

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

Introduction

The first reading of the Model GST Law as examined and recommended by the GST Council has been completed by the Union Ministry of Law on 11 February 2017. It has commenced the second reading of the draft GST Law from 13 February 2017. The Union Ministry of Law has suggested several changes to the Model GST Law. The proposed changes have been discussed by the Law Committee of the GST Council (hereinafter referred to as the 'Law Committee') up to Section 49 and the sections dealing with Appellate Tribunals (Sections 104 to 121). Keeping in view the changes suggested by the Union Ministry of Law, the Law Committee was of the opinion that after examining the entire draft received from the Union Law Ministry, it would be desirable to have a joint meeting between the officers of the Ministry of Law and the Law Committee in order to arrive at a consensus draft.

2. The GST Council, during its 5th, 6th and 7th meetings, had suggested certain changes to the Model GST Law. These have been suitably incorporated in the law and vetted by the Union Ministry of Law. These are included as **Annexure I** to this document for information of the GST Council and discussion where so required.

3. Further, the GST Council had asked the Law Committee to re-examine certain provisions of law. The following issues have been put on the agenda for further deliberations and approval.

- i. Provisions relating to Tribunal
- ii. Reconciliation of Sections 4 & 5
- iii. Power to waive penalty
- iv. & v. Issues relating to Supply read with Schedules II and IV
- vi. Power of CAG
- vii. Definition of 'Agriculture'

4. The full text of the finally vetted Model GST Law is proposed to be presented in the next meeting of the GST Council.

Note:

1. Text in blue indicates changes made in the law as per the decisions of the GST Council.
2. Text in red indicates the suggestions of the Law Committee.
3. Text in green indicates provisions that are to be incorporated in the SGST Law only.

Issue No. 1: Provisions relating to Tribunal:

4. It was decided in the 7th Meeting of the GST Council held on 22-23 December 2016 that the provisions relating to Tribunals in the GST regime would be revised and that in the revised draft, the following would 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. Draft formulation as discussed by the Law Committee is indicated in the table below. The formulation has also been vetted by the Union Ministry of Law.

Old Section 100 to Section 103	104. (1) The Central Government shall, by notification, on the recommendation of the Council, constitute, with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.	Constitution of Appellate Tribunal.
	105. (1) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereafter in this Chapter referred to as “Regional Benches”), State Benches and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).	Benches of Appellate Tribunal and their composition.
	(2) There shall be constituted a National Bench of the Appellate Tribunal at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).	
	(3) The Central Government shall, by notification, on the recommendation of the Council, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).	
	(4) The Central Government, shall, by notification, specify for each State, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as State Bench) for exercising the powers of the Appellate Tribunal within the concerned State:	
	Provided that the Central Government shall, on receipt of a request from any State Government and on the	

	recommendation of the Council, constitute such number of Area Benches in that State, as it deems fit.	
	(5) (a) Each State Bench or Area Bench of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).	
	(b) The State Government may designate the senior most Judicial Member in a State as the State President.	
	(6) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a bench of two Members.	
	(7) If the Members of the National Bench, Regional Bench, State Bench or Area Bench, differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Bench, State Bench or Area Bench and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.	
	(8) The Central Government, in consultation with the President may, for the administrative convenience, transfer –	
	(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional, or	
	(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area Bench.	
	(9) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.	

	106. (1) A person shall not be qualified for appointment as-	Qualifications for appointment of President, Vice-President and Members.
	(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court;	
	(b) a Judicial Member, unless he has been – (i) a Judge of the High Court; or (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or (iii) Member of Indian Legal Service holding a post not less than Additional Secretary for three years.	
	(c) a Technical Member (Centre) unless he is a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;	
	(d) a Technical Member (State) who is not below the rank of Additional Commissioner of Value Added Tax or the State Goods and Services Tax or such rank as may be notified by the concerned State Government on the recommendation of the Council with at least three years of experience in the administration of an earlier law or the State Goods and Services Tax.	
	(2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Central Government after consultation with the Chief Justice of India or his nominee.	
	(3) The Technical Members of the National Bench and Regional Bench shall be appointed by the Central Government on the recommendation of the Selection Committee consisting of such persons and in such manner as may be prescribed.	
	(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of High Court of the State or his nominee.	
	(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government in such manner as may be prescribed.	

	(6) The Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.	
	(7) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.	
	(8) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.	
	107. (1) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-eight years, whichever is earlier and shall be eligible for re-appointment.	Term of Office of President and Members of Appellate Tribunal.
	(2) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which they enter upon their office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment.	
	(3) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term until he attains the age of sixty three years.	
	108. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the Senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.	Senior most Member of the National Bench to act as President in certain circumstances.
	(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.	
	109. The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:	Salary, allowances and other terms and conditions of service of

		President, State President or Members of Appellate Tribunal
	Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.	
	110. The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or State Government, as the case may be, resign from his office:	Resignation of President, State President or Members of Appellate Tribunal
	Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.	
	111. (1) The Central Government may after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Member of the National Bench, Regional Bench or Technical Members (Centre) of State Bench or Area Benches, and the State Government may after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—	Removal of President, State President or Members of Appellate Tribunal
	(a) has been adjudged an insolvent; or	
	(b) has been convicted of an offence which, in the opinion of such Government, involves moral turpitude; or	
	(c) has become physically or mentally incapable of acting as such President, State President or Member; or	
	(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member;	

	(e) has so abused his position as to render his continuance in office prejudicial to the public interest:	
	Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e) unless he has been informed of the charges against him and giving him a reasonable opportunity of being heard.	
	(2) Without prejudice to the provisions of sub-section (1), the President or a Judicial and Technical Member of the National Bench or Regional Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given a reasonable opportunity of being heard.	
	(3) Without prejudice to the provisions of sub-section (1), the Member Technical (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the Central Government and of which the said Member had been given a reasonable opportunity of being heard.	
	(4) Without prejudice to the provisions of sub-section (1), the Judicial Member or Member Technical (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given reasonable opportunity of being heard.	
	(5) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Member of the National Bench or the Regional Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2).	

