. The Secretary to the Council clarified that spectrum sale had been subject to Service Tax from the current year and that the TRU Circular dated 13 April 2016 circulated in this meeting only clarified certain exemptions and clarifications given by the Central Government. The Hon'ble Chairperson observed that there would be greater flexibility to control the entire universe of Governmental services through an exemption notification rather than through a Schedule in the GST Law as the latter would require amendment in thirty-two Acts every time a Governmental service was required to be brought under the tax net. The Hon'ble Deputy Chief Minister of Delhi agreed to the suggestion. The Hon'ble Minister from West Bengal stated that the notification should be placed before the Council for approval. The Hon'ble Deputy Chief Minister of Delhi and the Hon'ble Minister from Bihar supported this proposal. The Council agreed that the notification containing the exemptions of Government services shall be placed before the Council for approval. The Secretary to the Council stated that the Council could agree upfront that no tax would be chargeable in respect of entries contained in Schedule IV. The Hon'ble Minister from West Bengal suggested to have an in-principle statement based on the formulation that he proposed earlier. The Secretary to the Council stated that using this formulation might lead to an interpretation in which license fees for spectrum could become non-taxable and therefore, the formulation suggested by the Hon'ble Minister from West Bengal needed some redrafting. The Hon'ble Minister for Karnataka stated that while he agreed with the flexibility principle by bringing Schedule IV in a notification, one advantage of keeping these items as neither supply of goods nor of services was that the suppliers of Government services would not be required to take registration if they were also making small

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quantum of taxable supply. The Commissioner(GST), CBEC amplified that in the GST law, registration had to be taken if aggregate turnover of a supplier, including the exempt supplies, crossed Rs. 20 lakh and that if a government hospital, whose value of supply of exempted health services was say Rs. 50 lakhs and it also rented out a shop for an annual rent of Rs. 5 lakh, the government hospital would require to be registered and pay tax on the rent received. The Hon'ble Minister from Telangana suggested to include *Anganwadis,* issuance of caste certificates and occupancy certificate under the exempted category. The Hon'ble Minister from Haryana stated that he supported the proposal of the Hon'ble Minister from West Bengal to provide for exemption of tax for specified Government services in the Schedule itself. He added that if a decision was taken to adopt the exemption route, and consensus was not reached in the Council for exempting certain Government service, then it would become liable to tax. He suggested an alternative that a generic protection to Government services from tax might be kept in the Schedule and in addition, also provide a scope to exempt certain Government services that might arise in future through an exemption. The Secretary to the Council suggested that another option could be to keep Schedule IV and to provide under it that the Government on the recommendation of the Council would notify a list of services provided by the Government for which there would be no requirement of registration. The Hon'ble Minister from Tamil Nadu observed that the way Schedule IV was presently worded seemed to be a denial of reality. He suggested that instead of stating that Services under Schedule IV were not service, it would be more appropriate to state that such services were 'excluded' from GST. He also pointed that there was already a provision for exemption of services through a notification in Section 3(4)(c) of the GST Law. The Hon'ble Minister from Andhra Pradesh observed that the issue was whether exemption for Government services should be in a Schedule or in a notification and he expressed his agreement to provide for exemption through a notification. The Hon'ble Chairperson suggested that the Officers' Committee might examine Schedule IV and to suggest a draft formulation that the services mentioned in Schedule IV (except those mentioned in Clause 4) to be exempted through a notification and that such notification shall be issued on the recommendation of the Council.

8. The Hon'ble Chairperson observed with satisfaction that the Council had completed one reading of the entire GST Law. He recalled that there were certain outstanding issues in regard to the GST Law and invited Members to discuss and take a decision on them. The important points discussed in respect of the outstanding issues are as follows:

i. **Section 2(7), 2(8) and 2(106) (*Definitions*):** The Commissioner, GST Council brought to the notice of the Council that in the 5th meeting of the Council, a revised definition of 'agriculture' was approved by the Council which had broadened the definition of agriculture contained in the GST Law and had included all the

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categories excluded earlier such as dairy farming, poultry farming, stock breeding, etc. He further pointed out that in the 6th meeting of the Council, the Hon'ble Deputy Chief Minister of Gujarat had requested to revisit this definition as the new definition would lead to substantial loss of revenue. Starting the discussion, the Hon'ble Deputy Chief Minister of Gujarat stated that the definition of 'agriculture' should not be kept as wide as in the revised formulation. He added that 'agriculturist' should not cover manufacturers of processed agricultural products. The Hon'ble Minister from Punjab suggested to define 'agriculture' as only primary produce from the land and the processed products should be subject to tax. The Hon'ble Minister from Maharashtra stated that his concern was similar to that expressed by the Hon'ble Deputy Chief Minister of Gujarat. He pointed out that by keeping the definition of 'agriculture' very wide, industrialists operating in 'agriculture' sector, like big centres of horse breeding and chicken processing would get the benefit of tax exemption. He suggested that the definition of 'agriculturist' should be limited to one who ploughed the land. The Hon'ble Minister from Telangana observed that income tax applied to dairy farming and poultry farming. The Hon'ble Minister from Haryana suggested that exemption for Agriculturist should be available to anyone who carried out primary production on land and it should cover small, marginal farmers as well as those carrying out contract farming. The Hon'ble Minister from Tamil Nadu suggested to distinguish agriculture products on the basis whether a product underwent a physical change or a chemical change. He added that by this method, processed chicken would be an agricultural product but a product made out of milk like cheese would not be an agricultural product. The Hon'ble Minister from Karnataka stated that if the definition of 'agriculture' in one law was kept too wide, it would have ramifications in other laws. He suggested to keep the definition of 'agriculture' narrow and then adopt the exemption route. The Hon'ble Minister from Maharashtra stated that exemption limit of Rs. 20 lakh of annual turnover would help actual producers to be out of the tax net but bigger industrialists should not be given the benefit of tax exemption. The Hon'ble Minister from Andhra Pradesh suggested to include fish farming in the exempted category. The Hon'ble Minister from Tamil Nadu suggested to define agriculture product which could be exempt and not to define agriculture. He informed that in Tamil Nadu, there was tax on sugar cane and this would go out of the tax net if a wide definition of 'agriculture' was adopted. The Hon'ble Minister from Kerala expressed agreement with the wider definition of 'agriculture' and suggested that conservation of soil and water shed management should also be added to the definition of 'agriculture' as these formed the basis of agriculture. The CCT, Gujarat informed that the idea behind defining 'agriculturist' was to exempt farmers from registration under GST and if it was not provided, then growers of sugarcane or groundnut would need to take registration and pay tax. He stated that on such products, tax could be charged on reverse charge basis. The Hon'ble Minister from Telangana observed that the business of agriculture was very uncertain and sometimes, a single virus-attack would kill large number of poultry, buffaloes, etc. and therefore, he suggested

