

Confidential



Additional agenda for 33rd GST Council Meeting

20 February 2019



File No: 53/33rd GSTCM/GSTC/2019
GST Council Secretariat

Room No.275, North Block, New Delhi
Dated: 12th February 2019

Notice for 33rd Meeting of the GST Council on 20th February 2019 through video conferencing

The undersigned is directed to refer to the subject cited above and to say that the 33rd Meeting of the GST Council will be held on 20th February 2019 (Wednesday) through **Video Conferencing** as follows:

- Wednesday, 20th February 2019 : 12:00 hours onwards
2. The agenda items for the 33rd Meeting of the GST Council will be communicated in due course of time.
 3. Respective State NIC units may be contacted for details regarding the Video Conference.
 4. Please convey the invitation to the Hon'ble Members of the GST Council to attend the meeting.

(-Sd-)
(Dr. Ajay Bhushan Pandey)
Secretary to the Govt. of India and ex-officio Secretary to the GST Council
Tel: 011 23092653

Copy to:

1. PS to the Hon'ble Minister of Finance, Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.
2. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.
3. The Chief Secretaries of all the State Governments, Delhi and Puducherry with the request to intimate the Minister in charge of Finance/Taxation or any other Minister nominated by the State Government as a Member of the GST Council about the above said meeting.
4. Chairperson, CBIC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.
5. Chairman, GST Network

Agenda Items for the 33rd Meeting of the GST Council on 20th February 2019

1. Confirmation of the Minutes of 32nd GST Council Meeting held on 10th January 2019
2. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
3. Decisions of the GST Implementation Committee (GIC) for information of the Council
4. Decisions/recommendations of the IT Grievance Redressal Committee for information of the Council
5. Recommendations of the GoM for boosting Real Estate Sector under GST regime
6. Draft notifications and Removal of Difficulty order giving effect to the decisions of 32nd GST Council Meeting regarding MSME (including small traders)
7. Any other agenda item with the permission of the Chairperson
8. Date of the next meeting of the GST Council

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Discussion on Agenda Items

Agenda Item 7: Any other agenda item with the permission of the Chairperson

Agenda Item 7(i): Interim Report of GoM on Lottery:

Following Agenda Items were taken up for discussion in the first meeting of Group of Ministers (GoM) on Lottery held on 18th February, 2019.

- (i) Whether or not disparity in the tax structure on lottery be continued;
- (ii) Find ways to curb illegal Lottery;
- (iii) Discuss issues related to Online Lottery.

2. The interim report of the GoM is attached as Annexure to this Agenda Item. Pursuant to the discussions, GoM on Lottery recommended the following on tax rates for consideration of the Council:

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- (i) **A single rate of GST should be levied on lottery instead of existing two rates. (Presently, the lotteries run by the State are taxed at the rate of 12% whereas the lotteries authorized by State Government are taxed at the rate of 28%). A uniform rate would be in conformity with GST principles.**
- (ii) **Lottery is a sin/demerit good and should be taxed at high rate of GST. GST Council may take the final decision on the appropriate single rate of tax on lottery either at the rate of 28% or 18%.**

3. On issues of illegal lottery, online lottery etc, the GoM recommended that a Group of Officers may be constituted to study issues related to online lottery and illegal lottery trade and submit report on the following:

- (i) **Best practices of enforcement and compliance verification methods;**
- (ii) **Legal framework to check illegal lottery and regulate online lottery including international online lottery sold in India and suggest improvement in legal framework and IT methods for better compliance and checking evasion.**

4. The interim report of the Group of Ministers on Lottery is placed before the GST Council for consideration.

Interim report of the GOM on Lottery to be presented before the 33rd GST Council Meeting on 20th February 2019.

