

Minutes of the 5th GST Council Meeting held on 2-3 December 2016

The fifth meeting of the GST Council (hereinafter referred to as 'the Council') was held on 2-3 December 2016 in Pravasi Bharatiya Kendra, New Delhi under the Chairpersonship of the Hon'ble Union Finance Minister, Shri Arun Jaitley. The list of the Hon'ble Members of the GST Council who attended the meeting is at **Annexure. 1.** The list of officers of the Centre, the States, the GST Council and the GSTN who attended the meeting is at **Annexure 2.**

2. In his opening remarks, the Hon'ble Chairperson of the Council welcomed all the members and then took up the agenda items for discussion.
3. The following five agenda items were taken up for consideration:
 - i. Confirmation of the Minutes of the 4th GST Council Meeting held on 3-4 November, 2016.
 - ii. Approval of the Draft GST Law, the Draft IGST Law and the Draft GST Compensation Law.
 - iii. Provision for Cross-Empowerment to ensure Single Interface under GST (outstanding agenda item from the 4th GST Council meeting).
 - iv. Date of the next meeting of the GST Council.
 - v. Any other agenda item with the permission of the Chairperson.

Discussion on Agenda Items

Agenda Item 1: Confirmation of the Minutes of the 4th GST Council Meeting held on 3-4 November, 2016

4. The Members suggested the following amendments to the draft Minutes of the 4th meeting of the Council (hereinafter referred to as 'the Minutes') –

- i. The Hon'ble Minister from Tamil Nadu stated that in paragraph 29 (xv) of the Minutes, it should be recorded that the rate of Goods and Services Tax (GST) on gold shall be between 2% and 4%, so that an upper ceiling for the rate was fixed. The Hon'ble Chairperson of the GST Council (hereinafter referred to as 'the Chairperson') stated that the issue regarding GST rate on gold should be kept open and it could be considered after the completion of the rate fitment exercise. The Council agreed that no amendment was required in the Minutes on this issue.
- ii. The officer from Odisha stated that in paragraph 33 of the Minutes, the version of the Hon'ble Minister from Odisha recorded therein should be replaced with the following – 'The Hon'ble Minister from Odisha supported Option II.'
- iii. The Commissioner of Commercial Tax (CCT), Rajasthan stated that in paragraph 15 of the Minutes, the fourth sentence relating to the version of the Hon'ble Minister from Rajasthan recorded in the aforesaid paragraph should be


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replaced with the following version – ‘He further stated that a special rate may be kept for demerit goods and that levying cess for generating revenue for compensation for five years was not desirable. He suggested that instead of deciding the special rate after five years, a special rate of tax for demerit goods may be decided at present only.’

5. In view of the above discussions, for Agenda item 1, the Council decided to adopt the draft Minutes of the 4th meeting of the Council with the following changes-

- i. To replace the version of the Hon’ble Minister from Odisha recorded in paragraph 33 of the Minutes with the following – ‘The Hon’ble Minister from Odisha supported Option II.’
- ii. To replace the fourth sentence relating to the version of the Hon’ble Minister from Rajasthan recorded in paragraph 15 of the Minutes (of the 4th Meeting of the Council) with the following – ‘He further stated that a special rate may be kept for demerit goods and that levying cess for generating revenue for compensation for five years was not desirable. He suggested that instead of deciding the special rate after five years, a special rate of tax for demerit goods may be decided at present only.’

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

6. The Hon’ble Chairperson invited the members to commence discussion on this agenda item. However, a discussion ensued regarding the order of discussion between agenda items 2 and 3. The Hon’ble Ministers from Uttar Pradesh and Kerala suggested that agenda item 3 (Provision for Cross-Empowerment to ensure Single Interface under GST) be taken up first. The Hon’ble Chairperson stated that the Members needed to converge on a consensus on all issues. He observed that if a provision of law was linked to agenda item 3, then it could be decided along with the agenda item 3. The Hon’ble Chief Minister of Puducherry stated that it was important to get a clear picture in respect of agenda item 3 and then, it would be easier to decide on the law. The Hon’ble Minister from West Bengal strongly suggested to discuss agenda item 3 first as this had already been discussed in three meetings of the Council and in one informal meeting of the Members of the Council. The Hon’ble Chairperson observed that many other issues had been decided starting from the first meeting of the Council while the agenda on cross-empowerment kept getting discussed. The Hon’ble Deputy Chief Minister of Delhi also supported the suggestion to discuss agenda item 3 first and added that clarity was needed regarding treatment of the Integrated Goods and Services Tax (IGST). The Hon’ble Minister from Tamil Nadu observed that it was necessary to look at cross-empowerment under IGST and therefore, agenda item 3 needed to be discussed first. The Hon’ble Chairperson observed that the Council would keep discussing and re-discussing the issue under agenda item 3 till a consensus was reached. He further added that this issue could be discussed when the draft IGST Law was taken up for discussion but the entire process need not be halted for that.

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7. The Hon'ble Minister from Meghalaya also suggested to take up agenda item 3 before agenda item 2. The Hon'ble Chairperson emphasized that the officers had worked on the draft model laws and this needed to be discussed and provisions of law linked to agenda item 3 could be looked at separately. The Hon'ble Minister from Kerala observed that if States wanted agenda item 3 to be discussed before agenda item 2, it could be agreed upon, particularly when it was also discussed earlier in an informal meeting of the Council. The Hon'ble Deputy Chief Minister of Delhi observed that as 8 or 9 Members had requested to change the sequence of the agenda, this could be accepted. The Hon'ble Chairperson observed that the art of reaching consensus was to first take up issues that bind the Council rather than those that divide it. He also pointed out that there was no scope to defer implementation of GST beyond 16 September 2017 and that the Council needed to be mindful that the laws needed to be passed in the Parliament and the State Legislatures. He further observed that the laws needed to be cleared by the GST Council and if certain issues cropped up in the Council, the officers would need to meet again for reformulating certain provisions. The Hon'ble Minister from Haryana observed that it would be prudent to take up areas of agreement first to keep GST implementation on track. He further observed that the officers had worked hard on the Draft Model GST Laws and these should be discussed as per the sequence of the agenda items. He added that the States retained their right to present their arguments with full force while discussing agenda item 3.

8. The Hon'ble Minister from West Bengal observed that the States were not consulted while deciding on the sequence of the agenda items and felt that agenda item 3 should have come earlier in the sequence. The Hon'ble Deputy Chief Minister of Gujarat suggested to follow the order of the agenda set by the Hon'ble Chairperson. The Hon'ble Minister from Jammu & Kashmir stated that the Council should focus on areas of agreement if the intention was to resolve issues. He observed that it was important to look at the larger picture and not to indulge in a political debate. He also observed that Jammu & Kashmir was the most empowered legislature in the country which also levied Service Tax but he was making an effort to implement GST in his State too. He further observed that approval of law was not contingent upon an agreement on the administrative arrangement.

9. The Hon'ble Minister from Kerala observed that after the Constitutional amendment, the States had lost the bargaining power and had been reduced to the level of a municipality but on the administrative issue, power at State level was very important and this could not be compromised. He observed that there was a history of discussion on cross-empowerment and the agenda should have followed that sequence. The Hon'ble Chairperson observed that rights of the Centre were contingent upon States' agreement and *vice versa* and in that sense, both had lost their power. After reading out the paragraphs 47-49 of the Minutes of the 4th Council Meeting, he pointed out that it was clear that agenda item 3 and the Draft Model GST Laws were to be dealt on parallel track. The Hon'ble Minister from Chhattisgarh suggested that discussion could be started with agenda item 2 and the laws could be cleared so as to be presented in the Parliament. He

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recalled that the 5th Council meeting was earlier deferred to enable the officers to discuss the Draft Model GST Laws. The Hon'ble Minister from West Bengal strongly objected to this suggestion but the Hon'ble Minister from Chhattisgarh reiterated that he had made this suggestion after careful consideration and keeping in mind the fact that the issue of cross-empowerment was also to be decided by the Council.

10. The Hon'ble Minister from Tamil Nadu stated that there could be no agreement on several sections of the Draft Model GST Law till there was an agreement on agenda item 3. The Hon'ble Minister from Jammu & Kashmir wondered how the issue of cross-empowerment could help improve the status of State Governments, as the power of bureaucracy to administer a tax did not lead to improving the status of States. He added that it was collectively decided to share the power to tax. The Hon'ble Minister from Uttar Pradesh observed that agenda item 3 had implications on several provisions of law. He suggested to give a fixed time for discussion on cross-empowerment and if there was no agreement, then, the discussion could move to agenda item 2. The Hon'ble Chairperson proposed that the draft IGST Law and the agenda item 3 could be taken up together and before that, the draft Central GST/State GST Laws and the Compensation Law could be taken up for discussion. The Council agreed to this suggestion and thereafter, discussion on agenda item 2 was taken up.