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having a wide definition of 'agriculture'. The Secretary to the Council observed that if the definition of 'agriculture' was kept very broad, it would lead to profit-making by entrepreneurs. He suggested that another alternative could be to remove the definition of 'agriculture' and only have a definition of 'agriculturist'. The Principal Secretary (Finance), Odisha stated that under the Odisha VAT Law, there was no definition of 'agriculture' and only specific products were exempt. He stated that in his State, paddy was charged to VAT under reverse charge. He suggested not to define the terms 'agriculture' and 'agriculturist'. The Hon'ble Minister from Maharashtra pointed out that in Article 366 of the Constitution, 'agricultural income' was defined as for the purposes of the enactments relating to Indian income-tax and that the GST law should adopt the definition of agriculture from Income Tax Act. The Hon'ble Chairperson observed that States like Tamil Nadu and Odisha had argued for specific exemption for products rather than a generic exemption. He elaborated that all the produce that came out of land like paddy, wheat and pulses could be exempted as also other products like poultry, egg or milk but the Council might not want to exempt high-end products like prawn and salmon. He further observed that if the definition of 'agriculture' was to be based on process, then like Income Tax, it would be limited to land related produce whereas the view in the Council was to expand the definition of 'agriculture' to include products like milk, chicken and egg which supplemented a farmer's income. He, therefore, suggested that the Council should keep with itself the power to exempt specific products, rather than operating exemption through a generic definition of 'agriculture'. The Hon'ble Minister from West Bengal observed that the sense of the House as reflected in the Minutes of the 5th meeting of the Council was to include dairy farming, poultry farming, fish farming, etc. in the definition of 'agriculture' in order to exempt them from tax and the question was whether the exemption should be through a definition or through a specific exemption notification. The Hon'ble Minister from Karnataka suggested not to call persons involved in production of these products as agriculturists and instead give them specific exemption from tax. The Consultant (GST), CBEC explained that exemption for agricultural products could be handled through the classification of products under the Harmonized System of Nomenclature (HSN). He pointed out that internationally, as per the WTO definition of 'agriculture', products covered under Chapters 1-24 of HSN were normally treated as 'agricultural product' with certain exceptions like fish and fish products and with certain additions like raw silk, wool and raw cotton falling in chapters other than Chapter 1-24. He explained that exemption could be given product-wise as for instance, wheat could be exempted but its product like biscuit could be charged to tax. The Secretary to the Council sought the view of the House as to whether the definitions of the terms 'agriculture' and 'agriculturist' could be removed from the GST Law. The CCT, Karnataka explained that Schedule V of the GST Law exempted agriculturists from taking registration under the GST Law and that if this exemption was removed, then if cotton as a product was taxable, then the farmers producing cotton would need to take registration under the GST Law. The Secretary to the Council

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observed that it could be provided that anyone who was an individual farmer need not be registered. The Hon'ble Minister from Punjab observed that there would be an issue regarding defining who would be an individual farmer. The Hon'ble Minister from Uttar Pradesh further raised a question about the status of share-croppers in such a definition. The Hon'ble Minister from Kerala observed that if agriculture and commerce were to be connected, then, the agriculture part could be kept out of the tax and the commerce part could be taxed. The Hon'ble Deputy Chief Minister of Gujarat observed that if 'agriculture' was not defined, it could send a wrong political message for GST. The Hon'ble Minister from Meghalaya suggested to add handloom to the definition of 'agriculture'. The Secretary to the Council suggested that Officers of the Law Committee should examine whether or not the definition of 'agriculture' and 'agriculturist' was needed in the GST Law and to revert to the Council. The Council agreed to this suggestion.

ii. **Section 87A (*Power to waive penalty*):** The Secretary to the Council stated that there was a suggestion from the Central Board of Excise and Customs (CBEC) to add a new Section 87A which read as follows: " Power to waive Penalty: Notwithstanding anything contained in the provisions of section 85 or 86 of this Act, no penalty may be imposed on an assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure or that he had made a reasonable attempt to comply with the provisions of this act to avoid such failure." The Commissioner, GST Council explained that this provision was meant to give discretion of not imposing penalty and that the officers of the Law Committee could examine it further. He pointed out that such a provision existed in the Finance Act, 1994 when Service Tax was introduced and was received well by the trade. The Hon'ble Minister from West Bengal stated that the expressions used in the proposed Section like 'reasonable cause' and 'reasonable attempt' lent discretion to officers. The Secretary to the Council stated that this provision was meant to help small taxpayers who might feel harassed if penalty was imposed for not filing returns in the initial period of implementation of GST. He recalled that under Service Tax, such special provisions were there for ten years during the transitional phase. The Hon'ble Minister from West Bengal observed that discretion to local level officials should be avoided. The Secretary to the Council suggested another approach that the Council could exempt certain class of people from the provisions of Section 85 and 86 dealing with 'offences' and 'penalties' and 'general penalty'. The Hon'ble Minister from Uttar Pradesh suggested an alternative approach to reduce the penalty limit for certain class of taxpayers or to provide that for one year after implementation of GST, no penalty to be imposed on taxpayers up to a turnover of say Rs. 50 lakh. The Hon'ble Minister from Andhra Pradesh observed that discretionary powers created problems at the ground level. The Hon'ble Deputy Chief Minister of Delhi also observed that discretionary powers would be difficult to control. The Secretary to the Council stated that the proposed provision just gave an enabling power to exempt certain categories of taxpayers from penalty and that the Law Committee could redraft the proposed Section 87A on the basis of these discussions and

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present it before the Council. The Hon'ble Minister from West Bengal and the Hon'ble Deputy Chief Minister of Delhi stated that the provision should be drafted in a manner that it should not give discretion to officers for levying penalty. The Council agreed to these suggestions.

iii. **Section 95(2) (*Relevancy of statements under certain circumstances*):** The Secretary to the Council informed that CBEC proposed to delete Section 95(2). The Commissioner, GST Council explained that this provision mandated that proceedings under the GST Law should also be like proceedings before a Court of law which essentially meant carrying out examination-in-chief and cross-examination of every person whose statements were relied upon in a Show Cause Notice. He explained that in civil proceedings, such an elaborate procedure need not be followed and would lead to delay in adjudication. The Council agreed to delete this provision.

