



**PARLIAMENT OF INDIA  
RAJYA SABHA**

**REPORT OF THE SELECT COMMITTEE**

**ON**

**THE CONSTITUTION  
(ONE HUNDRED & TWENTY-SECOND AMENDMENT) BILL, 2014**

**PRESENTED TO THE RAJYA SABHA ON 22<sup>nd</sup> July, 2015**



**Rajya Sabha Secretariat, New Delhi  
22<sup>nd</sup> July, 2015/Ashadha, 1937 (Saka)**



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\*TO BE APPENDED AT THE PRINTING STAGE

COMPOSITION OF THE COMMITTEE  
(Constituted on 12/05/2015)

1. Shri Bhupender Yadav – Chairman
2. Dr. Chandan Mitra
3. Shri Ajay Sancheti
4. Shri Madhusudan Mistry
5. Shri Mani Shankar Aiyar
6. Dr. Bhalchandra Mungekar
7. Shri Naresh Agrawal
8. Shri K. C. Tyagi
9. Shri Derek O'Brien
10. Shri A. Navaneethakrishanan
11. Shri Satish Chandra Misra
12. Shri K. N. Balagopal
13. Shri Dilip Kumar Tirkey
14. Shri C. M. Ramesh
15. Shri Praful Patel
16. Shrimati Kanimozhi
17. Shri Anil Desai
18. Shri Naresh Gujral
19. Mir Mohammad Fayaz
20. Shri D. Raja
21. Shri Rajeev Chandrasekhar

**SECRETARIAT**

1. Shri A. K. Singh, *Joint Secretary*
2. Shri Vimal Kumar, *Director*
3. Shri Sameer Suryapani, *Joint Director*
4. Shri Deepak Kalra, *Assistant Director*

(i)

## PREFACE

I, the Chairman of the Select Committee of the Rajya Sabha on The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014, to whom the aforesaid Bill, as passed by Lok Sabha on 6<sup>th</sup> May, 2015, was referred, having been authorised by the Select Committee to present the report on its behalf, present this Report of the Select Committee along with the Bill, annexed thereto.

2. The Committee heard the Secretaries, Ministry of Finance (Department of Revenue), Ministry of Law & Justice (Legislative Department), Ministry of Urban Development and Ministry of Panchayati Raj on the Bill. Apart from that, the Committee heard the views of Experts/Financial Institutions/ State Governments and other Stakeholders through this Bill.

3. While considering the Bill, the Committee took note of the following documents/papers placed before it:-

- (a) The Constitution (One Hundred & Twenty-Second Amendment), Bill, 2014 as passed by the Lok Sabha on 6<sup>th</sup> May, 2015;
- (b) Background Note on the Bill furnished by the Ministry of Finance (Department of Revenue);
- (c) Information/Papers on the Bill furnished by the Ministry of Law and Justice (Legislative Department);
- (d) Background note on the Bill furnished by the Ministry of Urban Development;
- (e) Background Note on the Bill furnished by the Ministry of Panchayati Raj;
- (f) Memoranda furnished by the State Governments;
- (g) Memoranda furnished by the Experts/other Stakeholders; and
- (h) Replies to Memoranda no. 1-58 furnished by Ministry of Finance (Department of Revenue)

4. The Committee heard the views of the Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) at its sitting held on 22<sup>nd</sup> May, 2015. The Committee then held its second meeting on 29<sup>th</sup> May, 2015 and heard the view of the representatives of the Ministries of Urban Development, Panchayati Raj, Finance (Department of Revenue) and Law & Justice (Legislative Department). On 16<sup>th</sup> June, 2015, the Committee heard the view of Shri K. M. Mani, Finance Minister, Government of Kerala and Chairman, Empowered Committee of State Finance Ministers; Shri Sumit Dutt Majumdar, Consulting Editor, TIOL & Former Chairman, CBEC; Dr. Rathin Roy, Director, National Institute of Public Finance and Policy; Prof. Pinaki Chakraborty, National Institute of Public Finance and Policy; Prof. Abhijit Sen, Former Member, Planning Commission; Shri Sagar Shah, International Liaison Partner, BDO, India LLP; Shri Satya Poddar, Ernst & young LLP; Prof. Arun Kumar, Centre for Economic Studies and Planning, School of Social Sciences, JNU, Delhi and representative of Voluntary Health Association of India (VHAI); National Association of Software and Services Companies (NASSCOM); Manufactures' Association of Information and Technology (MAIT); American Chamber of Commerce in India (ACCI); Cellular Operators Association of India (COAI). In this meeting, the Ministries of Finance (Department of Revenue) and Law and Justice (Legislative Department), also clarified points/issues raised by the Hon'ble Members on the Bill. The Committee held clause by clause consideration of the Bill at its sitting held on 3<sup>rd</sup>, 10<sup>th</sup> and 17<sup>th</sup> July, 2015. Representatives of Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) were also present in the meeting.

5. Apart from appropriate modifications in Enacting Formula and Clause I of the Bill, the Committee has also given some recommendations which are of critical importance but were not covered by the Bill. It is important that these recommendations are duly incorporated.

(iii)

6. The Committee also conducted its study visit to Chennai, Kolkata and Mumbai from 21<sup>st</sup> to 25<sup>th</sup> June, 2015, wherein the Committee heard the views of State Government of Tamil Nadu, Puducherry, Kerala, West Bengal, Maharashtra, Gujarat and Goa. The Committee also heard the views of the experts namely Dr. V. Bhaskar, Former Special Chief Secretary, Finance Department, Govt. of Andhra Pradesh; Dr. Partho Shome, Former Chairman, Tax Administration Reforms Commission and Dr. Asim Das Gupta, Former Finance Minister, Government of West Bengal. Apart from this the Committee also heard various stakeholders (list enclosed at **Annexure-I**)

7. The Committee considered and adopted the report in its meeting held on the 20<sup>th</sup> July, 2015.

8. The Committee wishes to express its thanks to the officials of the Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) concerned with the Bill for their cooperation and all the State Governments, Associations, Experts and other stakeholders for their valuable suggestions on the Amendment Bill.

9. The recommendations/observations of the Committee are set out at appropriate places in the report.

**New Delhi**

**22<sup>nd</sup> July, 2015**

**..... Ashadha, 1937 (Saka)**

**BHUPENDER YADAV**

*Chairman,*

*Select Committee on The Constitution*

*(One Hundred & Twenty-Second Amendment) Bill, 2014,*

*Rajya Sabha*

## Acronyms

1.	ASSOCHAM	The Associated Chambers of Commerce and Industry of India
2.	CII	The Confederation of Indian Industry (CII)
3.	CST	Central Sales Tax
4.	CGST	Central Goods and Services Tax
5.	CVD	Countervailing Duty
6.	EC	Empowered Committee
7.	FICCI	Federation of Indian Chambers of Commerce and Industry
8.	GST	Goods and Services Tax
9.	GSTN	Goods and Services Tax Network
10.	VAT	Value Added Tax
11.	IGST	Integrated Goods and Services Tax
12.	MCGM	Municipal Corporation of Greater Mumbai (MCGM)
13.	NIPFP	National Institute of Public Finance and Policy
14.	NCAER	National Council of Applied Economic Research
15.	NSDL	National Securities Depository Limited
16.	RNR	Revenue Neutral Rates
17.	SGST	State Goods and Services Tax
18.	SFC	State Finance Commission

# **REPORT**

## **CHAPTER- I**

### **INTRODUCTION**

1.1 The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 was passed by Lok Sabha on 6<sup>th</sup> May, 2015. The said Bill on a motion (**Annexure-I**) moved by the Minister of Finance, Corporate Affairs and Information and Broadcasting, was referred to the Select Committee for examination and the Committee was asked to submit its Report by the last day of the first week of the next Session(Monsoon Session).

1.2 The Bill contains 21 clauses on which the Committee has been asked to submit a report and these clauses proposes to, inter alia, amend Constitution of India by inserting new Articles-246 A, 269A and 279 A with respect to special provision to Goods and Services Tax, levy and collection of Goods and Services Tax in course of inter-state trade or commerce and Goods and Services Tax council, respectively. Apart from that, the bill also purports to amend Articles 248, 249, 250, 268, 269, 270, 271, 286, 366 and 368 of Constitution of India and amendment of the Sixth and the Seventh schedule of the Constitution as well. The Bill also seeks to repeal Article 268A of the Constitution.

1.3 By bringing this bill into effect, the Govt. of India intends to usher in fundamental systemic reforms in the indirect taxes dispensation currently being implemented in the country by integrating and harmonizing the tax structure across the country in the form of Goods and Services Tax (GST). The proposed amendments would subsume a number of indirect taxes presently being levied by Central and State Governments into GST thereby doing away the cascading of taxes and providing a common national market for Goods and Services. The aim to bring about these amendments in the Constitution is to confer simultaneous power on Parliament and State legislatures to make laws for levying GST simultaneously on every transaction of supply and Goods and Services.

1.4 This bill is a next step forward towards a comprehensive indirect tax reform in the country after the introduction of Value Added Tax (VAT). Though the indirect tax system in the country has been going through a series of reforms over the last two decades and one of them is the introduction of Value Added Tax called, CENVAT at the Central level providing credit of tax paid on inputs and capital goods upto the manufacturing stage and Subsequently, in 1994, a tax on services (commonly known as Service Tax) was introduced by the Centre. The Service Tax with the passage of time expanded its domain to cover more services and now applies to about 115 service categories which contributed growth in revenue from this tax. In 2004, the input tax credit scheme for CENVAT and Service Tax was merged to permit cross flow of credit across these taxes. As for the States, they have switched over from a multiple point Sales tax to a Value Added Tax (VAT) covering all transactions of sale of goods within the State up to the retail stage in a phased manner starting from 2005-06.

