

## **Draft Minutes of the 11<sup>th</sup> GST Council Meeting held on 4<sup>th</sup> March 2017**

The eleventh meeting of the GST Council (hereinafter referred to as ‘the Council’) was held on 4 March 2017 in Vigyan Bhavan, 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 were listed for discussion in the eleventh meeting of the Council –
  1. Confirmation of the Minutes of the 10<sup>th</sup> GST Council Meeting held on 18 February 2017
  2. Approval of the Draft Central Goods and Services Tax (CGST) Law as modified in accordance with the decisions of the GST Council and as vetted by the Ministry of Law & Justice, Government of India
  3. Approval of the Draft Integrated Goods and Services Tax (IGST) Law as modified in accordance with the decisions of the GST Council and as vetted by the Ministry of Law & Justice, Government of India
  4. Development of an e-Waybill System by Goods and Services Tax Network (GSTN)
  5. Date of the next meeting of the GST Council
  6. Any other agenda item with the permission of the Chairperson
3. In his opening remarks, the Hon’ble Chairperson welcomed all the Members of the Council and thereafter invited discussion on the listed agenda items.

### **Discussion on Agenda Items**

#### **Agenda Item 1: Confirmation of the Minutes of the 10<sup>th</sup> GST Council Meeting held on 18 February, 2017:**

4. The Hon’ble Chairperson invited comments of the Members on the draft Minutes of the 10<sup>th</sup> Meeting of the Council (hereinafter called the ‘Minutes’) held on 18 February 2017 before its confirmation. The Members suggested the following amendments to the draft Minutes.

4.1. The Hon'ble Minister from West Bengal stated that in paragraph 4.1.1, the word 'above' in the second sentence of his recorded version should be replaced by the word 'below'. The Council agreed to this suggestion.

4.2. The Hon'ble Minister from West Bengal highlighted that four issues recorded in the Minutes, had to be brought back to the Council for decision, namely: (i) carve out of export and import functions exclusively for the Central administration (recorded in paragraph 4.19 of the Minutes); (ii) to deem supplies to territorial waters as intra-State supply (recorded in paragraph 4.21 of the Minutes); (iii) to allow the benefit of the Composition scheme to restaurants, which was a supply of service (recorded in paragraph 8.4.3 of the Minutes); (iv) to examine the provision in Model GST Law for matching annual GST return of the taxpayer with his annual financial statement (recorded in paragraph 9.2.2 of the Minutes). The Secretary to the Council (hereinafter referred to as 'Secretary') responded to each of the above issues. He stated that in respect of issue raised at (i) above, as the Law Committee of Officers (hereinafter referred to as 'the Law Committee') was pre-occupied in completing the drafting and correction of the CGST and IGST Law, it could not deliberate on this subject and that the issue would be brought before the Council after the Law Committee's deliberation. On the issue raised at (ii) above, he stated that Section 9 of the IGST Law contained a formulation on the lines suggested by the Hon'ble Minister from Karnataka and that this addressed all the concerns of the coastal States. On the point raised at (iii) above, he informed that the Law Committee had incorporated a suitable formulation in Section 10(1) of the CGST Law. On the point raised at (iv) above, he stated that, if needed, this issue would be addressed in the relevant GST Rules.

4.3. The Hon'ble Chief Minister of Puducherry stated that in the last Council meeting, the Hon'ble Minister from Karnataka had referred to supply of goods by restaurants. He observed that while a restaurant only supplied food, another connected feature was hotels offering accommodation and giving restaurant service. The Secretary stated that restaurants with annual turnover upto Rs. 20 lakh would be exempt from GST, while those with annual turnover between Rs. 20 lakh and Rs. 50 lakh would be covered under the Composition scheme. He added that hotels providing accommodation and restaurant service would normally have an annual turnover of more than Rs. 50 lakh and would thus pay GST at the normal rate. The Hon'ble Chief Minister of Puducherry stated that presently in his Union Territory, restaurants were charged to tax at the rate of 2% and observed that the proposed tax rate of 5% was on the higher side.

4.4. Shri P. Mara Pandiyan, Additional Chief Secretary (Taxes), Kerala stated that in paragraph 9.2.2. of the Minutes, the Hon'ble Minister of Kerala had raised the issue of having a legal provision for matching the annual GST return of a taxpayer with his annual Income Tax return. The Secretary stated that such provision of matching could not be part of the law as it would go against the provision of Section 138 of the Income Tax Act which prohibited the Income Tax department to share income tax return of a person with anyone else. The Hon'ble Chairperson added that sharing a person's Income Tax return with anyone else was a prosecutable offence under Section 138 of the Income Tax Act. The Secretary observed that keeping in view such sensitivity, it was decided that annual financial statement could be used for matching as this also contained the declaration of a person's income. The Hon'ble Minister from West Bengal stated that his State had recently amended the VAT Law and it now provided that the audit report prepared under the Income Tax law would be sufficient compliance for the audit report required under the VAT Law. The Council agreed not to change the decision recorded in paragraph 9.2.2. of the Minutes.

4.5. The Hon'ble Minister from Uttar Pradesh pointed out that in paragraph 10.1.1. (iv) of the Minutes, it was recorded that retired officers shall be eligible for appointment as Technical Member (State) in Appellate Tribunal whereas as per their understanding, the same provision would also apply for the appointment of Technical Member (Centre). He suggested that the decision recorded in this paragraph should be amended to read as follows: "Retired officers shall be eligible for appointment as Technical Member (State) as well as Technical Member (Centre) in the Appellate Tribunal." The Council agreed to this suggestion.

5. In view of the above discussion, for **Agenda item 1**, the Council decided to adopt the Minutes of the 10<sup>th</sup> Meeting of the Council with the changes as recorded below:

5.1. In paragraph 4.1.1 of the Minutes, to replace the word 'above' with the word 'below' in the second sentence recording the version of the Hon'ble Minister from West Bengal.

5.2. To replace the decision recorded in paragraph 10.1.1.(iv) of the Minutes, with the following: 'Retired officers shall be eligible for appointment as Technical Member (State) as well as Technical Member (Centre) in the Appellate Tribunal'.

**Agenda Item 2: Approval of the Draft CGST Law as modified in accordance with the decisions of the GST Council and as vetted by the Ministry of Law & Justice, Government of India:**

6. Introducing this agenda item, the Secretary informed that the draft CGST Law was discussed in a meeting with officers from the Centre and the State convened by him on 3 March 2017 and that as per inputs received in the meeting, ten more amendments were incorporated in the draft CGST Law and hard copies of the same were circulated to the Members before the meeting. He requested that the Members might also offer comments on these suggested amendments while discussing the draft CGST Law circulated as an agenda note for this meeting.

6.1. The ten amendments circulated during the meeting of the Council on 4 March 2017 are listed below (the changes are indicated in bold and italics and in strikethrough mode):

**i. Issue No. 1**

Section 2 – ~~(a)~~ ***(81)*** “other territory” includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause ***(114)*** of section 2;

***Note: Clauses (81) to (119) to be consequently renumbered and other consequential changes (referencing) to be carried.***

**ii. Issue No. 2**

Section 109(10) – 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:

***Provided that any 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 in any order appealed against, does not exceed five hundred thousand rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single Member.***

**iii. Issue No. 3**

Section ***110***(11) - The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal ***shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment.***

**iv. Issue No. 4**

Section 118(1) - An appeal shall lie to the Supreme Court-

(a) from any order passed by the National Bench **and** or Regional Benches of the Appellate Tribunal; or

**v. Issue No. 5**

Section 129(1) – (c) upon furnishing a security *equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed* ~~in such form as may be prescribed equivalent to the amount payable under clause (a) or clause (b):~~

**vi. Issue No. 6**

Section 67(2) – Provided that where it is not practicable to seize any such goods, the proper officer, *or any officer authorized by him*, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

**vii. Issue No. 7**

Section 67(9) – Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, *or any officer authorized by him*, under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed.

**viii. Issue No. 8**

Section 168 – *Explanation.*— For the purposes of this section, the Commissioner specified in sub-section (90) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 151, and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

**ix. Issue No. 9**

**Schedule I:**

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a *financial* year by an employer to an employee shall not be treated as supply of goods or services.

**Schedule III:**

~~4. Services by a foreign diplomatic mission located in India 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.~~

(To be handled through notification)

x. **Issue No. 10 –**

**Section 19 – Tax wrongfully collected and paid to Central Government or State Government.**

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-state supply, but which is subsequently *held found* to be an intra-State supply, shall, be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

6.2. Shri Upender Gupta, Commissioner (GST Policy Wing), Central Board of Excise & Customs (CBEC) broadly explained the changes made in the CGST Law between the draft of 26 November 2016 (which was the most recent version of the Draft Laws put in public domain) and the draft of 1 March 2017 presented as an Agenda Note for the 11<sup>th</sup> Meeting of the Council. These broad changes are recorded in **Annexure 3** and were circulated to the Council members during the meeting.

6.2.1. On the issue of change in the legal scheme of Advance Ruling Authority, i.e. to be constituted under the State Act instead of the earlier scheme of being constituted under the Central Act, the Hon'ble Chairperson enquired as to how the State Laws would ensure uniformity across the States. The Hon'ble Minister from Karnataka stated that the Advance Ruling Authority gave its Ruling on case-by-case basis and it would not apply across the State boundaries. He suggested that the power to give Advance Ruling should be kept at officer's level. The Chairperson observed that there might be some need for conformity and uniformity of Rulings and that in case of any conflict, the Court could resolve it.