iv. **Section 16 (*Eligibility and conditions for taking input tax credit*):** The Secretary to the Council recalled that in the 5th meeting of the Council held on 2-3 December 2016, it was decided to defer decision regarding ITC in respect of capital goods till data on the total quantum of ITC availed on capital goods was received. The Additional Secretary to the Council stated that based on figures gathered from the GAIL and the Department of Telecommunication, the approximate incidence of input tax credit on account of pipelines and telecom towers could be between Rs. 3,600 Crore and Rs. 4,500 Crore per year for the next four to five years. The Hon'ble Minister from Karnataka observed that if ITC was given for pipelines and telecom towers, this would place the existing investors at a disadvantage vis-à-vis new investors whose capital investment per connection would be lower. The Hon'ble Deputy Chief Minister of Gujarat expressed that credit on pipelines might be allowed for the first five years of implementation of GST only for which compensation was going to be paid to the States. He added that the entire credit might be allowed in the first year for these five years and that no credit should be allowed thereafter, so that there were no adverse financial implications on the revenue of the State. The Hon'ble Minister from Uttar Pradesh also supported this view. The Hon'ble Minister from Punjab observed that there would be undue benefit to investors if credit was given in one year and that it should be staggered over three years. The Secretary to the Council observed that if, for telecom towers, there was an issue regarding disrupting competition, the Council could consider allowing ITC for pipelines for conveying gas, etc. as they had considerable Service Tax liability. The Hon'ble Minister from Uttar Pradesh suggested to allow ITC for laying drinking water pipelines. He further observed that in the telecom sector, there was an oligopoly and some other companies could be benefited. The Hon'ble Minister from Karnataka supported extending ITC to pipelines for conveying water for drinking and irrigation. The Hon'ble Minister from West Bengal informed that presently, GAIL might be accounting for 80% of the pipeline business but in future, this could change and the beneficiaries could be other companies such as pipelines laid for transmission of coal-bed methane. He further observed that, in principle, there might not be objection to extending ITC for pipelines. The Hon'ble

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Deputy Chief Minister of Gujarat suggested that ITC could be allowed for government entities like Gujarat State Petroleum Corporation Limited (GSPCL). The Council felt that the law should not result in competitive advantage to new players. After further discussion, it was agreed not to extend the benefit of ITC for pipelines and telecom towers.

9. For agenda item 2, the Council approved the GST Law subject to the relevant decisions/observations as recorded in the Minutes of the 5th and 6th Council meeting on this agenda and as recorded below. It was also agreed that a revised draft incorporating the changes agreed upon in the Council and the suggestions of the Union Law Ministry after the legal vetting would be placed before the Council in the next meeting.

i. **Section 2(7), 2(8) and 2(106) (*Definitions*):** Officers of the Law Committee to examine whether or not the definition of 'agriculture' and 'agriculturist' is needed in the GST Law and to revert to the Council.

ii. **Section 2(110) (*Definitions*):** The Law Committee of officers to look into the definition of Works Contract so as to include both movable and immovable property.

iii. **Section 4 (*Classes of officers under the Central Goods and Services Tax Act*) and Section 5 (*Classes of officers under the State Goods and Services Tax Act*):** To address the contradiction between Section 4(2) and Section 5(2) in respect of the authority that would specify the jurisdiction of officers other than of the Commissioner.

iv. **Section 16 (*Eligibility and conditions for taking input tax credit*)**: To modify the provision so as not to extend the benefit of ITC for pipelines and telecom towers.

v. **Revised Section 81 (power to arrest) and 92 (prosecution)**: The revised formulation in respect of Section 81 and Section 92 approved with the following changes: (a) arrest to be provided for repeat offences; (b) to replace the expression 'Central Government' in the proviso to the explanation in the revised Section 92(1) by the expression 'designated authority.'

vi. **Section 87A (*Power to waive penalty*):** Officers of the Law Committee to redraft Section 87A and it is to be drafted in a manner so as not to give discretion to officers for levying penalty.

vii. **Section 95(2) (*Relevancy of statements under certain circumstances*):** To delete the sub-section (2) of Section 95.

viii. **Section 100 (*Constitution of the National Appellate Tribunal*), Section 101 (*Appeals to the Appellate Tribunal*), Section 102 (*Orders of Appellate Tribunal*) and Section 103 (*Procedure of Appellate Tribunal*)**: The revised draft to be shared with the States in advance. In the revised draft the following to be provided: (a) the selection of the Vice Chairperson of State Tribunals to be done jointly by the Centre and the concerned State as appeal against both taxes were to be heard by the State Tribunals; and (b) pre-deposit for appeal before the First Appellate Authority shall be 10% of the disputed amount and that for the Tribunal shall be 20% of the disputed amount.

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ix. **Section 105 (*Appearance by authorised representative*)**: To replace the expression 'Tax Return Preparer' in Section 105 (2)(e) with the expression 'GST Practitioner'

x. **Section 137 (*Special Procedure for certain processes*)**: This section to be kept in abeyance and stakeholders from Banking, Insurance, Information Technology (IT & ITeS), Telecom, Airlines and Railways to be heard in the next meeting of the Council.

xi. **Section 138 (*GST compliance rating*)**: To amend Section 138(1) by replacing the word 'shall' with the word 'may' and to amend Section 138(2) by adding the phrase 'by the GST Council' at the end of the sentence.

xii. **Section 142 (*Disclosure of information required under section 141*)**: To amend Section 142(3) by changing the maximum limit set for imposing fine from Rupees One Thousand to Rupees Twenty-Five Thousand.

xiii. **Section 163 (*Anti-profiteering Measure*)**: To amend Section 163(1) by replacing the phrase 'by law' by the phrase 'on the recommendation of the Council by a notification'. Additionally, the requirement of passing the benefit of duty reduction to the consumers should be incorporated in the relevant provisions of the GST Law in addition to that contained in Section 169(1)(ii).

xiv. **Section 164 (*Repeal and saving*)**: To harmonise the provisions of Section 164(1)(f) and Section 182.

xv. **Section 169 (*Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations*)**: The Rules Committee of Officers to provide for allowing ITC of embedded VAT through Rules to be made in this regard. Further, the requirement of passing the benefit of duty reduction to the consumer to be added in the relevant provisions of the GST Law as done in Section 169(1)(ii).

xvi. **Sections 165 – 197 (Transitional Provisions):** The Council tentatively approved these Sections with the understanding that suggestions, if any, in respect of these Sections shall be sent in writing to the Council before its next meeting.

xvii. **Schedule II (*Matters to be treated as supply of goods or services*)**: To revisit Clause 5(f) and 5(h).

xviii. **Schedule IV (*Activities or transactions undertaken by the central government, a state government or any local authority which shall be treated neither as a supply of goods nor a supply of services*)**: The Officers' Committee to examine Schedule IV and to suggest a draft formulation that the services mentioned in Schedule IV (except those mentioned in Clause 4) to be exempted through a notification and that such notification shall be issued on the recommendation of the Council.