1. Introduction

In 32nd GST Council meeting held on 10.01.2019 at New Delhi, a GoM on Lottery was constituted. GST Council Secretariat vide its order dated 15.01.2019, constituted a 8 member GoM consisting of the following members:

Sl. No.	Name	Designation and State	Details
1	Shri Sudhir Mungantiwar	Hon'ble Finance Minister, Govt. of Maharashtra	Convenor
2	Dr. T. M. Thomas Isaac	Hon'ble Finance Minister, Govt. of Kerala	Member
3	Dr. Amit Mitra	Hon'ble Finance Minister, Govt. of West Bengal	Member
4	Dr. Himanta Biswas Sharma	Hon'ble Finance Minister, Govt. of Assam	Member
5	Shri Mauvin Godinho	Hon'ble Minister for Panchayats, Govt. of Goa	Member
6	Shri Manpreet Singh Badal	Hon'ble Finance Minister, Govt. of Punjab	Member
7	Shri Krishna Byre Gowda	Hon'ble Minister of Rural Development, Law and Parliamentary Affairs, Govt. of Karnataka	Member
8	Shri Jarkar Gamlin	Hon'ble Minister, Taxes and Excise, Govt. of Arunachal Pradesh	Member

2. Terms of Reference

2.1 The Terms of Reference of GoM on Lottery included the following:

- I. Whether the disparity in the tax structure on the same product/commodity be continued or a uniform rate be prescribed for both;
- II. Whether private persons authorized by States are misusing the lower rate and getting enriched themselves at the cost of the State and suggest measures to curb it;
- III. Examine any other legal issue related to enforcement, including the legal framework, so as to prevent evasion of tax on lottery and suggest appropriate tax rate to address the problem.

2.2 Following Agenda Items were taken for discussion in the first meeting of Group of Ministers (GoM) on Lottery held on 18th February, 2019 by video conference.

- (i) Whether or not disparity in the tax structure on lottery be continued (With reference to TOR I);
- (ii) Find ways to curb illegal Lottery (With reference to TOR II and III);
- (iii) Discuss issues related to Online Lottery (With reference to TOR III).

3. The first meeting of GoM on Lottery on 18th February 2019 was chaired by the convener of GoM Shri Sudhir Mungantiwar, Hon'ble FM of Maharashtra. The meeting was attended by

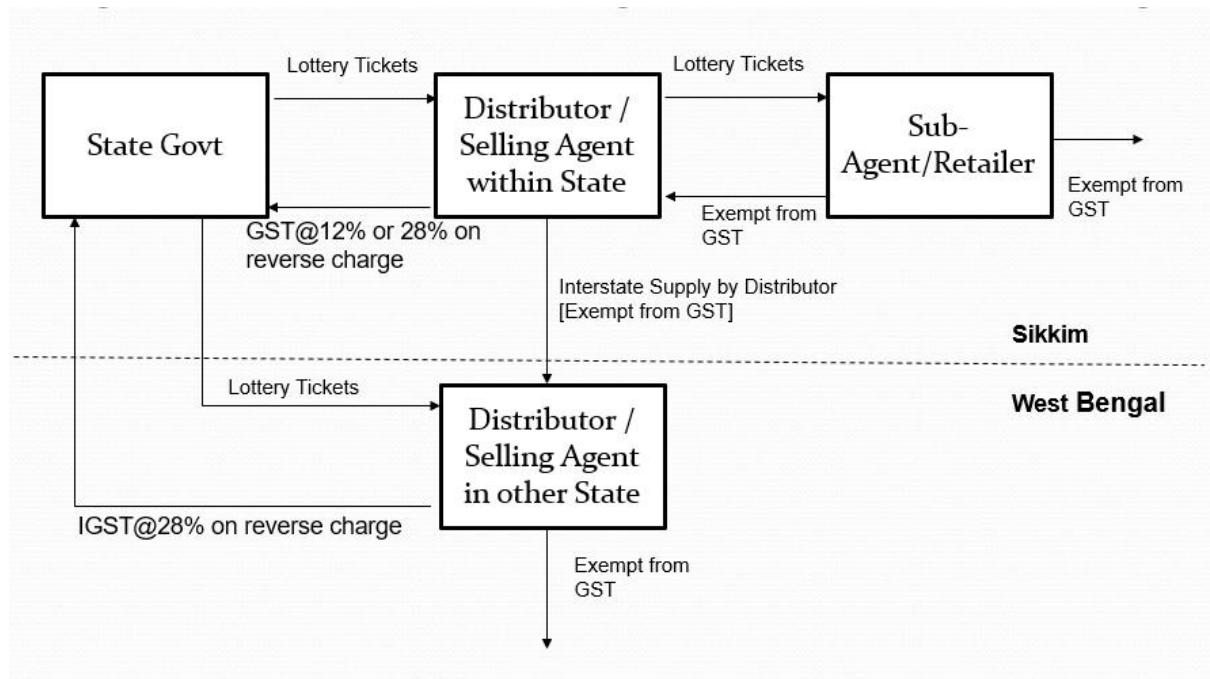
Hon'ble Ministers from Assam and Goa. States of West Bengal, Assam, Arunachal Pradesh, Karnataka were represented by Commissioners of State Tax.