1.5 In spite of the fact that many of the aforesaid measures have been taken, goods and services continue to be bogged down with multiple indirect taxes at different stages of the value chain with significant tax cascading under the present indirect tax regime and therefore a need to introduce GST was strongly felt.

1.6 In international arena GST is known for its end user consumption tax. The broad objectives of introducing the Goods and Services Tax (GST) would widen the tax base through the coverage of multifarious economic activities into its ambit and by cutting down exemptions; mitigate cascading and double taxation and enabling better compliance through the lowering of overall tax burden on goods and services. By doing away with latent or embedded taxes, it would provide leeway for the competitiveness of domestic industry vis-à-vis imports and in international markets. Unifying the tax structure across States, the new scheme of tax regime would pave way for a common national market for goods and services.

1.7 The proposal for the introduction of GST was first mooted in the Budget Speech for the financial year 2006-07. Since then, detailed deliberations and negotiations were held with the Empowered Committee of State Finance Ministers (EC) on the topic. The 115th Constitutional (Amendment) Bill, 2011, for the introduction of GST was first introduced in the Lok Sabha in March 2011. The Bill was referred to a Parliamentary Standing Committee (PSC) which submitted its report in August 2013. The Bill however lapsed with the dissolution of the 15th Lok Sabha.

**Rationale behind moving towards GST:**

1.8 Presently, the Constitution empowers the Central Government to levy excise duty on manufacturing and service tax on the supply of services. Further, it empowers the State Governments to levy sales tax or value added tax (VAT) on the sale of goods. This exclusive division of fiscal powers has led to a multiplicity of indirect taxes in the country. In addition, central sales tax (CST) is levied on intra-State sale of goods by the Central Government, but collected and retained by the exporting States. Further, many States levy an entry tax on the entry of goods in local areas.

1.9 This multiplicity of taxes at the State and Central levels has resulted in a complex indirect tax structure in the country that is ridden with hidden costs for the trade and industry. Firstly, there is no uniformity of tax rates and structure across States. Secondly, there is cascading of taxes due to 'tax on tax'. No credit of excise duty and service tax paid at the stage of manufacture is available to the traders while paying the State level sales tax or VAT, and vice-versa. Further, no credit of State taxes paid in one State can be availed in other States. Hence, the prices of goods and services get artificially inflated to the extent of this 'tax on tax'.

1.10 The introduction of GST would mark a clear departure from the scheme of distribution of fiscal powers envisaged in the Constitution. The proposed dual GST envisages taxation of the same taxable event, i.e., supply of goods and services, simultaneously by both the Centre and the States.

1.11 GST will simplify and harmonise the indirect tax regime in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and industry more competitive, domestically as well as internationally. It is also expected that introduction of GST will foster a common or seamless Indian market and contribute significantly to the growth of the economy.

1.12 Further, GST will broaden the tax base, and result in better tax compliance due to a robust IT infrastructure. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of GST that would incentivize tax compliance by traders.

#### **Roadmap for the implementation of GST:**

1.13 Amendment of the Constitution: Government introduced on 19.12.2014 the Constitution (122<sup>nd</sup>) Amendment Bill, 2014 in the Lok Sabha for amending the Constitution of India to facilitate introduction of Goods and Services Tax (GST) in the country. The Bill has been passed by the Lok Sabha on 06.05.2015 and is pending in Rajya Sabha. After the Bill is passed in both the Houses of the Parliament by two-thirds majority, the Constitutional Amendment Bill will be sent to State Legislatures for ratification. The ratification by at least 50% of the State Legislature will be required before the proposed amendments are brought in effect.

1.14 Enactment of enabling legislation in the Centre and States: For the levy of CGST, SGST and IGST, a set of three laws would need to be enacted. CGST and IGST laws would need to be enacted by the Parliament, and the SGST law would have to be enacted by each of the State Legislatures.

#### **Status on design and mechanics of GST:**

1.15 The contours of GST are still evolving. Key aspects of GST like the tax rate, tax base, exemption limits, place of supply rules for services, appropriate IGST model etc. will be finalized on passage of the Bill. In this regard, the Empowered Committee of State Finance Ministers(EC) and the Department of

Revenue, GOI, have constituted several working groups and committees for drafting the GST Rules and processes as follows:-

- i. Committee on Dual Control, Threshold and Exemptions in GST Regime;
- ii. Committee on IGST and GST on imports;
- iii. Committee on Revenue Neutral rates for State GST & Central GST and Place of Supply Rules;
- iv. Committee to draft model GST Law;
- v. Committee to examine the Report of the sub-Group-I on Business Processes.

**Salient features of the Constitution (122<sup>nd</sup>) Amendment Bill, 2014:**

1.16 The salient features of the GST Bill as introduced in the Lok Sabha are as follows:-

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce to be collected by the

Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. It is further provided that every decision of the Council shall be taken 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:—

(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.

### **Deliberations**

1.17. The Committee held its first meeting on 22<sup>nd</sup> May, 2015. At its introductory meeting the Committee decided to chalk out its future course of action. As the State Governments were the main stakeholders, it was unanimously decided by the Committee to seek their written views on the Bill by 5<sup>th</sup> June, 2015. The Members were also requested to suggest the names of the Experts/stakeholders to be heard by the Committee.

1.18 In response thereto, the Committee received written memorandum from the State Governments of Madhya Pradesh, Bihar, Odisha, Himachal Pradesh, Uttar Pradesh, Punjab, Sikkim, UT of Puducherry, Maharashtra, Chhattisgarh, Goa, Gujarat, Kerala, West Bengal, Tamil Nadu, Karnataka and Assam.

The Committee heard the views of the Secretaries of Ministries of Finance (Department of Revenue) and Law & Justice (Legislative Department) on the Bill.

1.19 Secretary, Department of Revenue made a presentation before the Committee informing the Committee about a brief history and background of the Bill and the reason and purpose to bring about the constitutional Amendments proposed in the Bill.

1.20 The Committee held its second meeting on 29<sup>th</sup> May, 2015. As the Bill was going to have a wider implication on the Municipal Bodies and Gram Panchayat, the Committee invited Ministries of Urban Development and Panchayati Raj in the meeting. In addition to this, the Secretaries, Ministries of Finance (Department of Revenue) and Law and Justice (Legislative Department) had also been invited to be present in the meeting to clarify points/issues, if any, being raised by the Members on the Bill.

1.21 In his deposition before the Committee, Secretary, Ministry of Urban Development highlighted the importance of the Municipalities in the wake of urbanization and also thereby deteriorating the quality of life in the cities. He also emphasized that due to urbanization and their meager financial resources to cope with the demands of their present needs, these municipalities were facing unprecedented cash flow problems so the basic infrastructure in the cities has deteriorated to a great extent though on a comparable scale the life in cities has been more rewarding and comfortable than that of countryside. So, by way of the proposed constitutional amendment, the Ministry expected some positive changes in the present scenario whereby financial independence of the local bodies including gram panchayat could be realized in the new scheme of things and these bodies could match up and cope up with the demands and pressure being exerted on their resources and may not remain financially dependent on the sweet will of their respective states. In his deposition, before the Committee, Secretary, Panchayati Raj endorsed the views expressed by Secretary, Urban Development.

1.22. As the Bill was of very vast nature and has been described as a reform measure of unparalleled importance in the sphere of Indian Taxation regime in independent India, the Committee felt that State Governments being major stakeholders, their views would be crucial in preparation of Report on the Bill. Therefore, the Committee decided to undertake a study visit to Chennai, Kolkata and Mumbai from 21<sup>st</sup> to 25<sup>th</sup> June, 2015 to interact with the representatives of the various State Governments, Public and Private authorities/organisations/ financial institutions, etc on the Bill.

1.23 During its visit to Chennai, Kolkata and Mumbai, the Committee heard the views of the State Governments/ UTs of Tamil Nadu, Puducherry, Kerala, West Bengal, Maharashtra, Gujarat and Goa. Apart from this the Committee also heard the views of the experts namely Dr. V. Bhaskar, Former Special Chief Secretary, Finance Department, Govt. of Andhra Pradesh, Dr. Partho Shome, Former Chairman, Tax Administration Reforms Commission, Dr. Asim Das Gupta, Former Finance Minister, Govt. of West Bengal including the Industrial Houses i.e. CII, ASSOCHAM and FICCI on the Bill.

1.24 In addition to this, the Committee also heard the views of financial institutions/Associations/Organisations during the visit of the Committee. A list of the same is enclosed at **Annexure-II**

1.25 The Committee received 58 Memoranda from State Governments/Experts/other Stakeholders. These Memoranda were transmitted to the Ministry of Finance (Department of Revenue) for their comments and suggestions. While framing the specific and general recommendations on the Bill, the Committee has duly taken into consideration the suggestion made by the State Government/experts/other Stakeholders and the Department of Revenue on these memoranda.