	(6) The Central Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Member Technical (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (3).	
	(7) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Member Technical (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (4).	
	112. Subject to the provisions of article 220 of the Constitution of India, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.	Prohibition to appear, act or plead before Appellate Tribunal
	113. No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal, as the case may be.	Vacancy in Appellate Tribunal not to invalidate acts or proceedings.
	114. (1) The National Bench or Regional Bench of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.	Jurisdiction of National Bench, Regional Bench and State Bench or Area Benches
	(2) The State or Area Bench shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (1).	
	(3) The President and the State President shall, by general or special order, distribute the business or transfer cases among the Regional Benches or Area Benches in a State.	
5 of 1908.	115. (1) The Appellate Tribunal shall not, while disposing of any proceeding before it or, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.	Procedure before Appellate Tribunal
	(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as	

5 of 1908.	are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: —	
	(a) summoning and enforcing the attendance of any person and examining him on oath;	
	(b) requiring the discovery and production of documents;	
	(c) receiving evidence on affidavits;	
1 of 1872.	(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;	
	(e) issuing commissions for the examination of witnesses or documents;	
	(f) dismissing a representation for default or deciding it ex parte;	
	(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and	
	(h) any other matter which may be prescribed.	
	(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction, —	

	(a) in the case of an order against a company, the registered office of the company is situated; or	
	(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.	
	(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of	

45 of 1860. 2 of 1974.	sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.	
	116. (1) Any person aggrieved by an order passed against him under section 102 or section 103 of this Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.	Appeals to Appellate Tribunal.
	(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed one lakh rupees.	
	(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State Goods and Services Tax call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act and under the State Goods and Services Tax Act as authorized under section 7 of the State Goods and Services Tax SGST Act, for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order. <i>(CGST Law)</i>	“as authorized under section 7 of the State Goods and Services Tax SGST Act,” to be restored in order to ensure that order passed by an authority exercising only cross-empowered orders being revised
	(3) The Commissioner may, on his own motion, or upon request from the Commissioner of Central Goods and Services Tax call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act and under the Central Goods and Services Tax Act as authorized under section 7 of the Central Goods and Services Tax CGST Act, for the purpose of	“as authorized under section 7 of the State Goods and Services Tax SGST Act,” to be restored in order to ensure

	<p>satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.</p> <p style="text-align: right;"><i>(SGST Law)</i></p>	<p>that order passed by an authority exercising only cross-empowered orders being revised</p>
	<p>(4) Where in pursuance of an order under sub-section (3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 102, or as the case may be, under sub-section (1) of section 103 and the provisions of this Act shall, apply to such application, as they apply in relation to appeals filed under sub-section (1).</p>	
	<p>(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).</p>	
	<p>(6) The Appellate Tribunal may</p> <p>(a) admit an appeal within three months after the expiry of the period referred to in sub-section (1), or</p> <p>(b) permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5),-</p> <p>if it is satisfied that there was sufficient cause for not presenting it within that period.</p>	
	<p>(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed:</p>	
	<p>Provided that no such fee shall be payable in the case of an appeal filed by the Commissioner or a Memorandum of cross objections referred to in sub-section (5).</p>	

	(8) No appeal shall be filed under sub-section (1), unless the appellant has deposited—	
	(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and	
	(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount deposited under sub-section (6) of the section 102, arising from the said order, in relation to which the appeal has been filed.	
	(9) Where the appellant has deposited the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.	
	(10) Every application made before the Appellate Tribunal, —	
	(a) in an appeal for rectification of error or for any other purpose; or	
	(b) for restoration of an appeal or an application,	
	shall be accompanied by such fees as may be prescribed:	
	Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner.	
	117. (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority, as the case may be, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.	Orders of Appellate Tribunal
	(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, to the	

	parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:	
	Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.	
	(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State Tax or the other party to the appeal within a period of three months from the date of the order:	
	(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of Central Tax or the other party to the appeal within a period of three months from the date of the order:	
	Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless he has been given a reasonable opportunity of being heard.	
	(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.	
	(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State Tax.	
	(6) Save as provided in section 125 or section 126, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.	

	118. (1) The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed.	Financial and administrative powers of President and State President
	(2) The State President shall exercise such financial and administrative powers over the Benches of the Appellate Tribunal in a State, as may be prescribed:	
	Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the conditions that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President:	
	Provided further that the State President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the Appellate Tribunal, subject to the conditions that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the State President.	
45 of 1860.	119. The President, State President, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.	President, State President, Members, officers, etc., to be public servants.
	120. No suit, prosecution or other legal proceeding shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.	Protection of action taken in good faith.
	121. In this Chapter, unless the context otherwise requires, the expressions, -	Definitions
	(a) “Appellate Tribunal” includes the National Bench, Regional Bench, State Bench or Area Benches thereof;	

	(b) “Judicial Member” means a member of the Appellate Tribunal appointed as such and includes the President or the State President, as the case may be;	
	(c) “President” means the President of the Appellate Tribunal;	
	(d) “State President” means the President of the State Bench of the Appellate Tribunal.	