4. Agenda Item 1: Whether or not disparity in the tax structure on lottery be continued

4.1 Lottery is an actionable claim, deemed to be goods. [Section 2(52) read with Schedule-III, Clause-6 of CGST Act]. GST@12% is levied on lottery run by State government [sold within the State, not outside; Sl. No. 242 of Notification No. 1/2017-CT(R)] and GST@28% is levied on lottery authorised by State government [sold within the State, and outside the State also; Sl. No. 228 of Notification No. 1/2017-CT(R)].

4.2 Also, the supply of lottery by a State Govt to a distributor is charged GST on reverse charge basis [Sl. No. 5 of Notification No.4/2017-Central Tax (Rate) dated 28.06.2017]. GST is exempt on supply of lottery by distributor/selling agents to sub-agents/retailers/customers [Sl. No. 149 of Notification No. 1/2017-CT(Rate) dated 28.06.2017].

4.3 Taxability of lottery business in GST is as follows: -



4.4 Current GST Revenue from Lottery

4.4.1 From Paper Lottery

Rs. crore

S. No	State	2017-18 (GST Period)			2018-19 (Upto Dec'18)		
		12%	28%	Total	12%	28%	Total
1	West Bengal	5.51	1820.10	1825.61	124.51	2112.80	2237.31
2	Kerala	841	Nil	841	725.34	Nil	725.34
3	Maharashtra	7.15	27.94	35.09	8.11	32.84	40.95
4	Goa*	Nil	269.69	269.69	Nil	140.71	140.71
5	Punjab	2.71	3.83	6.54	5.17	3.90	9.07
6	Sikkim	Nil	Nil	Nil	Nil	Nil	Nil
7	Arunachal*	Nil	2.66	2.66	Nil	10.64	10.64
8	Nagaland						
9	Mizoram						
10	Assam						
	Total	856.4	2124	2981	863	2301	3164

* - Value computed on proportional basis

4.4.2 From Online Lottery

Rs. crore

S. No	State	2017-18 (GST Period)			2018-19 (Upto Dec'18)		
		12%	28%	Total	12%	28%	Total
1	West Bengal	Nil	Nil	Nil	Nil	Nil	Nil
2	Kerala	Nil	Nil	Nil	Nil	Nil	Nil
3	Maharashtra	Nil	719.93	719.93	Nil	304.41	304.41
4	Goa*	Nil	40.53	40.53	Nil	21.14	21.14
5	Punjab	Nil	54.97	54.97	Nil	25.53	25.53
6	Sikkim	Nil	0.39	0.39	Nil	1.10	1.1
7	Arunachal*	-	-	-	Nil	162.28	162.28
8	Nagaland						
9	Mizoram						
10	Assam						
	Total	0	816	816	0	514	514

* - Value computed on proportional basis

4.4.3 States were requested to verify and confirm the data on GST revenue from lottery and also make data available where missing. Maharashtra has since updated the data.