Discussion on the Draft Model GST Law

11. Introducing the Draft Model GST Law, the Secretary to the Council (hereinafter referred to as 'the Secretary') thanked the officers of the State for their contribution in drafting the GST Law and also commended the contribution of the State officers in the 2-day Officers' Meeting held on 21-22 November 2016 to discuss the Draft Model GST Law. A brief presentation was made on the Draft Model GST Law by Shri Upender Gupta, Commissioner, GST Policy Wing, Central Board of Excise and Customs (CBEC). Thereafter, section-wise discussion of the Draft Model GST Law took place. The important points discussed in relation to provisions of the Draft Model GST Law are as follows –

- i. **Section 1(2) (Short title, extent and commencement):** The Hon'ble Minister from Jammu & Kashmir suggested that Section 1(2) may be amended so as to exclude Jammu & Kashmir by inserting the words "(except the State of Jammu & Kashmir)". Jammu & Kashmir would then take the process of extending the law further as required by the Constitution of India and the Constitution of Jammu & Kashmir. The Council agreed to this suggestion.
- ii. **Section 2 (7), 2 (8) and 2 (106) (Definitions):** The Hon'ble Minister from Telangana suggested that the definition of agriculturist should not be limited to those who cultivate the land personally as small landholders might give their land to other ryots for cultivation. The Hon'ble Deputy Chief Minister of Delhi observed that tenancy was quite common in India and to make them taxable

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under GST would be a very big decision which needed to be discussed. The Hon'ble Minister from Uttar Pradesh suggested that the definition of 'agriculturist' should be a broad one. The Hon'ble Minister from Karnataka observed that while tenant farming was widespread, most States had laws against tenancy. He therefore posed a question whether tenancy could be legalized under the Model GST Law. The Hon'ble Chief Minister of Puducherry observed that share-cropping was prevalent in various States and this should not be taxed. The Hon'ble Minister from Haryana observed that the agriculture sector was highly stressed, the land-holdings were small and, therefore, no restrictions should be put on the agriculture sector and even allow contract farming and that Haryana was very soon coming up with a tenancy Act in line with the new tenancy Act of Punjab which allowed contract farming by large food processing industries where the primary production was at the farmer's level. He also suggested including dairy farming, poultry farming and cutting of grass in the definition of agriculture as it was important to keep primary agricultural production activity out of the tax net, irrespective of who carried out such activity whether a person, a Hindu Undivided Family, a firm, private limited company, etc. The Hon'ble Minister from Punjab supported the view of the Hon'ble Minister from Haryana. He further observed that the definition of 'agriculture' should be very wide and informed that his State had sent a definition for 'agriculturist' which read as follows – 'means a person not being a company, a firm, a limited liability partnership, any body corporate incorporated by or under the laws of a country outside India, involved in the operations of agriculture, either

1. by one's own labour, or
2. by the labour of one's family, or
3. by servants on wages payable in cash or kind or by hired labour, or
4. through any usufructuary, mortgage or lease or otherwise.

He also suggested to delete the definition of the term 'to cultivate personally' contained in Section 2 (106). The Hon'ble Minister from Uttar Pradesh suggested to add pisciculture and animal husbandry in the definition of 'agriculture'. The Hon'ble Minister from Telangana suggested to keep poultry and dairy as part of the definition of agriculture. The Commissioner of Commercial Tax (hereinafter referred to as 'CCT'), Gujarat stated that a company that entered into a tenancy agreement should get registered and pay GST. He added that if tenancy was illegal in a State, it could not be legalized in GST. The Hon'ble Minister from Karnataka suggested that if tenancy farming was legal in a State, the definition of agriculturist could include share-cropper in that State. The Secretary stated that the smaller dairy farmers, etc. would enjoy the exemption threshold. He also stated that IGST would be difficult to operate in the absence of a uniform definition. The Hon'ble Deputy Chief Minister of Delhi stated that as a nation, we should adopt a pro-agriculture policy. The CCT, Karnataka explained that exemption to agriculturists


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implied exemption to a person from tax whereas exemption to products like poultry implied exemption to a product from tax and not to a person. He added that the approach had been to exempt milk but not the processed products of milk whereas if dairy as an agricultural activity was exempted, then the processed dairy products produced by an agriculturist would also be exempt. The Hon'ble Chief Minister of Puducherry observed that a very small percent of dairying, poultry farming, etc. was carried out by corporates and due to this, the entire sector should not be subject to tax. The CCT, Maharashtra stated that in his State there was no Value Added Tax (VAT) on primary products, but processed goods like cheese, butter and ghee attracted VAT. The Hon'ble Deputy Chief Minister of Gujarat observed that milk cooperative was a big activity in Gujarat and the practice was to exempt the farmers bringing milk to the cooperative but to tax the subsequent value added products. The Hon'ble Minister from Kerala stated that raw agriculture products were not taxed and as there was an exemption threshold of Rs. 20 lakh, the existing provision was acceptable. The Hon'ble Minister from Haryana stated that 50% of agricultural activity was through share cropping and tenancy and today, even a one-year lease agreement was valid in law. The Hon'ble Minister from West Bengal suggested to delete the clause "but not in crop share" contained in section 2 (106) (c) as his State, like many others had a system of share-cropping. The Hon'ble Minister from Tamil Nadu suggested to define taxation of agricultural commodity in relation to the stage when it underwent a chemical transformation or when agricultural goods were sold in branded, packaged form. The Secretary requested the views of the Members on removing the exclusion clause ('but does not include...') in Section 2(7) and most of the Members supported the removal of this exclusion clause. The Hon'ble Minister from Haryana explained that the raising of man-made forests was part of the crop-diversification programme of the Central Government by planting eucalyptus, poplar, etc. and the State Governments also extended subsidies for such programmes. The Hon'ble Minister from Odisha stated that the collection of minor forest produce should not be taxed. The Hon'ble Minister from Tamil Nadu suggested to exclude branded, processed and packaged items from the definition of agriculture. The Secretary explained that these categories would not come within the ambit of agriculture. The Hon'ble Minister from Tamil Nadu also suggested to add pisciculture in the definition of agriculture. The Hon'ble Minister from Telangana suggested that in section 2(7), nothing should be excluded from the definition of agriculture. The Hon'ble Deputy Chief Minister of Gujarat cautioned against changing the existing definition of agriculture as this would invite demand for agricultural subsidy from the hitherto excluded sectors. The Hon'ble Minister from Tripura suggested to include rubber plantations and tea in the definition of agriculture. The Hon'ble Minister from Meghalaya suggested to include apiculture (beekeeping) and piggery in the definition of 'agriculture'. The Hon'ble Chairperson observed that the expression 'raising of crops' in section 2 (7) would cover growing rubber and tea and that each crop need not be listed separately. Based on the above discussion, the Council agreed on a modified definition of



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agriculture in section 2 (7) which reads as follows – “agriculture” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, pisciculture, the raising of crops, grass or garden produce, ~~and also grazing, but does not include~~ dairy farming, poultry farming, stock breeding, piggery, apiculture, the mere cutting of wood or grass, gathering of fruit, collection of minor forest produce, raising of man-made forest or rearing of seedlings or plants. Further, the Council agreed to merge the definitions under Section 2 (8) and Section 2 (106) as follows – “agriculturist” means an individual or a Hindu Undivided Family, who carries on any agricultural operation on his own account-

- a) by one’s own labour, or
 - b) by the labour of one’s family, or
 - c) by servants on wages payable in cash or kind ~~{(but not in crop share)}~~ or by hired labour under one’s personal supervision or the personal supervision of any member of one’s family and to retain the Explanation 1 and 2 under Section 2 (106). However, the Council did not agree to the suggestion from the Hon’ble Minister from Punjab to add a sub-clause (d), namely, ‘through any usufructuary, mortgage or lease or otherwise’ and to include cooperative societies within the meaning of agriculturist.
- iii. The Hon’ble Minister from Punjab suggested that the lease of agricultural land should be exempt from service tax. After discussion, the Council agreed that this would be considered at the time of discussing exemptions from GST.
 - iv. **Section 2 (11) (Definitions):** The Hon’ble Minister from Tamil Nadu suggested defining ‘State’ in the draft IGST Act. The officer from Andhra Pradesh suggested defining the term ‘State’ in the draft Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) Laws. After discussion, the Council decided that this matter would be discussed at the time of discussion of the draft IGST Act.
 - v. **Section 2 (17) (Definitions):** The Hon’ble Minister from West Bengal observed that after the introduction of negative list of Services under Service Tax, payment of user fees, licence fees, etc. had come under the purview of Service Tax. He stated that persons or institutions performing statutory compliance should not be subjected to tax under GST. In this view, he suggested that the following provision be added in Schedule IV of the Draft Model GST Law: “Any licence fees, user charges, and other fees arising out of statutory compliances and related to State welfare and development measures”. The Council agreed to this suggestion.
 - vi. **Section 2 (57) and 2 (58) (Definitions):** The Hon’ble Minister from West Bengal suggested that the definitions of ‘intra-state supply of goods’ and of ‘intra-state supply of services’ should be incorporated in the Model GST Law


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also instead of only cross-referencing it to the IGST Act. The Hon'ble Deputy Chief Minister of Delhi also supported this proposal. The Council agreed to this suggestion.