Issue No. 2: Reconciliation of Sections 4 & 5:

5. It was decided in the 7th Meeting of the GST Council held on 22-23 December 2016 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. The Law Committee has proposed to delete Section 4(2) of the Model GST Law and make certain amendments in Section 5 of the Model GST Law, which is indicated in the table below. The formulation has also been vetted by the Union Ministry of Law.

Issue No. 2	<p>Section 5 (of SGST Law)</p> <p>(2) The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner in respect of all or any of the functions assigned to them, shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the State Government Commissioner may, by order, specify.</p> <p>Note: Section 4(2) of SGST Law proposed to be deleted</p>	
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Issue No. 3: Power to waive penalty:

6. In the 7th Meeting of the GST Council held on 22-23 December 2016, CBEC had proposed a provision for Power to waive penalty (Section 87A) which is as below:

“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.”

7. After discussion, the Council decided that the Officers of the Law Committee would redraft Section 87A (Power to waive penalty) of the Model GST Law in a manner so as not to give discretion to officers for levying penalty. A revised draft is placed below but there was no consensus on this draft in the Law Committee.

Issue No. 3	<p style="text-align: center;">Section 87A (Power to waive penalty)—</p> <p style="text-align: center;">Notwithstanding anything contained in the provisions of section 85 or 86 of this Act, any of the penalty referred to in the said sections may be waived in part or full for such class of the taxpayers, under such mitigating circumstances as may be notified by the Central/State Government in this regard, on the recommendation of the Council.</p> <p style="text-align: center;">Note: There was no consensus in Law Committee. Issue proposed to be discussed in the Council.</p>	
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Issue No. 4 & 5: Issues relating to Supply read with Schedules II and IV:

8. It was decided in the 7th Meeting of the GST Council held on 22-23 December 2016 that the Law Committee would examine Schedule IV and suggest a draft formulation through which the services mentioned in Schedule IV (except those mentioned in Clause 4) would be exempted through a notification and that such notification shall be issued on the recommendation of the Council.

9. The Law Committee has proposed that Clause 4 (dealing with services provided by the Government towards diplomatic or consular activities; citizenship, naturalization and aliens; admission into, and emigration and expulsion from India; currency, coinage and legal tender, foreign exchange; trade and commerce with foreign countries, import and export across customs frontiers, inter-State trade and commerce; and maintenance of public order) can also be deleted from Schedule IV and be dealt through a notification. Keeping the above in view, the draft formulation of the Law Committee making amendments in Section 3 of the Model GST Law is placed below.

10. In the 5th Meeting of the GST Council held on 2-3 December 2016, it was decided to incorporate supplies of works contract (paragraph 5(f) of Schedule-II) and restaurant (paragraph 5(h) of Schedule-II) as composite supply on which all provisions relating to services shall apply. The amendment made in Schedule II is placed below.

11. The revised drafts relating to Section 3 and Schedule II have been vetted by the Union Ministry of Law.

Issue No. 4 & 5	Section 3. For the purposes of this Act, the expression “supply” includes—	Scope of supply.
	⊕ (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;	
	(b) importation import of services for a consideration whether or not in the course or furtherance of business; and (Note : The clause will be moved to IGST Act)	

	(b) (e) asupply the activities specified in Schedule I, made or agreed to be made without a consideration.	
	(2) (c) The matters activities to be treated as supply of goods or supply of services as referred to in Schedule II.	
	(2) Notwithstanding anything contained in sub-section (1) ,—	
	(a) activities or transactions specified in Schedule III; or	
	(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Central/State Government on the recommendation of the Council, as specified in Schedule IV	
	shall be treated neither as a supply of goods nor a supply of services.	
	(4) Subject to sub-sections (1) and (2), the Central Government may, upon the recommendation of the Council, specify, by notification, the transactions that are to be treated as—	
	(a) a supply of goods and not as a supply of services; or	
	(b) a supply of services and not as a supply of goods. or	
	(e) neither a supply of goods nor a supply of services.	
	Schedule – IV is proposed to be deleted in view of above changes in Section 3 relating to Supply.	

	SCHEDULE II [Section 3 (2)]	
	MATTERS-ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES	

	<p>1. Transfer</p> <p>(a) any transfer of the title in goods is a supply of goods;</p> <p>(b) any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;</p> <p>(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.</p> <p>2. Land and Building</p> <p>(a) any lease, tenancy, easement, licence to occupy land is a supply of services;</p> <p>(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.</p> <p>3. Treatment or process</p> <p>Any treatment or process which is being applied to another person's goods is a supply of services.</p> <p>4. Transfer of business assets</p> <p>(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.</p> <p>(b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.</p> <p>(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—</p>	

- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. The following shall be treated as “supply of service”

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

Explanation.—For the purposes of this clause—

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

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (~~-- of 1972~~); or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

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

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

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

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

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

	<p>(g) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and</p> <p>(h) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p> <p>6. The following composite supplies shall be treated as a supply of services—</p> <p>(a) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; and</p> <p>(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p> <p><i>Explanation.</i>— For removal of doubts, it is clarified that activities specified in clause (f) and (h) shall be treated as a composite supply and supply of service involved in such supply shall be deemed to be the principal supply.</p> <p>7. The following shall be treated as supply of goods</p> <p>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.</p>	
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Issue No. 6: Power of CAG:

12. In the 6th Meeting of the GST Council held on 11 December 2016, it was decided to delete Section 65 (Power of CAG to call for information for audit) and to inform the CAG that the Council was not in favour of keeping this provision. However, subsequently, the Comptroller & Auditor General of India has discussed this issue with the Government of India and has strongly urged to retain this provision and also to add “and such other information as required for conduct of audit”. It is accordingly proposed to deliberate upon the provision as drafted below in the Model GST Law.