4.5 State Governments from North East, Goa and trade have represented and requested that the differential rate of tax on lottery be removed. Two rates of GST create entry barriers for trade. High difference of 16% between two rates is causing lotteries of smaller States not getting market outside the State. Lottery royalty/license payment to States gets affected by the volume of business. GST was expected to create one pan India market and this goal is getting defeated in the case of lottery.

4.6 Apart from above, there is only one definition of Lottery under Section 4 of the Lotteries Regulations Act, 1998. Two tax rates are also against the provisions of the Competition Act, 2012. Such discrimination does not exist in any other category of products. As far as the tax rate is concerned, lottery is a sin/demerit good whose consumption should be discouraged and therefore lottery merits levy of GST at a high rate.

4.7 Record of Discussions of GoM on Agenda Item No 1

4.7.1 In his opening remarks, the Hon'ble Convener of the GoM welcomed all the members and requested members of GoM to give their views on the above agenda item. Hon'ble Minister of Goa suggested that two rates of GST on lottery should be removed as such dual rates has affected the revenues of Goa. CCT, Karnataka observed that such two rates on lottery may lead to classification issues, thereby, forcing enforcement measures to prevent any revenue loss. CCT, Karnataka also pointed out that rate differential also exists in transport of goods by railways (Comment: However, railway is not allowed major portion of input tax credit while paying tax@5%). Nominated officer from Arunachal Pradesh suggested that a single rate of GST at 12% or 18% be applied on lottery. Hon'ble FM of Assam observed that two rates of GST have adversely affected revenue and market access for smaller North East States as a high difference of 16% is acting as market barrier for the smaller States. He suggested to levy a single rate of GST at 28% on lottery as goods without differentiating on the ground whether lottery is run by the State or authorised by the State Government. Further, he stated that lottery being a sin good, cess deserves to be imposed on supply of lottery. He also observed that the Court judgements have upheld the previous recommendations of the GST Council on two rates of lottery and such judgements *per se* do not bar the GST Council to prescribe a single rate of GST on lottery. The Secretary of GoM communicated the view of the Central Government that a single rate of tax be levied on lottery as GST has converted India into a single unified market. Further since lottery is a demerit/sin good, a high tax rate should be levied on lottery. CCT, West Bengal communicated the views of Hon'ble FM of West Bengal that any changes in GST rates on lottery may be deferred till the Lok Sabha elections, the subject being sensitive. She also pointed out that the concept of State run and State authorised lottery has been approved judicially. Hon'ble Minister of Maharashtra opined that very high rate leads to grey market and a balanced view needs to be taken while making the rate uniform. Hon'ble Minister of Maharashtra concluded with the suggestion that a single rate of GST at 18% or 28% may be levied on lottery as decided by GST Council.

4.8 In view of the above discussions, for Agenda item 1, the GoM decided to recommend to GST Council the following: -

(1) A single rate of GST should be levied on lottery instead of existing two rates. (Presently, the lotteries run by the State are taxed at the rate of 12% whereas the lotteries authorized by State Government are taxed at the rate of 28%). A uniform rate would be in conformity with GST principles.

(2) Lottery is a sin/demerit good and should be taxed at high rate of GST. GST Council may take final decision on the appropriate single rate of tax on lottery at either 28% or 18%.

5. Agenda Item 2: Rise of Illegal Lottery Trade

5.1 Illegal lottery has increased in the GST era due to high incidence of tax at 28% or 12% on the face value of lottery and two rates of tax when compared to pre-GST era tax incidence of around 9.68% on the face value. Lottery trade resorts to various modes of illegal lottery trade to avoid tax.