- vii. **Section 2 (63) (Definitions):** The Hon'ble Minister from Tamil Nadu suggested that instead of cross-referencing the definition of 'manufacturer' from the Central Excise Act, 1944, the definition should be incorporated in the Model GST Law itself so that the definition in the Model GST Law did not change merely due to change in the definition in the Central Excise Act, 1944. The Hon'ble Deputy Chief Minister of Delhi also supported this proposal. The Council agreed to this suggestion.
- viii. **Section 3 (2) (Meaning and scope of supply):** The Hon'ble Minister from West Bengal suggested that under Article 366 (29A) of the Constitution, works contract and restaurant were treated as deemed sale of goods whereas in the Draft Model GST Law, they were treated as supply of services as per paragraph 5 (f) and 5 (h) in Schedule II. He observed that this could lead to legal challenge. Commissioner (GST Policy Wing), CBEC clarified that this issue had been referred to the Union Law Ministry for clarification and if they suggested to keep these two categories of supply as that of goods, entry in Schedule II could be modified accordingly. Joint Commissioner, Commercial Taxes, West Bengal suggested that in order to avoid any legal challenge, these two categories of supply could be considered as composite supply on which all provisions relating to services shall apply. The Council agreed to this suggestion.
- ix. The Hon'ble Minister from Tamil Nadu observed that in the earlier version of the draft Model GST Law, the definition of 'location of recipient of service' was in the Model GST Law itself but in the revised version, it had been shifted to the draft IGST Act. He suggested that the definition of 'location of recipient of service' should also be incorporated in the Model GST Law. The Council agreed to this suggestion.
- x. **Section 7 (Powers of SGST/CGST officers under the Act):** The Council agreed that this Section would be discussed later as it related to cross-empowerment.
- xi. **Section 8 (1) (Levy and Collection of Central/State Goods and Services Tax):** The Hon'ble Minister from Kerala observed that as tax rates were not decided, a 14% cap on rate should not be kept. He further observed that after 5 years, once cess had ceased to exist, the tax rate would exceed 28% if cess was merged with tax. The Hon'ble Minister from Tamil Nadu suggested to keep the tax rate at 20%. The Secretary clarified that under Article 265 of the Constitution, no tax could be levied without the authority of law and therefore, a rate cap was required in the legislation. He further observed that if a schedule

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of rates for all goods was kept in the law, it would become very cumbersome to change any rate. The Hon'ble Chairperson observed that if no rate was mentioned in the law, then the provision would suffer from the vice of excessive delegation. The Hon'ble Minister from Assam suggested to keep the rate cap at 20% in order to have more room for maneuvering the tax rate for States like his which were prone to natural calamities. The Council agreed to change the rate cap from the existing rate of 14% to 20% (i.e. 20% in SGST and 20% in CGST).

- xii. **Section 9 (1) (Composition Levy):** The Hon'ble Deputy Chief Minister of Delhi observed that as GST was to be a self-assessed tax, there was no rationale to have a provision to grant permission for availing the benefit of the Composition scheme. He suggested that it should be only on the basis of self-declaration and in case a person opted for the Composition scheme in violation of the provisions of law, the same could be handled through audit or enforcement provisions. The CCT, Karnataka explained that as there were certain conditions that had to be fulfilled by a person opting for the Composition scheme, the provision for permission had been kept. After discussion, the Council agreed that this provision be amended and that the benefit of the Composition scheme shall be availed on the basis of declaration rather than permission, subject to the conditions precedent being fulfilled.
- xiii. **Section 9 (1) (b) (Composition Levy):** The Hon'ble Deputy Chief Minister from Delhi expressed concern in regard to this provision and stated that any grocery store which was selling goods not leviable to tax under GST would get excluded from the benefit of the Composition scheme. The CCT, Gujarat clarified that this provision would only apply to stores selling the 5 petroleum products and potable alcohol which were excluded from GST and they would not be entitled to avail the benefit of the Composition scheme. The Council agreed not to make any change in the provision.
- xiv. **Section 9 (1) (Composition Levy):** The Secretary pointed out that in the first meeting of the Council held on 22-23 September 2016, it was decided that manufacturers and service providers shall be kept out of the Composition scheme. He explained that this decision needed to be revisited in order to give relief to the manufacturers in the micro, small and medium enterprises (MSME) sector who currently enjoyed exemption from Central Excise duty up to a turnover of Rs. 1.5 crore and taxing them at a normal combined rate of CGST and SGST would erode their competitiveness. He further informed that this issue was discussed during the meeting of the State officers held on 21-22 November 2016 and an agreement was reached that manufacturers up to a turnover of Rs. 50 lakh could be given the benefit of Composition but at a higher rate of tax of not less than 2.5% each in CGST and SGST. He sought the


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Council's approval for a change in its earlier decision. The Hon'ble Minister from Rajasthan observed that the threshold for Composition levy was too low which could be increased or CGST on supplies from small manufacturers could be reimbursed by the Central Government. The Secretary stated that the Central Government could decide separately regarding the issue of reimbursement of CGST to small manufacturers. The Hon'ble Minister from Tamil Nadu strongly argued for a Composition Scheme on the basis of the capacity of a unit instead of its turnover such as that for brick kilns. He observed that this would avoid the need for verification of turnover. The Secretary stated that it would be administratively difficult to fix capacities for different industries. The CCT, Karnataka explained that presently, the capacity-based Composition scheme was available to different industries in different States (such as ply board in Haryana, marble in Rajasthan and brick kiln in Tamil Nadu) but in GST, there would be a nation-wide coverage of manufacturers under the Composition scheme and therefore, fixing capacities for different kinds of industries would be very difficult. The Hon'ble Minister from Karnataka further observed that verification of declared capacity would require visit by officers of the Tax Department which was not desirable. The Secretary observed that an industry-wise capacity-based levy would be difficult to implement in GST. The Hon'ble Minister from Haryana suggested that the turnover threshold for availing composition should not be specified in the Section and that it should be "as specified by the Council but not less than Rs. 50 lakh". The Council agreed to this suggestion and also agreed to a broad formulation that the aggregate turnover for availing the Composition Scheme shall be such amount as may be specified by the GST Council but shall not be less than Rs. 50 lakh. The Council also agreed to modify its original decision taken in the 1st GST Council meeting dated 22-23 September 2016 as per which manufacturers were not to be extended the benefit of the Composition scheme and agreed to extend the benefit to manufacturers also, subject to clause (e) of Section 9 (1) of the Model GST Law. The Council also agreed that such a scheme should be limited to turnover-based composition rather than capacity based composition.

- xv. The Council also discussed the rate of tax under Section 9 (Composition Levy). The Hon'ble Minister from West Bengal observed that a combined tax rate of 5% on manufacturers under the Composition scheme would lead to loss of competitive advantage. The Secretary explained that the Composition scheme would normally be relevant to manufacturers making Business-to-Consumer (B2C) supplies where no input tax credit (ITC) was involved. The Hon'ble Minister from Punjab suggested to levy a higher rate of GST for manufacturers as value addition for them would be higher. The Hon'ble Minister from Uttar Pradesh did not favour taxing the manufacturers and traders at the same rate as economic value addition was very different in these two sectors. The Hon'ble Minister from Karnataka stated that in order to enhance the share of

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manufacturing in India's Gross Domestic Product (GDP), some benefit should be given to manufacturers. The Hon'ble Deputy Chief Minister of Gujarat stated that this could lead to high revenue loss. The Hon'ble Minister from Punjab stated that there was a possibility of evasion by splitting up the units. The Hon'ble Minister from Kerala stated that small manufacturers should not be penalized, especially as there was no Central Excise duty for manufacturers with turnover below Rs. 1.5 crore. The Hon'ble Minister from Jammu & Kashmir stated that the rate for manufacturers and traders should be kept uniform in order to avoid dispute as to who was a trader and who was a manufacturer. The Hon'ble Minister from Rajasthan stated that instead of having two rates of composition levy, manufacturers should be kept out of composition and the Centre should give them reimbursement of the CGST component. The Hon'ble Deputy Chief Minister of Gujarat stated that the benefit of lump sum tax should be limited to traders who were involved in re-sale and should not be extended to manufacturers. He suggested to consider one of the following two options: (i) Manufacturers should not be entitled to the benefit of lump sum tax; (ii) If it has to be given at all, it should be at the rate of 5% (2.5% CGST and 2.5% SGST) and that if the Government of India decided to extend relief, it should be given from its budgetary provision. The Hon'ble Minister from Tamil Nadu suggested that manufacturers should be levied a combined tax rate of 2% whereas traders should be levied a combined tax rate of 1%. The Hon'ble Minister from Odisha suggested a combined tax rate of 2% for traders and 3% for manufacturers. The Hon'ble Minister from Assam suggested a combined rate of 3% for manufacturers. The Hon'ble Minister from Haryana suggested a combined rate of 3% for manufacturers and 1% for traders. The Hon'ble Minister from Tamil Nadu strongly proposed that as five States had a capacity-based levy, the Council should consider a rate of 2% or a capacity-based levy. The CCT, Maharashtra suggested a combined composition rate of 3% for the manufacturers. He further stated that bakeries and restaurants had strongly represented to allow them the benefit of Composition scheme without any turnover cap. The Secretary stated that presently, works contract and restaurants were under the Composition scheme because they had elements of both goods and services. In GST, this logic was not relevant. Further, they would also get ITC for all their purchases. After deliberations, the Council decided to have a total composition rate of 1% (i.e. 0.5% for CGST and 0.5% for SGST) for traders and a total composition rate of 2% (i.e. 1% for CGST and 1% for SGST) for manufacturers.