Issue No. 6	Section 65. The proper officer shall, upon request made in this behalf, make available to the Comptroller and Auditor General of India or an officer authorised by him, information, records and returns furnished under this Act, and such other information as required for conduct of audit as required under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.	Power of CAG to call for information for audit.
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Issue No. 7: Definition of ‘Agriculture’

13. In the 5th GST Council meeting held on 2-3 December, 2016, the definition of ‘agriculture’ related sections were decided as follows:

Section 2(7): “agriculture” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, *pisciculture*, ~~the~~ raising of crops, grass or garden produce, ~~and also grazing, but does not include~~ dairy farming, poultry farming, stock breeding, *piggery*, *apiculture*, ~~the mere~~ cutting of wood or grass, gathering of fruit, *collection of minor forest produce*, raising of man-made forest or rearing of seedlings or plants;

Section 2(8) r/w 2 (106) – “agriculturist” means ~~a person~~ an individual or a Hindu Undivided Family, who ~~cultivates land personally, for the purpose of agriculture;~~ carries on any agricultural operation on his own account –

(a) by one’s own labour, or

(b) by the labour of one’s family, or

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

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

Explanation 2, - in the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

14. However, in view of a number of observations by the Members of the Council in the 7th GST Council meeting held on 3-4 January 2017, it was decided that Officers of the Law Committee should examine whether or not definition of ‘agriculture’ and ‘agriculturist’ was needed in the GST Law.

15. The Law Committee took note of the suggestions made in the 7th GST Council meeting that the definition concerning agriculture in GST Law should follow the same approach as that in the Income Tax Act. The Law Committee went through the definitions in the Income Tax Act. The Income Tax Act follows an approach where the phrase “agriculture” has not been defined.

The Act goes on to define only the phrase “agricultural income” as the Income Tax Act is concerned only with agricultural income rather than agriculture in general. Income tax Act restricts agricultural income to income to the cultivator or receiver of rent-in-kind from agricultural land and building connected to the land. Thus the salient feature of the definition is that it should be agricultural land based and should be linked to cultivation and related activities.

16. In the GST law, the main purpose is to keep the agriculturist out of the registration liability and therefore, following the approach of Income Tax Act, the focus should be on defining agriculturist and not agriculture. Secondly, the definition of agriculturist should be restricted to cultivation of land, broadly on the lines of the Income Tax Law. **The Law Committee has, therefore, recommended that the definitions of ‘agriculture’ and ‘to cultivate personally’ may be deleted and that only a revised definition of ‘agriculturist’ may be incorporated.** The Law Committee has also proposed consequential change in the provisions relating to the registration.

17. The new definition will serve the purpose as follows:

- a) Most of the primary agricultural and agriculture allied products are likely to be exempted items. Therefore, anyone dealing with only exempted items, or having a turnover less than twenty lakh rupees will not be required to take the registration as per provisions in Clause 2(a) of Schedule V.
- b) A person cultivating cash crops like cotton, groundnuts, sugarcane etc., which are not likely to be exempt (as they attract VAT in some States), will be covered by the new definition of the agriculturist. In such a case, GST on supply of these crops by the farmer will get collected on reverse charge from the buyer.

Therefore, following new formulations as vetted by the Union Ministry of Law are proposed for approval.

Issue No. 1	<p style="text-align: center;">Section 2 definitions</p> <p style="text-align: center;">(7) “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land on one’s own account—</p> <p style="text-align: center;">(a) by one’s own labour, or</p> <p style="text-align: center;">(b) by the labour of one’s family, or</p>	
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	(c) by servants on wages payable in cash or kind or by hired labour under one's personal supervision or the personal supervision of any member of one's family;	
	23. The following persons shall not be liable to registration, namely:—	Person not liable for registration
	(b) an agriculturist, for the purpose of agriculture to the extent of supply of produce out of cultivation of land;	

Annexure I

Changes made in Model GST Law as suggested by the GST Council

Note:

1. Text in blue indicates changes made in the law as per the decisions of the GST Council.
2. Text in red indicates the suggestions of the Law Committee.

S No.	Date of Decision	Changes suggested by MGL	Changes in MGL (Suggested Changed in Blue)	Comments by Ministry of Law
1	5 th Meeting of the GST Council held on 2-3 December 2016	Section 1(2): To amend the provision to exclude the applicability of the GST statute to the State of Jammu and Kashmir.	Done. Section 1(2) is amended as (2) It extends to the whole of India except the State of Jammu and Kashmir.	Accepted by Ministry of Law
2	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (7): To modify the definition of agriculture as follows – “agriculture” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, pisciculture, the raising of crops, grass or garden produce, grazing, dairy farming, poultry farming, stock breeding, piggery, apiculture, the mere cutting of wood or grass, gathering of fruit, collection of minor forest produce, raising of man-made forest or rearing of seedlings or plants.	Circulated as a separate Agenda item.	Accepted by Ministry of Law
3	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (8) and Section 2 (106): To merge the definitions under these two sections as follows – “agriculturist” means an individual or a Hindu Undivided Family, who carries on any agricultural operation on his own account-	Circulated as a separate Agenda item.	Accepted by Ministry of Law