6.2.2. The Hon'ble Minister from Uttar Pradesh stated that it was patently unfair to charge interest at the rate of 18% and 24% from the taxpayer for late payment of tax under Section 50 of the draft CGST Law but the Government was required to pay interest only at the rate of 6% for delayed refund under Section 56 of the draft CGST Law. He observed that for late payment of refund, there should be a higher interest liability on the Government at par with what the taxpayer was liable to pay. The Hon'ble Chairperson cautioned that the Government's liability for interest payment should not be too high. The Secretary informed that even at the current rate of 6%, the Government's liability to pay interest for late refund of Income Tax during the last financial year was Rs. 7,000

crore and added that a cautious approach was required with regard to the Government's interest liability. The Hon'ble Minister from Uttar Pradesh observed that this additional burden of Rs. 7,000 crore on the Government was due to its own laxity and by giving refund more promptly, the Government could save Rs. 7,000 core. The Hon'ble Chairperson observed that in the Income Tax Department, the entire tax administration had become online and refunds were being processed much faster and that the smaller amounts of refund were paid online whereas the larger amounts were paid by cheque and sent by post under intimation to the assessee. He observed that despite such improvement, it should be kept in mind that there could be delays due to Governmental procedure and that a higher rate of interest for delayed refund would cause considerable financial burden on the finances of the States as well.

6.2.3. The Hon'ble Minister from West Bengal stated that in his State, 90% of the self-declared refund claim was given automatically and only 10% was held back for checking for any violation. He informed that his State gave interest at the rate of 6.5% for delayed refund and added that the Council could deliberate further on this issue. The Hon'ble Minister from Uttar Pradesh suggested that if refund was not paid within 3 to 4 months of filling the claim, a higher rate of interest should be paid by the Government. The Commissioner (GST Policy Wing), CBEC informed that the clause of interest payment for delayed refund applied when the refund was paid beyond a period of 60 days from the date of filling the application whereas a taxpayer was required to pay interest only after 90 days of confirmation of the tax demand by the assessing officer. He also informed that the rate of interest paid by the Government was linked to its cost of borrowing which was around 6%. Shri Ritvik Pandey, CCT, Karnataka stated that the interest was also payable for refund of pre-deposit paid at the appellate stage. CCT, Gujarat observed that the taxpayer would have collected the amount equivalent to the tax from the buyer and therefore, he was not entitled to keep this amount. He cautioned that for taxpayers, fixing an interest rate below the prevailing bank rate, would lead to indiscipline.

6.2.4. The Hon'ble Chief Minister of Puducherry stated that the Government machinery should be given a better leverage in regard to payment of interest and that 6% rate of interest was reasonable. The Hon'ble Chairperson stated that sometimes a State Government might not be able to pay refund to a taxpayer due to certain public interest considerations like drought in the State but the considerations of a taxpayer would be different. The Hon'ble Minister from Uttar Pradesh responded that the taxpayer might also fail to pay tax due to certain unforeseen circumstances like an illness in the family or a fire in his godown and that taxpayers facing such difficulty deserved to

be given some concession. The Hon'ble Deputy Chief Minister of Delhi supported the view of the Hon'ble Minister from Uttar Pradesh. The Hon'ble Minister from West Bengal observed that the optimal level of interest rate should be 18% and that an interest rate of 24% was too high.

6.2.5. The Hon'ble Minister from Uttar Pradesh stated that it was desirable to maintain parity in the rate of interest for the taxpayer and the Government. He stated that if needed, Government could be given additional time of 3 to 4 months to process the refund claim but thereafter the rate of interest for delayed refund should be the same as the rate of interest for short payment of tax. Shri Manish Kumar Sinha, Commissioner, GST Council stated that differential rate of interest for the Government and the taxpayer was not an equity issue and that the Government rate of interest was linked to the rate at which it placed its funds to the Reserve Bank of India (RBI) or borrowed funds from the RBI. He also stated that the rate of interest for refunding a pre-deposit amount after completion of the litigation process should not be very high. He added that the rate of interest for a taxpayer should be linked to the market rate of borrowing as a taxpayer would have collected from the buyer, the amount equivalent to tax which was in effect Government's money. The Hon'ble Minister from Uttar Pradesh stated that the equity issue was also very important. The Hon'ble Deputy Chief Minister of Delhi stated that a higher rate of interest for delayed refund would encourage the tax authorities to clear the refund claims early and stated that presently his Government was saddled with the burden of processing refund claims as old as 7 years. Shri Arun Goyal, Additional Secretary, GST Council pointed out that the language used in Section 50 of the draft CGST Law was to 'pay interest at such rate, not exceeding 18%' and that this gave some flexibility to the Government in fixing the actual rate of interest for delayed payment of tax.

6.2.6. The Secretary observed that payment of refund by Government could also be withheld due to a stay order given by a Court and after the judgement, the Government might be required to pay the refund with interest liability. The Hon'ble Minister from Uttar Pradesh observed that if the Supreme Court decided the case in favour of the taxpayer, it implied that the fault lay with the Government. He added that if the Government bore the implication of errors of judgement of its officers, it would make the administration more accountable. The Hon'ble Minister from Karnataka stated that one way to address this issue could be that the Government could pay a slightly higher rate of interest, say 9%, for certain categories of delayed refund which could be classified as routine delay but for refunds arising out of finalization of litigation process, the rate of interest could be kept at 6%. The Hon'ble Chairperson observed that where the Government did not refund money for 6 to 7 years due to litigation in Court, it retained and used the taxpayers' money for these years and for this, it



should be liable to pay interest at the rate at which the Government would have paid ordinarily for its borrowing, i.e. the Government of India Security (G-SEC) rate. He further stated that if the assessee had to pay a confirmed demand, he would have collected it from his customer but did not pay to the Government and this led to his unjust enrichment. He further stated that such a taxpayer would use the money which he was not supposed to keep. He explained that the conventional difference in the rate of interest to be paid by the Government and by the taxpayer was based on this presumption and the issue to be deliberated was as to what should be the difference in these two rates. The Hon'ble Minister from Karnataka supported this approach. He stated that cost for the Government should be higher for routine delay and this could be 9% and for litigation cases, the rate of refund should be 6%. He further added that the cost of late payment of tax by the assessee should be tied to the Bank borrowing rate.

6.2.7. The Hon'ble Minister from Uttar Pradesh stated that this approach appeared to be a classic case of capitalism working for the capitalists. He observed that the Government had a much higher bargaining power and it had wide resources for generating revenue including borrowing from abroad at a very low rate of interest. He stated that for a private person, the cost of borrowing funds was high as he could not borrow from abroad at a much lower rate. He stated that the Government of India could borrow from abroad at a low rate of say 1.5%, lend it to Banks at the rate of 6% which in turn would lend to the customers at a much higher rate. He stated that this was a classic case in the USA during the decades of the 1960s and the 1970s. The Hon'ble Chief Minister of Puducherry observed that a taxpayer could take money from the consumer, use it and thus enrich himself and deposit it into the Government's account after litigation of 6 to 7 years when the Court ordered him to do so. He informed that more than Rs. 100 crore was not paid by the dealers of petroleum products in his Union Territory due to litigation in the Court. The Hon'ble Minister from Telangana stated that the rate of interest for delayed refund for Government should be kept at 6% and the rate of interest for delayed payment of tax by a private person should be kept between 12% to 15%.

6.2.8. The Hon'ble Minister from Jammu and Kashmir stated that default in payment of tax was a public policy issue and it should not be mixed with the sovereign borrowing power of the Union of India. He stated that one solution to this issue could be to include a provision in the Public Service Guarantee Act that the Tax Administrations would pay refund within six months of filing an application. The Hon'ble Chairperson observed that such a requirement would then only apply to the State Governments. The Hon'ble Minister from Uttar Pradesh stated that such a requirement

could be made applicable to all the Acts. He stated that the issue was not one of sovereignty but the large differential in the interest rate to be paid by the Government and the taxpayer. The Hon'ble Chairperson observed that another way to address this issue could be to keep the rate of interest as proposed, but have a mandatory fixed period within which refund must be paid. The Secretary stated that the period for payment of refund was already prescribed in the proposed Law. He suggested that one way to address this issue could be to provide that if the refund was not given within a certain period of the passing of an adjudication or appellate order where the order had acquired finality, the rate of interest for delayed refund would be 9% and in other cases of refund, where interest was payable, it should be paid at the rate of 6%. The Hon'ble Minister from Uttar Pradesh suggested that the rate should be more than 9%. The Hon'ble Chairperson cautioned against keeping the rate of interest too high. The Council agreed to the suggestion of the Secretary.

6.3. Shri Tuhin Kanta Pandey, Principal Secretary (Finance), Odisha stated that in Section 54(12), the reference to Section 50 was erroneous and that it should be Section 56. The Council agreed to this suggestion. The Hon'ble Chairperson stated that the Law Committee should be authorised to make minor corrections and rectify typographical errors in the draft CGST and IGST Law after the Council had approved it. The Council agreed to this suggestion.

6.4. The Hon'ble Minister from West Bengal raised a question whether the rate of tax on restaurants under the Composition scheme was 5% each under the CGST and the SGST Act. Shri P.K. Mohanty, Consultant (GST), CBEC informed that the proposed rate of 5% was the sum total of the tax to be levied under the CGST and the SGST Acts and consequently, the rate of tax under each Act was 2.5%. The Secretary observed that restaurants with turnover of more than Rs. 50 lakh would be subject to the normal rate of tax applicable for supply of services.

