GST COUNCIL : APEX BODY OF GST

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Article 279A of the Constitution provides supreme powers to GST Council to make recommendations on various matters covered under GST. It includes making of recommendations on taxes, cesses and surcharges to be levied or exemptions to be given by the Union, the States and local bodies on goods and services which may be subsumed under GST.

The supreme body for GST is the GST Council, as proposed in the 101st Constitution Amendment Bill. Newly added Article 279A of the Constitution deals with the formation and functions of GST Council as under :-

(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following Members, namely :-

   (a) Union Finance Minister ....Chairperson;

   (b) Union Minister of State in charge of Revenue or Finance......Member;

   (c) Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.......Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of Clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on -

   (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the Goods and Services Tax;

   (b) the goods and services that may be subjected to, or exempted from the Goods and Services Tax;

   (c) model Goods and Services Tax laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;

   (d) the threshold limit of turnover below which goods and services may be exempted from Goods and Services Tax;

   (e) the rates including floor rates with bands of Goods and Services Tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the Goods and Services Tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the Goods and Services Tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonized structure of Goods and Services Tax and for the development of a harmonized national market for goods and services.

(7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the Members present and voting, in accordance with the following principles, namely :-

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of -

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute -

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States, arising out of the recommendations of the Council or implementation thereof.

GST may be a game changer for the country but success of GST depends on sincere and hard work of GST Council

Working of Central and State Government is dependent on the recommendations of GST Council on various criteria to be fixed for Deemed Exports, Composite Dealers, Reverse Charge, General and Special Exemptions, Treatment of Continuous Supply of Goods or Services, Valuation of Taxable Supplies, Interest Rates, etc.

GST Council has to provide turnover criteria of composite dealers, specify goods and services to be exempted from tax, persons to be exempted from registration, transactions to be treated as deemed exports, tax deduction at source, tax collection at source, refunds, interest rates on delayed payments and delayed refunds, etc.

GST Council as covered under GST Model Law :-

Definitions

1. *The Council as Defined :* As per Section 2(34), "Council" means the Goods and Services Tax Council established under Article 279A of the Constitution.
2. *Recommendation on Regulations :* As per Section 2(81), "regulations" means the regulations made by the Board/Commissioner under any provision of the Act on the recommendation of the Council.
3. *Rules to be framed :* As per Section 2(86), "rules" means the rules made by the Central/State Government under any provision of the Act on the recommendation of the Council.
4. *Common Portal :* As per Section 2(25), "common portal" means the common GST electronic portal approved by the Central Government and State Governments, on the recommendation of the Council, for the specified purposes, as may be notified under this Act.

Reverse Charge Mechanism

1. *Reverse Charge under GST :* As per Section 2(85), "reverse charge", means the liability to pay tax by the person receiving goods and/or services instead of the person supplying the goods and/or services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify
2. *Categories of Goods/Services to be covered under Reverse Charge :* As per Section 7(3), the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services.

Recommendations to be provided by the GST Council

1. *Deemed exports :* As per Section 2(37), "deemed exports", as notified by the Central Government/State Government on the recommendation of the Council, refer to those transactions in which the goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange.
2. *Treatment of transactions :* As per Section 3(3), subject to Schedule II, the Central or a State Government may, upon recommendation of

the Council, specify, by notification, the transactions that are to be treated as -

i. a supply of goods and not as a supply of services; or

ii. a supply of services and not as a supply of goods; or

iii. neither a supply of goods nor a supply of services.

3. *Composite dealers :* As per Section 8(1), on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in a financial year does not exceed [fifty lakh of rupees], to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than one per cent. of the turnover during the year.

4. *General exemptions :* As per Section 10(1), if the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon.

5. *Special exemptions :* As per Section 10(2), if the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

6. *Continuous supply of goods :* As per Section 12(4), the Central or a State Government may, on the recommendation of the Council, specify, by notification, the supply of goods that shall be treated as continuous supply of goods;

7. *Continuous supply of services :* As per Section 13(4), the Central or a State Government may on the recommendation of the Council, specify, by notification, the supply of services that shall be treated as continuous supply of services;

8. *Recommendation on valuation of taxable supply :* As per Section 15(4)(v), the value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.

i. the consideration, whether paid or payable, is not money, wholly or partly;

ii. the supplier and the recipient of the supply are related;

iii. there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;

iv. business transactions undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;

v. such other supplies as may be notified by the Central or a State Government in this behalf on the recommendation of the Council.

9. *Exemption from registration :* As per Section 19(12), the Central or a State Government may, on the recommendation of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

10. *Interest on delayed payments :* As per Section 36(1), every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified, on the recommendation of the Council, by the Central or a State Government.

11. *Tax deduction at source :* As per Section 37(1), notwithstanding anything contained to the contrary in this Act, the Central or a State Government may mandate, -

    (a) a department or establishment of the Central or State Government, or

    (b) local authority, or

    (c) Governmental agencies, or

    (d) such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council,

    (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees ten lakh.

12. *Refund of tax :* As per Section 38(6)(d), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to the tax or interest borne by such other class of applicants as the Central or a State Government may, on the recommendation of the Council, by notification, specify.

13. *Interest on delayed Funds :* As per Section 39, if any tax refundable under Section 38 to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, interest at such rate as may be specified in the notification issued by the Central or a State Government on the recommendation of the Council shall be payable in respect of such refund from the date immediately after the expiry of the due date for sanction of refund under Section 38 till the date of refund of such tax.

14. *Tax collected at source :* As per Section 43C(1), notwithstanding anything to the contrary contained in the Act or in any contract, arrangement or memorandum of understanding, every electronic commerce operator (hereinafter in this section referred to as the "operator") shall, at the time of credit of any amount to the account

of the supplier of goods and/or services or at the time of payment of any amount in cash or by any other mode, whichever is earlier, collect an amount, out of the amount payable or paid to the supplier, representing consideration towards the supply of goods and/or services made through it, calculated at such rate as may be notified in this behalf by the Central/State Government on the recommendation of the Council.

15. *Qualifications of authorized representative :* As per Section 86(2)(d), "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being any person who has acquired such qualifications as the Central Government (or the State Government) may, on the recommendation of the Council, prescribe for this purpose.
16. *Appeals not to be filed in certain cases :* As per Section 92(1), the Board or the State Government may, on the recommendation of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the GST officer.
17. *Recommendation on framing rules under GST :* As per Section 132(1), the Central Government (or the State Government) may, on the recommendation of the Council, make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of GST Act.

tional Appellate Tribunal

1. *Constitution of the National Appellate Tribunal :* As per Section 81(1), the Central Government shall on the recommendation of the GST Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal).
2. *Qualifications, eligibilities, appointments, selection manner :* As per Section 81(6), the qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members shall be such as may be prescribed on the recommendations of the Council.
3. *Powers and functions of National Appellate Tribunal :* As per Section 81(7), the National President and the State Presidents shall exercise such powers and discharge such functions as may be prescribed on the recommendations of the Council.

istration

1. *Migration of existing taxpayers to GST :* As per Section 142(2), the certificate of registration issued to persons who are registered under any of the earlier laws, shall be valid for a period of six months from the date of its issue. However, this validity period may be extended for such further period as the Central/State Government may, on the recommendation of the Council, notify.
2. *Compulsory registration :* As per Schedule III, the Central Government or a State Government, on the recommendations of the Council, may notify person or class of persons who shall be required to be registered under GST Act irrespective of the turnover.