## **CHAPTER-II**

### **CLAUSE BY CLAUSE CONSIDERATION**

#### **Clause 1**

2.1 This clause provides for short title and commencement of the Constitution (Amendment) Bill.

#### **Recommendation**

**2.2 This clause has been adopted with no change.**

#### **Clause 2**

2.3 This clause makes enabling provisions for the Union and States with respect to GST.

2.4 Sub-clause (1) of this clause seeks to provide that notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the

Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

2.5 Sub-clause (2) of the said clause seeks to provide that Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce with an explanation that that provision of this article in respect of goods and services tax referred to in clause (5) of article 279A, that is, on petroleum crude, high speed diesel, petrol, natural gas and aviation turbine fuel shall take effect from the date recommended by the Goods and Services Tax Council.

2.6 In respect of this clause, apprehensions were expressed by some Members that the clause may affect the powers of the State Governments mentioned under the concurrent list. In this regard, the Committee felt that their apprehensions were unwarranted as the clause will not affect any powers of the State Government under concurrent list.

2.7 As regards the amendments proposed in article 246A (1) to insert the words, "not exceeding 18 per cent" between "goods and services tax" and imposed by the Union or by such State" is concerned, "the Members moving the amendment stressed the need to keep GST rates moderate and reasonable so that consumers are not excessively burdened, and to this end proposed that the GST Council be bound by the Constitution to not exceed 18% as the rate for an adequately revenue-generating GST."

#### **Views of the Government**

2.8 In response thereto, the Ministry of Finance, Department of Revenue has stated that rates of GST cannot be fixed in the Constitution as this is a dynamic variable. The rates of GST would have to be recommended by the GST Council depending on various factors such as economic conditions, revenue buoyancy, etc. At the same time, every effort would be made by the GST Council to ensure that the rate of GST is reasonable. Further, there may be certain demerit goods such as

tobacco, or luxury goods, that may, if the GST Council so decides, attract a higher rate of GST. RNR was calculated by NIPFP before introduction of GST Constitution amendment Bill. NIPFP and the Committee headed by CEA are working out rates under GST as per provisions of Bill.

2.9 The Department of Revenue stated that Petroleum products have been included under definition of “goods and services tax” provided in proposed clause (12A) of article 366. An Explanation has been added in proposed article 246A to clarify that GST will not be levied on petroleum and petroleum products till a future date to be recommended by the GST Council. This has been done after FM’s meeting with State Finance Ministers on 15.12.2014 and is also as per the recommendations of the Empowered Committee to protect the revenue streams of the States.

2.10 With regard to providing for a maximum rate of GST in the Bill, the Department of Revenue mentioned that rates of GST cannot be fixed in the Constitution, as this is a dynamic variable. The rates of GST would have to be recommended by the GST Council depending on various factors such as economic conditions, revenue buoyancy, etc. To allay fears of revenue loss a provision of compensation to States has been provided in the Bill. At the same time, every effort would be taken to ensure that the rate of GST is reasonable. Further, there may be certain demerit goods such as tobacco, or luxury goods, that may attract a higher rate of GST.

#### **Views of the Stakeholders**

2.11 Most of the State Governments in their written replies have objected to bringing petroleum products under the ambit of GST. Another suggestion was to include Aviation Gasoline in that list.

2.12 However, the Experts/stakeholders were of the considered opinion that it needs to be emphasised that since a large part of the petroleum and petroleum products are important intermediate inputs, it is absolutely necessary to bring them

under the GST ambit sooner than later to eliminate cascading effect and its associated inefficient economic cost. Even in a GST regime, these could be taxed at higher rate if revenues have to be protected. It is well known that petroleum and petroleum products and alcohol together contribute around 40 to 45 per cent of VAT/Sales tax revenues of States. The share of excise duty collection from petroleum and petroleum products is substantial for Central Government as well. It appears that revenue consideration alone is holding back inclusion of these items in GST. It is necessary for the Bill to specify a specific date for inclusion of these items under GST especially when the economic efficiency benefit from inclusion is much more than the direct short run revenue impact to the Central and the State Governments.

**Recommendation**

**2.13 The clause has been adopted with no change.**

**Clause 3**

2.14 This clause seeks to make consequential amendments in article 248 of the Constitution in view of the proposed amendment in clause 2 of the Bill. Since Union has residuary power to make laws on subjects not mentioned in any of the Lists, it is proposed to make it clear that if anything is not covered specifically then, as per Constitutional Scheme, it would fall under article 248.

**Recommendation**

**2.15 This clause has been adopted with no change.**

**Clause 4**

2.16 This clause seeks to make consequential amendments in article 249 of the Constitution in view of the proposed amendment in clause 2 of the Bill. This amendment enables Parliament to make laws in national interest, if so required as per the procedure laid therein.

**Recommendation**

2.17 **This clause has been adopted with no change.**

**Clause 5**

2.18 This clause seeks to make consequential amendments in article 250 of the Constitution in view of the proposed amendment in clause 2 of the Bill. The amendment makes it clear that Union may legislate as in other cases if a proclamation of emergency is in operation.

**Recommendation**

2.19 **This clause has been adopted with no change.**

**Clause 6**

2.20 This clause seeks to amend article 268 of the Constitution to omit the duties of excise on medicinal and toilet preparations from the purview of the power of the Government of India in view of the proposed imposition of goods and services tax on goods and services.

**Recommendation**

2.21 **This clause has been adopted with no change.**

**Clause 7**

2.22 This clause seeks to omit article 268A of the Constitution as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003. The said article empowers the Government of India to levy taxes on services. As it is proposed to bring tax on services under GST, such a provision would no longer be required for the reason that the provision though enacted, it is yet to be notified so far.

### **Recommendation**

2.23 **This clause has been adopted with no change.**

#### **Clause 8**

2.24 This clause seeks to amend clause (1) of article 269 of the Constitution to insert after the words “consignment of goods” the words, figures and letter “except as provided in article 269A” in view of the new article 269A which provides for levy of goods and services tax on supplies in the course of inter-State trade or commerce and apportionment of such tax between the Union and the States in the manner provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

### **Recommendation**

2.25 **This clause has been adopted with no change.**

#### **Clause 9**

2.26 This clause seeks to insert a new article 269A which provides for goods and services tax on supplies in the course of inter-State trade or commerce which shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. It also provides that Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

2.27 As regards this clause, Members sought clarifications about the distinction between “supplies, sales and purchase; and consignment”.

2.28 Some Members suggested that that after 269A (1), the following proviso may be added:-

2.29 “Provided that the expression “supplies” shall not apply to goods and services supplied by one unit of a firm to another unit of the same firm under the same ownership in another location or State.

Provided further that if two or more firms are together engaged in the supply of the same end product, the expression “supplies” shall not apply to such transactions.”

#### **Views of the Government**

2.30 In this regard, the Ministry of Finance, Department of Revenue stated that while “sale” is for consideration, “consignments” are in the nature of branch transfers. “Supplies” would constitute both “sale” as well as “consignment” transactions. Further, since GST charged on supply of goods and services would be VATable, this would not have any cascading impact. Since input tax credit would be available for GST paid on both sales as well as consignments in the course of inter-State trade, there would be no cascading impact of levying GST on supplies of goods and services in the course of inter-State trade.

2.31 The words ‘on the recommendations of the GST Council’ have been added to proposed article 269A (1) vide this clause. This would ensure that the law made by Parliament for apportioning the proceeds of IGST between the Union and the States will be made on the recommendation of the GST Council. This has been done as per the recommendations of the Empowered Committee after their meeting in Shillong in November 2013.

#### **Views of the Stakeholders**

2.32 The stakeholders were of the view that proceeds of IGST shall be used for settlement of accounts among the States for flow of input tax credit in inter-State transactions, and in theory, there should be zero balance in the proceeds of IGST in a fiscal year. But, in practice, there may be a distinct possibility of a positive

balance in the proceeds of IGST at the end of a fiscal year. In that event, there should be a constitutionally appropriate mechanism for distribution of these remaining proceeds in a year, to be provided in terms of suitable provision in article 269A in clause 9.

**Recommendation**

**2.33 The Committee feels that since imposition of GST on the supplies of goods and services in the course of inter-State trade would not lead to cascading of taxes, hence the Clause has been adopted with no change.**

**Clause 10**

2.34 This clause seeks to amend clause (1) of article 270 of the Constitution to substitute the words, figures and letter “article 268, 268A and 269”, the words, figures and letter “article 268, 269 and article 269A” in view of the proposed amendments referred to above; to insert a new clause (1A) after the existing clause (1) of article 270 to provide that the goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).

**Views of the Stakeholders**

2.35 It was proposed by one of the State Government that the words “not apportioned” should be replaced with “not appropriated” in order to be in sync with the term used in the proposed Article 269A(1). Likewise, the word “distributed” should be replaced with the expression appropriated”.

**Recommendation**

**2.36 This clause has been adopted with no change.**

### **Clause 11**

2.37 Clause 11 of the Bill seeks to amend article 271 of the Constitution to insert after the words “in those articles”, the words “except the goods and services tax under article 246A”, with a view to put restrictions on the powers of Parliament to levy surcharge for the purposes of the Union on the GST. In other words, it provides that goods and services on which GST is levied shall not be subject to any surcharge under article 271.

### **Recommendation**

**2.38 This clause has been adopted with no change.**

### **Clause 12**

2.39 Sub-clause (1) of this clause seeks to provide for insertion of a new article 279A which empowers the President to constitute, by order, a Council to be called the Goods and Services Tax Council consisting of the Members referred to in sub-clause (2) of this clause.

2.40 Sub-clause (2) of the said clause seeks to provide that the Goods and Services Tax Council shall consist of the Union Finance Minister as Chairperson; the Union Minister of State in charge of Revenue or Finance as Member; the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as Members.