- xvi. **Section 9 (Composition Levy) and Section 8 (Levy and Collection of Central/State Goods and Services Tax):** The Hon'ble Minister from West Bengal raised the issue whether tax on reverse charge basis should be levied on Composition dealers only. He added that as the provision was not envisaged for other classes of dealers, there would be no level playing field. The CCT, Gujarat suggested that levy of tax on reverse charge basis should be applied on



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all supplies from unregistered persons (which is otherwise chargeable to tax) as otherwise, it would create a non-level-playing field between unregistered persons and the registered taxpayers. He further added that without such a provision, it would be beneficial to buy goods from an unregistered person as no tax was paid at the time of receipt of goods even when incidence of tax had arisen. The Council accepted this suggestion and decided that there shall be a reverse charge on all commodities when supplied by an unregistered person (which is otherwise chargeable to tax) to a registered person, including a taxpayer under the Composition scheme. The Hon'ble Deputy Chief Minister of Gujarat observed that the existing definition of agriculture was perfectly acceptable and activities excluded in the definition of agriculture should remain excluded as otherwise, persons who were not agriculturists would get the benefit of tax exemption and this would result in revenue loss. He further observed that even with the provision of reverse charge, such entrepreneurs who supplied such produce to unregistered persons would remain untaxed resulting in revenue loss.

xvii. **Section 11 (*Power to grant exemption from tax*):** The Hon'ble Minister from Tamil Nadu raised a question as to how parity would be maintained for the exemptions in the draft CGST, SGST and IGST Acts. The Secretary stated that as the GST Council would recommend the rates and exemptions under all the three Acts, parity would be ensured. However, after discussion, the Council agreed to make suitable modification in the wording of Section 11 to reflect the understanding that applicability of exemptions under CGST, SGST and IGST shall be uniform.

xviii. **Section 12(2)(b) (*Time of supply of goods*):** The Hon'ble Minister from West Bengal observed that there was presently no tax on advances received for sale of goods and that the terms of payment should not be made a point of taxation. The CCT, Gujarat explained that even today tax was collected on advances received for provision of services and to have parity, it was also applied to goods. The CCT, Karnataka added that for some goods, there was considerable gap of about 3-4 months between receipt of advance and delivery of goods and that the government should not be deprived of taxes for this period. The Hon'ble Minister from Telangana observed that tax on advances should not be charged as it would create complications in situations where the order of the buyer was cancelled. The Commissioner (GST Policy Wing), CBEC clarified that if an order was cancelled, a credit note would be issued by the supplier and there would be a corresponding reduction in the output tax liability of the supplier in the return for that month and that the supplier would not have to approach the Tax Department to get any refund as they would be allowed to self-adjust their liability. The Hon'ble Minister from Tamil Nadu supported this provision and stated that in Service Tax, it had helped in curbing tax

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evasion. The Hon'ble Minister from Uttar Pradesh also supported this provision. The Council agreed not to make any change in the provision.

- xix. **Section 12(4) (Time of supply of goods):** The Hon'ble Minister from West Bengal stated that the term 'voucher' was not defined and it was not clear whether it was goods or services. The CCT, Gujarat clarified that if vouchers were given for use in a grocery store, the point of supply of goods shall be fixed through this provision. The Secretary suggested to define the term 'voucher' in the Definitions section. The Council agreed to define the term 'voucher' in the Definitions section.
- xx. **Section 15 (Value of taxable supply):** The Hon'ble Minister from West Bengal raised a question as to why the value of reimbursable supply was omitted in the new draft. The Commissioner (GST Policy Wing), CBEC clarified that this provision was covered under Section 15(2)(c) and that this would be supplemented by the Valuation Rules which would have elaborate provisions for situations not covered under the Section. The Hon'ble Minister from West Bengal observed that the principle applied in respect of reimbursable expenditure in Service Tax should be used in GST to which the Commissioner (GST Policy Wing), CBEC clarified that this would be addressed in the Valuation Rules. The Council agreed not to make any change in the provision.
- xxi. **Section 16(2) (Eligibility and conditions for taking input tax credit):** The Hon'ble Minister from West Bengal raised a question in respect of the second proviso of this sub-section as to why tax would be payable in a situation where a contract between two taxable persons could provide for period for making payment beyond three months. The Commissioner (GST Policy Wing), CBEC clarified that it was an anti-evasion measure and that the credit reversed after three months could be again taken once the recipient of service had made payment to the supplier. The Hon'ble Minister from West Bengal raised a question as to why the same principle was not applied to goods to which the Commissioner (GST Policy Wing), CBEC clarified that goods being tangible, there would be a proof of its receipt which was not the case in services, where there was only a book entry. The Council after further discussion, agreed to keep similar provision for goods and services and further agreed that the time period for making payments shall be increased from three months to six months from the date of issuance of invoice.
- xxii. **Section 16(1) (Eligibility and conditions for taking input tax credit):** The Hon'ble Minister from Tamil Nadu questioned the rationale for allowing deferred input tax credit for pipelines and telecommunication towers but not for other capital goods. The Secretary clarified that credit was being staggered for these two categories of capital goods in view of the large amounts of ITC involved. The Hon'ble Minister from Karnataka observed that no ITC was

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given on power transmission lines though GST could be levied on wheeling charges. The Chief Economic Advisor, Government of India suggested to levy a low rate of GST on electricity to allow the blocked ITC in the power sector to pass through and that this would address the problem of high cost of power generation. The Secretary clarified that electricity duty was in Schedule 7 of the Constitution (State List) and that the present value chain was exempt from tax. He added that even if ITC was allowed on capital goods in the power sector, it could not be used except possibly for wheeling charges. He also informed the Council that the Ministry of Power had suggested to levy a nominal rate of GST on electricity to enable power companies to use the credit to discharge their GST liability on miscellaneous activities like Service Tax on labour contracts. He observed that in such an arrangement, electricity duty would continue to be levied and in addition, a low rate of GST could be levied as a pass-through for ITC. The Hon'ble Minister from Uttar Pradesh wondered why credit was being allowed to pipelines and telecommunication towers while it was not permitted earlier. The Secretary clarified that in the GST regime, effort was to remove credit blockages to address the problem of tax cascading and ITC was being allowed for these two sectors with this aim in mind. The Hon'ble Minister from Uttar Pradesh stated that if credit was spread over three years, it should not adversely impact the compensation to the States. The Chairman, CBEC informed that ITC on capital goods was high and it amounted to about Rs. 25,000 crore and out of this, pipelines and telecommunication towers accounted for about Rs. 10,000 crore. The Hon'ble Deputy Chief Minister of Gujarat observed that for the first five years of GST implementation, it would be beneficial for States if ITC on pipelines and telecommunication towers was given in the first year itself, but it would create problems for them after the expiry of the five-year compensation period. The Hon'ble Minister from Karnataka stated that telecommunication towers and pipelines were being extended the facility of ITC for the first time and if they were also allowed to take this credit in a single year, this would lead to a double bonanza for these two sectors, which should be avoided. The Hon'ble Minister from Uttar Pradesh reiterated that this provision should not affect compensation to States. The Hon'ble Chairperson observed that experienced State Government officials had participated in drafting this provision and they would also understand the interest of the States. The Hon'ble Minister from Uttar Pradesh suggested either not to allow ITC on pipelines and telecommunication towers or to extend compensation to States for an additional two years beyond the five-year period. The Hon'ble Minister from Tamil Nadu requested for data regarding the amount of credit given to the entire capital goods sector. The Hon'ble Minister from Uttar Pradesh suggested to defer decision regarding ITC in respect of capital goods till data on the total quantum of ITC availed on capital goods was received from CBEC. The Council agreed to this suggestion.


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xxiii. **Section 22 (Manner of recovery of credit distributed in excess):** The Hon'ble Minister from West Bengal suggested to clarify the wordings regarding excess distribution of credit to one or more recipients of credit. The Commissioner (GST Policy Wing), CBEC explained the mechanism of an Input Service Distributor (ISD). The Hon'ble Minister from West Bengal observed that the wordings of Section 22 regarding recovery of excess distribution of credit to one or more recipients of credit could be made clearer. The Council agreed to this suggestion.

xxiv. **Section 23 (Registration):** The Hon'ble Minister from West Bengal observed that the progress of migration of taxpayers to GST was slow due to server errors and slow login process. He enquired as to what steps were being taken to rectify the situation. The Hon'ble Ministers from Chhattisgarh, Bihar and Jharkhand also expressed concern regarding considerable time being taken for logging in to the system for migration. Shri Navin Kumar, Chairman, Goods and Services Tax Network (GSTN) informed that migration of existing taxpayers to GSTN had commenced from 8 November 2016. He further informed that 62% of dealers from Gujarat had registered on the GSTN portal and that the experience of Maharashtra had also been good. He added that GSTN would look into the problems mentioned by West Bengal and that they were also going to circulate to all States the migration process followed by Gujarat.

xxv. **Section 28(1) (Tax invoice) read with Section 30 (Amount of tax to be indicated in tax invoice and other documents):** The Hon'ble Minister from West Bengal questioned the rationale for moving away from the present system of displaying maximum retail price (MRP) on the packing of goods which also subsumed the taxes in it. He expressed an apprehension that if tax incidence was very large, it could raise issues of political economy. The CCT, Karnataka explained that for Business-to-Business (B2B) supplies, showing the quantum of tax in invoices was necessary for availing ITC. For Business-to-Consumer (B2C) supplies, there was a discussion in the Empowered Committee (EC) in the past and it was concluded that the tax element should be shown in B2C invoices as well so that the consumer was aware of the amount of tax he paid for a transaction and that this would enhance transparency. The Hon'ble Chief Minister of Puducherry observed that every consumer should know as to how much tax he paid. The Hon'ble Deputy Chief Minister of Gujarat observed that even today, tax was being shown separately in the invoices. The Council agreed not to make any change in the provision.

xxvi. **Section 42 (Levy of late fee):** The Hon'ble Minister from Haryana observed that the maximum late fee of Rs. 5,000 was too low. He also enquired as to why the term 'late fee' was used instead of the term 'penalty'. The CCT, Karnataka explained that late fee would be charged under all three Acts and

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effectively, this would come to Rs. 15,000. If a higher late fee was charged, it would be burdensome for small taxpayers. As regards nomenclature, he explained that the expression 'late fee' was used to enable charging this amount automatically through the IT system whereas for levying penalty, a notice would need to be given. After discussion, the Council agreed to change the wording in the law suitably to reflect that late fee shall not be less than Rs. 5,000 or an amount as recommended by the Council.