6.5.1. The Hon'ble Minister from Telangana stated that in Section 6, cross-empowerment should be part of the Act instead of implementing it through a notification. The Hon'ble Minister from Uttar Pradesh supported this suggestion. The Secretary stated that the situations of cross-empowerment would be dynamic in nature and to have flexibility, it need not be put in the Law. He added that the Council had already taken a decision regarding the distribution of taxpayers between the Central and the State administration and that this need not be put in the Law. The Hon'ble Chairperson observed that the ambit of Section 6 would be in accordance with the Council's decision and that the content of notification would be as decided by the Council. He added that the Government was to only issue such a notification and not determine its content, which would be determined by the Council. He

added that the power to vary the content of the notification should rest with the Council. The Hon'ble Minister from West Bengal observed that the complexion of the Council could change in due course and, therefore, suggested that the following formulation should be incorporated as part of Section 6 of the CGST Act: 'Without prejudice to the provisions of this Act, officers appointed under the State Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as may be notified by Government on the recommendations of the Council.' The Hon'ble Chairperson stated that the present formulation in Section 6 of the draft CGST Act also conveyed the same meaning.

6.5.2. The Hon'ble Minister from Karnataka stated that the issue of cross-empowerment was different from dividing the taxpayer base in the ratio of 90% and 10%. He stated that while the numerical distribution rested with the Council, a provision for cross-empowerment under the GST regime must be put in the Law, as otherwise there would be severe difficulties in implementing GST. The Hon'ble Chairperson stated that in pith and substance, the existing draft was identical to the one suggested by the Hon'ble Minister from West Bengal and that the only difference was that the second clause had been made the first clause and the first clause had been made the second clause. He summed up with the observation that there shall be cross-empowerment under the Law and that its extent would be decided from time to time.

6.5.3. The Hon'ble Minister from Tamil Nadu observed that if cross-empowerment was vested on SGST officers through notification, then there was a chance that the decision already taken on dual control might be subject to frequent alterations. He, therefore, suggested that the notification route should be avoided and that, instead, it might be done through Rules made under the relevant Law. He suggested the following revised formulation for Section 6 of the draft CGST Law: 'Without prejudice to the provisions of this Act, the Government shall, on the recommendations of the Council, and subject to such conditions as may be prescribed and specified under rules framed under this Act, authorize officers appointed under the State Goods and Services Tax Act to be the proper officers for the purposes of this Act and for this purpose the State officers may exercise all or any of the powers they have under the State Goods and Service Tax Act.' The Hon'ble Chairperson suggested that the Law Committee could reformulate the existing text of Section 6 of the draft CGST Act taking into account the suggestions of the Hon'ble Minister from West Bengal. The Council agreed to the suggestion.

6.5.4. The Hon'ble Minister from Karnataka recalled that in the 8<sup>th</sup> Meeting of the Council (held on 3-4 January 2017), he had observed that cross-empowerment was premised on the concept of pooled sovereignty of the Centre and the States and that if an officer of CBEC issued an order under the SGST Act, the States were also bound by it. He observed that it was essential that if a CGST officer passed an order, he must also pass an order under the SGST Act. He emphasised that it must be ensured that two orders were not passed by two authorities on the same issue and that this could be achieved by incorporating this idea in the Act rather than in the Rules or in a notification. He observed that this would give comfort to taxpayers. The Secretary observed that this formulation could be put in the relevant GST Rule. The Hon'ble Minister from Karnataka stated that it should be put in the Law and gave the following formulation for the same: 'Without prejudice to the provisions of this Act, officers appointed under the State Goods and Services Tax Act shall be authorised to be the proper officers for the purposes of this Act subject to such conditions as may be notified by the Government on the recommendations of the Council.' He further stated that under the cross-empowerment framework, it was essential that officer of only one government acted on an issue and on his doing so, officers of the other government should be precluded from taking any action. He stated that while this could be put in the Rules/notification, putting it in the Act would send a signal to trade and industry that the issue of dual control had been addressed. He suggested to add the following provision in the law: 'Subject to the restrictions as notified under sub-section (1), where any proceedings on an issue has been initiated by the proper officer under the State Goods and Services Act, no action shall be initiated under this Act with respect to that issue. He further stated that the law should clearly lay down that where an officer was issuing an order under one Act, he should pass the corresponding order under the other Act as well. He suggested to add the following provision in the law: 'Subject to the restrictions as notified under sub-section (1), where proper officer has issued an order under this Act, he shall issue the corresponding order under the State Goods and Services Act as a part of his order under this Act.'

6.5.5. The Commissioner (GST Policy Wing), CBEC stated that the formulation suggested by the Hon'ble Minister from Karnataka was broadly the same as the original text in Section 7 the Model GST Law put in public domain in November, 2016. He informed that this provision was removed on the advice of the Union Law Ministry. He stated that the Law Ministry had explained that the CGST Law should not contain what was to be done under another law and that the phrase 'on the recommendations of the Council' was added to ensure that the provisions would be uniform in all the relevant laws. The CCT, Karnataka stated that the present formulation under Section 6 of the

CGST Act only empowered the officers under the SGST Act to exercise the powers under the CGST Act but did not provide an assurance that on a dispute, only one officer would pass one order under both the Acts. He stated that it was very important for the public perception to assure that multiple orders would not be passed by two different authorities on the same dispute. The Hon'ble Chairperson stated that there should be an express or implied bar of the nature suggested above to ensure that the taxpayer did not have to go to multiple officers for the same dispute. He observed that if a CGST officer passed an order which also included the tax under the SGST Act, the SGST officer should not claim that there was no bar on him to pass an order under the SGST Act and that absence of such an understanding could lead to a chaotic situation.

6.5.6. The CCT, Gujarat stated that a similar provision was also required in respect of appeal provisions. The Hon'ble Chairperson observed that an order passed under one Act covering demand of duty under both the Acts could not be deemed to be an order under two different Acts and that no two appeals could be filed to the Appellate authority in respect of such an order. He added that if CGST appellate authority heard an appeal against an order covering demands under both CGST and SGST Acts, there should be a bar in the law for the SGST appellate authority to hear the same appeal. The Hon'ble Minister from Uttar Pradesh stated that the same principle should also apply for refund of taxes. The Secretary stated that the Law Committee should prepare a formulation giving effect to the understanding that that SGST officers shall be cross-empowered under the CGST Act in the Act itself and that only one order shall be passed for one dispute involving taxes under both the CGST and the SGST Act and that if a CGST officer passed an order, which also included demand for tax under the SGST Act, the SGST officer shall be barred from passing order on the same dispute. The Council agreed to this suggestion.

6.6. The Principal Secretary (Finance), Odisha raised a question in relation to Section 60(5) of the draft CGST Act as to whether an assessee would need to file an application to get refund or whether he would get refund automatically. He stated that Value Added Tax (VAT) Laws of several States had a provision to grant refund automatically. CCT, Gujarat stated that an application would be required for claiming refund and that such a provision would be incorporated in the relevant GST Rules.

6.7. The Hon'ble Chief Minister of Puducherry stated that in Section 16(4) of the draft CGST Law, the entitlement to take input tax credit was restricted upto the month of September following the end of the financial year to which an invoice belonged but this period was getting extended as the

entitlement was also linked to the relevant annual return. CCT, Karnataka clarified that the entitlement to take input tax credit on an invoice of a particular year was limited to the month of September of the next financial year but the cut-off month would be earlier, if the taxpayer filed his earlier to the month of September of the next financial year.

6.8. Dr. Ravi Kota, Finance Commissioner, Assam pointed out that the scope of the expression 'works contract' in Clause 6 of Schedule II of the Draft CGST Law was different from that contained in Section 2(118) of the Draft CGST Law. Shri Narayana Raju, Secretary, Legislative Department stated that they would examine this issue further to align the wordings in Clause 6 of Schedule II and Section 2(118) of the draft CGST Law. The Council agreed to this suggestion.

6.9. The Hon'ble Minister from Tamil Nadu stated that in the 5<sup>th</sup> Meeting of the Council (held on 2-3 December 2016), it was decided to incorporate the definitions of 'intra-State supply of goods' and 'intra-State supply of services' in the Model GST Law instead of only cross-referencing it to the IGST Act but this was not done. Commissioner (GST Policy Wing), CBEC stated that this issue was discussed in the Law Committee of officers and it was noted that the existing definition of 'intra-State supply of goods' and 'intra-State supply of services' was contained in Section 8 of the draft IGST Act and that this also had reference to Sections 10 and 12 of the IGST Act. He pointed out that Section 10 of the IGST Act related to place of supply of goods and Section 12 related to place of supply of services which were lengthy Sections. He stated that incorporating the definitions of 'intra-State supply of goods' and 'intra-State supply of services' in the draft CGST Law would have involved incorporating Sections 8, 10 and 12 of the draft IGST Act which would have been unwieldy and therefore, the Law Committee suggested that this need not be incorporated in the draft CGST Law. He also pointed out that the Union Law Ministry had advised that definitions adopted in one Act should not be repeated in the other Acts. The Council accepted this explanation and agreed to modify the decision taken in its 5<sup>th</sup> Meeting and agreed not to incorporate the definitions of 'intra-State supply of goods' and 'intra-State supply of services' in the CGST Act as it was already contained in the IGST Act.

6.10. The Hon'ble Deputy Chief Minister of Delhi pointed out that in Section 2(90) of the draft CGST Act, 'Commissioner' was not included in the definition of 'proper officer' and this could mean that in Section 6 of the draft CGST Act (dealing with cross-empowerment), Commissioner would not be a proper officer and therefore could not be cross-empowered. Commissioner (GST Policy Wing), CBEC stated that Sections 3, 4 and 5 of the draft CGST Act had reference to

Commissioner. The Hon'ble Chairperson stated that the Law Committee could suitably redefine the term "proper officer" in the draft CGST Act to also bring officers of the rank of Commissioner within its ambit. The Council agreed to this suggestion.