2.41 Sub-clause (3) of the said clause seeks to provide that 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.

2.42 Sub-clause (4) of the said clause seeks to provide that the Goods and Services Tax Council shall make recommendations to the Union and the States on 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; the goods and services that may be subjected to, or exempted from the goods and services tax;

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; the threshold limit of turnover below which goods and services may be exempted from goods and services tax; the rates including floor rates with bands of goods and services tax; any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster; 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 any other matter relating to the goods and services tax, as the Council may decide.

2.43 Some Members proposed that under clause 4 (c), among the "principles" to be considered by the GST Council while preparing GST laws the principle of "share of local bodies in revenue buoyancy and compensation for losses sustained through taxes subsumed" should be included as articles 243H and 243X provide for State Legislatures to, by law, ensure the "sound finances" of the local bodies. This would also enable State Finance Commissions set up under articles 243 I and 243 Y to provide for augmenting the share of local bodies in revenue buoyancy generated by the adoption of GST.

2.44 With reference to sub-clause (4) (g) which provides for "special consideration" to certain States, some Members proposed, in keeping with article 243 B (2), that "special consideration" may also be extended to States like Goa and Union territories like Puducherry by adding at the end of 4(g) " and any State or Union territory having a population not exceeding twenty lakhs".

2.45 Sub-clause (5) of the said clause seeks to provide that 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. These items have been kept out of GST to protect the revenue interest of the States.

2.46 Some members sought the inclusion in clause 12(5) of highly revenue-generating products like tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption within a period not later than five years so that India, within a few years, fulfills the fundamental GST objective of making the entire nation a single common market for all products.

2.47 Sub-clause (6) of the said clause seeks to provide that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

2.48 Sub-clause (7) of the said clause seeks to provide that one half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings so that the States have say in the matters of their interest.

2.49 Sub-clause (8) of the said clause seeks to provide that the Goods and Services Tax Council shall determine the procedure in the performance of its functions.

2.50 Sub-clause (9) of the said clause seeks to provide that 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 vote of the Central Government shall have a weightage of one-third of the total votes cast, and the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting. Sub-clause (10) of the said clause provides that No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of— any vacancy in, or any defect in, the constitution of the Council; or any defect in the appointment of a person as a member of the Council; or any procedural irregularity of the Council not affecting the merits of the case. Sub-Clause (11) of the said Clause provides that the Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.

2.51 In respect of this clause some Members proposed amendment that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the destination based taxation principle and need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

2.52 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-fourth of the total votes cast, and

(b) The votes of all the State Governments taken together shall have a weightage of three-fourth of the total votes cast, in that meeting. And the vote of each state shall have a weightage proportionate to the population of that State.

After 279A, add the following new article 279B:

2.53 (1) Parliament may, by law, provide for the establishment of a Goods and Services Tax Dispute Settlement Authority to adjudicate any dispute or complaint referred to it by a State Government or Governments of the Government of India arising out of a deviation from any of the recommendations of the Goods and Services Tax Council constituted under article 279A that results in a loss of revenue to a State Government or Governments or the Government of India or affects the harmonized structure of the Goods and Services Tax.

2.54 (2) The Goods and Services Tax Dispute Settlement Authority shall consist of a Chairperson and two other Members.

2.55 (3) The Chairperson of the Goods and Services Tax Dispute Settlement Authority shall be a person who has been Judge of the Supreme Court or Chief

Justice of a High Court to be appointed by the President on the recommendation of the Chief Justice of India.

2.56 (4) The two other members of the Goods and Services Tax Dispute settlement Authority shall be persons of proven capacity and expertise in the field of law, economics or public affairs to be appointed by the President on the recommendation of the Goods and Services Tax Council.

2.57 (5) The Goods and Services Tax Dispute Settlement Authority shall pass suitable orders including interim orders.

2.58 (6) A law made under clause (1) may specify the powers which may be exercised by the Goods and Services Tax Dispute Settlement Authority and provide for the procedure to be followed by it.

2.59 (7) Notwithstanding anything in this Constitution, Parliament may, by law, provide that no Court other than the Supreme Court shall exercise jurisdiction in respect of any such adjudication or dispute or complaint as is referred to in clause (1).

2.60 Explanation- For the purposes of this article, "State" includes a Union territory with Legislature.

### **Views of the Government**

#### Proposed article 279A (4)(c):

2.61 The GST Council would now make recommendations on the model GST laws, principles of IGST apportionment, and place of supply rules. This has been done as per the recommendations of the Empowered Committee after their meeting in Shillong in November 2013. It may not be appropriate for the GST Council or any other body to stipulate the share of local bodies in the revenues collected by the respective States. 73<sup>rd</sup> Amendment of the Constitution provides for setting up of State Finance Commissions which have been given the responsibility to make recommendations on principles which govern distribution

of finances between the States and local bodies i.e., Panchayats and Municipalities. Deficiencies, if any, in functioning of State Finance Commissions in individual States may have to be dealt with separately.

2.62 The Department further clarified that taxing powers of local bodies -- Panchayats and Municipalities -- are derived from Acts and laws passed by the State Legislatures. The State Legislatures, under Article 243H and 243X of the Constitution, are authorized to make laws, which are the taxes that the local bodies will levy. This power has not been interfered with and the current structure in the Constitution remains intact.

2.63 So far as other arrangements which are currently provided under the Constitution with regard to formation of the State Finance Commissions and with regard to devolution which the State Governments should make are concerned, they also remain intact in the Constitution. These have not been interfered with.

Proposed article 279A (4)(e)

2.64 To give flexibility to the States, the provision of 'bands' over the GST floor rates, to be recommended by the GST Council, has been introduced. Depending on the local situations and requirements, the States have the option to levy slightly higher tax within this band. This shall also enable the States to cushion the impact of any potential loss of revenue arising out of implementation of GST. The word "band" does not need to be defined in the Constitution but would need to be defined in the model State tax law or the SGST law and the CGST law which shall be recommended by the GST Council. This provision has been made as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendations of the Parliamentary Standing Committee.

Proposed article 279A (4) (f), (g)

2.65 Special category status has been granted to 11 States by the National Development Council comprising the Prime Minister, Union Ministers, Chief Ministers and members of the erstwhile Planning Commission (Now NITI Aayog). Provision of special category States is not based on population but on specific issues such as hilly and difficult terrain, strategic location along borders with neighbouring countries, economic and infrastructural backwardness, and non-viable nature of state finances. The proposed amendment shall mean inclusion of the State of Goa and UT of Puducherry in the list of States with special provisions. Goa has the highest per capita income in the country while Puducherry has fifth highest per capita income in the country. Neither of them have any of the specific problems listed in the criteria above.

Proposed article 279A (5)

2.66 Initially, as recommended by the Parliamentary Standing Committee on Finance and the Empowered Committee in its Bhubaneswar meeting in January 2013, 'petroleum products' had been proposed to be subsumed in GST. However, since taxes on petroleum products constitute a major portion of State revenues, many States expressed apprehension over possible revenue loss in case petroleum products are subsumed under GST. Hence, these products have been constitutionally brought under GST and it has been provided that they would not be subject to GST till notified at a future date on the recommendation of the GST Council. It may be mentioned that petroleum products constitute a major input in most manufacturing industries and their non inclusion would mean these industries would not be able to claim input tax credit for such inputs resulting in cascading of taxes and increased cost of production. It is expected that once GST regime is stabilised, the States may want to include petroleum under GST after two or three years itself. As per the proposed amendment, the GST Council shall not be able to make any recommendation before five years to include petroleum products under GST. Hence, it is better to keep the option open for Council to decide rather than binding the GST Council for five years.

2.67 Further, the Bill leaves it to the GST Council to recommend the date on which GST shall be applicable on petroleum products. Since the States would have 2/3<sup>rd</sup> vote share in the Council, if the States do not want GST to be imposed on petroleum products, in any case it would not be possible for GST to be imposed on petroleum products as long as the States do not agree. Further, losses, if any suffered by the States, will be compensated by the Centre.

Proposed article 279A (9)

2.68 The structure of GST Council represents the federal nature of governance in this country. This has been done as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendations of the Parliamentary Standing Committee. This provision has been consciously adopted to ensure the federal balance in the functioning of the GST Council, and also to enhance co-operative federalism. The existing pattern of vote-share in the GST Council ensures that no decision can be taken by the Council either by the Centre or the States acting on their own. Hence, neither the States nor the Centre alone can take a decision in the Council. Providing 3/4th weightage to the States would upset the federal balance between the Centre and the States. Presently, in the concurrent list, in case of any difference between Central and State legislation, the Central legislation prevails. The present weightage of votes in the GST Council would ensure that neither the Centre nor the States are able to take a decision without the support of the other. In other words both would enjoy a veto.

2.69 Further, with Centre holding only 1/3<sup>rd</sup> of the votes, the Centre would require support of 20 States/Union Territories to get a resolution passed. This shows that Centre would need co-operation of States to get any decision taken at the GST Council.

Proposed article 279A (11)

2.70 The hitherto proposed article 279B for the creation of a GST Dispute Settlement Authority *has been omitted*, and a provision has been made in Article

279A itself empowering the GST Council to decide about the modalities to resolve the disputes arising out of its recommendations. The States were apprehensive that the proposed GST Dispute Settlement Authority under proposed article 279B would affect the fiscal powers of the States and the Union. Hence, this provision has been done away with. This has been done as per the recommendations of the Empowered Committee after their meeting in Bhubaneswar in January 2013, and also the recommendation of the Parliamentary Standing Committee.