- xxvii. **Section 46 (Tax deduction at source):** The Joint Commissioner, Commercial Taxes, Sikkim pointed out that in his State, the value of transactions was very small and therefore, the threshold limit for Tax Deduction at Source (TDS) should be kept at Rs. 1 lakh instead of Rs. 5 lakh. The Secretary stated that this would not be desirable as this would place onerous requirements even for transactions by local bodies. The Hon'ble Ministers from Assam, Gujarat, Uttar Pradesh and Bihar suggested that there should be no threshold limit for transactions to attract TDS and that all government transactions should attract TDS at the rate of 1%. The Hon'ble Minister from Haryana also supported this demand and also suggested that the TDS rate should be higher. The Secretary stated that a higher TDS rate was not desirable as TDS was only meant to create an audit trail. The Hon'ble Minister from Jammu & Kashmir stated that law should not be made to address the errant taxpayers and that imposing TDS for all transactions would become very cumbersome. The Hon'ble Minister from Karnataka also warned that TDS on all Government transactions would create a lot of workload for the officers. The CCT, Karnataka stated that there was an alternative provision in the Draft Model GST Law of giving a Unique Identity Number (UIN) which could be obtained by panchayats, etc. and that they could report their purchases at a fixed periodicity (say one year) and upload it on GSTN for the purpose of matching. He added that this arrangement would be less onerous than TDS for all Government transactions. The Principal Secretary (Finance), Odisha stated that compliance burden would increase considerably if all Government transactions were subject to TDS and local schools, mid-day meal scheme, anganwadis, etc. would find it difficult to comply. There were also some suggestions to charge a higher rate of TDS for works contract. The Hon'ble Chief Minister of Puducherry and the Hon'ble Minister from Telangana suggested that for works contract, the full tax amount should be collected at source. The Hon'ble Minister from Odisha suggested TDS for works contract to be at the rate of 4%. The CCT, Gujarat explained that higher TDS on works contract would lead to several situations of refund which was not desirable. The Hon'ble Minister from West Bengal stated that differential rate of TDS could be considered for registered and non-registered dealers to incentivize registration. He also suggested to define the term 'Governmental agencies' in Section 46(1). After these discussions, the Council agreed that the limit for TDS under this Section shall be Rs. 2.5 lakh for all

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categories of supplies and to define the term 'Governmental agencies' in Section 46(1).

12. The Hon'ble Chairperson stated that discussion on the rest of the Sections of the Draft Model GST Law could be deferred for the next meeting of the Council and that some time should be devoted for discussion on agenda item 3 (Provision for Cross-Empowerment to ensure Single Interface under GST). The Council agreed to defer discussion on the remaining provisions of the Draft Model GST Law for the next Council meeting.

13. Accordingly, for agenda item 2, the Council approved the provisions of Chapters I to IX of the Model GST Law (Sections 1 to 46) subject to the decisions/observations recorded below and also subject to changes that might be suggested by the Union Law Ministry during the process of vetting of the draft GST Laws. The Council further agreed that the changes made during the legal vetting would be highlighted and brought to the Council for discussion and approval.

- i. **Section 1(2) (Short title, extent and commencement):** To replace the version of the Hon'ble Minister from Jammu & Kashmir recorded in paragraph 11(i) of the Minutes with the following – 'The Hon'ble Minister from Jammu & Kashmir suggested that Section 1(2) may be amended so as to exclude Jammu & Kashmir by inserting the words "(except the State of Jammu & Kashmir)". Jammu & Kashmir would then take the process of extending the law further as required by the Constitution of India and the Constitution of Jammu & Kashmir.'
- ii. **Section 2(7) (Definitions):** To modify the definition of agriculture as follows – "agriculture" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, pisciculture, the raising of crops, grass or garden produce, grazing, dairy farming, poultry farming, stock breeding, piggery, apiculture, the mere cutting of wood or grass, gathering of fruit, collection of minor forest produce, raising of man-made forest or rearing of seedlings or plants.
- iii. **Section 2(8) and Section 2(106) (Definitions):** To merge the definitions under these two sections as follows – "agriculturist" means an individual or a Hindu Undivided Family, who carries on any agricultural operation on his own account-
 - a) by one's own labour, or
 - b) by the labour of one's family, or
 - c) by servants on wages payable in cash or kind or by hired labour under one's personal supervision or the personal supervision of any member of one's family and to retain the Explanation 1 and 2 under Section 2(106).


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- iv. To consider the issue of exemption from GST for lease of agricultural land at the time of discussing exemptions from GST.
- v. **Section 2(11) (Definitions):** To discuss the definition of 'State' at the time of discussion on the draft IGST Act.
- vi. **Section 2(17) (Definitions):** To add the following provision in Schedule IV of the Draft Model GST Law: "Any licence fees, user charges, and other fees arising out of statutory compliances and related to State welfare and development measures".
- vii. **Section 2(57) and 2(58) (Definitions):** To incorporate the definitions of 'intra-state supply of goods' and of 'intra-state supply of services' in the Model GST Law instead of only cross-referencing it to the IGST Act.
- viii. **Section 2(63) (Definitions):** To incorporate the definition of 'manufacturer' as given in the Central Excise Act, 1944 in the Model GST Law.
- ix. **Section 3(2) (Meaning and scope of supply):** To incorporate supplies of works contract (paragraph 5(f) of Schedule-II) and restaurant (paragraph 5(h) of Schedule-II) as composite supply on which all provisions relating to services shall apply.
- x. To incorporate the definition of 'location of recipient of service' in the Model GST Law as presently defined in the IGST Act.
- xi. **Section 7 (Powers of SGST/CGST officers under the Act):** To discuss it later as it related to cross-empowerment.
- xii. **Section 8(1) (Levy and Collection of Central/State Goods and Services Tax):** To change the rate cap from the existing rate of 14% to 20%.
- xiii. **Section 9 (Composition Levy):** To modify the original decision taken in the 1st GST Council meeting dated 22-23 September 2016 as per which manufacturers were not to be extended the benefit of the Composition Scheme and agreed to extend the said benefit to manufacturers also, subject to clause (e) of Section 9(1) of the Model GST Law, and that such a scheme shall be limited to turnover-based composition rather than capacity based composition.
- xiv. **Section 9(1) (Composition Levy):** To amend the section so as to provide that the benefit of Composition scheme shall be availed on the basis of intimation rather than permission.
- xv. **Section 9(1) (Composition Levy):** To amend the provision by inserting that the aggregate turnover for availing the Composition Scheme shall be such amount

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as may be specified by the GST Council but shall not be less than Rs. 50 lakh and to have a total composition rate of 1% (i.e. 0.5% for CGST and 0.5% for SGST) for traders and a total composition rate of 2% (i.e. 1% for CGST and 1% for SGST) for manufacturers.