		<p>a) by one's own labour, or</p> <p>b) by the labour of one's family, or</p> <p>c) by servants on wages payable in cash or kind or by hired labour under one's personal supervision or the personal supervision of any member of one's family and to retain the Explanation 1 and 2 under Section 2 (106).</p>		
4	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (11): To discuss the definition of 'State' at the time of discussion on the draft IGST Act.	This issue will be taken up along with IGST Act.	---
5	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (17): To add the following provision in Schedule IV of the Draft Model GST Law: "Any licence fees, user charges, and other fees arising out of statutory compliances and related to State welfare and development measures".	Circulated as a separate Agenda item.	Accepted by Ministry of Law
6	5 th Meeting of the GST Council held on 2-3 December 2016	Section 2 (57) and 2 (58): To incorporate the definitions of 'intra-state supply of goods' and of 'intra-state supply of services' in the Model GST Law instead of only cross-referencing it to the IGST Act.	This issue was discussed by the Law Committee. It is proposed that cross-referencing from the IGST Act may be retained as definitions are pretty long.	-----
7	5 th Meeting of the GST Council held on 2-3	Section 2 (63): To incorporate the definition of 'manufacturer' as given in the Central	Done. Section 2(63). Manufacturer definition provided by the Law Committee in lines of Central Excise Act.	Accepted by Ministry of Law

	December 2016	Excise Act, 1944 in the Model GST Law.	(63) “manufacture” means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly;	
8	5 th Meeting of the GST Council held on 2-3 December 2016	Section 3 (2): To consider supplies of works contract (paragraph 5(f) of Schedule- II) and restaurant (paragraph 5 (h) of Schedule-II) as composite supply on which all provisions relating to services shall apply.	Circulated as a separate Agenda item.	Accepted by Ministry of Law
9	5 th Meeting of the GST Council held on 2-3 December 2016	To incorporate the definition of ‘location of recipient of service’ in the Model GST Law as presently defined in the IGST Act.	Done. Section 2(69) and 2(70) inserted. (69) “ location of the recipient of services ” means, - (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business; (b) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment; (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and (d) in absence of such places, the location of the usual place of residence of the recipient;	Accepted by Ministry of Law

			<p>(70) “location of the supplier of services” means, -</p> <p>(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;</p> <p>(b) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;</p> <p>(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and</p> <p>(d) in absence of such places, the location of the usual place of residence of the supplier;</p>	
10	5 th Meeting of the GST Council held on 2-3 December 2016	Section 7: To discuss it later as it related to cross-empowerment.	To be discussed by Law Committee with Ministry of Law.	
11	5 th Meeting of the GST Council held on 2-3 December 2016	Section 8 (1): To change the rate cap from the existing rate of 14% to 20%.	<p>Done. Section 8 (1)(a) is amended as follows:</p> <p>8. (1) There shall be levied a tax called the Central Tax on all intra-State supplies of goods or services or both except alcoholic liquor for human consumption, on the value determined under section 15 and at such rates as may be notified by the Central Government in this behalf, but not exceeding fourteentwenty percent., on the recommendation of the Council and collected in such manner as may be prescribed:</p> <p>Provided that said tax on supply of petroleum crude, high speed diesel, motor spirit (commonly known as</p>	Accepted by Ministry of Law.

			petrol), natural gas, aviation turbine fuel shall be levied from such date as may be notified by the Central/State Government on the recommendation of the Council.	
12, 13 & 14	5 th Meeting of the GST Council held on 2-3 December 2016	<p>(1) Section 9: To modify the original decision taken in the 1st GST Council meeting dated 22-23 September 2016 as per which manufacturers were not to be extended the benefit of the Composition Scheme and agreed to extend the said benefit to manufacturers also, subject to clause (e) of Section 9 (1) of the Model GST Law, and that such a scheme shall be limited to turnover-based composition rather than capacity based composition.</p> <p>(2) Section 9 (1): To amend the section so as to provide that the benefit of Composition scheme shall be availed on the basis of intimation rather than permission.</p> <p>(3) Section 9 (1): To amend the provision by inserting that the aggregate turnover for availing the Composition Scheme shall be such amount as may be specified by the GST Council but shall not be less than Rs. 50 lakh and to have a total composition rate of 1% (i.e. 0.5% for CGST and 0.5% for SGST) for traders and a total composition rate of 2% (i.e. 1% for CGST and 1%</p>	<p>Done. Section 9 is amended as follows:</p> <p>9. (1) Notwithstanding anything to the contrary contained in this Act but subject to sub-section (3) or (4) of section 8, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed but not exceeding one percent. of the turnover in case of a manufacturer and 0.5 percent.-of the turnover in case of other suppliers, subject to such conditions and restrictions as may be prescribed in this behalf.</p> <p><i>Explanation.</i> - For the purposes of this sub-section, the expression 'turnover' shall mean turnover in a State during the year.</p> <p>(2) The registered person shall be eligible to opt under sub-section (1) subject to the fulfilment of the following conditions namely, —</p> <p>(a) he is not engaged in the supply of services;</p> <p>(b) is not engaged in making any supply of goods which are not taxable under this Act;</p> <p>(c) he is not engaged in making any inter-State outward supplies of goods;</p> <p>(d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 151; or</p> <p>(e) he is not a manufacturer of such goods as may be notified on the recommendation of the Council:</p> <p>Provided that the registered person shall not be eligible to opt for such</p>	<p>Accepted by Ministry of Law.</p> <p>Suggestion of the GST Council Secretariat: In order to retain greater flexibility with the GST Council, it may consider taking a decision to fix a higher ceiling, say Rs. 1 Crore, in the Model GST Law for eligibility under the Composition Scheme and may agree to presently have a lower threshold of Rs. 50 Lakh.</p>