2.71 It may further be mentioned that Article 279A (11) only provides that GST Council may decide the 'modalities' to resolve disputes arising out of its recommendations. The 'modalities' could include any dispute resolution mechanism which could be *inter-alia* negotiation, mediation, arbitration or even a judicial authority as deemed appropriate by the GST Council depending on the nature of dispute before it. Thus, as per the proposed Bill, the GST Council shall, by itself, not be resolving the disputes but decide on the modalities for resolving the disputes.

#### **Views of the Stakeholders**

2.72 The Stakeholders were of the view that vote of the Central Government and State Government shall have the weightage of 1/4<sup>th</sup> and 3/4<sup>th</sup> respectively otherwise it would be difficult to get the proposals approved, in the constitution of GST Council instead of the words 'Union Minister of State in charge of Revenue or Finance' it should be 'Ministers' in charge for these functions, as these positions are not explicitly mandated in the Constitution, No dispute resolution mechanism can be meaningful and effective without an explicit linkage between the empowerment clause for the levy of GST (Articles 246A and 366(12A)) and the GST Council recommendations, Goods and Services Tax Council shall be guided by the destination based taxation principle and need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services, Requisite provisions may be incorporated to make the decisions of the GST Council binding on the States and

the Union, Include the State/UT of Goa and Puducherry in Article 279A (4) (G), The Threshold limit for applicability of GST may be fixed at Rs. 50 Lacs, GST Rate may be kept in the range of 16-18%, Tax rate on Goods and Services is to be same to avoid disputes, Tax on interstate supply of goods from one state to other of the same company may be exempted from the purview of GST, The Input taxes paid by the exporters are to be refunded automatically, etc.

### **Recommendation**

**2.73 After having deliberated on the issue of finances of local bodies, the Committee strongly feels that the revenues of local bodies need to be sustained and protected for ensuring that standards of local governance are maintained. The Committee, thus, strongly recommends that the State Governments take adequate measures to ensure that adequate revenues flow to the local bodies, and their resources are not adversely affected. The Committee noted that Article 243H and 243X contain provisions for State Legislatures to authorize Panchayats and Municipalities to collect and appropriate taxes in the State list. The Committee further noted that Article 243I and 243Y provide for setting up of State Finance Commissions to make recommendations regarding devolution of funds to local bodies. The Committee noted that the above provisions notwithstanding, local bodies find managing their resource requirements quite challenging.**

**2.74 In light of above, with respect to Article 279A 4(e), the Committee strongly recommends that the word ‘band’ used in the proposed Article may be defined in GST laws. The Committee recommends the following definition of ‘band’:**

***“Band” : Range of GST rates over the floor rate within which Central Goods and Service Tax (CGST) or State Goods and Services Tax (SGST) may be levied on any specified goods or services or any specified class of***

*goods or services by the Central or a particular State Government as the case may be.*

2.75 With respect to Article 279A(5), taking note of the provision that inclusion of petroleum products into GST can take place only on recommendation of GST Council which could happen only with the consent of both the Centre and the States, the Committee recommended that the clause be adopted with no change.

2.76 The Committee is aware that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

2.77 In view of the clarifications submitted by the Department of Revenue and Legislative Department, the Committee finds no merit in disturbing the voting pattern proposed in the Bill, as the same has been worked out on a formula where no one is at an disadvantageous or dominating position be it Centre or States. Moreover, under clause 2 Parliament and the Legislature of every State shall have power to make laws with respect to GST simultaneously.

2.78 In the GST Council, all the decisions have to be taken collectively by the Centre and States and in order to take decision on any issue 75% votes are necessary. So, in order to strike a fine balance Centre vote share has been kept at 1/3<sup>rd</sup> and that of the States at 2/3<sup>rd</sup>. In that backdrop, the Committee recommends that these amendments may not be necessary since our Constitution is a federal Constitution and so, it is necessary to make the provisions providing for a manner that disallow the dominance of one over the other. Keeping this in view, the voting formula has been worked out. Hence, the clause has been adopted with no change.

**2.79 The Committee, having noted the point mentioned by the Department of Revenue that the GST Council shall decide only the ‘modalities’ to resolve disputes, did not agree to recommend inclusion of Article 279B as was proposed in Constitution(115<sup>th</sup> Amendment) Bill, 2011.**

### **Clause 13**

2.80 This clause seeks to amend clauses (1) and (2) of article 286 of the Constitution which is a consequential amendment in view of the proposed amendments in clause 2 of the Bill.

2.81 One Member proposed insertion of a new clause (1A) in article 286 of the Constitution to provide as under-

“No law of a State shall impose, or authorize the imposition of, any restriction on reimbursement of a tax levied under the law of a State in respect of any supply of goods or of services of both inside the State, when such goods or services or both are supplied in the course of inter-State trade or commerce or export outside the territory of India.

Explanation.– For the purpose of this clause, consumption or use of goods or services or both whether partly or wholly, in supply of any other goods or services or both in the course of inter-State trade or commerce or export outside the territory of India, shall be deemed to be supply of goods or services or both in the course of inter-State trade or commerce or export outside the territory of India to the extent of such consumption or use.”

### **Views of the Government**

2.82 Article 286 put restriction on the imposition of tax on the sale or purchase of goods if such sale or purchase takes place outside the States or in the course of import of goods into or export of goods outside the territory of India. By making amendments so as to substitute the words “sale or purchase of goods” the words

“supply of goods or services or both”, the restrictions would continue to apply any IGST or CGST and therefore it may not be necessary to go for the above amendment.

2.83 Some Members sought the definition in the Constitution amendment Bill itself of the term "supply" in proposed clause I (A) of article 286.

### **Recommendation**

**2.84 The term 'supply' would be defined in the various GST laws relating to CGST and SGST. Hence, the Committee feels that it would not be appropriate to insert the definition of supply in this clause. This clause has been adopted with no change.**

### **Clause 14**

2.85 Clause 14 of the Bill seeks to insert a new definition clause (12A) in article 366 of the Constitution to define the words “goods and services tax”. It also seeks to insert two clauses (26A) and (26B) to define the words “Services” and “State”, respectively.

2.86 Some Members proposed amendments in clause (12A) to delete the word “any” and the words “except taxes on the supply of alcoholic liquor for human consumption so as to progressively ensure a true common market for all goods”.

2.87 In (26A) delete “anything other than goods” and substitute with “commercial transactions in intangibles so as to avoid the circular definition of 'services' meaning 'anything other than goods.'”

### **Views of the Government**

2.88 In this regard the Ministry of Finance, Department of Revenue has stated that term ‘services’ has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes.

2.89 On the issue of inclusion of Petroleum and petroleum products under GST constitutionally, Department of Revenue in their written submission stated that:

2.90 Petroleum and petroleum products have been included under GST constitutionally by keeping only “alcoholic liquor for human consumption” outside of definition of “goods and services tax” given in newly introduced clause (12A) of article 366. However, GST would be leviable on these products only w.e.f. the date recommended by the GST Council. This has been done taking into consideration the concern expressed by Empowered Committee in their various meetings about the likely loss of Revenue, if the Petroleum products are included in GST. Parliamentary Standing Committee had recommended that there should be no exclusions from GST provided under the Constitution Amendment Bill.

2.91 The Department of Revenue mentioned that petroleum products constitute a major input in most manufacturing industries and their non inclusion would mean these industries would not be able to claim input tax credit for such inputs resulting in cascading of taxes and increased cost of production. It is possible that once GST regime is stabilised, the States may want to include petroleum under GST after two or three years itself. In such a situation, since petroleum products have been included Constitutionally, including petroleum products under GST would not require a Constitution amendment.

#### **Views of the Stakeholders**

2.92 The Experts/Stakeholders were of the considered views that:

#### **Definition of Services**

2.93 “Supply of Services’ means any business activity which is not supply of goods.”

2.94 In view of Article 246A empowering both Centre and States to levy tax on supply of goods and services, it is the view that the Clause (29A) of Article 366 may be considered for deletion as this would become redundant.

## **Petroleum**

2.95 The international practice is to include petroleum in the GST base, and then apply a supplementary excise on selected petroleum products (e.g., petrol and diesel). A credit is allowed for the GST portion of the tax to commercial or industrial use of the fuels, but not for the supplementary excise. It would be advisable for India also to adopt this structure.

2.96 Thus, it is recommended that the provisions limiting the scope of GST (to exclude petroleum products) be deleted. Specifically, Explanation to Article 246A is redundant. The GST Council has the powers in any case to exclude any products from the GST base, if it so decides.

## **Goods and Services Tax**

2.97 It is advisable to change the definition of 'goods and services tax' in Article 366 (12A) as follows. Further, goods in Article 366(12) need to be redefined to include real property.

2.98 "goods and services tax" means a multi-stage destination-based value added tax on supply of goods, or services, or both, and levied as per the framework recommended by the GST Council.

2.99 "goods" includes, for purposes of the goods and services tax, all materials, commodities, articles, and immovable property

## **Recommendation**

**2.100 Endorsing the view of the Department, the Committee feels that 'services' has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes. Further, having noted the points mentioned by the Department of Revenue regarding inclusion of petroleum products under GST, the clause has been adopted with no change.**

### **Clause 15**

2.101 This clause seeks to amend article 368 of the Constitution in view of the proposed amendments referred to in clause 12 of the said Bill so as to apply the special procedure provided in the proviso to clause (2) thereof which requires the ratification of the Bill by the Legislatures of not less than one half of the States in addition to the method of voting provided for amendment of the Constitution.