- xvi. **Section 9 (Composition Levy) and Section 8 (Levy and Collection of Central/State Goods and Services Tax):** To levy tax on reverse charge basis on all commodities when supplied by an unregistered person (which is otherwise chargeable to tax) to a registered person.
- xvii. **Section 11 (Power to grant exemption from tax):** To make suitable modification in the wording of Section 11 to reflect the understanding that applicability of exemptions under CGST, SGST and IGST shall be uniform.
- xviii. **Section 12(4) (Time of supply of goods):** To define the term 'voucher' in the Definition section.
- xix. **Section 16(1) (Eligibility and conditions for taking input tax credit):** To defer decision regarding ITC in respect of capital goods till data on the total quantum of ITC availed on capital goods was received from CBEC.
- xx. **Section 16(2) (Eligibility and conditions for taking input tax credit):** To increase the time period for making payment from three months to six months from the date of issuance of invoice for both goods and services.
- xxi. **Section 22 (Manner of recovery of credit distributed in excess):** To make the wordings of Section 22 clearer regarding recovery of excess distribution of credit to one or more recipients of credit.
- xxii. **Section 42 (Levy of late fee):** To change the wording in the law suitably to reflect that the maximum late fee shall not be less than Rs. 5,000 or an amount as recommended by the Council.
- xxiii. **Section 46 (Tax deduction at source):** To prescribe the limit for TDS to Rs. 2.5 lakh for all categories of supplies and to define the term 'Governmental agencies' in sub-section (1)

Agenda item 3: Provision for Cross-Empowerment to ensure Single Interface under GST (outstanding agenda item from the 4th GST Council meeting):

14. During the lunch break, there was an informal meeting of officers from some State governments and the Central Government led by the Secretary to the Council to explore possible solutions to the issue of single interface in GST. In the formal meeting of the Council, starting the discussion, the Hon'ble Minister from Tamil Nadu stated that cross-

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empowerment under the IGST Act was a must and GST would be unworkable without it. After resolving this issue, the issue of Rs. 1.5 crore threshold under CGST/SGST could be discussed. He further stated that during the officers meeting, a view had emerged that for units with turnover less than Rs. 1.5 crore, the State administration could do a higher number of audits and for taxpayers with turnover above Rs.1.5 crore, the Centre could conduct a higher number of audits. He expressed that in principle, it was a correct philosophy to move on, but cross-empowerment of IGST was a critical element. The Hon'ble Minister from Karnataka supported the view of the Hon'ble Minister from Tamil Nadu on the issue of cross-empowerment under IGST. He further observed that if one tried to divide the base, the lines of division became very sensitive. The alternative suggestion referred to by the Hon'ble Minister from Tamil Nadu would help to utilise both the administrations optimally without dividing the taxpayer base, but some variation could be made in the suggestion.

15. The Hon'ble Chairperson invited the Chairman, CBEC to express his views on the subject. The Chairman, CBEC stated that there was useful discussion during the officers' meeting. He stated that for smooth working of CGST and SGST, cross-empowerment was essential but it should apply across the value chain without exclusion of any tax administration from any segment as Constitutionally both the administrations were empowered to tax the entire value chain. He expressed that the percentage of audit to be conducted by the Central administration could be lesser for units with turnover below Rs. 1.5 crore and could be higher for units with turnover above Rs. 1.5 crore. He observed that cross-empowerment of refund needed to be discussed further as there were legal issues relating to the Consolidated Fund of India being operated by State government officials and the Consolidated Fund of States being operated by Central government officials, the modalities of audit of such refunds, etc. On IGST, he observed that since Article 269A of the Constitution vested the power of 'levy and collection' of IGST with the Centre, it might not be legally permissible to do cross-empowerment and that this issue needed to be clarified from the Law Ministry. He further observed that Central Sales Tax (CST) was an origin based levy, and that sales became inter-State by virtue of transactions entered into by the seller as well as the buyer as both needed to be registered under CST but the position would be different under IGST and that the number of taxpayers doing inter-State transaction would be lesser in GST than that in CST. He also observed that IGST being a destination based tax, the place of supply was a very important issue, and the revenue concern would essentially be that of the destination State and the Centre and that the origin State was not concerned with it. The Hon'ble Minister from Tamil Nadu raised a question regarding the relevance of buyer and seller being under CST. The Commissioner, GST Policy Wing, CBEC clarified that in CST, C-forms were given by destination States and thus, the buyers also became registered as inter-State dealers even if their subsequent transactions were only intra-State, whereas under GST, a buying dealer alone would no longer require registration under IGST, unless he was also supplying inter-State.

16. The Hon'ble Minister from Tamil Nadu observed that while legal opinion could be taken on the issue of cross-empowerment under IGST, the larger question was whether

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it was rational to do cross-empowerment under IGST. He observed that the Origin State was also a consuming State and therefore it also needed to be concerned about IGST and almost 70% of taxpayers paying SGST would also be registered under IGST. The Hon'ble Minister from Karnataka suggested that the principle proposed by the Chairman, CBEC for CGST, namely that no player should be excluded from an activity, should apply to IGST as well. He further stated that IGST was not an independent activity but part of the chain of economic activity and therefore States needed to have a toehold in IGST. The Hon'ble Minister from West Bengal stated that if a dealer from State X sold goods to State Y, the dealer in State X could use ITC of SGST for payment of IGST, and the administration of State X should have the power to cross-check the correct availment of ITC. The Hon'ble Minister from Uttar Pradesh supported this view and observed that in his State, about 50% of dealers were carrying out inter-State transaction and it was necessary to allow State governments to administer IGST. The Commissioner (GST Policy Wing), CBEC clarified the fund settlement procedure under GST. He explained that if IGST was cross-utilised for payment of SGST in a State, the Central government would transfer the equivalent amount of money to that State government and if SGST was used to pay IGST in a State, the concerned State would transfer an equivalent amount to the Centre. He further clarified that as per data received by the GST Council for twenty States, the all-India average of inter-State dealers was only 27%. The Hon'ble Minister from Karnataka stated that the all-India average might be different from State specific numbers as mentioned by the Hon'ble Minister from Tamil Nadu.

17. The Hon'ble Minister from Karnataka observed that the Central Government could allow States to administer IGST on its behalf. The Hon'ble Minister from Uttar Pradesh supported this view and stated that Article 258 of the Constitution permitted the Central Government to delegate its powers to the States. The Hon'ble Minister from Odisha stated that cross-empowerment must be given under IGST as was the case under CST. The Hon'ble Minister from West Bengal emphasized that as a matter of principle, IGST could not be left out of cross-empowerment as the two administrations should trust each other. He further stated that without cross-empowerment, no audit could be done and that taxpayers up to Rs.1.5 crore turnover should be exclusively left to the States. The CCT Andhra Pradesh stated that they had been assuring the taxpayers that there would be a single interface for administration but without cross-empowerment under IGST, almost 60% of dealers would not have single interface. He emphasized that if the State administration conducted the audit of a unit, there was no reason for the case to go to the Central administration. The Hon'ble Minister from Tamil Nadu stated that it was essential that the key processes under GST, namely registration, return, scrutiny, audit, enforcement, appeals, refund and demand should be conducted by one authority only, and to achieve such a single interface, a horizontal division was necessary as suggested under Option II.

18. The Hon'ble Deputy Chief Minister of Gujarat observed that the issue of cross-empowerment had been discussed four times but the Constitutionality of cross-empowerment under IGST was being raised for the first time. He suggested dividing the

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taxpayer base in the ratio of 60% to States and 40% to the Centre. The Hon'ble Minister from Tamil Nadu observed that Article 269A itself gave power to the Council to apportion the IGST between the Union and the States. The Hon'ble Chairperson observed that there was no dispute regarding apportionment but the issue raised by the Chairman, CBEC was whether delegation under Article 269A was possible in view of use of the phrase 'levied and collected by the Government of India'. He added that the word 'collected' did not appear in Section 246A which empowered collection of CGST and SGST. The Hon'ble Minister from Uttar Pradesh observed that the same expression 'levied and collected' was used in Article 269 under which States were empowered to collect CST. The CCT, Karnataka explained that the expression 'levied and collected by the Government of India' was common to Article 269 and 269A and that the only difference was that under Article 269, the tax was assigned to the States whereas in Article 269A, the tax was apportioned between the Union and the States. The Hon'ble Chairperson observed that one interpretation was that under Article 269, the Central Government was empowered to assign the whole of the tax to States and CST was assigned to the States exercising this power, whereas Article 269A provided for apportionment of tax between the Centre and the States, which meant sharing a portion. The CCT Gujarat stated that without cross-empowerment under IGST, GST could not be implemented efficiently and the distinction between Origin State and Destination State was an artificial one. He emphasized that the Origin State also had a stake in IGST. The Hon'ble Minister from Rajasthan stated that cross-empowerment was required in all three Acts as otherwise, the aim of single interface would not be achieved. The Hon'ble Chairperson observed that in case there was no Constitutional problem for cross-empowerment under IGST, one needed to look at an optimal solution. The Hon'ble Minister from Karnataka stated that one solution could be to do cross-empowerment and provide for a small percent of audit of taxpayers below Rs. 1.5 crore turnover by the Central administration. The Hon'ble Minister from Tamil Nadu stated that except intelligence based action where both administrations should be empowered to act, in other cases, there should be no dual control and processes like registration, return scrutiny, audit, appeals, demand and refund should remain with the States to avoid dual control. He added that for audit, cross-empowerment could be considered but expressed an apprehension that if auditable units were divided in the ratio of 60:40, the heavier cases above Rs. 1.5 crore would go more to the Central administration in a disproportionate number. He suggested that instead, both the Central and the State administration should have a certain percentage of audit, but the other five processes for units below Rs.1.5 crore turnover should remain with the States. He added that the Central administration could do audit for a higher number of taxpayers for turnover above Rs.1.5 crore and for units in multiple States, central registration could also be explored. He also stated that while the State would carry out the various processes, the Central administration could have complete access to data regarding scrutiny etc. The Hon'ble Minister from West Bengal stated that to avoid complications for taxpayers below Rs. 1.5 crores, they should remain with the States. The Hon'ble Minister from Kerala supported the suggestion of the Hon'ble Ministers of Uttar Pradesh, West Bengal and Gujarat. The Hon'ble Deputy Chief Minister of Gujarat suggested that for units with turnover below Rs. 1.5 crore, the auditable units could be divided in the ratio of 70:30 for