		for SGST) for manufacturers.	scheme unless all the registered persons, having the same Permanent Account Number, also opt to pay tax under sub-section (1).	
15	5 th Meeting of the GST Council held on 2-3 December 2016	Section 9 and Section 8: To levy tax on reverse charge basis on all commodities when supplied by an unregistered person (which is otherwise chargeable to tax) to a registered person.	Done. Section 8(4) added as follows: (4) The Tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such registered person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.	Accepted by Ministry of Law.
16	5 th Meeting of the GST Council held on 2-3 December 2016	Section 11: To make suitable modification in the wording of Section 11 to reflect the understanding that applicability of exemptions under CGST, SGST and IGST shall be uniform.	Proviso to Section 11 (1) proposed to be added but issue to be discussed by Law Committee with Ministry of Law.	---
17	5 th Meeting of the GST Council held on 2-3 December 2016	Section 12 (4): To define the term 'voucher' in the Definition section.	Done. 2(114) inserted as follows : (114) "Voucher" means an instrument in the form of a document containing an undertaking or an obligation to supply, in exchange of such instrument, goods or services or both of specified description or of any description in accordance with the condition of such exchange;	Accepted by Ministry of Law.
18	5 th Meeting of the GST Council held on 2-3 December 2016	Section 16 (1): to defer decision regarding ITC in respect of capital goods till data on the total quantum of ITC availed on capital goods was received from CBEC.	Done. (1) Proviso to section 16(1) omitted. Provided that credit of input tax in respect of pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto shall not exceed—	Accepted by Ministry of Law.

			<p>(a) one third of the total input tax in the financial year in which the said goods are received;</p> <p>(b) two third of the total input tax, including the credit availed in the first financial year, in the financial year immediately succeeding the year referred to in clause (a) in which the said goods are received; and</p> <p>(c) the balance of the amount of credit in any subsequent financial year.</p> <p>(2) Explanation below section 16(4) amended as follows :</p> <p>Explanation.— For the purposes of this Chapter, the expression “plant and machinery” means apparatus, equipment, and machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures.</p>	
19	5 th Meeting of the GST Council held on 2-3 December 2016	Section 22: To make the wordings of Section 22 clearer regarding recovery of excess distribution of credit to one or more recipients of credit.	Section 22 already clear and no change is required.	Accepted by Ministry of Law
20	5 th Meeting of the GST Council held on 2-3 December 2016	Section 42: To change the wording in the law suitably to reflect that the maximum late fee shall not be less	Done. Section 42(1) amended as follows: 42. (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 32 or section 33, as the case may be, or returns required under	Accepted by Ministry of Law: It has been suggested that the amount can be notified by the Council but a

		than Rs. 5,000 or an amount as recommended by the Council.	section 34 or section 40 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.	definite maximum amount has to be specified by the Council.
21	5 th Meeting of the GST Council held on 2-3 December 2016	Section 46: To prescribe the limit for TDS to Rs. 2.5 lakh for all categories of supplies.	Done. Section 46(1) amended as follows: [hereafter in this section referred to as “the deductor”], to deduct tax at the rate of one per cent. from the payment made or credited to the supplier [hereafter in this section referred to as “the deductee”] of taxable goods or services or both, , where the total value of such supply, under a contract, exceeds five lakh two lakh fifty thousand rupees or such higher amount as may be prescribed on the recommendation of the Council....	Accepted by Ministry of Law
22	6 th Meeting of the GST Council held on 16 th December 2016	Section 2(7), 2(8) and 2(106): To revisit the definition in view of the observations of the Hon’ble Deputy Chief Minister of Gujarat in paragraph 3(ii) of the Minutes and of the Hon’ble Minister from Punjab in paragraph 3(iii) of the Minutes.	Circulated as a separate Agenda item.	---
23	6 th Meeting of the GST Council held on 16 th	Section 4 and Section 5: To be taken up after the first reading of the Model GST Law to examine and address any contradiction	Circulated as a separate Agenda item.	Accepted by Ministry of Law.

	December 2016	in respect of the jurisdiction of the SGST officer.		
24	6 th Meeting of the GST Council held on 16 th December 2016	Section 43: To amend the provision by replacing the term 'Tax Return Preparer' with the term 'GST Practitioner.'	Done. Section 2(54) 43, 124(2)(e), 171(2)(xlii) has been amended and Tax Return Preparer has been replaced by Goods and Services Tax Practitioner .	Accepted by Ministry of Law. Suggestion of the GST Council Secretariat: The GST Council may consider using the expression 'GST Sahayak' instead of 'Goods and Services Tax Practitioner' as 'practitioner' has a much wider connotation than what is intended under this provision (filing of returns and such other tasks as may be prescribed).
25	6 th Meeting of the GST Council held on 16 th December 2016	Section 48(4)(b): To amend the provision by reducing the limit for granting refund on the basis of self-certification (regarding no unjust enrichment) from Rs. five lakh to Rs. two lakh or such amount as the Council may decide.	Done. First Proviso to Section 48(4)(b) amended as follows: Provided that where the amount claimed as refund is less than five two lakh rupees or such higher amount as may be recommended by the Council , it shall not be necessary for the applicant to furnish any documentary and other evidences and instead, he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.	Accepted by Ministry of Law.
26	6 th Meeting of the GST Council held on 16 th	In all Sections where amounts are prescribed, an amendment be done by incorporating an additional expression 'or	The expression 'or such amount as the Council may decide' will be incorporated throughout the Act.	Ministry of Law has pointed that the Council may specify any amount