6.11. The Deputy Chief Minister of Delhi referred to his letter dated 4 March, 2017 addressed to the Hon'ble Chairperson and copies sent to all the Hon'ble Members pointing out that designating the sale of land and sale of buildings (subject to certain exceptions), neither as supply of goods nor a supply of services (in Schedule III of the draft CGST Law) would lead to a break in the input tax credit chain and it would be a very big missed opportunity to curb the flow of black money. He stated that, as pointed out in his letter, there was a wrong impression created that introduction of GST on supply of real estate would lead to subsuming of property tax and stamp duty in GST or that it would lead to levy of GST on agricultural land. He also pointed out that low cost housing could be exempted from GST and that for other categories of housing, the cost would not rise due to availability of input tax credit on the raw materials used in construction. The Secretary stated that the Central Government was of the same view as expressed by the Hon'ble Deputy Chief Minister of Delhi. He recalled that this issue was discussed at length during the 7<sup>th</sup> Meeting of the Council (held on 22-23 December, 2016) where the Central Government strongly argued for levying GST on sale of land and building but the Council did not agree to the same and it was decided to revisit this issue after one year of implementation of GST.

6.12. The Hon'ble Chairperson stated that the points raised by the Hon'ble Deputy Chief Minister of Delhi merited careful consideration and that it was desirable to complete the input tax credit chain by levying GST on sale of land and building and that this would also help in curbing generation of black money. He further observed that this would not impinge upon the existing taxation powers of the States on land and building. The Hon'ble Deputy Chief Minister of Delhi suggested that sale of land and building should be removed from Schedule III of the draft CGST Law and cautioned that if this issue was sealed today, then a big opportunity to curb black money would be lost. The Hon'ble Minister from Telangana stated that this issue was already decided and should not be re-opened. The Hon'ble Chairperson stated that the letter of the Hon'ble Deputy Chief Minister of Delhi deserved examination as it had rightly pointed out that it did not impinge upon States' power to levy stamp duty and it did not bring agricultural land under GST and at the same time completed the input tax credit chain. The Hon'ble Deputy Chief Minister of Delhi stated that introduction of GST and availability of input tax credit on land and building would discourage hoarding of land by investing black money into it. The Secretary observed that as per the decision in the 7<sup>th</sup> Meeting of the

Council, this issue was to be reconsidered after one year of implementation of GST and if there was an agreement at that time to bring sale of land and building under GST, it would require amendment to Schedule III. He therefore suggested that presently sale of land and building could be exempted through a notification instead of incorporating it in the law. CCT, Karnataka stated that if a decision was taken to bring sale of land and building in GST, then several amendments would be required in the law such as Section 16 dealing with eligibility and conditions for taking input tax credit. He therefore suggested that the entry regarding sale of land and building should not be removed from Schedule III. The Hon'ble Chairperson stated that this issue could be taken up for decision after one year of implementation of GST. The Hon'ble Minister from Uttar Pradesh suggested to retain the decision taken in the 7<sup>th</sup> Meeting of the Council. The Hon'ble Minister from Andhra Pradesh stated that they would further study the proposal made by the Hon'ble Deputy Chief Minister of Delhi. The Council decided to retain the decision taken in the 7<sup>th</sup> Meeting of the Council (held on 22-23 December, 2016).

6.13. Shri Shyamal Misra, CCT, Haryana stated that in the 10<sup>th</sup> Meeting of the Council (held on 18 February 2017), it was decided to incorporate a provision similar to the Proviso to Section 108(2) (now Section 110(2), relating to National Tribunal) that the senior most Member of the State Bench shall discharge the functions of the President of the State Bench for a temporary period in case the office of the President fell vacant due to reasons like death or resignation of the President, but the same had not been done. The Commissioner (GST Policy Wing), CBEC informed that this issue was discussed in the Law Committee and also with the officers of the Union Law Ministry and it was felt that this provision was not required because the senior most Member of a State Tribunal would be its President and, in his absence, the next senior most Member would be the State President. The Council agreed to modify its decision taken in the 10<sup>th</sup> Meeting of the Council and agreed not to have a Proviso to Section 110(2) for the State Bench similar to that for the National Tribunal.

6.14. CCT, Haryana stated that in the 10<sup>th</sup> Meeting of the Council (held on 18 February 2017), during discussion on issue No. 4 and 5 of the Agenda Note of Agenda Item 3, it was decided to move the provision contained in Section 7(1)(b), namely, 'import of services for a consideration whether or not in course or furtherance of business' to the IGST Law but the same was not done. Commissioner (GST Policy Wing), CBEC explained that as the whole provision of supply was in Section 7 of the draft CGST Law, the Law Committee suggested that it was desirable to keep this provision as part of Section 7 of the CGST Law. The Council agreed to this suggestion and



accordingly agreed to modify its decision taken in the 10<sup>th</sup> Meeting of the Council (held on 18 February 2017).

6.15. The Hon'ble Minister from Karnataka stated that tax collection at source by electronic commerce operators [Section 52(1) of the draft CGST Act] was only a tracking mechanism to create a transaction trail in respect of transactions done through an electronic portal. He observed that electronic commerce was a nascent business and it fitted well with the aim of creating a digital economy. He observed that keeping these factors in view, while the concept of tax collection at source might be kept, but the rate of this tax collection should be upto 1% and not frozen at 1% as currently drafted in Section 52(1) of the draft CGST Law. He stated that this would imply that the maximum tax collection at source from electronic commerce operators could be 0.5% each in the CGST and SGST Law but it could also be lower. He stated that the Council should adopt a principle that the rate of tax collection at source should be pegged at a rate, which would only allow audit trail but would not affect the business model of the electronic commerce segment and would not entail significant amounts of refund. The Council agreed to suitably change the wording in Section 52(1) of the draft CGST Law to indicate that the rate of tax collection at source by electronic commerce operators shall be upto 1%.

6.16. The Hon'ble Minister from Jammu & Kashmir stated that in the draft CGST Law, there were references to several other laws like the Indian Penal Code (IPC), the Code of Criminal Procedure (Cr.PC.), Contract Act etc. which did not apply to the territory of Jammu & Kashmir. On an enquiry from the Hon'ble Chairperson as to how this issue was handled in other Laws, the Secretary, Legislative Department clarified that in the other Laws, it was normally provided that the corresponding Law of the State of Jammu & Kashmir shall apply. The Hon'ble Chairperson suggested that a provision could be put in the CGST Law that any reference to any legislation in the CGST Law shall include corresponding law of the State of Jammu & Kashmir, if it applied there. The Council agreed to this suggestion.

6.17. CCT, Karnataka suggested that Section 31(3)(b) and the Proviso to Section 31(3)(c) of the draft CGST Law (which provides that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees, except where the recipient of the goods or services or both requires such bill) should be re-examined by the Law Committee in order to shift some part of the provision to the relevant GST Rules. The Council agreed to this suggestion.

6.18. The Principal Secretary (Finance), Odisha suggested that there should be a provision in Section 117 of the draft CGST Law that an appellant should pay the full amount of tax in dispute before filing an appeal in High Court. CCT, Gujarat stated that VAT laws of some States had a provision that if a taxpayer had lost a case in the Tribunal, he would have to deposit the full tax amount under dispute before filing an appeal in the High Court. The Secretary observed that it was already provided that 10% of the disputed tax amount would be paid as pre-deposit at the level of the First Appeal and an additional 20% would be paid as pre-deposit at the level of the Second Appeal making the total pre-deposit as 30% of the disputed tax amount, and the question was whether this amount should be increased to 100% for filing an appeal before the High Court. Shri Rajiv Jalota, CCT, Maharashtra stated that in his State, no part payment of tax was allowed for filing appeal in High Court and that the demand of tax could also not be stayed by the High Court. He added that such demand could, however, be stayed under the High Court's Writ jurisdiction. The Hon'ble Chairperson stated that the principle of depositing 100% tax before filing an appeal negated the very right of appeal. He observed that for a high value demand of tax, say Rs.20 crore, it would be unviable to file an appeal in High Court. He further stated that the taxpayer would then take recourse to filing a Writ petition in the High Court and in all likelihood, the Court would grant a stay, making this provision a nullity. The Commissioner (GST Policy Wing), CBEC pointed out that under Section 119 of the draft CGST Law, it was provided that notwithstanding an appeal filed before a High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Appellate Tribunal shall be payable. The Council agreed not to make any change in Section 117 (appeal to High Court) of the draft CGST Law.

6.19. The Hon'ble Minister from Uttar Pradesh observed that the limit of tax amount of Rs. 50,000/- provided in Section 112(2) upto which the Appellate Tribunal could exercise its discretion to refuse to admit an appeal was too small and should be considered for an upward revision. The Hon'ble Chairperson stated that the Appellate Tribunal should be given discretion in this regard. He observed that a case might be small but it might have a cumulative effect as it might impact many assesseees or might be relevant for repeat cases. He further observed that if it was a legal issue, the ratio of the decision could apply across the board. The Secretary stated that this issue was discussed at length in the 10<sup>th</sup> Meeting of the Council (held on 18 February 2017) and the monetary limit for not admitting an appeal before the Appellate Tribunal was reduced from Rs. 1 lakh to Rs. 50,000 and that this decision should not be revisited. The Council agreed to this suggestion.