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the States and the Centre and for units above Rs. 1.5 crore turnover, it could be 60:40 for the States and the Centre for all purposes, including audit and enforcement. The Hon'ble Minister from Punjab stated that if, for units with turnover below Rs.1.5 crore, audit was done by the Central administration and the other processes was done by the State administration, this would lead to complications about which administration would do adjudication, appeal, etc. The Commissioner (GST Policy Wing), CBEC clarified that there would be stratified sample for intervention and only 5% of the taxpayers would be subject to audit and out of this, adjudication, appeal, etc. would not arise in every case. He further clarified that the model being discussed ensured single interface in respect of all key processes except refunds. The work relating to adjudication, appeals would be done by that tax administration which had initiated the return scrutiny or audit scrutiny. Further, the law itself provided the single interface model in respect of registration as it provided that registration by one authority would be deemed to be the registration by the other authority, and cancellation by one authority would be deemed to be cancellation by the other authority. It was further clarified that cross-empowerment of refund required examination of the issue whether an officer of the Central administration could draw funds from the Consolidated Fund of the States and whether an officer from the State administration could draw funds from the Consolidate Fund of India. The Hon'ble Minister from Tamil Nadu observed that the model suggested by the Centre would require creation of more offices of the Central Government. The Chairman, CBEC clarified that the reorganization of CBEC did not envisage any expansion of the manpower and that the entire work would be performed by the existing manpower. He also pointed out that in Service Tax, the Central tax administration had a very significant presence in the taxpayer segment of turnover below Rs. 1.5 crore.

19. The Secretary suggested certain broad parameters as a possible solution for this issue. He suggested that the enforcement-based action shall lie with both the tax administrations without any restriction and that audit and scrutiny in a year should not exceed 5% of the total taxpayer base. He added that the division of taxpayers should be limited only with reference to this 5% and the proportion of the division could possibly be 60% for the States and 40% for the Centre. He further suggested that issuance of show cause notice, passing of adjudication order, etc. would be done by the same tax administration which conducted the audit, scrutiny or enforcement. He stated that out of CBEC's share of auditable units, it should audit a small number of taxpayers below the turnover of Rs. 1.5 crore. He further stated that no division of taxpayers should be done except for audit and scrutiny and that for all other services, a taxpayer could remain with the administration that he was earlier dealing with and where the dealer was registered with both the Central and the State tax administration, he would have the choice to go to either of the two tax administration. The Hon'ble Minister from Punjab observed that such an arrangement would lead to a disproportionate number of taxpayer above the turnover of Rs. 1.5 crore going to the Centre. The CCT, Karnataka stated that in the scheme suggested by the Secretary, audit of taxpayers with turnover below Rs. 1.5 crore by the Central administration shall not exceed 1% of the total taxpayer base below Rs. 1.5 crore, but there would be no restriction regarding the intervention by the Centre in respect of



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taxpayers having turnover above Rs. 1.5 crore and by the States for taxpayers with turnover below and above Rs.1.5 crore. The Hon'ble Minister from West Bengal wondered why the Centre needed to have any toehold over taxpayers with a turnover below Rs. 1.5 crore. The Hon'ble Minister from Assam observed that the Centre had been administering taxpayers with turnover below Rs. 1.5 crore in Service Tax and suggested to vertically divide the taxpayer base so that the more important portion of taxpayers with turnover above Rs. 1.5 crore did not go to the Central administration. He also pointed out that all States did not unanimously want control over taxpayers with turnover below Rs. 1.5 crore. The CCT, Karnataka explained the proposed solution with an illustration saying that out of the units to be audited by the Centre, say only 20% would fall below the turnover of Rs. 1.5 crore. So, if the Central administration had to do country-wide audit of 50,000 taxpayers, then 20% of this, i.e. 10,000 taxpayers would be those below the turnover of Rs. 1.5 crore whereas the remaining 40,000 taxpayers that the Central administration would audit would be units above the turnover of Rs. 1.5 crore. The Hon'ble Minister from Telangana stated that if horizontal division was not acceptable, then there could be a vertical division where 65% of taxpayers should be allocated to the States and 35% should be allocated to the Centre. The Hon'ble Minister from Punjab stated that there was nothing sacrosanct about the turnover threshold of Rs. 1.5 crore and there was a need to explore whether exclusive control for the States could be for a lower threshold, say Rs. 1 crore or even lower.

20. After these deliberations, the Council decided to defer a decision on this issue and to continue further discussion in the next meeting of the Council.

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

21. After discussion, it was agreed that the next meeting of the Council would be held on 11-12 December 2016 in New Delhi.

Agenda item 5: Any other agenda item with the permission of the Chairperson

22. Some Members of the Council desired to discuss the impact of demonetization. The Hon'ble Chief Minister of Puducherry stated that it was important to discuss how to overcome loss of revenue due to demonetization. The Hon'ble Minister from West Bengal stated that it was important to discuss as to how much revenue would be lost due to deceleration of economic growth both of the Centre and the States and whether Rs. 50,000 crore kept for compensation would be sufficient in the new situation. The Hon'ble Minister from Chhattisgarh stated that this question was hypothetical at this stage and that the Central Government was obligated to give compensation to the States. The Hon'ble Deputy Chief Minister of Delhi stated that the monthly expense of the State was about Rs 3,000 crore and if the revenue went down, they might not even have money to disburse salaries to their officials. He added that in this view, there was a need to understand the Centre's and States' readiness to deal with this situation. The Hon'ble Minister from Haryana stated that there were concerns but the GST Council was not the forum to discuss this issue. He also suggested that more time should be given to assess the impact of

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demonetization and even an increase in revenue could not be ruled out. The CCT, Andhra Pradesh stated that he had been directed by his Government to request the Council to clarify whether compensation under GST was to come only through cess or whether the Central Government would also be willing to compensate from the Consolidated Fund of India. The Hon'ble Minister from Punjab observed that as the Central Government had decided to compensate the States, the matter should be left to the Centre. The Hon'ble Minister from Uttar Pradesh stated that an assurance was needed that States would continue to be compensated even if there was a shortfall in the revenue collection. The Hon'ble Minister from Rajasthan observed that the Constitutional amendment itself had an assurance regarding the compensation. He suggested that demonetization should be discussed separately with the Hon'ble Union Finance Minister. The Hon'ble Minister from Kerala stated that States were also facing the crisis of currency and there was a need to exchange ideas on how to face the situation. He also observed that revenue of the States had taken a big hit and this also needed to be discussed. The Hon'ble Minister from Telangana observed that demonetization would lead to problems of finances for States due to loss of revenue in the coming few months. The Hon'ble Minister from Odisha suggested to release outstanding Central Sales Tax (CST) compensation at the earliest to tide over the problem. The Deputy Chief Minister of Gujarat observed that as an assured 14% rate of growth of revenue was decided for compensation, the States should not be very concerned. He observed that the GST Council had its own agenda and it should discuss those rather than discussing other issues. He emphasized that the Council was not like the Parliament and therefore, demonetization needed to be discussed separately. The Hon'ble Minister from Karnataka stated that it had already been decided that compensation shall be paid through cess but a relaxation of this decision would be needed. He also suggested that there should be a forum to discuss such other issues which might affect all States. The Hon'ble Chairperson stated that demonetization could not be discussed within the ambit of the Council but he agreed that the meeting of the Council could be closed an hour earlier and then, the impact of demonetization on the States would be discussed informally without the presence of the officers. The Council agreed to this suggestion.

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



(Arun Jaitely)
Chairperson, GST Council



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Annexure-1

List of Ministers who attended the 5th GST Council Meeting on 2-3 Dec 2016			
S No	State/Centre	Name of the Minister	Charge
1	Govt of India	Shri Arun Jaitley	Finance Minister
2	Govt of India	Shri Santosh Kumar Gangwar	Minister of State for Finance
3	Puducherry	Shri V. Narayanasamy	Chief Minister
4	Delhi	Shri Manish Sisodia	Deputy Chief Minister
5	Gujarat	Shri Nitin Patel	Deputy Chief Minister
6	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
7	Arunachal Pradesh	Shri Honchun Ngandam	Minister for Education & Libraries
8	Assam	Dr. Himanta B. Sarma	Finance Minister
9	Bihar	Shri Bijendra Prasad Yadav	Minister, Commercial Taxes & Energy
10	Chattisgarh	Shri Amar Agrawal	Minister, Commercial Tax
11	Haryana	Captain Abhimanyu	Minister for Excise & Taxation
12	Himachal Pradesh	Shri Prakash Chaudhary	Minister for Excise & Taxation
13	Jammu & Kashmir	Shri Haseeb Drabu	Finance Minister
14	Jharkhand	Shri C.P. Singh	Minister, Urban Development, Housing & Transport
15	Karnataka	Shri Krishna Byregowda	Minister for Agriculture
16	Kerala	Dr. Thomas Isaac	Finance Minister
17	Meghalaya	Shri Zenith M. Sangma	Minister for Taxation
18	Odisha	Shri Pradip Kumar Amat	Minister, Finance & Public Enterprises
19	Punjab	Shri Parminder Singh Dhindsa	Finance Minister
20	Rajasthan	Shri Rajpal Singh Shekhawat	Minister for Urban Development & Housing
21	Tamil Nadu	Shri K. Pandiarajan	Minister for School Education, Sports & Youth Welfare
22	Telangana	Shri Etela Rajender	Finance Minister
23	Tripura	Shri Bhanu Lal Saha	Finance Minister
24	Uttar Pradesh	Dr. Abhishek Mishra	Minister for Skill Development
25	West Bengal	Dr. Amit Mitra	Finance Minister