Agenda Item 2A – GST Treatment of Land and Building (Real Estate)

10. The Secretary to the Council introduced this agenda and explained that in Section 2(49), the definition of 'goods' included only movable property. He pointed out that under the Constitution, States had power to charge stamp duty on transactions in land and

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building and that the rate of this duty ranged between 5% and 6%. He emphasized that under this agenda item, no change in the scheme of stamp duty was proposed as entry 63 of the State List of Schedule 7 of the Constitution empowering States to charge stamp duty remained intact. He pointed out that today, there existed a dichotomy in rates of Service Tax on property depending upon the fact whether it was bought as an under construction property (which attracted Service Tax) or as a ready-built property after obtaining completion certificate (which did not attract Service Tax). He explained that this created a cost arbitrage of about 6% in favour of buying ready-built property. He stated that, in addition, there were embedded taxes as no ITC was available on inputs like steel, cement, floor tiles, sanitary fittings, etc. used in the construction of the property. Shri Arvind Subramanian, Chief Economic Advisor to the Government of India stated that the cost arbitrage between ready-built and under-construction property could range between 6% to 18% due to embedded taxes. In view of this, the Secretary to the Council proposed that GST could be imposed on supply of land and building and the rate could be 12% or 18% with a provision to block refund if there was an incidence of duty inversion between input tax and the output tax on the final supply. He stated that such a measure would take care of the present anomaly of taxation between constructed and under-construction property. Starting the discussion on this agenda item, the Hon'ble Minister from Uttar Pradesh raised the question as to what percentage of sale of property was fully-constructed vis-à-vis those under construction. The Secretary to the Council stated that such data was not readily available. The Hon'ble Minister from Uttar Pradesh observed that most property sales would be of under-construction property as it would be difficult for developers to fully fund by themselves the development of a property. The Hon'ble Minister from Uttarakhand stated that the hill States should have special exemption. The Hon'ble Chairperson observed that this would be decided once the main issue was settled. The Hon'ble Minister from Punjab observed that if a developer constructed the property on his own, then the completed project's cost would be higher as the developer would also recover the cost of capital investment. The Hon'ble Deputy Chief Minister of Gujarat did not support the proposal under this agenda item. He observed that in almost 90% cases, an under-construction flat was booked by customers and money was paid by them for construction. He stated that stamp duty was on value addition and the proposal made now would lead to double taxation. The Secretary to the Council stated that another important consideration for introducing this agenda item was that if sale of property was considered as a supply and tax was charged at the rate of 18%, it would complete the ITC chain and there would be greater incentive to buy tax paid inputs like cement, steel, sanitary fittings, tiles, etc. The Hon'ble Deputy Chief Minister of Gujarat stated that levying GST on Land and Building would put additional duty burden on the small house-owners. The Hon'ble Minister from Telangana observed that after demonetization, the real estate business had suffered and introduction of GST on it would further worsen the situation. The Hon'ble Minister from Bihar suggested to form a small committee to further examine this proposal. The Commissioner (GST) CBEC stated that if tax was imposed on re-sale of property, say, a hotel, this would help in claiming ITC and lowering the cost of business for the buyer of the hotel. He also stated that charging GST on re-sale of property would also capture the value addition over a period of time. The Hon'ble Deputy Chief Minister of Gujarat

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pointed out that there was stamp duty on re-sale. The Hon'ble Minister from West Bengal stated that he supported the views expressed by the Hon'ble Deputy Chief Minister of Gujarat and the Hon'ble Ministers from Uttar Pradesh and Telangana. He observed that all fittings and raw materials used in buildings would largely be tax-paid and this was presently an additional tax gain for the State as no ITC was available on them. He expressed that the proportion of evaded inputs like steel, cement, etc. might not be very high. He further stated that there were much larger transactions in smaller and medium houses and these should not be taxed in addition to the levy of stamp duty. He cautioned that this would also be a bad political message. The Chief Economic Advisor observed that low-cost housing could remain exempt from GST. He further observed that the final, effective rate of tax on the consumer would not change but there would be greater flow of ITC and a self-policing mechanism would come into play. The Hon'ble Minister from Punjab stated that for residential property, ITC could not be availed. The Hon'ble Minister from Kerala stated that he did not support the proposal under this agenda item. He observed that the Transfer of Property Act gave power to States to levy stamp duty on the transfer of property after completing the paper work. He informed that in Kerala, rebate of stamp duty was given against payment of VAT. He further stated that cement, etc. were not obtained from the grey market as this could risk collapse of the building. He emphasised that stamp duty was a source of revenue for the State government and that it should be left with the States. The Hon'ble Minister from Tamil Nadu stated that the proposal under this agenda item appeared to be unconstitutional as stamp duty was constitutionally retained. He also added that the definition of goods in the Constitution did not include land and building. The Hon'ble Chairperson summed up the two broad viewpoints namely that incidence of tax was likely to go up and the other that the tax amount would remain the same due to availability of ITC on inputs used as construction material. The Hon'ble Minister from Punjab observed that if GST was imposed on land and building, the cost for the customer would go up. The Chief Economic Advisor stated that if GST was extended to land and building, it would be a transformational GST and would also have a strong anti-corruption, anti-black money signalling. He reminded the House that internationally, GST was charged on supply of property. The Hon'ble Chairperson observed that this idea was transformational but instead of introducing it at this stage, this suggestion could be revisited after a year or so of the GST implementation. The Hon'ble Deputy Chief Minister of Delhi suggested that instead of closing the issue at this stage, it could be further examined by a group of officers or Ministers constituted for this purpose. However, taking into view the general sense of the House, the Council agreed that this issue could be revisited after a year or so of the implementation of GST.

11. In view of the discussion above for agenda item 2A, the Council decided not to introduce GST on land and building at this stage and agreed that this issue could be revisited after a year or so of the implementation of GST.

Discussion on the Draft GST Compensation Law

12. The Secretary to the Council introduced the Draft GST Compensation Law (hereinafter referred to as 'the Compensation Law') and invited comments of the Members

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on the same. Starting the discussion, the Hon'ble Minister from Tamil Nadu suggested to insert after Section 2(3) of the Compensation Law, a definition of 'compensation fund' as follows: "Compensation fund means, a non-lapsable fund in the Public Account, for the purpose of 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 as per section 18 of the Constitution (101st Amendment) Act 2016." He further suggested to add the following in the Compensation Law: "The Goods and Services Tax Compensation Fund shall comprise of the Compensation Cess and such other revenues that the Central Government may transfer to it." He also suggested to add in Section 2(8), the words 'under this Act' after the words 'taxable person'. Similarly, he suggested that in Section 2(12), the words 'under this Act' be added after the word 'State'. He further pointed out that in Section 5(1), there was no reference to ITC adjustment and ITC reversal but the same was included in the spread sheet used for collecting data for revenue of the base year. He suggested that ITC adjustment and ITC reversal should also be specifically reflected in the law as Section 5(1)(h). He also suggested to modify the heading of Section 10 by adding the words "and other revenue" after the word "cess". He further suggested to amend Section 10(2) of the Compensation Law as follows:

"All amounts payable to the States under Section 7 shall be paid from the Goods and Services Tax Compensation Fund.

Explanation I: The Goods and Services Tax Compensation Fund shall comprise of the Compensation Cess and such other revenues that the Central Government may transfer to it.

Explanation II: In case the proceeds of Compensation cess is insufficient to meet the compensation needs of the States, the Central Government shall transfer sufficient funds to the Compensation Fund to meet the loss of revenue of States on account of implementation of the Goods and Services Tax." The Hon'ble Minister from Telangana supported these proposals.