6.20. The Hon'ble Minister from Uttar Pradesh raised an issue as to how the officers of the States would get representation in the National Tribunal. The Secretary stated that the manner of appointment of the Members of the Appellate Tribunal shall be provided in the relevant GST Rules and the Council could take a decision when discussing the relevant Rules.

6.21. Dr. Reeta Vasishta, Additional Secretary, Legislative Department, Ministry of Law recalled the Council's decision to have a Single Member Bench of the Appellate Tribunal to hear appeal for cases where tax amount did not exceed Rs 5 lakh and suggested that such Single Member Bench should only consist of a Judicial Member. The Hon'ble Minister from Uttar Pradesh stated that this was not a requirement under the VAT Law and that the appeal under the VAT Law also went to the High Court. The Secretary, Legislative Department stated that an appeal decided the rights and obligations of a taxpayer, and, therefore, if it was to be heard by a single Member Bench, it should consist only of a Judicial Member. He added that an administrative function was different from a quasi-judicial function and that there were judgements of the Court that whenever a quasi-judicial function was performed by a single Member Bench, it should consist of a Judicial Member. The Hon'ble Minister from Uttar Pradesh expressed disagreement with the suggestion and stated that the District Magistrates and the Commissioners also decided a large number of cases involving the rights and obligations of the citizens without involving a Judicial Member. The Hon'ble Chairperson observed that the Member (Technical) of a Tribunal would generally be appointed from amongst the officers of the level of Commissioner, Chief Commissioner, or a retired senior officer and because of his long experience in taxation matters, he would be as knowledgeable, if not more, than a Judicial Member, many of whom might be drawn from the rank of advocates or Additional District Judges whose exposure to tax matters would be limited. He stated that in this view, there was no justification to insist that a single Member Bench should only consist of a Judicial Member. The Hon'ble Minister from West Bengal stated that there should be no insistence that a single Member Bench should only consist of a Judicial Member. The Council agreed that a single Member Bench of the Appellate Tribunal could consist of either a Member (Technical) or a Member (Judicial).

7. For **agenda item 2**, the Council approved the draft CGST Law with the changes/decisions as recorded below which includes the changes as suggested in the meeting of the officers held on 3 March 2017 in New Delhi. The Council also authorised the Law Committee of Officers to make minor corrections and rectify typographical errors, wherever required, and that such changes would

be shown in the track change mode and shall be shared with the States within three working days of the date of this meeting.

7.1. To renumber the sub-clause (a) appearing after Section 2(80) of the draft CGST Law [which reads as follows: “other territory” includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114) of section 2] as Section 2 (81) and to consequentially renumber the existing Clauses (81) to (119) and to also carry out other consequential changes (referencing).

7.2. The Law Committee to suitably redefine the term “proper officer’ in the draft CGST Act [Section 2(91)] to also bring officers in the rank of Commissioner within its ambit.

7.3. To align the language of the expression ‘works contract’ in Clause 6 of Schedule II and Section 2(118) of the draft CGST Law.

7.4. The Law Committee to reformulate the existing text of Section 6 of the draft CGST Act taking into account the suggestions of the Hon’ble Minister from West Bengal and the Hon’ble Minister from Karnataka to give effect to the understanding that SGST officers shall be cross-empowered under the CGST Act in the Act itself and that only one order shall be passed for one dispute involving taxes under both the CGST and the SGST Act and that if a CGST officer passed an order, which also included demand for tax under the SGST Act, the SGST officer shall be barred from passing order on the same dispute.

7.5. To modify the decision taken in the 10<sup>th</sup> Meeting of the Council (held on 18 February 2017), in respect of Issue No. 4 and 5 of the Agenda Note of Agenda Item 3 and not to move the provision contained in Section 7(1)(b), namely, ‘import of services for a consideration whether or not in course or furtherance of business’ to the IGST Law.

7.6. In Section 19(1), to add the words as indicated in bold italics below: “A registered person who has paid integrated tax on a supply considered by him to be an inter-state supply, but which is subsequently ***held found*** to be an intra-State supply, shall, be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.”

7.7. Section 31(3)(b) and Proviso to Section 31(3)(c) to be re-examined by the Law Committee in order to shift some part of the provision to the relevant GST Rules.

7.8. To suitably change the wording in Section 52(1) to indicate that the rate of tax collection at source by electronic commerce operators shall be upto 1%.

7.9. In Section 54(12), the reference to Section 50 to be replaced by Section 56.

7.10. To modify Section 56 to provide that if refund is not given within thirty days of the passing of an adjudication or appellate order where the order has acquired finality, the rate of interest for delayed refund would be 9% and in other cases of refund, where interest is payable, it shall be paid at the rate of 6%.

7.11. In the proviso to Section 67(2), to add the words as indicated in bold italics below: “Provided that where it is not practicable to seize any such goods, the proper officer, ***or any officer authorized by him***, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:”

7.12. In Section 67(9), to add the words as indicated in bold italics below: “Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, ***or any officer authorized by him***, under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed”.

7.13. To add a Proviso in Section 109(10) as indicated in bold italics below: “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:

***Provided that any 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 in any order appealed against, does not exceed five hundred thousand rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single Member.***

7.14. A single Member Bench of the Appellate Tribunal shall consist of either a Member (Technical) or a Member (Judicial).

7.15. To modify the decision of the Council taken in its 10<sup>th</sup> Meeting and not to have a Proviso to Section 110(2) for the State Bench similar to that for the National Tribunal.

7.16. In Section 110(11), to add the clause as indicated in bold italics below: “The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal ***shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment.***”

7.17. In Section 118(1), to carry out the editorial correction as indicated in bold italics and strikethrough mode below: “An appeal shall lie to the Supreme Court-

(a) from any order passed by the National Bench ***and*** or Regional Benches of the Appellate Tribunal; or...”

7.18. In Section 129(1)(c), to make the amendment as indicated in bold italics and strikethrough mode below: “upon furnishing a security ***equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed in such form as may be prescribed equivalent to the amount payable under clause (a) or clause (b):***”

7.19. To add the missing Sub-section and Section numbers in Explanation under Section 168 which reads as follows: “For the purposes of this section, the Commissioner specified in sub-section ***(90)*** of section ***2***, sub-section ***(3)*** of section ***5***, clause ***(b)*** of sub-section ***(9)*** of section ***25***, sub-section ***(1)*** of section ***37***, sub-section ***(2)*** of section ***38***, sub-section ***(6)*** of section ***39***, sub-section ***(1)*** of section ***151***, and section ***167*** shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.”

7.20. To add the words indicated in bold italics below in Clause 2 of Schedule I: “Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a ***financial*** year by an employer to an employee shall not be treated as supply of goods or services.”

7.21. To delete Clause 4 of Schedule III which reads as follows and this matter to be handled through notification: “~~***4. Services by a foreign diplomatic mission located in India 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.***~~”

7.22. To modify the decision of the Council taken in its 5<sup>th</sup> Meeting (held on 2-3 December 2016) and not to incorporate the definitions of ‘intra-State supply of goods’ and ‘intra-State supply of services’ in the CGST Act as it was already contained in the IGST Act.

7.23. To incorporate a provision in the CGST Law that any reference to any legislation in the CGST Law shall include corresponding law of the State of Jammu & Kashmir, if it applied there.

**Agenda Item 3: Approval of the Draft IGST Law as modified in accordance with the decisions of the GST Council and as vetted by the Ministry of Law & Justice, Government of India:**

8. Introducing this agenda note, the Secretary invited the Commissioner (GST Policy Wing), CBEC to brief the Council regarding the important changes made in the draft IGST Law. The Commissioner (GST Policy Wing), CBEC broadly explained the changes made in the IGST Law between the draft of November 2016 (which was the most recent version of the Draft put in public domain) and the draft of 1 March 2017 presented as Agenda Note for the 11th Meeting of the Council. These changes are broadly recorded in **Annexure 3** and was also circulated to the Council Members. The Secretary invited comments of the Members on the draft IGST Law.

8.1. The Hon’ble Minister from Tamil Nadu stated that the draft IGST Law should not extend to Union Territories without Legislature. He stated that according to Article 366(26B) of the Constitution, “State” with reference to Articles 246A, 268, 269, 269A and Article 279A of the Constitution included a ‘Union territory with Legislature;’ and considering that Article 366 (26B) of the Constitution included only “Union Territory with Legislature” within the meaning of State, Union Territory without Legislature could not be considered as a State for the purpose of Goods and Service Tax. He added that since, Article 366 (26B) of the Constitution had a reference to Article 246A, 269A and 279A, ‘Union Territory without Legislature’ could not be covered by the SGST/IGST Act. He further stated that the other fact was that Section 2(102) of the CGST Act had defined State as “State” including a ‘Union territory with Legislature’.

8.2. The Commissioner, GST Council stated that the power to levy GST was derived from Article 246A of the Constitution and under it, the Central Government had the power to impose GST across the entire territory of the Union of India. He added that once this power was vested with the Central Government, it had the legal authority to apply multiple taxes (like CGST and Union Territory Goods and Services Tax). He added that the Central Government also had residuary powers of

taxation under Entry 96 of the List I of the Schedule 7 of the Constitution and under this, it could impose GST in Union Territory without Legislature. The Hon'ble Minister from Uttar Pradesh stated that this issue could be examined by the Law Committee. The Secretary clarified that this issue had already been examined by the Law Committee as well as the officers of the Union Law Ministry and both had agreed with the formulation incorporated in draft CGST Law for levying GST in Union Territories without Legislature. The Hon'ble Chairperson stated that if the term Union Territory without Legislature was not covered in the definition of 'State', it would be covered in the definition of Union of India and therefore he did not visualize any legal difficulty in levying GST in Union Territories without Legislature. The Council agreed with this view.