#### **Recommendation**

2.102 **This clause has been adopted with no change.**

### **Clause 16**

2.103 This clause seeks to amend the sub-paragraph (3) of paragraph 8 of the Sixth Schedule to the Constitution with a view to empower the District Council for an autonomous district to have the power to levy and collect taxes on entertainment and amusements within such district.

#### **Recommendation**

2.104 **This clause has been adopted with no change.**

### **Clause 17**

2.105 This clause seeks to amend the Seventh Schedule of the Constitution to substitute the items under entry 84 of the List I and to omit entries 92 and 92C; to omit entries 52 and 55 of List II and substitute the entries 54 and 62 of List II of the Seventh Schedule to the Constitution. These amendments are consequential to the insertion of new article 246A.

2.106 With a view to progressively promoting a common market in all goods and services, some Members proposed amendment to Entry 84 of Union List as follows:

- (g) sale and consumption of electricity'
- (h) alcohol for human consumption.

2.107 Some Members also sought clarifications as it does not figure in the Constitution (a) (ii): What is entry 92C?

### **Recommendation**

**2.108 Regarding the aforesaid Entry, the Committee is of the view that Entry 92C was inserted by the Constitution (Eighty-Eighth Amendment) Act, 2003 to empower the Union to impose service tax on certain services read with article 268A of the Constitution.**

**2.109 Notwithstanding, the service tax levied under the Finance Act, 1994 were continuing as such. The amendment was carried out in the Constitution but the provision was never brought into force. Since Parliament has enacted the said constitutional provision and as such the provision stands as the part of Constitution; and therefore, unless it is omitted by a Constitution Amendment Act by Parliament, it will continue to sit in the Constitution. On the need for formal repeal, the Law Commission, in its One Hundred and Forty-eighth Report on "Repeal of Certain Pre-1947 Central Acts", has observed that "the statues, unlike human beings, do not die a natural death, with the possible exception of statute whose life is pre-determined by the Legislature at the time of their enactment. A statute, unless it is expressly enacted for a temporary period, survives until it is killed by repeal. To this extent, statutes enjoy immortality." Therefore, it is necessary to omit the said provision to ward of any future doubts about GST.**

(iii) After Clause 17(b)(i), **add:**

Entry 53 shall be omitted

(iv) Further amend entry 54 to add between “alcoholic liquor for human consumption,” and “but not including sale” the words: and tobacco and tobacco products and sale and consumption of electricity,

(v) Further amend Clause 17(b)(iv) to read as follow:

2.110 “Entry 62. Taxes on entertainment and amusements and any other taxes, duties, tolls, levies, or royalties devolved by State legislatures to institutions of local self-government under articles 243 H and 243 X to the extent levied, collected and appropriated by a Panchayat or a Municipality or a Regional Council or a District Council”.

### **Views of the Government**

2.111 Inclusion of electricity under GST has not been envisaged ever since the First Discussion Paper was published in 2009 on GST. Neither the Empowered Committee, nor the Parliamentary Standing Committee ever recommended inclusion of electricity under GST. Taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution. Entry 53 of List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122<sup>nd</sup> Amendment) Bill, 2014.

2.112 Further, in the case of alcohol, the States have been consistently opposing the inclusion of alcohol under GST. Even in the First Discussion Paper, it had been recommended that alcohol be excluded from GST. This is also as per the recommendations of the Empowered Committee.

2.113 Under the proposed Constitution scheme, the Centre has the power to tax one demerit good (tobacco), while the States have the power to tax the other demerit good (alcohol). Tobacco, unlike alcohol has been subsumed in GST, and

the States will have the right to levy SGST on it. This arrangement was specifically recommended in this light where alcohol, being the other demerit good, has not been subsumed into GST, and States retain the powers to levy excise duty as well as sales tax on alcohol. Centre has no powers *vis-à-vis* alcohol.

### **Views of the Government**

2.114 As regards petroleum and petroleum products, the views of the Department have been recorded while dealing with the proposed Article 279A (5).

2.115 In their written replies, the Department of Revenue stated that all forms of Entry Tax have been subsumed under GST by omitting Entry 52 of List II (State list) of Seventh Schedule. The Parliamentary Standing Committee had recommended Entry tax to be subsumed under GST. At the same time, a Constitutional commitment has also been given to the States that their losses caused due to introduction of GST would be compensated for five years. The Department has also mentioned that provision of Entry tax is an impediment to creation of common market, which is a goal of GST, as it acts like a tariff barrier on movement of goods into a local area and discriminates between goods produced within and outside the area. It impedes free movement of goods and also increases compliance cost for business.

### **Views of the Stakeholders**

Clause 17 (b) (ii) in List II-State List

2.116 For Entry 54, the following entry shall be substituted, namely:-

“54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel, tobacco and tobacco products and alcoholic liquor for human consumption, but not including

sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

2.117 State Governments may be allowed to levy higher taxes on tobacco and tobacco products; betting and Gambling activity may be kept out of the purview of GST; retain Entry 52 and Omit Entry 55; Insert a new Entry 54A "other polluting goods and services to be notified by GST Council.

2.118 Clause 17 (b) (iii) in List II-State List

2.119 "55. Taxes on advertisement other than advertisements published in the newspapers and advertisements broadcast by radio or television,"

### **Electricity**

2.120 Electricity must form an integral part of the GST base, as is any other normal good. It is therefore suggested that electricity duty also be subsumed within the GST framework. This approach can reduce the cost of electricity by 20%, significantly enhancing the competitiveness of our domestic manufacturing sector.

2.121 The GST need not be a full replacement of the electricity duty. Only a part of the duty can be replaced by GST, which should be fully creditable to industrial/commercial users of electricity.

2.122 Given that Article 246A empowers the Union and States impose GST, notwithstanding anything contained in articles 246 and 254, GST can be extended to electricity even if Entry 53 in List II – State List (Taxes on the consumption or sale of electricity) is not omitted. Continuing this entry would allow States the flexibility to levy a supplementary tax to electricity in addition to GST, if they consider it necessary or desirable.

### **Real Estate**

2.123 Real Estate merits inclusion in GST from another significant perspective, i.e., to bring transparency to the sector. Real estate is known to be the breeding ground of corruption. Bringing this sector into GST will significantly reduce tax evasion through more efficient transactions tracking and improved enforcement and compliance.

2.124 For inclusion of real Estate in the GST base, the definition of 'goods and services tax' under Clause 14 of the Bill should be broadened to include property, movable or immovable as suggested below.

2.125 Given the practice in other jurisdictions to levy supplementary taxes in the form of land transfer taxes, levy stamp duties, and registration fees on real property transactions, the existing entries in the Union and State Lists relating to these taxes on land and buildings can be left unchanged. The tax rates and base for these levies can be adjusted (including reducing them to zero) as per the recommendations of the GST.

### **Alcohol**

2.126 Any explicit restrictions on the application of GST to alcohol in the Constitution itself are thus not appropriate. Accordingly, a change in the definition of GST in Article 366(12A) is recommended.

2.127 Alcohol should be given the same treatment as is being given to Petroleum and its products. In that case, the clause 'except taxes on the supply of the alcoholic liquor for human consumption' would have to be deleted from the definition of GST at Clause 12A of the Bill. Further, as has been done in the case of Petroleum and its products, the levy of GST on Alcohol may be postponed to a later date to be decided by the GST council. Till that time, the States will continue to levy State Excise duty and State VAT on Alcohol. The advantage would be that no further amendment of the Constitution would be needed, when the States agree to bring in Alcohol within GST at a later date.

## **Entertainment Tax**

2.128 The Bill proposes that local levies such as octroi and entry taxes should be fully subsumed under the GST. This is necessary to ensure free flow of goods and services within the common market of India. This is equally true of the entertainment tax. The funding needs of the local bodies can be better addressed through vertical devolution of State GST revenues to local bodies, as opposed to such nuisance taxes which are difficult to administer and comply with, and do not yield much revenue. The quantum of revenues earned by local bodies from entertainment tax levied and collected by them is insignificant and constitutes a miniscule fraction of their budgets. For smaller towns and cities, the revenues from the tax might not cover even the cost of administration and enforcement.

2.129 It is recommended that Entry 62 in List II – State List be omitted.

## **Entry 84**

2.130 List I Union List, the powers of the Union to levy supplementary taxes on petroleum and tobacco are limited to excise on the manufacture or production of these goods. By contrast, the powers of States for levy of supplementary taxes extend to purchase or sale of the specified products. It is desirable that the Union powers also be likewise extended to sale or purchase of the specified goods.

2.131 Purchase Tax/Entry Tax/Octroi are to be allowed as input Tax credit.

## **Recommendation**

**2.132 The Committee is of the view that the entry in the list II- State List empowers the State Government to make laws in respect of the subjects mentioned therein. The Committee is also of the considered view that taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution. Entry 53 of the List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122nd Amendment) Bill, 2014. The**

**Committee also noted the rationale for the provisions relating to alcohol for human consumption and tobacco as provided by the Department of Revenue. Hence, the clause has been adopted with no change.**

### **Clause 18**

2.133 Sub-clause (1) of this clause seeks to provide that an additional tax on supply of goods, not exceeding one per cent in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

2.134 Sub-clause (2) of this clause seeks to provide that the net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.

2.135 Sub-clause (3) of this clause seeks to provide that the Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

2.136 Sub-clause (4) of this clause seeks to provide that Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

2.137 Some Members of the Committee proposed to delete this clause because under clause 19, 100 percent compensation be provided for a period not less than five years. In view of guaranteed compensation for any loss incurred by any State or Union Territory, there is no need to levy a market-distorting 1% additional levy.