13. The Hon'ble Minister from Odisha stated that as he had stated in the 3rd meeting of the Council, the rate of royalty on coal fixed at 14% *ad valorem* had had not been received for more than four years. He added that even though the Ministry of Coal had constituted a Committee to revise the rate of royalty on 21 July 2014, the rate of royalty had remained unrevised. He added that while the Central Government had enhanced the Clean Environment Cess to Rs. 400 per tonne in 2016-17, this cess was not being shared with the coal-bearing States. He further suggested that the Clean Environment Cess should be renamed as 'Environment and Rehabilitation Cess' and at least 60% of its proceeds should be shared with the coal-bearing States to meet the negative externalities and remaining 40% of the cess may go to the GST Compensation Fund. He further added that during the 3rd and 4th meetings of the Council, he had raised the issue regarding the pending challenge of the Entry Tax laws before the Supreme Court because of which only a part of this tax was being collected. He informed that on 11 November 2016, a 9-judge Constitutional Bench had given its verdict and that his State was confident that Odisha's law was valid on the basis of principles settled by the Supreme Court. He expressed that as

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the balance amount of tax was to be collected, it would be fair and just to include the balance tax for the year 2015-16 in the base year revenue. He further added that if this proposal was not acceptable, then collection of Entry Tax, consequent upon the order of the Supreme Court, in future, should be excluded from the actual collection of that year. He observed that if it was not excluded, there would be a double jeopardy for the State. He made another point that there was no provision in the Compensation Law as to how compensation would be paid if the amount in the GST Compensation Fund fell short of the amount claimed as compensation by the States. He therefore suggested to add that in case the amount in the Compensation Fund fell short of the total claim made by the States in a year, the balance shall be paid by the Government of India from its Consolidated Fund. He also suggested to re-number the paragraphs relating to 'Base Year', 'Base Year Revenue', 'Projected Growth Rate' and 'Projected Revenue for Any Year' as Section 3, 4, 5 and 6 respectively for the sake of clarity and simplicity.

14. The Hon'ble Minister from Andhra Pradesh observed that collection of cess for giving compensation was not correct and instead, compensation for GST should be borne by the Central Government. He recalled that when VAT was introduced, compensation was paid from the Consolidated Fund of India. The Hon'ble Minister from Maharashtra suggested giving compensation every month. He further suggested and that in view of abolition of the Local Body Tax (LBT) in his State, the following explanation should be added at the end of Section 5 of the draft GST Compensation Law: 'Explanation – For the purpose of clause C above, the term 'Revenue Collected' shall mean the amount of tax leviable under the erstwhile Entry 52 of List II of the Seventh Schedule to the Constitution prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016 that could have been collected in the Base Year had the same not been discontinued either fully or partially, during the course of the year.' He also suggested to release compensation based on self-certification by the State Government instead of CAG certification, or as the case may be, by the Audit Department of the State Government. He observed that if cess was not sufficient to pay compensation, then it should be paid from the Government of India fund. He also suggested that even if the amount available in the GST Compensation Fund was not sufficient to pay compensation, the States must be paid compensation within the five-year period and that levy of cess might be extended beyond five years to recover the shortfall.

15. The Hon'ble Minister from Punjab observed that quarterly payment of cess would, in actual effect, lead to payment after 4 months and suggested to make the period of payment as monthly or bimonthly. He further suggested that if the amount in the Compensation Fund was insufficient, the Government of India should commit to make payment from any other source. He also suggested to add the word 'fee' in Section 5(1)(g).

16. The Hon'ble Minister from Telangana stated that the experience of States for compensation during VAT was not good. He suggested that there should be a provision that if the cess amount was not sufficient for payment of compensation, it would be paid through the Consolidated Fund of India. He also highlighted the need to compensate for

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Rural Development (RD) Cess on commodities like rice. He also expressed that there should be guaranteed compensation for five years after GST implementation.

17. The Hon'ble Minister from Uttar Pradesh reiterated all the points raised earlier by the Hon'ble Ministers from States. He particularly highlighted the need for a provision for funding through the Consolidated Fund of India and compensation to be paid on monthly or bi-monthly basis as devolution from the Central Government was being received on monthly basis. The Hon'ble Minister from Uttarakhand stated that for small States, monthly payment of compensation was essential. She also added that the Centre should commit to pay compensation for five years. The Hon'ble Minister from West Bengal supported payment of compensation on a monthly basis as tax returns were filed on a monthly basis. He further stated that in Section 8 of the Compensation Law, there should be a reference to Section 8(3) of the GST Law. He added that reference to Section 5(2) of the IGST Act needed more discussion. He further added that the collection of taxes had fallen during the third quarter and the situation was likely to worsen in the fourth quarter and that there was a likely shortfall of revenue in his State of Rs. 5000 to Rs. 7000 Crore. He observed that the projected collection of compensation amount of about Rs. 55000 Crore might not be sufficient and there was a need to provide in the Act that if there was a shortfall in collection of cess, compensation shall be paid from the Consolidated Fund of India or from some other source. The Hon'ble Minister from Meghalaya stated that North Eastern States had less resources and compensation should be given on monthly or bi monthly basis. He added that it had been agreed by the Council earlier that tax exempted under the Industrial Policy of Special Category States shall be added to their base year revenue. He observed that this would give them only limited benefit and he urged that additional mechanisms be adopted for the benefit of North Eastern States for them to derive full benefit from GST.

18. The Hon'ble Minister from Assam supported the suggestion of Odisha in respect of addition of revenue from Entry Tax to the base year revenue. He also observed that monthly release of compensation was very important and that there should be a commitment for 'compensation from any other source of Government of India' if cess collection fell short of the compensation requirement. The Hon'ble Deputy Chief Minister of Gujarat stated that compensation should be given for sixty months. He added that when exports took place from SEZ, cess would also be refunded and therefore compensation fund should be net of such refunds. He also supported the idea of making a provision that compensation could be given from some source other than cess. The Hon'ble Minister from Jammu & Kashmir suggested to release compensation payment in advance and to adjust the same at the end of the month after getting certified accounts. He suggested that compensation should not be linked on the basis of past collection but be paid on a projection basis. He also suggested to amend Section 5(4) in reference to Jammu & Kashmir to indicate that 'the base year revenue shall include the amount of sales tax collected on services.' He further suggested to amend Section 5(5) by adding the word 'remission' along with the word 'exemption'.

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19. The Hon'ble Minister from Chhattisgarh suggested that the Entry Tax collection should not be added as revenue in the year it was collected. The Hon'ble Minister from West Bengal also supported the stand of the Hon'ble Ministers from Odisha, Haryana and Chhattisgarh of either adding the collection of Entry Tax arising out of the judgement of the Supreme Court in the base year 2015-16 or not to add it in the subsequent year when it was actually collected. The Hon'ble Minister from Kerala suggested to add the clause that if compensation fund was insufficient, then compensation shall be paid from the Central Government's Consolidated Fund. He also supported payment of compensation on monthly basis and also suggested to specify items on which cess would be levied and that services should not be charged to cess.