8.3. The Hon'ble Minister from Jammu & Kashmir stated that the definition of SGST Act contained in Section 2(21) of the draft IGST Law had a reference to Article 246A of the Constitution, which was not applicable to the State of Jammu & Kashmir. He stated that Article 5 of the Constitution of Jammu & Kashmir (relating to the extent of executive and legislative power of the State of Jammu & Kashmir) provided that the executive and legislative power of the State of Jammu & Kashmir extended to all matters except those with respect to which the Parliament of India had power to make laws for the State of Jammu & Kashmir under the provisions of the Constitution of India. The Additional Secretary, Legislative Department suggested to modify the definition of the term 'State Goods and Services Tax Act' in Section 2(21) of the draft IGST Law and to remove from it, reference to Article 246A of the Constitution of India. The Council agreed to this suggestion.

8.4. The Hon'ble Minister from West Bengal stated that in Section 2(6) of the draft IGST Law, there was a reference, in relation to export of services, that the payment for such services should be received in convertible foreign exchange. He stated that exports to Nepal and Bhutan was normally permitted against payment in Indian Rupees and suggested that this could be examined by the Law Committee and corrected, if so required.

8.5. The Hon'ble Minister from West Bengal enquired whether the IGST would be collected inclusive of Customs duty. The Commissioner (GST Policy Wing), CBEC stated that the proviso to Section 5(1) of the draft IGST Law provided that integrated tax on goods imported into India shall be levied in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 and this implied that it would be levied on the value inclusive of Basic Customs duty.

8.6. The Hon'ble Minister from West Bengal stated that there appeared to be a contradiction between Section 12(8) and Section 13(9) of the draft IGST Law as the former referred to 'place of



supply of services by way of transportation of goods, including by mail or courier...’, whereas the later referred to ‘place of supply of services of transportation of goods, other than by way of mail or courier...’. He stated that mail or courier was included in Section 12(8) but was excluded in Section 13(9). Shri G.D. Lohani, Commissioner, CBEC explained that Section 12(8) of the draft IGST Law dealt with supplies within the country whereas Section 13(9) dealt with supplies where either the supplier of services or the recipient of services was located outside India. He explained that under the current Service Tax law, couriers dealing with international supply were not treated as transporters and couriers for inbound and outbound supplies to and from India were subject to tax. He further explained that for supplies within India, for which Section 12(8) of the draft IGST Law applied, couriers were to be taxed only at one end. He stated that the provisions of Section 12(8) and Section 13(9) of the draft IGST Law were drafted keeping this difference in mind. The Hon’ble Minister from West Bengal stated that the Law Committee could examine this aspect and that if there was no discrepancy, then the provisions in question could continue in their present form.

8.7. CCT, Karnataka stated that the provision of refund for international tourists in Section 15 of the draft IGST Law would be difficult to implement in practice as an international tourist would not be able to figure out whether the tax he had paid for purchases in India was CGST and SGST or IGST. The Hon’ble Chairperson stated that the general international experience was that provision of tax refund to tourists was very cumbersome and required a lot of paperwork and procedural formalities. The Secretary stated that one option could be to remove this provision altogether but if it had to be retained, it could be operated only on the basis of the IGST model. The Hon’ble Chairperson stated that another option could be to restrict the facility of refund to international tourists to jewellery purchases. The Hon’ble Minister from Uttar Pradesh observed that there was no provision in the United States of America for refund of duties paid by an international tourist. CCT, Gujarat stated that several countries had a provision to refund the taxes paid by international tourists and that it would be desirable to retain enabling provision for it in the GST Law. The Council agreed to this suggestion.

9. For **agenda item 3**, the Council approved the draft IGST Law with the changes/decisions as recorded below. The Council also authorised the Law Committee of Officers to make minor corrections and rectify typographical errors, wherever required, and that such changes would be shown in the track change mode and shall be shared with the States within three working days of the date of this meeting.

9.1. Section 2(6) dealing with export of services and containing the requirement of payment in convertible foreign exchange to be re-examined by the Law Committee and corrected, if required.

9.2. To modify the definition of the term 'State Goods and Services Tax Act' in Section 2(21) by removing from it, reference to Article 246A of the Constitution of India.

9.3. The Law Committee to examine Section 12 (8) and 12 (9) for any apparent contradiction, and if there was no contradiction, these provisions could continue in their present form.

**Agenda Item 4: Development of an e-Waybill System by Goods and Services Tax Network (GSTN):**

10. Introducing this agenda item, the Secretary stated that Section 68 of the draft CGST Law contained a provision for inspection of goods in movement and that it provided that the Government might specify a document or a device to be carried by a person in charge of a conveyance who carried goods exceeding a certain prescribed value. He recalled that this provision (the then Section 80 of the Model GST Law) was discussed in the 6<sup>th</sup> Meeting of the Council (held on 11 December, 2016), particularly in the context of having check-posts at the State borders and it was felt that in the GST regime, check-posts need not be kept at the borders to physically check goods but it was necessary to record information regarding movement of goods across the State borders. He added that it was also discussed that the movement of goods, whether within or across the State, would be with a meta-permit and that the vehicles could be checked anywhere and not necessarily at the borders. He stated that keeping this in view, GSTN needed authorisation for development of an e-Way Bill Application System. He stated that by using this System, every Logistics Service Provider could generate an e-way bill containing the invoice details and the vehicle details on 24\*7 basis, without requiring any approval from a tax officer. With this introduction, he presented the following agenda for the consideration of the Council: (i) Approval of the proposal to create Electronic Way Bills System Module as part of the GST System through GSTN; and (ii) GSTN to collect a small convenience fee for each e-Way bill for the creation and operation of the proposed e-Way Bill System.

10.1. The Hon'ble Minister from West Bengal stated that in principle, he supported the proposal but the only question was as to who would pay the cost for creation of the System and generation of e-Way Bills which was indicated to be about Rs. 232 crore over a five year period. He stated that as

this was a relatively small amount, the cost should be borne by the Government instead of the logistics operators. The Secretary informed that this issue was deliberated in the Officers' Meeting held on 3 March 2017 and the general view that emerged there was that the Central and the State Governments should bear this cost. The Council agreed with this proposal.

10.2. Ms. Sujata Chaturvedi, CCT, Bihar stated that the Ministry of Road Transport and Highways (MoRTH) should also be consulted while developing the e-Way Bill System. The Secretary stated that a separate meeting would be held with MoRTH as also with the other relevant Ministries like Environment, Railway and Shipping, to discuss this issue and for not having check posts at the State borders.

11. For **agenda item 4**, the Council approved the proposal to create Electronic Way Bills System Module as part of the GST System through GSTN and the cost for developing and operating the same would be borne by the Central and State Governments.

#### **Agenda Item 5: Date of the next meeting of the GST Council**

12. The Hon'ble Chairperson stated that another meeting of the Council would need to be called shortly to approve the other two laws namely the Model SGST Law and the UTGST Law. He suggested to hold the next meeting on either 14, 15 or 16 March 2017. After deliberation, the Council agreed to hold its next meeting on 16 March 2017 in New Delhi.

#### **Agenda Item 6: Any other agenda item with the permission of the Chairperson**

13. The Hon'ble Minister from Uttar Pradesh informed that migration of the existing taxpayers to GSTN was very slow and that the process needed to be expedited. Shri Navin Kumar, Chairman, GSTN informed that about two-thirds of the existing Value Added Tax (VAT) dealers had activated their accounts on GSTN but of late, the speed had slowed down as many taxpayers whose annual turnover was between Rs. 10 lakh and Rs. 20 lakh were waiting for clarity in the law before migrating to GSTN. The Hon'ble Chairperson observed that the work of migration of existing taxpayers should be carried out efficiently.

14. The Hon'ble Chairperson expressed his deep appreciation for the hard and long working hours put in by the officers of the Law Committee, which enabled the CGST and IGST Laws to be passed by the Council in this meeting. He observed that this was a milestone in the Centre-State relationship as, on an important issue like taxation, State officers played a very prominent role in drafting the law and correcting the language. The Hon'ble Chief Minister of Puducherry stated that the House placed on record its deep appreciation of the stellar role played by the Hon'ble Chairperson in steering the successful completion of the discussion on the CGST and IGST Laws. The Hon'ble Minister from West Bengal placed on record his appreciation for the hard work of the officers of the Law Committee and, in particular thanked the two co-convenors, Shri P.K. Mohanty, Consultant (GST), CBEC and Dr. P.D. Vaghela, CCT, Gujarat. He also placed on record his appreciation of the important role played by Dr Hasmukh Adhia, Secretary to the Council, his team of officers and Shri Upender Gupta, Commissioner (GST Policy Wing), CBEC. As a token of appreciation of the contribution of the officers of the Law Committee, the Hon'ble Chairperson felicitated the following officers with bouquets:

#### **State Government Officers**

1. Dr. P.D. Vaghela, Commissioner, Commercial Taxes, Gujarat
2. Shri Rajiv Jalota, Commissioner, Commercial Taxes, Maharashtra
3. Shri Ritvik Pandey, Commissioner, Commercial Taxes, Karnataka
4. Shri Arun Mishra, Additional Secretary, Commercial Taxes, Bihar
5. Shri Khalid Anwar, Joint Commissioner, Commercial Taxes, West Bengal
6. Shri Dhananjay Akhade, Joint Commissioner, Commercial Taxes, Maharashtra
7. Dr. Ravi Prasad, Joint Commissioner, Commercial Taxes, Karnataka
8. Shri Riddhesh Rawal, Deputy Commissioner, Commercial Taxes, Gujarat