	December 2016	such amount as the Council may decide’.		but a maximum limit needs to be fixed in the law.
27	6 th Meeting of the GST Council held on 16 th December 2016	Section 48(3): To add another proviso to this Section granting power to the Council not to allow refund in certain cases even when there was an inverted duty structure.	<p>Done. Proviso to Section 48(3) added as follows:</p> <p>Provided that no refund of unutilized input tax credit shall be allowed in cases other than:</p> <p>(i) zero rated supplies made without payment of tax;</p> <p>(ii) or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies except supplies of goods or services or both as may be notified on the recommendation of the Council:</p>	Accepted by Ministry of Law.
28	6 th Meeting of the GST Council held on 16 th December 2016	Section 53 (6): To add the expression ‘transporter’ so that they are also made liable to maintain record of goods being transported by them.	<p>Done. Section 53(6) amended as follows:</p> <p>(2) Every owner or operator of warehouse or godown or any other place used for storage of goods or every transporter irrespective of whether he is a registered person or not shall maintain records of the consigner, consignee and other relevant details of the goods as may be prescribed.</p>	Accepted by Ministry of Law.
29	6 th Meeting of the GST Council held on 16 th December 2016	Section 54: To amend the Section by increasing the period of retention of records from five years to six years.	<p>Done. Section 54 amended as follows:</p> <p>Every registered person required to keep and maintain books of account or other records under sub-section (1) of section 53 shall retain them until the expiry of sixty seventy two months from the due date of filing of Annual Return for the year pertaining to such accounts and records:</p>	Accepted by Ministry of Law.
30	6 th Meeting of the GST Council held on 16 th	Section 56(1): To suitably clarify that only aggregators would be treated as electronic	<p>Done. Section 56(1) amended as follows:</p>	Accepted by Ministry of Law.

	December 2016	commerce operators and it would exclude those entities who sold their goods through their own electronic portal.	56. (1) Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator(hereafter in this section referred to as the “operator”), not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.	
31	6 th Meeting of the GST Council held on 16 th December 2016	Section 56(4), 56(5), 56(6), 56(7), 56(8) and 56(10): To correct the typographical error and to incorporate the correct sub-section number.	Done. Section numbers to be re-aligned towards the end of the drafting stage.	---
32	6 th Meeting of the GST Council held on 16 th December 2016	Section 58: To amend the Section by reducing Commissioner’s power to extend provisional assessment for up to four years.	Done. Proviso to Section 58(3) amended as follows: Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years as he may deem fit.	Accepted by Ministry of Law.
33	6 th Meeting of the GST Council held on 16 th December 2016	Section 59(1): As it has an implication for cross-empowerment, it would be taken up later.	This will be finalized along with Section 7.	---
34	6 th Meeting of GST Council held on 16 th December 2016	Section 61: To amend the Section by expanding the scope of assessment of unregistered persons to also include ‘those persons whose registration certificate had been cancelled but	Done. Section 61 has been amended as follows: Notwithstanding anything to the contrary contained in section 66 or section 67, where a taxable person fails to obtain registration even though liable to do so or whose registration	Accepted by Ministry of Law.

		who was liable to pay tax’.	has been cancelled under sub-section (2) or (3) of section 25 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the due date for filing of the annual return for the year to which the tax not paid relates:	
35	6 th Meeting of the GST Council held on 16 th December 2016	Section 65: To delete this provision and to inform the CAG that the Council was not in favour of keeping this provision.	Circulated as a separate Agenda item.	---
36	6 th Meeting of GST Council held on 16 th December 2016	Section 72(1)(e): To amend the provision suitably by adding the words ‘any other officer authorized by the Government’.	Done. Section 72(1)(e) amended as follows: (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or any officer authorized by Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;	Accepted by the Ministry of Law.
37	6 th Meeting of the GST Council held on 16 th December 2016	Section 81: To be redrafted providing that arrest could be made for duty evasion of Rs. 2 crore or more and that arrest made for duty evasion ranging from Rs. 2 Crore to Rs. 5 Crore shall be bailable and beyond Rs. 5 Crore shall be non-bailable. The language of the provision to also convey that wherever there was a grey	Done. Adequate Changes done in section 81 of Prosecution. (4) The offences specified in clauses (a), (b) or (c), (d) or (e) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable. Note: This was already shown in the 7th Meeting of the GST Council.	Accepted by Ministry of Law

		area relating to assessment, no arrest shall be made.		
38	6 th Meeting of the GST Council held on 16 th December 2016	The committee of officers dealing with GST law to harmonize the provisions of Section 85 (1) (xiv) and Section 89(1)(a) of the Model GST law.	Done. Section 89 amended as follows: (3) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (2), shall be deemed to be concluded.	Accepted by Ministry of Law
39	6 th Meeting of the GST Council held on 16 th December 2016	Section 85: In addition to the reference of the specified amount of penalty, to further add 'or such amount as may be prescribed by the Council'	Done. Section 85 amended as follows: shall be liable to pay a penalty of ten thousand rupees or such higher amount as may be recommended by the Council or an amount equivalent to the tax evaded or the tax not deducted under section 46 or short deducted or deducted but not paid to the Government or tax not collected under section 56 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.	Not accepted by Ministry of Law as it amounts to excessive delegation. Note: A higher amount can be fixed in the law, below which an amount may be notified by the Central Government as recommended by the Council.
40 & 41	6 th Meeting of the GST Council held on 16 th December 2016	(1) Section 89 (1) (a): To amend the provision by adding that while detaining a vehicle, a detention order shall be served on the owner or the driver of the vehicle. (2) Section 89 (1) (c): To slightly modify the language to provide for issuance of notice before imposition of penalty.	Done. Section 89 amended as follows: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.	Accepted by Ministry of Law.