20. Shri Udai Singh Kumawat, Joint Secretary, Department of Revenue responded to some of the suggestions made. He mentioned that a suitable definition of Compensation Fund could be added to Section 2 of the Compensation Law. He added that the mode of funding the compensation could only be as already prescribed by the Council. He also agreed to the suggestion to add the word 'fee' in Section 5(1)(g) and clarified that this would apply in respect of those entries of the State List which had been omitted (like Entry 54 of the State List) under the Constitution (One Hundred and First Amendment) Act, 2016 read with Entry 66 of the State List in Schedule 7 of the Constitution. With regard to the suggestion from the Hon'ble Minister from West Bengal, he informed that Section 8 had already been revised and that the revised version had been circulated in the meeting. He stated that as regards the suggestion from the Hon'ble Minister from Odisha and a few other Hon'ble Members, regarding non-inclusion of Entry Tax in the revenue collection of the relevant year, the Council had already agreed earlier that whatever revenue was actually collected by the States would be considered as revenue collected except to the extent that had already been agreed for the Special Category States and that this decision would stand unless the Council agreed to change it. As regards the suggestion of the Hon'ble Deputy Chief Minister from Gujarat regarding refund of cess on exported goods, he pointed out that Section 9 of the Compensation Law provided that all provisions of furnishing return and claiming refund of CGST and IGST shall apply to the Compensation Act. He agreed to the suggestion for changes in Section 5(4) and Section 5(5) made by the Hon'ble Minister from Jammu & Kashmir. He added that 'remission' in the context of Jammu & Kashmir meant the same as exemption, i.e. tax not collected. As regards the suggestion of the Hon'ble Minister from Tamil Nadu to add ITC adjustment and ITC reversal as Section 5(1)(h), he pointed out that ITC reversal was reflected in the actual VAT collection and adding it would lead to double counting and hence it could not be added separately. The Hon'ble Minister from Tamil Nadu observed that the spreadsheet sent for collecting data for Compensation had a column regarding ITC adjustment and ITC reversal. The Secretary to the Council explained that this was not meant to add this amount into the revenue collected as it was already decided in the Council that for compensation, the amount of revenue to be taken into account would be net of ITC reversals. On the subject of inclusion of Entry Tax in the revenue base, the Secretary to the Council stated that the issue of Entry Tax litigation was earlier discussed in the Council extensively and then it was decided that only actual revenue earned by a State in a year

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shall be counted towards the revenue collected during a year and as a part of the overall package, it was agreed that an assured growth rate of 14% shall be considered for compensation to States. He added that the suggestion of subtracting the collection of Entry Tax from the revenue collection of States in a year would be unfair to the Central Government. He further added that if an earlier tax dispute pending in a Court was decided in favour of a taxpayer leading to a large amount of refund in a subsequent year, the calculation of tax collected would be net of this refund. The Hon'ble Minister from Assam informed that the disputed amount of Entry Tax for his State was about Rs. 1200 Crore which was for years 2011-12, 2012-13 and 2013-14 and this was likely to be collected in 2017-18 or 2018-19 and due to this, notionally there would be a surplus collection of revenue in the next two years and this would lead to loss of about Rs. 800 Crore. He said that the reverse could also be considered regarding refund. The Secretary to the Council stated that such an arrangement would open a Pandora's Box. The Hon'ble Minister from West Bengal pointed out that the issue of Entry Tax was different from individual cases of dispute as this tax was being subsumed under GST.

21. The Hon'ble Chairperson stated that the issue of compensation had been discussed earlier for two or three days and certain decisions were taken. He observed that while infirmities and ambiguities in the language of the Compensation Law could be addressed, the basic principles regarding compensation decided earlier in the Council could not be reopened at this stage. He stated that in the earlier meetings, the mechanisms for funding compensation was discussed like through taxation or through the Consolidated Fund of India and finally the formulation that was agreed upon was the one which was least burdensome for consumers, namely to collect cess on certain luxury and demerit goods in excess of 28% tax, and that after five years, this cess could be merged with the tax. He added that revenue for the base year 2014-15 was to be based on actual tax collection figure and not on some hypothetical basis of collection. He added that the projected growth rate of 14% on the base year collection was linked to the overall agreement reached regarding compensation and it was not possible at this stage to open only one limb of the agreement. He mentioned that the demand for payment of compensation from the Consolidated Fund of India essentially meant funding compensation from Income Tax or non-tax revenues of the Central Government, which would be a challenge as the Central Government also had its own committed expenditure. He said that based on these considerations, certain principles had been agreed upon, namely that the compensation would be funded out of the cess mechanism, which would have a pool of revenue and if there was any shortfall in this pool, it could be supplemented by some mechanism that the Council might decide. He also pointed out that after the Supreme Court judgement on Entry Tax, separate benches would sit and evaluate the legality of various State laws which was likely to take time. The Hon'ble Minister from Haryana observed that the proposal was not to add any notional revenue to the base year but to add the actual revenue collected or to exclude such collection in the subsequent year, as otherwise the States would suffer a double jeopardy. The Hon'ble Chairperson observed that the projected average growth rate of the economy was about 6% to 7% and adding to it inflation of about 4%, the figure did not reach 14% as was agreed for the projected growth rate for

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calculating compensation and this figure was arrived at after considering various other imponderables. The Hon'ble Minister from Haryana referred to a history of mistrust because CST compensation was not given to the States as per the agreed formula. The Hon'ble Chairperson observed that the Council would now decide upon compensation and the States had also been empowered in the Council. The Hon'ble Minister from Telangana pointed out that the Council had not decided as to how compensation would be paid if there was a shortfall in cess collection. The Hon'ble Chairperson stated that in such an eventuality, the Council could decide to raise the rate of tax or cess. The Hon'ble Minister from Telangana observed that as only four to five Sates were likely to require compensation, it could be provided that in case of a shortfall in cess amount, the compensation could be funded from the Consolidated Fund of the Central Government. The Hon'ble Minister from Tamil Nadu observed that cess should not become a cross around the Council's neck and suggested to have a formulation that if cess was found to be inadequate, the Council shall arrive at ways to meet the shortfall. The Hon'ble Chairperson observed that there was Constitutional commitment for the Central Government to provide hundred per cent compensation and how it would be done was for the Council to decide.

22. The Hon'ble Minister from West Bengal observed that the principles for compensation were decided earlier in the Council after three days of extensive discussion, but at that time there was no demonetisation. He added that after demonetisation, revenue shortfall to the tune of 20% to 30% was expected in the third quarter and it could be worse in the fourth quarter. He observed that the Centre might also suffer revenue shortfall and then where would the compensation money come from. The Hon'ble Chairperson stated that the Central Government's tax collection data for November 2016 as on 5th December, 2016 showed increase in income tax collection by 13.5% and of Central Excise collection by 23%. He added that there was fall in revenue in Service Tax but this was also the trend in the last year and was possibly due to the effect of post-Diwali festival. The Hon'ble Minister from Kerala observed that there should be clear provision in the Compensation Law as to how 100% compensation shall be ensured and shall be paid within the month. The Hon'ble Minister from Jammu & Kashmir stated that the formulation earlier agreed for compensation was actually an insurance at 14% and there would be compensation even if a State suffered from a calamity. The Hon'ble Minister from West Bengal stated that it should be clearly recorded that there shall be 100% compensation at the projected growth rate of 14%. The Secretary to the Council stated that this was already a commitment but the Council would need to provide for means of raising resources for compensation. The Hon'ble Minister from Karnataka observed that the Constitutional provision was that the Parliament shall provide for compensation. The Hon'ble Chairperson said that in the Council there was shared sovereignty between the Centre and the States and the Council was the *de facto* legislative body and it was expected that the Parliament and the State legislators would adopt the decision of the Council *in toto*.