#### **Central Government Officers**

1. Shri P. K. Mohanty, Consultant (GST) CBEC
2. Shri P. K. Jain, Principal Commissioner, Authorised Representative, CESTAT
3. Shri Upender Gupta, Commissioner (GST Policy Wing), CBEC
4. Shri G. D. Lohani, Commissioner of Central Excise, Faridabad
5. Shri Neeraj Prasad, Additional Commissioner (GST Policy Wing), CBEC

6. Shri Vishal Pratap Singh, Deputy Commissioner (GST Policy Wing), CBEC
7. Shri Ravneet Singh Khurana, Deputy Commissioner (GST Policy Wing), CBEC
8. Shri Siddharth Jain, Assistant Commissioner (GST Policy Wing), CBEC

#### **Ministry of Law**

1. Ms. Rita Vashishtha, Additional Secretary, Legislative Department, Ministry of Law
2. Shri R. Srinivas, Additional Legislative Counsel, Legislative Department, Ministry of Law

#### **Goods & Services Tax Network**

1. Shri Jagmal Singh, Vice President, GSTN

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

**Annexure 1**

**List of Ministers who attended the 11<sup>th</sup> GST Council Meeting on 4 March 2017**

<b><u>S No</u></b>	<b><u>State/Centre</u></b>	<b><u>Name of the Minister</u></b>	<b><u>Charge</u></b>
1	Govt of India	Shri Arun Jaitley	Finance Minister
2	Govt of India	Shri Santosh Kumar Gangwar	Ministry of State, 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	Andhra Pradesh	Shri Yanamala Ramakrishnudu	Finance Minister
7	Assam	Dr. Himanta Biswa Sarma	Finance Minister
8	Bihar	Shri Bijendra Prasad Yadav	Minister, Commercial Taxes
9	Chhattisgarh	Shri Amar Agrawal	Finance Minister
10	Himachal Pradesh	Shri Prakash Chaudhary	Minister, Excise & Taxation
11	Jammu & Kashmir	Dr. Haseeb A. Drabu	Finance Minister
12	Jharkhand	Shri C.P. Singh	Minister, Urban Development & Housing
13	Karnataka	Shri Krishna Byregowda	Minister, Agriculture
14	Mizoram	Shri Lalsawta	Finance Minister
15	Nagaland	Shri Vikheho Swu	Minister, Roads & Bridges
16	Rajasthan	Shri Rajpal Singh Shekhawat	Minister, Industries
17	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries, Finance & Administrative Reforms
18	Telangana	Shri Etela Rajender	Finance Minister
19	Uttar Pradesh	Prof. Abhishek Mishra	Minister, Skill Development
20	West Bengal	Dr. Amit Mitra	Finance Minister

## Annexure 2

### List of officers who attended the 11<sup>th</sup> GST Council Meeting on 4 March 2017

<u>S No</u>	<u>State/Centre</u>	<u>Name of the Officer</u>	<u>Charge</u>
1	Govt. of India	Dr. Hasmukh Adhia	Revenue Secretary
2	Ministry of Law	Shri Suresh Chandra	Secretary, Legal Affairs
3	Ministry of Law	Dr. G. Narayana Raju	Secretary, Legislative Department
4	Govt. of India	Shri Najib Shah	Chairman, CBEC
5	Govt. of India	Ms. Vanaja N. Sarna	Member (P&V), CBEC
6	Govt. of India	Shri Ram Tirath	Member (GST), CBEC
7	Govt. of India	Shri Mahender Singh	Director General, DG-GST, CBEC
8	Govt. of India	Shri P.K. Jain	Principal Commissioner, (AR), CESTAT, CBEC
9	Govt. of India	Shri B.N. Sharma	Additional Secretary, Dept of Revenue
10	Ministry of Law	Dr. Reeta Vasishta	Additional Secretary, Legislative Department
11	Govt. of India	Shri P.K. Mohanty	Advisor (GST), CBEC
12	Govt. of India	Shri Alok Shukla	Joint Secretary (TRU), Dept of Revenue
13	Govt. of India	Shri Upender Gupta	Commissioner (GST), CBEC
14	Govt. of India	Shri Udai Singh Kumawat	Joint Secretary, Dept of Revenue
15	Govt. of India	Shri Amitabh Kumar	Joint Secretary (TRU), Dept of Revenue
16	Govt. of India	Shri G.D. Lohani	Commissioner, CBEC
17	Govt. of India	Shri D.S.Malik	ADG, Press, Ministry of Finance
18	Govt. of India	Shri Hemant Jain	Advisor to MoS (Finance)
19	Ministry of Law	Shri S. Shrivat	Assistant Legal Adviser
20	Govt. of India	Ms. Aarti Saxena	Deputy Secretary, Dept of Revenue
21	Govt. of India	Shri S.P. Bhatia	OSD to FM
22	Govt. of India	Shri Ravneet Singh Khurana	Deputy Commissioner, GST Policy

<b>S No</b>	<b>State/Centre</b>	<b>Name of the Officer</b>	<b>Charge</b>
23	Govt. of India	Shri Vishal Pratap Singh	Deputy Commissioner, GST Policy
24	Govt. of India	Shri Siddharth Jain	Assistant Commissioner, GST Policy
25	Govt. of India	Shri Vipin Kumar Singh	Assistant Director, Press
26	Govt. of India	Shri P.K.Manderva	Superintendent, GST Policy
27	GST Council	Shri Arun Goyal	Additional Secretary
28	GST Council	Shri Shashank Priya	Commissioner
29	GST Council	Shri Manish K Sinha	Commissioner
30	GST Council	Shri G.S. Sinha	Joint Commissioner
31	GST Council	Ms. Thari Sitkil	Deputy Commissioner
32	GST Council	Shri Rakesh Agarwal	Assistant Commissioner
33	GST Council	Shri Kaushik TG	Assistant Commissioner
34	GST Council	Shri Shekhar Khansili	Superintendent
35	GST Council	Shri Manoj Kumar	Superintendent
36	GST Council	Shri Sandeep Bhutani	Superintendent
37	GST Council	Shri Amit Soni	Inspector
38	GST Council	Shri Anis Alam	Inspector
39	GST Council	Shri Ashish Tomar	Inspector
40	GST Council	Shri Sharad Verma	Tax Assistant
41	GST Council	Shri Sher Singh Meena	Tax Assistant
42	Andhra Pradesh	Shri J. Syamala Rao	Commissioner, Commercial Taxes
43	Andhra Pradesh	Shri T. Ramesh Babu	Additional Commissioner, Commercial Taxes
44	Andhra Pradesh	Shri D.Venkateswara Rao	OSD, Revenue
45	Arunachal Pradesh	Shri Marnya Ete	Secretary & Commissioner, Commercial Taxes
46	Arunachal Pradesh	Shri Nakut Padung	Superintendent, VAT
47	Assam	Dr. Ravi Kota	Finance Commissioner



<b>S No</b>	<b>State/Centre</b>	<b>Name of the Officer</b>	<b>Charge</b>
48	Assam	Shri Rakesh Agarwala	Joint Commissioner, Commercial Taxes
49	Bihar	Ms. Sujata Chaturvedi	Principal Secretary & Commissioner, Commercial Taxes
50	Bihar	Shri Arun Kr. Mishra	Addl. Secretary, Commercial Taxes
51	Bihar	Shri Ajitabh Mishra	Assistant Commissioner, Commercial Taxes
52	Chhattisgarh	Ms. Sangeetha P	Commissioner, Commercial Taxes
53	Chhattisgarh	Shri Khemraj Jhariya	Additional Commissioner, Commercial Taxes
54	Delhi	Shri H. Rajesh Prasad	Commissioner, VAT
55	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
56	Goa	Shri Dipak Bandekar	Commissioner, Commercial Taxes
57	Gujarat	Dr. P.D. Vaghela	Commissioner, Commercial Taxes
58	Gujarat	Ms. Mona Khandhar	Secretary (Economic Affairs)
59	Haryana	Shri Shyamal Misra	Commissioner, Excise & Taxation
60	Haryana	Shri Vidya Sagar	Joint Commissioner, Excise & Taxation
61	Haryana	Shri Rajeev Chaudhary	Deputy Commissioner, Excise & Taxation
62	Himachal Pradesh	Shri Pushpendra Rajput	Commissioner, Commercial Taxes
63	Jammu & Kashmir	Shri P.I. Khateeb	Commissioner, Commercial Taxes
64	Jammu & Kashmir	Shri P.K. Bhat	Additional Commissioner, Commercial Taxes
65	Jharkhand	Shri Sanjay Kr. Prasad	Joint Commissioner (HQ)
66	Jharkhand	Shri G.S. Kapardar	Assistant Commissioner
67	Karnataka	Shri Ritvik Pandey	Commissioner, Commercial Taxes
68	Karnataka	Dr. M.P. Ravi Prasad	Joint Commissioner, Commercial Taxes
69	Kerala	Shri P. Mara Pandiyan	Additional Chief Secretary (Taxes)
70	Kerala	Dr. Rajan Khobragade	Commissioner, Commercial Taxes
71	Madhya Pradesh	Shri Manoj Shrivastav	Principal Secretary, Commercial Taxes
72	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes

<b>S No</b>	<b>State/Centre</b>	<b>Name of the Officer</b>	<b>Charge</b>
73	Madhya Pradesh	Shri Sudip Gupta	Deputy Commissioner
74	Maharashtra	Shri Rajiv Jalota	Commissioner, Sales Tax
75	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, Sales Tax
76	Meghalaya	Shri Abhishek Bhagotia	Commissioner, Commercial Taxes
77	Meghalaya	Shri L. Khongsit	Assistant Commissioner, Commercial Taxes
78	Mizoram	Shri L.H. Rosanga	Commissioner, Taxes
79	Mizoram	Shri R. Zosiamliana	Deputy Commissioner, Taxes
80	Nagaland	Shri Asangba Chuba Ao	Commissioner, Commercial Taxes
81	Odisha	Shri Tuhin Kanta Pandey	Principal Secretary (Finance)
82	Odisha	Shri Saswat Mishra	Commissioner, Commercial Taxes
83	Odisha	Shri Sahadev Sahu	Joint Commissioner, Commercial Taxes
84	Puducherry	Dr. V. Candavelou	Secretary (Finance)
85	Puducherry	Shri G. Srinivas	Commissioner, Commercial Taxes
86	Punjab	Shri Satish Chandra	Additional Chief Secretary
87	Punjab	Shri Rajeev Gupta	Advisor (GST), Govt of Punjab
88	Punjab	Shri Pawan Garg	Deputy Commissioner, Commercial Taxes
89	Rajasthan	Shri Alok Gupta	Commissioner, Commercial Taxes
90	Rajasthan	Shri Ketan Sharma	Deputy Commissioner, Commercial Taxes
91	Sikkim	Shri Manoj Rai	Joint Commissioner, Commercial Taxes
92	Tamil Nadu	Shri C. Chandramouli	Additional Chief Secretary
93	Tamil Nadu	Shri K. Gnanasekaran	Additional Commissioner, Commercial Taxes
94	Tamil Nadu	Shri R. Rajesh Kannan	Officer, Coordination
95	Tamil Nadu	Shri P. Rajendran	Assistant Liaison Officer
96	Telangana	Shri Anil Kumar	Commissioner, Commercial Taxes
97	Telangana	Shri Laxminarayan Jannu	Joint Commissioner, Commercial Taxes

<b>S No</b>	<b>State/Centre</b>	<b>Name of the Officer</b>	<b>Charge</b>
98	Tripura	Shri Debapriya Bardhan	Commissioner, Commercial Taxes
99	Uttarakhand	Shri Ranveer Singh Chauhan	Commissioner, Commercial Taxes
100	Uttarakhand	Shri Piyush Kumar	Addl. Commissioner, Commercial Taxes
101	Uttarakhand	Shri Yashpal Singh	Deputy Commissioner, Commercial Taxes
102	Uttar Pradesh	Shri R.K.Tiwari	Additional Chief Secretary
103	Uttar Pradesh	Shri Mukesh Kumar Meshram	Commissioner, Commercial Taxes
104	Uttar Pradesh	Shri Vivek Kumar	Additional Commissioner, Commercial Taxes
105	Uttar Pradesh	Shri Niraj Kumar Maurya	Assistant Commissioner, Commercial Taxes
106	West Bengal	Shri H.K. Dwivedi	Principal Secretary, Finance
107	West Bengal	Ms. Smaraki Mahapatra	Commissioner, Commercial Taxes
108	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, Commercial Tax
109	GSTN	Shri Navin Kumar	Chairman, CBEC
110	GSTN	Shri Prakash Kumar	CEO

## Annexure 3

### Changes in Model GST Law (Between 26<sup>th</sup> Nov 2016 draft to 1<sup>st</sup> March 2017 draft)

<b>General</b>
<ol style="list-style-type: none"><li>1. All the changes that have been discussed and accepted by the Council in the 5<sup>th</sup> – 10<sup>th</sup> Council meetings have been incorporated and suitable changes (including consequential) have been made in the draft law (e.g. Penalty amounts, Tribunal provisions, removal of definition of agriculture, definition of agriculturist, etc.).</li><li>2. Law committee while examining the Rules as per stakeholder feedback received, also made appropriate changes in the Model GST Law (MGL) (e.g. introduction of invoice for reverse charge, a provision for payment voucher on the basis of feedback received on Invoice Rules, etc.).</li><li>3. The revised drafts include changes on account of examination of comments / feedback received from trade and industry on the draft MGL put in public domain in November 2016 (comments received till the first week of January 2017 were considered).</li><li>4. The overall sections of the CGST Law are the same as the draft MGL as it stood in November 2016, but there have been some changes as outlined below: -<ol style="list-style-type: none"><li>a. Realignment of Chapters to bring them more in consonance with the taxpayer life cycle i.e. Assessment and Audit Functions brought after Registration, Payment and Refunds.</li><li>b. Internal realignment of sub-sections and clauses as requested by the Union Ministry of Law during the vetting process.</li><li>c. Merging of sections (especially in Transitional Provisions, Appellate, Revision and Advance Ruling Chapters) to improve readability and matching of sections between CGST and SGST draft Laws.</li><li>d. Schedule V for Registration has been added as a separate section in the draft CGST Law on the recommendation of the Union Ministry of Law and Schedule has been omitted.</li></ol></li><li>5. In light of the decision of levy of taxes on Union territories without legislature, suitable amendments have been made as below: -<ol style="list-style-type: none"><li>a. A new Act called the Union Territory Goods and Services Tax Act will be framed to levy the tax on UTs without legislature.</li><li>b. Suitable changes in the Place of Supply rules contained in the Draft IGST Law to deem the transactions between territorial waters adjoining a State and the territory of that State as intra-State supplies.</li></ol></li></ol>
<b>Definitions</b>
<ol style="list-style-type: none"><li>1. Certain definitions have been added (e.g. Section 2(22) (cess), 2(49) (family) etc.) and some definitions deleted (Rules, First Stage Dealer) as per recommendations of the Council and the Union Ministry of Law.<ol style="list-style-type: none"><li>a. Since IGST, UTGST definitions have been adopted in the CGST Act and <i>vice versa</i>, no definitions will be repeated in any of the Acts (e.g. Continuous journey, intra-state supply etc.), and no expression or term will be defined in various laws simultaneously as omnibus provision for adoption of definitions contained in any of the other laws has been provided. (Section 2(119))</li><li>b. Only those terms are to be defined which have been used more than three times in the entire Law.</li></ol></li><li>2. Some sections such as Section 2(26) (common portal) and Section 2(39) (deemed exports) which were earlier in the Definitions section have been incorporated as separate sections and referred to in the definitions.</li><li>3. Some definitions such as “earlier law” have been redefined as “existing law (Section 2(43)) per other precedents and the Constitution.</li><li>4. “Prescribed” was redefined by adding the phrase ‘as per recommendations of the Council’.</li></ol>

- Therefore, all Rules are mandatorily to be approved by the Council.
- The term “Government” has been defined in various Laws to obviate the need for different sections in CGST and SGST laws.

#### **Levy and Collection of Tax**

- A new section has been created for tax liability on composite and mixed supplies (Section 8).
- Applying reverse charge on supplies procured from unregistered persons (Section 9(4)).
- Definition of a Taxable person has been shifted to the Definitions section (Section 2(107)).

#### **Input Tax Credit**

- The definition of aggregate value of turnover has been amended in section relating to Input Service Distributor, in order to enable distribution of GST credit in the ratio of turnover of GST and Non-GST supplies (petroleum etc.) for every State (Section 20).
- The term “plant and machinery” has been amended so as to specifically exclude pipelines laid outside the factory premises and telecommunication towers (Section 17).

#### **Registration**

- Liability for registration, deemed registration and persons not liable for registration shifted from Schedule V to Chapter VI (Sections 22 – 24).

#### **Tax Invoice**

- A payment voucher to be issued to an unregistered person when making payment on reverse charge basis (Section 31(3)(f)).
- A provision regarding no unauthorized collection by registered person added (Section 32).

#### **Refunds**

- Interest rate for late payment of tax has been proposed at 18% (Section 50) and 24% (Section 50) under certain extreme circumstances.
- Interest rate for delayed refunds is proposed at 6%. (Section 56).

#### **Demands and Recovery**

- Tax arrears cannot be the first charge (Section 82) for a bankrupt company and the provisions of the Insolvency and Bankruptcy Code, 2016 will take precedence over other Central or State Tax Laws.

#### **Advance Ruling**

- In the initial drafts it was proposed that an Advance Ruling Authority will be constituted under the Central Act and the same will be adopted under the State Act. Now, it is proposed that there will be 31 State Advance Ruling Authorities and the same will be adopted in the Central Act. (Sections 96).

#### **Appeal and Revisions**

- Tribunal provisions added (Section 109(6)).

#### **Miscellaneous Provisions**

- Section relating to Presumption as to documents has been shifted to Miscellaneous Chapter. Old sections relating to “presumption as to documents in certain cases” has been amended (Section 144).
- The Union Ministry of Law has also made an omnibus section to give powers to make Rules to the Central Government which is easier than providing a long list of rules in the law itself (Section 164).

**Changes in Model IGST Law (Between 26<sup>th</sup> Nov 2016 draft to 1<sup>st</sup> March 2017 draft)**

1. Realignment of Sections as per recommendations of the Law Committee and the Union Ministry of Law.
2. Suitable changes in the Place of Supply rules contained in the Draft IGST Law to deem the transactions between the territorial waters adjoining a State and the territory of that State as intra-State supplies.
3. Inter-State and Intra-State Supply definitions are proposed to be amended to bring more clarity.
4. Provision for apportionment of IGST credit used for payment of UTGST.
5. Some machinery sections have been deleted and an omnibus section for application of CGST sections on IGST supplies has been added.