### **Views of the Government**

2.138 In this regard the Ministry of Finance, Department of Revenue has explained that since GST is a destination based tax, the manufacturing States were apprehensive of their loss in revenues. To allay their fears, and to bring them on board, a provision has been made for the levy of 1% additional tax on the supply of goods. This tax shall be credited to the exporting State. Since it is expected that in the medium and long run, the revenues of all the States would increase due to better compliance and enforcement under GST, this provision of 1% additional tax has been made only for the first two years. The GST Council would have the power to recommend continuation of this tax at the end of 2 years, if it so deems fit. This was decided in view of the consultations with State Finance Ministers by FM on 15.12.2014. It is also in line with the recommendations made by the Empowered Committee in their various meetings for the protection of the revenues of the manufacturing States. Clause 18 in itself does not make any distinction of a “manufacturing state” and this tax shall be levied by all States who send their produce outside the State.

### **Views of the Stakeholders**

- In place of “An Additional Tax” in Clause 18 (1) and “additional tax” in Clause 18(2), it may be “Central Sales Tax.” Instead of introducing a new additional tax, the same purpose may be served by “Central Sales Tax,” which is already known to the Centre, the States, in industry, trade and others.
- 1% levy against the spirit of GST.
- Any specific reference to a period of two years would be arbitrary and unnecessary. The portion, “a period of two years”, may therefore be considered for deletion.
- It is important to recognize that GST is a destination based tax levied at the point of consumption. Introduction of an additional tax on

supply of goods, not exceeding one per cent for two years would make the tax partly origin based and partly destination based. Allowing continuation of origin based tax system would be a major distortion and continuation of significant tax exportation from the richer producing states to the poorer consuming states.

- In fact, this method of compensating the manufacturing states through one percent origin based tax is not at all necessary, since in any case the Bill itself envisages compensation by Centre for the states in case of revenue loss. Therefore, the view is that this provision would need to be deleted.
- Since, the Bill already contains a provision for compensating the States for any losses under GST for five years, it would result in no net revenue gain to the States where they indeed suffer a revenue loss under the GST and are recipient of compensation from the Centre. It would effectively mean an extra profit to the States who gain revenues from the GST. If so, it does not serve its intended purpose. These concerns warrant a removal of the 1% origin based tax.
- Restricting the levy only to 2 years, with no powers to extend the same for any further period. Restricting levy only to interstate sale and purchase of goods. This means that no such additional tax should be levied on interstate supply of goods otherwise than by way of sale and purchase.

### **Recommendation**

**2.139 The Committee feels that the provision of 1% additional tax in its present form is likely to lead to cascading of taxes. Therefore, the Committee strongly recommends that in the concerned GST law, an explanation should be given that for the purpose of Clause 18, the word 'supply' would mean:**

*Supply: "All forms of supply made for a consideration".*

## Clause 19

2.140 This clause seeks to provide that Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

In this clause some Members proposed amendments by adding the words “100 per cent” in the second line between “provide for” and “compensation to the States” and by **deleting** “such period which may extend to five years” and **substituting** with “a period not less than five years” **and to insert a new clause in clause 19 that–**

2.141 19(1) To this end, there shall be established a Goods and Services Compensation Fund under the administrative control of the Goods and Services Tax Council into which the Central Government shall deposit the Goods and Services Tax Compensation.

2.142 **By inserting** the words, “as well as the panchayats and Municipalities through States” between the words “to the States” between the words “to the States” and “for the loss of the revenue”

2.143 Further, some of the Members proposed amendments that for the words “Parliament may”, the words “Parliament shall” should be substituted.

2.144 Some Members proposed the addition of the words “as well as the Panchayats and the Municipalities through State Legislatures” so as to ensure the “sound finances” of the local bodies while respecting the Constitutional order that as local bodies are in the State List it is for State Legislatures, by law, to “authorise a Panchayat/Municipality to levy, collect and appropriate” such taxes.

### **Views of the Government**

2.145 Regarding the said amendments the Ministry of Finance, Department of Revenue has stated that it may not be appropriate to stipulate that States would compensate the local bodies for any losses caused to them. 73rd Amendment of the Constitution provides for setting up of State Finance Commissions which have been given responsibility to make recommendations on principles which would govern distribution of finances between the States and local bodies i.e., Panchayats and Municipalities. Deficiencies, if any, in the functioning of State Finance Commissions in individual States may have to be dealt with separately.

2.146 Further, one of the Members proposed amendments that for the words “Parliament may”, the words “Parliament shall” should be substituted.

2.147 Regarding the proposed amendment to substitute the words “for a period of not less than five years”, in place of the words “which may extend to five years”, the Ministry of Finance, Department of Revenue has stated that to bridge the trust deficit with the States, and to ensure no revenue loss to them, it has been Constitutionally provided that the States shall be compensated for five years for their losses caused due to introduction of GST. This has also been recommended by the 14<sup>th</sup> Finance Commission.

#### **Views of the Government**

2.148 Regarding substitution of word 'may' by 'shall', the Legislative Department has clarified that under the Constitution, wherever law making power is conferred on Parliament, the language used is “may” in view of the fact that within the constitutional parameters Parliament is supreme. However, in contrast, wherever, the power to make law is subject to certain contingency, then in such situation like Proclamation of Emergency, the provisions of the Constitution, uses the word “shall”. (as used in article 250 below). In view of this, it may not be necessary to substitute the word "may" with the word "shall"

2.149 In this connection, it would be appropriate to reproduce the provisions of the following articles, namely:—

2.150 “2. Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

2.151 Formation of new States and alteration of areas, boundaries or names of existing States.—Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State....

2.152 Art 245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

2.153 Art 247. Power of Parliament to provide for the establishment of certain additional courts.—Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

2.154 Art 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.—(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

2,155 Art 368. Power of Parliament to amend the Constitution and procedure therefor.— (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal

any provision of this Constitution in accordance with the procedure laid down in this article.”.

2.156 On the issue of period of GST Compensation, Department has stated that:-

"It is expected that the revenues of the Central and State Governments will not be impacted in the long run. However, due to a shift from origin-based to destination-based indirect tax structure, some States might face drop in revenue in the initial years. To help the States in this transition phase, a number of provisions have been incorporated in the Bill as enumerated in Para I, points (a) to (e), above. In the medium and long run, the revenues of all States and Centre are expected to grow due to widening of tax base, better tax compliance and enforcement, and growth in the economy".

2.157 Further, the smaller and weaker States will benefit from GST from the start. Since these are primarily consuming States, all SGST collected on goods and services will flow to the consuming States under the GST regime. Hence, the revenue of these States will increase and they are not likely to suffer any loss even during initial years.

#### **Views of the Stakeholders**

- Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period not less than five years.
- In place of “protection to,” it may be ‘protection of 100 percent to”. This will provide required comfort fully to the States and shield against anxiety during the initial phase of introduction of GST.
- On the basis of past experience, the need for timely payment of compensation, without delay, in every financial year.

- As the Bill made a provision for compensation in the event of revenue loss to the States after the introduction of GST, on the recommendations of the GST council, for such period which may extend to five years, this should provide comfort to the States. Since Union government eventually by law would be committed to compensation for revenue loss, it may be proper to eliminate tax on interstate supply of goods as proposed in the new Bill during the first two years of GST regime to introduce a destination based tax system.
- Having agreed to give compensation, there is no harm in Centre agreeing to give 100% compensation for all five years, in case of loss of revenue; – that would raise the comfort level of the States, and bridge the evident trust-deficit between Centre and the States.

**2.158 In view of the clarifications given by the Legislative Department, the Committee feels that there is no justification for substitution of the word ‘may’ with ‘shall’.**

**2.159 Having regard to the concerns expressed by the various States and some of the Members of the Committee in their submissions made before the Select Committee, the Committee recommends amendment in clause 19. The amended clause 19 should read as follows:**

*“19. Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for the loss of revenue arising on account of implementation of the Goods and Services Tax for a period of five years.”*

#### **Clause 20**

2.160 This clause seeks to provide for transitional provisions which provides that notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the

commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

2.161 This clause prescribe a timeframe within which the subsuming of different indirect taxes into GST would take place and enable the competent Legislature to amend or repeal their existing laws to pave the way for imposition of SGST in the States.

**Recommendation**

**2.163 This clause has been adopted with no change.**

**Clause 21**

2.164 This clause seeks to provide that if any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty.

2.165 However, no such order shall be made after the expiry of three years from the date of such assent. It also seeks to provide that every order made under sub-clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

**Recommendation**

**2.166 This clause has been adopted with no change.**

## **CHAPTER -III**

### **OTHER RELATED ISSUES IN CONTEXT OF THE BILL**

3.1 The Committee, thereafter, discussed plethora of inter-connected issues like source of revenue of Panchayats and Municipalities, Losses to Municipalities on account of deletion of Entry 52, creation of National Compensation Fund, non-functioning of State Finance Commissions, provision of Dispute Settlement Authority, inclusion of enabling clause to bring alcohol at a later stage to avoid constitutional amendment, GST Rate and Revenue Neutral Rate (RNR), etc. which have been dealt separately in the succeeding paras.