23. The Hon'ble Deputy Chief Minister of Gujarat strongly suggested to have provision to pay compensation on monthly or bi-monthly basis instead of quarterly basis. After discussion, the Council agreed that compensation shall be paid on bi-monthly basis.

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24. After discussion, the Council approved the Compensation Law subject to the decisions and observations as recorded below and it was also agreed that a revised draft incorporating the changes agreed upon in the Council and the suggestions of the Union Law Ministry after the legal vetting would be placed before the Council in the next meeting.

i. To incorporate the definition of 'Compensation Fund' in Section 2 to denote a Fund consisting of GST compensation cess revenue and such other revenue as the Council may decide.

ii. To add the word 'fee' in Section 5(1)(g) and this would apply only in case the "fee" being collected under Entry 66 of the State List (in Schedule 7 of the Constitution) was imposed in respect of those entries of the State List (like Entry 54) which had been omitted under the Constitution (One Hundred and First Amendment) Act, 2016.

iii. To add in Section 2(8), the words 'under this Act' after the words 'taxable person.'

iv. To amend Section 5(4) to indicate that 'the base year revenue shall include the amount of sales tax collected on services.'

v. To amend Section 5(5) by adding the word 'remission' along with the word 'exemption'.

vi. To give compensation on bi-monthly basis and to this extent the decision taken in the first Council meeting (held on 22-23 September 2016) to release compensation on quarterly basis stood modified.

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

25. After discussion, it was agreed that the next meeting of the Council would be held on 3rd and 4th January, 2017 in New Delhi.

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

(Arun Jaitley)
Chairperson, GST Council

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Annexure 1

List of Ministers who attended the 7th GST Council Meeting on 22-23 Dec 2016

S No	State/Centre	Name of the Minister	Charge
1	Govt of India	Shri Arun Jaitley	Finance Minister
2	Govt of India	Shri Santosh Kumar Gangwar	Minister of State for Finance
3	Puducherry	Shri V. Narayanasamy	Chief Minister
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Delhi	Shri Manish Sisodia	Deputy Chief Minister
6	Gujarat	Shri Nitin Patel	Deputy Chief Minister
7	Andhra Pradesh	Shri Yanamala Ramakrishnudu	Finance Minister
8	Assam	Shri Himanta B. Sarma	Finance Minister
9	Bihar	Shri Bijendra Prasad Yadav	Minister, Commercial Taxes
10	Chhattisgarh	Shri Amar Agrawal	Minister, Commercial Taxes
11	Haryana	Captain Abhimanyu	Minister, Excise & Taxation
12	Jammu & Kashmir	Dr. Haseeb A. Drabu	Finance Minister
13	Jharkhand	Shri C.P. Singh	Minister for Urban Development & Housing
14	Karnataka	Shri Krishna Byregowda	Minister for Agriculture
15	Kerala	Shri C. Raveendranath	Minister for Education
16	Madhya Pradesh	Shri Jayant Malaiya	Finance Minister
17	Maharashtra	Shri Sudhir Mungantiwar	Finance Minister
18	Meghalaya	Shri Zenith Sangma	Minister for Taxation
19	Odisha	Shri Pradip Kumar Amat	Finance Minister
20	Puducherry	Shri M.O.H.F. Shahjahan	Minister for Revenue (attended on 23 Dec 2016)
21	Punjab	Shri Parminder Singh Dhindsa	Finance Minister
22	Rajasthan	Shri Rajpal Singh Shekhawat	Minister for Heavy Industries
23	Tamil Nadu	Shri K. Pandiarajan	Minister, School Education, Sports & Youth Welfare
24	Telangana	Shri Etela Rajender	Finance Minister
25	Uttarakhand	Mrs. Indira Hridayesh	Finance Minister
26	Uttar Pradesh	Dr. Abhishek Mishra	Minister for Skill Development
27	West Bengal	Dr. Amit Mitra	Finance Minister

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Annexure 2

List of Officers who attended the 7th GST Council Meeting on 22-23 Dec 2016

S No	State/Centre	Name of the Officer	Charge
1	Govt of India	Dr. Hasmukh Adhia	Secretary, GST Council & Dept of Revenue
2	Govt of India	Shri Najib Shah	(Permanent Invitee to GST Council) Chairman, CBEC
3	Govt of India	Shri Arvind Subramanian	Chief Economic Adviser
4	Govt of India	Shri Ram Tirath	Member (GST), CBEC
5	Govt of India	Shri Mahender Singh	Director General, GST
6	Govt of India	Shri P.K. Jain	Principal Commissioner, (AR), CESTAT, CBEC
7	Govt of India	Shri B.N. Sharma	Additional Secretary, Dept of Revenue
8	Govt of India	Shri Vivek Johri	Principal Commissioner, Customs, Delhi, CBEC
9	Govt of India	Shri PK Mohanty	Advisor (GST), CBEC
10	Govt of India	Shri Alok Shukla	Joint Secretary (TRU), Dept of Revenue
11	Govt of India	Shri Upender Gupta	Commissioner (GST), CBEC
12	Govt of India	Shri Udai Singh Kumawat	Joint Secretary, Dept of Revenue
13	Govt of India	Shri Amitabh Kumar	Joint Secretary (TRU), Dept of Revenue
14	Govt of India	Shri G.D. Lohani	Commissioner, CBEC
15	Govt of India	Shri Paras Sankhla	OSD to FM
16	Govt of India	Shri D.S.Malik	ADG, Press, Ministry of Finance
17	Govt of India	Ms. Aarti Saxena	Deputy Secretary, Dept of Revenue
18	Govt of India	Shri Ravneet Khurana	Deputy Commissioner (GST), CBEC
19	Govt of India	Shri Siddharth Jain	Assistant Commissioner (GST), CBEC
20	Govt of India	Shri Hemant Jain	Advisor to MoS
21	Govt of India	Shri Mahar Singh	Assistant Director, Press, MoF
22	GST Council	Shri Arun Goyal	Additional Secretary
23	GST Council	Shri Shashank Priya	Commissioner
24	GST Council	Shri Manish K Sinha	Commissioner
25	GST Council	Ms. Himani Bhayana	Joint Commissioner
26	GST Council	Shri G.S. Sinha	Joint Commissioner
27	GST Council	Shri Rakesh Agarwal	Assistant Commissioner
28	GST Council	Shri Kaushik TG	Assistant Commissioner