42	6 th Meeting of the GST Council held on 16 th December 2016	Section 98(6): To amend the provision by increasing the rate of pre-deposit from 10% to 20% for all cases without providing for any discretion.	Done. Section 98(6) and 102(8) [Old Section 101(9)(a)(ii)] amended. (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed: (b) a sum equal to twenty per cent of the remaining amount of tax in dispute, in addition to the amount deposited under sub-section (6) of the section 98, arising from the said order, in relation to which the appeal has been filed.	Accepted by Ministry of Law.
43	7 th Meeting of the GST Council held on 22-23 December 2016	Section 2(7), 2(8) and 2(106): 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.	Circulated as a separate Agenda item.	Accepted by Ministry of Law.
44	7 th Meeting of the GST Council held on 22-23 December 2016	Section 2(110): The Law Committee of officers to look into the definition of Works Contract so as to include both movable and immovable property.	Done. Section 2(110) amended as follows: (110) "works contract" means a contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any moveable or immovable property wherein transfer of property in goods is involved in the execution of such contract;	Accepted by Ministry of Law.
45	7 th Meeting of the GST Council held on 22-23 December 2016	Sections 4 and 5: 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.	Circulated as a separate Agenda item.	Accepted by Ministry of Law.

46	7 th Meeting of the GST Council held on 22-23 December 2016	Section 16: To modify the provision so as not to extend the benefit of ITC for pipelines and telecom towers.	Done. Same as S No. 18.	Accepted by Ministry of Law.
47	7 th Meeting of the GST Council held on 22-23 December 2016	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.'	Section 92 amended as follows: (2) If any person convicted of an offence under this section is again prosecuted for an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine: (5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority. Note: This was already shown in the 8th Meeting of the Council.	Accepted by Ministry of Law.
48	7 th Meeting of the GST Council held on 22-23 December 2016	Section 87A: 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.	Circulated as a separate Agenda item.	----
49	7 th Meeting of the GST Council held on 22-23 December 2016	Section 95(2): To delete the sub-section (2) of Section 95.	Done. Section 95 (2) deleted. (2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.	Accepted by Ministry of Law.
50	7 th Meeting of the GST Council	Section 100, 101, 102 and 103: The revised draft to be shared with the States	Circulated as a separate Agenda item.	Accepted by Ministry of Law.

	held on 22-23 December 2016	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.		
51	7 th Meeting of the GST Council held on 22-23 December 2016	Section 138: 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.	Done. Section 138 amended as follows: (2) The GST compliance rating score shall may be determined on the basis of such parameters as may be prescribed, on recommendation of the Council.	Accepted by the Ministry of Law.
52	7 th Meeting of the GST Council held on 22-23 December 2016	Section 142: To amend Section 142(4) by changing the maximum limit set for imposing fine from Rupees One Thousand to Rupees Twenty-Five Thousand.	Done. Section 142(4) amended as follows: 142. If any person engaged in connection with the collection of statistics under section 141 or compilation or computerization thereof or if any GST officer having access to information specified under sub-section (1) of section 148, or any person engaged in connection with provision of service by the common portal or the agent of common portal, wilfully discloses any information or the contents of any return prescribed under this Act or rules made thereunder, otherwise than in execution of his duties under that section or for the purposes of the prosecution of an offence under this Act or under any other Act for the time being in force, he shall, be punishable with imprisonment for a	Accepted by Ministry of Law.

			term which may extend to six months or with fine which may extend to one twenty five thousand rupees, or with both.	
53	7 th Meeting of the GST Council held on 22-23 December 2016	Section 163: 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)	Done. Section 163 amended as follows: 163. (1) Any reduction in rate of tax on any supply of goods or services or both or by way of allowing input tax credit shall be passed on the recipient by way of reduced prices. (2) The Central Government may on recommendation of the Council , by notification, constitute an Authority, or entrust an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the price on account of any reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.	Accepted by Ministry of Law.
54	7 th Meeting of the GST Council held on 22-23 December 2016	Section 164: To harmonize the provisions of Section 164(1)(f) and Section 182.	Done. Section 164 amended. (2) Where any return, furnished under the earlier law, is revised after the appointed day but within the time limit specified for such revision under the earlier law and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the earlier law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount so refunded shall not be admissible as input tax credit under this Act.	Accepted by Ministry of Law.

55	7 th Meeting of the GST Council held on 22-23 December 2016	Section 169: The Rules Committee of Officers to provide for allowing ITC of embedded VAT through Rules to be made in this regard.	Will be handled by Rules.	---
56	7 th Meeting of the GST Council held on 22-23 December 2016	Schedule II: To revisit Clause 5(f) and 5(h).	Circulated as a separate Agenda item.	Accepted by Ministry of Law.
57	7 th Meeting of the GST Council held on 22-23 December 2016	Schedule IV: 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.	Circulated as a separate Agenda item.	Accepted by Ministry of Law.