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Annexure – 2**List of Officials who attended the 5th GST Council Meeting on 2-3 Dec 2016**

S No	State	Name of the Officer	Charge
1	Govt of India	Shri Hasmukh Adhia	Secretary, GST Council & Dept of Revenue
2	Govt of India	Shri Najib Shah	Permanent Invitee to GST Council & Chairman, CBEC
3	Govt of India	Shri Arvind Subramanian	Chief Economic Adviser
4	Govt of India	Shri Ram Tirath	Member (GST), CBEC
5	Govt of India	Shri P.K. Jain	Principal Commissioner, (AR), CESTAT, CBEC
6	Govt of India	Shri B.N. Sharma	Additional Secretary, Dept of Revenue
7	Govt of India	Shri Vivek Johri	Principal Commissioner, Customs, Delhi, CBEC
8	Govt of India	Shri PK Mohanty	Advisor (GST), CBEC
9	Govt of India	Shri Alok Shukla	Joint Secretary (TRU), Dept of Revenue
10	Govt of India	Shri Upender Gupta	Commissioner (GST), CBEC
11	Govt of India	Shri Udai Singh Kumawat	Joint Secretary, Dept of Revenue
12	Govt of India	Shri Amitabh Kumar	Joint Secretary (TRU), Dept of Revenue
13	Govt of India	Shri G.D. Lohani	Commissioner, CBEC
14	Govt of India	Shri Manu Tentiwal	PS to MoS (Finance)
15	Govt of India	Shri Paras Sankhla	OSD to FM
16	Govt of India	Shri Kush Sharma	Additional PS to MoS, Finance
17	Govt of India	Shri D.S.Malik	ADG, Press, Ministry of Finance
18	Govt of India	Ms. Aarti Saxena	Deputy Secretary, Dept of Revenue
19	Govt of India	Shri Vishal Pratap Singh	Deputy Commissioner (GST), CBEC
20	Govt of India	Shri Ravneet Khurana	Deputy Commissioner (GST), CBEC
21	Govt of India	Shri Siddharth Jain	Assistant Commissioner (GST), CBEC
22	GSTC Sectt.	Shri Arun Goyal	Additional Secretary
23	GSTC Sectt.	Shri Shashank Priya	Commissioner
24	GSTC Sectt.	Shri Manish K Sinha	Commissioner
25	GSTC Sectt.	Ms. Himani Bhayana	Joint Commissioner
26	GSTC Sectt.	Shri G.S. Sinha	Joint Commissioner
27	GSTC Sectt.	Shri Santosh Kumar Mishra	Deputy Commissioner
28	GSTC Sectt.	Ms. Thari Sitkil	Deputy Commissioner
29	GSTC Sectt.	Shri Kaushik TG	Assistant Commissioner
30	Andhra Pradesh	Shri J. Syamala Rao	Commissioner, Commercial Tax
32	Arunachal Pradesh	Shri Marnya Ete	Commissioner, Industry
33	Arunachal Pradesh	Shri Tapas Dutta	Assistant Commissioner, VATS



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S No	State	Name of the Officer	Charge
34	Assam	Dr. Ravi Kota	Finance Commissioner
35	Assam	Shri Anurag Goel	Commissioner, Tax Principal Secretary-cum- Commissioner, CT
36	Bihar	Ms. Sujata Chaturvedi	Additional Secretary, Commercial Taxes
37	Bihar	Shri Arun Kumar Mishra	Assistant Commissioner
38	Bihar	Shri Ajitabh Mishra	Secretary, Finance & Commercial Tax
39	Chattisgarh	Shri Amit Agrawal	Commissioner, Commercial Taxes
40	Chattisgarh	Ms. Sangeetha P	Additional Commissioner, Commercial Taxes
41	Chattisgarh	Shri Khemraj Jhariya	Commissioner, VAT
42	Delhi	Shri H. Rajesh Prasad	Special Commissioner (Policy)
43	Delhi	Shri R.K. Mishra	Joint Commissioner (GST)
44	Delhi	Shri Anand Kumar Tiwari	Commissioner, Commercial Tax
45	Goa	Shri Dipak Bandekar	Commissioner, Commercial Taxes
46	Gujarat	Dr. P.D. Vaghela	Secretary (EA), Finance
47	Gujarat	Ms. Mona Khandhar	Additional Chief Secretary
48	Haryana	Shri Sanjeev Kaushal	Commissioner, Excise & Taxation
49	Haryana	Shri Shyamal Misra	Joint Commissioner, Excise & Taxation
50	Haryana	Shri Vidya Sagar	Principal Secretary, Excise & Taxation
51	Himachal Pradesh	Shri Tarun Kapoor	Commissioner, Excise & Taxation
52	Himachal Pradesh	Shri Pushpendra Rajput	Finance Secretary
53	Jammu & Kashmir	Shri Navin K. Choudhary	Commissioner, Commercial Taxes
54	Jammu & Kashmir	Shri P.I. Khateeb	Additional Commissioner, Commercial Taxes
55	Jammu & Kashmir	Shri P.K. Bhat	Joint Commissioner, Commercial Taxes
56	Jharkhand	Shri Ranjan Kumar Sinha	Deputy Commissioner, Commercial Taxes
57	Jharkhand	Shri Sanjay Kumar Prasad	Commissioner, Commercial Taxes
58	Karnataka	Shri Ritvik Pandey	Additional Chief Secretary, Taxes
59	Kerala	Shri P. Marapandiyan	Commissioner, Commercial Taxes
60	Kerala	Shri Rajan Khobragade	Assistant Commissioner
61	Kerala	Shri Jayakumar	Commissioner, Commercial Taxes
62	Madhya Pradesh	Shri Raghwendra Kumar Singh	Deputy Commissioner, Commercial Taxes
63	Madhya Pradesh	Shri Sudip Gupta	Commissioner, Commercial Taxes
64	Maharashtra	Shri Rajiv Jalota	Joint Commissioner, Sales Tax
65	Maharashtra	Shri Dhananjay Akhade	Commissioner, Taxes
66	Meghalaya	Shri Abhishek Bhagotia	Assistant Commissioner, Taxes
67	Meghalaya	Shri L. Khongsit	Commissioner, Taxes
68	Mizoram	Shri K. Sanglawma	Superintendent, Taxes
69	Mizoram	Shri H. Hrangthanmawia	

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S No	State	Name of the Officer	Charge
70	Nagaland	Asangba Chuba Ao	Commissioner, Taxes
71	Odisha	Shri Tuhin Kanta Pandey	Principal Secretary (Finance)
72	Odisha	Shri Saswat Mishra	Commissioner, Commercial Taxes
73	Odisha	Shri Sahadev Sahoo	Joint Commissioner, Commercial Taxes
74	Puducherry	Dr. V. Candavelou	Secretary (Finance & Commercial Tax)
75	Puducherry	Shri G. Srinivas	Commissioner, Commercial Taxes
76	Punjab	Shri D.P. Reddy	Additional Chief Secretary (Taxation)
77	Punjab	Shri Rajat Agarwal	Excise & Taxation Commissioner
78	Punjab	Shri Rajeev Gupta	Advisor, GST
79	Punjab	Shri Supreet Singh Gulati	Additional Commissioner
80	Punjab	Shri Pawan Garg	Assistant Commissioner
81	Rajasthan	Shri Alok Gupta	Commissioner, Commercial Taxes
82	Rajasthan	Shri Ketan Sharma	Deputy Commissioner, GST
83	Rajasthan	Shri Harshvardhan Singh Deval	Assistant Commercial Taxes Officer
84	Sikkim	Shri Manoj Rai	Joint Commissioner, Commercial Taxes
85	Tamil Nadu	Dr. C. Chandramouli	Additional Chief Secretary, Commercial Taxes
86	Tamil Nadu	Shri K. Gnanasekaran	Additional Commissioner, Taxation
87	Telangana	Shri Somesh Kumar	Principal Secretary (Revenue)
88	Telangana	Shri Anil Kumar	Commissioner, Commercial Taxes
89	Telangana	Shri D. Srinivas Rao	Deputy Commissioner, Commercial Taxes
90	Tripura	Shri M. Nagaraju	Principal Secretary (Finance)
91	Uttar Pradesh	Shri Mukesh Kumar Meshram	Commissioner, Commercial Taxes
92	Uttar Pradesh	Shri S.C. Dwivedi	Special Secretary
93	Uttar Pradesh	Shri Vivek Kumar	Additional Commissioner, Law
94	Uttarakhand	Shri Ranveer Singh Chauhan	Commissioner, Taxes
95	Uttarakhand	Shri Piyush Kumar	Additional Commissioner
96	West Bengal	Ms. Smaraki Mahapatra	Commissioner, Commercial Tax
97	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, Commercial Tax
98	GSTN	Shri Navin Kumar	Chairman
99	GSTN	Shri Prakash Kumar	CEO


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