CHAIRMAN'S INITIALS

S No	State/Centre	Name of the Officer	Charge
29	GST Council	Shri Sandeep Bhutani	Superintendent
30	GST Council	Shri Amit Soni	Inspector
31	GST Council	Shri Alok Bharti	Inspector
32	GST Council	Shri Anis Alam	Inspector
33	GST Council	Shri Ashish Tomar	Inspector
34	GST Council	Shri Sharad Kumar Verma	PA to Commissioner
35	GST Council	Shri Sher Singh Meena	Tax Assistant
36	Andhra Pradesh	Shri J. Syamala Rao	Commissioner, Commercial Taxes
37	Andhra Pradesh	Shri T. Ramesh Babu	Additional Commissioner, Commercial Taxes
38	Arunachal Pradesh	Shri Marnya Ete	Secretary & Commissioner, Commercial Taxes
39	Arunachal Pradesh	Shri Tapas Dutta	Assistant Commissioner, VAT
40	Arunachal Pradesh	Shri Nakut Padung	Superintendent, VAT
41	Assam	Shri Anurag Goel	Commissioner, Commercial Taxes
42	Bihar	Smt. Sujata Chaturvedi	Principal Secretary & Commissioner, Commercial Taxes
43	Bihar	Shri Arun Kumar Mishra	Additional Secretary, Commercial Taxes
44	Bihar	Shri Ajitabh Mishra	Assistant Commissioner, Commercial Taxes
45	Bihar	Shri Virendra Kumar	PS to Minister
46	Chhattisgarh	Ms. Sangeetha P	Commissioner, Commercial Taxes
47	Chhattisgarh	Shri Khemraj Jhariya	Additional Commissioner, Commercial Taxes
48	Delhi	Shri H. Rajesh Prasad	Commissioner, VAT
49	Delhi	Shri R.K. Mishra	Special Commissioner (Policy)
50	Delhi	Shri Anand Kumar Tiwari	Joint Commissioner (GST)
51	Goa	Shri Dipak Bandekar	Commissioner, Commercial Taxes
52	Gujarat	Dr. P.D.Vaghela	Commissioner, Commercial Taxes
53	Gujarat	Ms. Mona Khandhar	Secretary (Economic Affairs)
54	Gujarat	Shri Riddhesh Raval	Assistant Commissioner
55	Haryana	Shri Sanjeev Kaushal	Additional Chief Secretary
56	Haryana	Shri Shyamal Misra	Commissioner, Commercial Taxes
57	Haryana	Shri Vidya Sagar	Joint Commissioner, Commercial Taxes
58	Himachal Pradesh	Shri Pushpendra Rajput	Commissioner, Excise & Taxation
59	Jammu & Kashmir	Shri P.I. Khateeb	Commissioner, Commercial Taxes

CHAIRMAN'S INITIALS

S No	State/Centre	Name of the Officer	Charge
60	Jammu & Kashmir	Shri P.K. Bhat	Additional Commissioner, Commercial Taxes
61	Jharkhand	Shri Ranjan Kumar Sinha	Joint Commissioner, Commercial Taxes
62	Jharkhand	Shri Sanjay Kumar Prasad	Deputy Commissioner, Commercial Taxes
63	Karnataka	Shri Ritvik Pandey	Commissioner, Commercial Taxes
64	Kerala	Shri P. Mara Pandiyan	Additional Chief Secretary (Taxes)
65	Kerala	Dr. Rajan Khobragade	Commissioner, Commercial Taxes
66	Kerala	Shri K.A. Maniram	APS to Minister
67	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
68	Madhya Pradesh	Shri Rajesh Bahuguna	Additional Commissioner
69	Madhya Pradesh	Shri Sudip Gupta	Deputy Commissioner
70	Maharashtra	Shri D.K. Jain	Additional Chief Secretary (Finance)
71	Maharashtra	Shri Rajiv Jalota	Commissioner, Sales Tax
72	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner
73	Maharashtra	Shri Sudhir Rathod	OSD to FM
74	Meghalaya	Shri Abhishek Bhagotia	Commissioner, Taxes
75	Meghalaya	Shri Leonardo Khongsit	Assistant Commissioner, Commercial Taxes
76	Mizoram	Shri Umakant	OSD to Govt of Mizoram
77	Odisha	Shri Tuhin Kanta Pandey	Principal Secretary (Finance)
78	Odisha	Shri Anand Satpathy	Additional Commissioner, Commercial Taxes
79	Odisha	Shri Sahadev Sahu	Joint Commissioner, Commercial Taxes
80	Puducherry	Dr. V. Candavelou	Secretary (Finance & Commercial Taxes)
81	Puducherry	Shri G. Srinivas	Commissioner, Commercial Taxes
82	Punjab	Shri Satish Chandra	Additional Chief Secretary
83	Punjab	Shri Rajeev Gupta	Advisor (GST)
84	Punjab	Shri Supreet Singh Gulati	Additional Commissioner, Excise & Taxation
85	Punjab	Shri Pawan Garg	Deputy Commissioner (GST)
86	Rajasthan	Shri Praveen Gupta	Secretary Finance (Revenue)
87	Rajasthan	Shri Alok Gupta	Commissioner, Commercial Taxes
88	Rajasthan	Shri Ketan Sharma	Deputy Commissioner (GST)
89	Tamil Nadu	Dr. C. Chandramouli	Additional Chief Secretary

CHAIRMAN'S INITIALS

S No	State/Centre	Name of the Officer	Charge
90	Tamil Nadu	Shri D. Soundararajapandian	Joint Commissioner
91	Tamil Nadu	Shri Rajesh Kannan	Information Officer
92	Telangana	Shri Somesh Kumar	Principal Secretary (Revenue)
93	Telangana	Shri Anil Kumar	Commissioner, Commercial Taxes
94	Telangana	Shri Laxminarayan Jannu	Joint Commissioner, Commercial Taxes
95	Tripura	Dr. Debamita Kilikdar	Deputy Commissioner of Taxes
96	Uttar Pradesh	Shri Mukesh Kumar Meshram	Commissioner, Commercial Taxes
97	Uttar Pradesh	Shri S.C.Dwivedi	Special Secretary
98	Uttar Pradesh	Shri Vivek Kumar	Additional Commissioner
99	Uttarakhand	Shri Yashpal Singh	Deputy Commissioner
100	Uttarakhand	Shri Ranveer Singh Chauhan	Commissioner, Commercial Taxes
101	Uttarakhand	Shri Piyush Kumar	Additional Commissioner, Commercial Taxes
102	West Bengal	Shri H.K. Dwivedi	Principal Secretary (Finance)
103	West Bengal	Ms. Smaraki Mahapatra	Commissioner, Commercial Taxes
104	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, Commercial Tax
105	GSTN	Shri Navin Kumar	Chairman
106	GSTN	Shri Prakash Kumar	CEO

CHAIRMAN'S INITIALS