5.2 Some of the methods of illegal lottery are as follows: -

- a) Printed Illegal Lottery: No logo of the Organizing State is generally printed on the ticket. The ticket does not bear the signature of the Lottery Director or the Secretary. There is no name of the organizing State mentioned on the ticket.
- b) Scratch Coupons: Scratch coupons are not actually Lottery. In a lottery, the ticket is bought first and a result is drawn later. But in the case of a scratch coupon, the result has already been drawn and the customer has to simply scratch the coupon that he has purchased and tally the number with the winning number that is already declared.
- c) Handwritten Chits (Matka): These are bets placed by customers on certain numbers. No tickets are printed in this type and the customer is given a handwritten chit against the number he has played.
- d) Parallel Illegal Lottery: Illegal lottery is played under the garb of legal lottery in this mode. The terminal operator has a legal lottery operational at his terminal. The terminal operator uses all the legal infrastructure (like the PC, printer, ticket, TV screen, and the result) to run his illegal lottery with the help of a CD or pen drive.
- e) Virtual Illegal Lottery: No prints or handwritten chits are given to the customer in this type of illegal lottery. The customer is asked to select a number and only a photograph of that number is sent through WhatsApp.

5.3 Record of Discussions of GoM on Agenda Item No 2

5.3.1 Hon'ble Convener of GoM observed that illegal lottery trade has become a menace to society adversely affecting tax collection and suggested to constitute a Committee of Officers to study the matter. He also suggested that stringent punishment must be prescribed in lottery laws and regulations for dissuading matka/illegal lottery. Hon'ble Minister of Goa observed that illegal lottery trade, especially handwritten chits without printed tickets (Matka), is prevalent in Goa also. CCT, Karnataka observed that illegal lottery trade has wider implications and officers from other departments may also be included in the Committee of Officers. CCT, West Bengal emphasized that there is increase in GST revenue in the State due to better enforcement measures and banning of the online lottery.

6. Agenda Item 3: Issues related to Online Lottery

6.1 The Central Government framed the Lotteries (Regulation) Rules, 2010 (in short ‘the Rules’) under sub-section (1) of Section 11 of the Lottery Regulation Act, 1998 (in short ‘Act’) The online Lottery has been defined under Rule 2(1)(e) which is as under-

(i) *“‘online lottery’ means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player’s choice of any particular number or combination of numbers is simultaneously registered with the central computer server;”*

(ii) Rule 3 permitted the State Government to organize a paper lottery or online lottery or both subject to the conditions specified in the Act and these rules.

(iii) At present, Kerala and West Bengal do not organise online lottery. Online lottery is present in Maharashtra, Punjab, Sikkim, Mizoram, Nagaland, Goa, Assam (Bodoland Territory Council) and Arunachal Pradesh.

6.2 The issues related to online lottery are many. They include no clear legal frame work to control the online lottery trade. There are problems of tax administration in IT spaces such as server location and data access, user validation, quantification etc. The shifting of paper lottery to online lottery may lead to loss of tax revenue. The consuming States have no data access to the online lottery trade. Also, there are several international online lottery players selling lottery illegally in India.

6.3 Record of Discussions of GoM on Agenda Item No 3

6.3.1 Secretary to GoM started the discussions by observing that online lottery needs to be regulated and controlled in order to increase the GST revenue and suggested to GoM to constitute a Committee of Officers to study the issues related to online lottery in detail. Hon’ble Minister of Goa suggested suitable guidelines for regulating online lotteries. CCT, Karnataka observed that online lottery issues are complex and needs a detailed study. Hon’ble Convener of GoM suggested to constitute a Committee of Officers to study online lottery issues and submit a report to GoM in the next meeting of the GST Council. Hon’ble Minister of Goa suggested that issues relating to casinos may be taken up in subsequent meeting.

6.4 The GoM recommended to GST Council on the above agenda item no 2 and 3 as follows: -

A Group of Officers may be constituted to study issues related to online lottery and illegal lottery trade and submit report on –

- (i) Best practices about enforcement and compliance verification methods.**
- (ii) Legal framework to check illegal lottery and regulate online lottery including international online lottery sold in India and suggest improvement in legal framework and IT methods for better compliance and checking evasion.**