#### **Issue of Legislative Competence**

3.2 Concerns were raised before the Committee on the adverse impact which the Constitution (122<sup>nd</sup> Amendment) Bill, 2014, may have on the finances of local bodies.

***3.3 Competence of States to authorize local bodies to levy, collect and appropriate taxes, duties, tolls and fees***

3.4 The Constitution makes elaborate provisions to deal with powers, authority and responsibilities of Panchayats, their power to impose taxes and Constitution of Finance Commission to review their financial position (articles 243G, 243H and 243-I). Similar provisions exist in case of Municipalities (articles 243W, 243X

and 243Y). These provisions speak of powers, functions, responsibilities, power to levy and collect tax by Panchayats and Municipalities. The powers to levy and collect taxes is delegated by State Legislatures by enacting law for the purpose and thus enabling them to perform the Constitutional functions and duties entrusted to them.

3.5 Articles 243H and 243X speak of power that the State Legislatures may give to Panchayats and Municipalities to levy collect and appropriate taxes, duties, tolls and fees and also of assigning such of them as are levied and collected by the State Government and to provide grants-in-aid from the Consolidated fund of the States.

3.6 From the provisions, it may be seen that the State's power to levy taxes is derived from the Constitution and the Panchayats and Municipalities power to tax is derived from the State Legislature which it would delegate in the manner Constitution permits. Those articles make it clear that the concerned State Legislature has to pass a law to confer taxing power on Panchayats and Municipalities. Further, it may be seen that the source of power rests with State Legislatures and the Constitution has not empowered the Panchayats and the Municipalities to impose taxes on their own. In the present set up there are State laws which enable the Panchayats and Municipalities to levy and collect the taxes.

3.7 In conclusion, it can be submitted that the provisions of articles 243H and 243X bestow a Constitutional obligation and responsibility on the State to enable revenue generation of Panchayats and Municipalities by enacting laws; which shall continue to apply when the States get the simultaneous power to levy GST under the proposed article 246A once the indirect taxes are subsumed into GST. The present Constitutional Amendment also requires enactment of State laws on the basis of Model GST Laws recommended by the GST Council and while making such laws States would abide by the Constitutional provisions relating to Panchayats and Municipalities.

### **Subsuming of Entry 52 under GST**

3.8 Thereafter, the Committee discussed the rationale for deletion of Entry 52, State List and its possible impact on the revenue sources of the local bodies. Entry 52, State List provides for “Taxes on the entry of goods into a local area for consumption, use or sale therein.”

3.9 The Committee felt that municipal-level taxes are an important source of revenue for many local bodies. If, we take the example of city of Mumbai, municipalities’ main source of revenue is octroi. The revenue collection in 2014-15 on octroi in the city of Mumbai was somewhere around Rs. 6733 crores which is individually around 42% of the entire finance generated there. If that is taken away how development would be ensured. Although the Government of India is assuring that compensation would be given to State Governments for the losses incurred by them but that too would be through State Government.

3.10 In his submission, Secretary, Department of Revenue stated that ‘Entry tax is an impediment to the free flow of goods and services in India. It creates inefficiencies in the supply chain. Further, in many States, Entry tax is not VATable, and hence, results in compounding and cascading of taxes. Therefore, 13<sup>th</sup> Finance Commission headed by Dr Vijay Kelkar, had recommended that Entry tax should be fully subsumed under GST. The same view was endorsed by the Standing Committee on Finance, while examining the Constitutional 115<sup>th</sup> Amendment Bill, 2011. Keeping that in mind, in the proposed Bill, a provision of “floor rate with bands” has been made, under which the States may levy additional SGST within the band to raise additional resources for passing on to the local bodies.

### **Impact of subsuming of Entry Tax on the financial independence of local bodies**

311 He further stated that ‘It has been seen that Entry tax in lieu of octroi or Octroi is only collected by local bodies in Maharashtra. Most States like Gujarat,

Karnataka, and Punjab already levy and collect Entry tax for distribution to local bodies. As stated above, under the GST regime, provision of “floor rate with bands” has been provided in the Bill which shall enable the States to raise additional resources through levy of additional SGST within the band, for passing it on to the local bodies.

3.12 Since Mumbai is the largest beneficiary of revenue collected from octroi, the case of Mumbai has been presented in detail. All other local bodies in the country are not so dependent on Entry tax or octroi for their revenue. In their 2015-16 budget, the Municipal Corporation of Greater Mumbai (MCGM) has estimated that they would earn about Rs. 7900 crores from octroi, out of a total revenue income of Rs. 19,255 crores, or about 41%. The other sources of revenue for MCGM are property tax, receipts from development plan, various user fees and charges, etc, which are not being affected by the Constitutional Amendment, and will continue to accrue to MCGM.

3.13 Further, in their 2015-16 budget, the MCGM has identified that they would need to introduce new taxes such as property tax on slums, transport cess, conservancy cess and fire cess. Incidentally, Mumbai is expected to yield very high revenues from service tax to the State of Maharashtra. It is open to the State to devolve suitable amount there from to the MCGM. Further, under Articles 243 H and 243 X of the Constitution, the State Government can also empower the local bodies to collect certain other levies such as profession tax or other taxes in the State List in the concerned Jurisdiction.

#### **Devolution of funds to the local bodies by the State Government**

3.14 The issue of devolution of funds to the local bodies and Municipalities by the respective State Government engaged the attention of the Committee from the day the Bill was referred to the Select Committee. Apprehensions and concerns were expressed from all quarters, even after the clarifications given by the Department of Revenue and Legislative Department, that the bodies which were

actually doing the work at the ground level may find it difficult to cope up with their requirements in the post GST era. Concerned over the availability of funds to them, several points were raised i.e how much funds would be allocated to them, how it would be done, whether the funds would ultimately be passed on to them, whether the amount so received would be enough to run their day today activities, there has to be a mechanism in the Bill to protect their interests, how constitutional provisions related to them would be protected and taken care of, etc. otherwise these bodies where actual activity is done would be at the sheer mercy of the Governments in their States. Here, the role of the State Finance Commissions becomes all the more important because while submitting their report they have to give due impetus to this fact that these bodies may not be deprived of their legitimate right guaranteed by the Constitution of India

3.14 The Committee felt that there is no question at all that the concerned State Governments have to devolve funds to the local bodies for their smooth functioning, and in order to do that they have to accept the recommendations of the State Finance Commissions, but what concerned most of the Members was that, either the State Finance Commissions are non-existent or even when they exist their recommendations were not followed in right spirit/ accepted. So, ultimately the local bodies suffer and this in turn hampers the various development works to be undertaken by them.

3.15 In his clarifications, Secretary Revenue stated that Constitution 73<sup>rd</sup> Amendment provides for setting up of State Finance Commissions which have been given responsibility to make recommendations on principles which would govern distribution of finances between the States and local bodies i.e. Panchayats and Municipalities. Deficiencies, if any, in the functioning of State Finance Commissions in individual States may have to be dealt with separately.

#### **Recommendation**

**3.16 The Committee feels that the concerns expressed by all the Members of the Committee related to local bodies and Municipalities are not**

**unwarranted. Based on the years of experience and being witnessed to their work in their respective constituencies they were of the view that their interest needs to be protected. The same view was also endorsed by nearly all the stakeholders who have either submitted their memorandum or appeared before the Committee on the Bill.**

**3.17 But, at the same time we may not forget that the Constitution of India clearly defines the ambit under which the Centre and each of the State has to function. Any encroachment into the State List would disturb the whole system and could strain the Centre-State relations.**

**3.18 The Committee feels that although the issues raised by the Members to protect and preserve the interest of local bodies are valid, it would not be appropriate for the Committee to advise, recommend and guide the State Governments what they have to do with regard to the interests of the local bodies.**

**3.19 As per the provisions of the Bill, while the Parliament would pass law relating to CGST, every State Government has to pass a similar law relating to SGST. Hence, while drafting the SGST, the role of the drafters and the concerned State Governments becomes all the more important as they have a duty to protect the revenue sources of the Panchayats, Municipalities, etc, enshrined under Constitution of India. The Committee also feels that here the role of the GST Council is also very important, because while recommending to the Centre and State Governments for subsuming of the taxes, cesses and surcharges levied by the Union, the States and the local bodies in the goods and services tax under article 279 (4) (a), it may also ensure protection of revenue sources of local bodies under provisions of article 279 (4) (c) and (h).**

**3.20 In the light of the above, the Committee feels that in a cooperative federalism, each unit of it interacts cooperatively and collectively resolves their problems by taking appropriate action at their end. On the same**

analogy, Government at the helm of the affairs is duty bound both morally and constitutionally to protect the interest of local bodies by giving them suitable space of functioning and power to levy and generate taxes for their day today functioning. Having full faith in our Constitution from where each tier of the Government draws its powers, the Committee believes that all the State Governments would enact laws on the basis of Model GST Laws recommended by the GST Council and while making such laws States would abide by the constitutional provisions relating to Panchayats and Municipalities.

3.21 Concerned about the very existence and survival of local bodies, the Committee feels that Local government is a State subject figuring as item 5 in List II of the Seventh Schedule to the Constitution. Article 243 G of the Indian Constitution enshrines the basic principle for devolution of power to the local bodies. In the nation's journey towards becoming an economic power, local bodies play an important part in enabling infrastructure availability to the citizens. Local bodies are institutions of the local self governance, which look after the administration of an area or small community such as villages, towns, or cities. The local bodies in India are broadly classified into two categories. The local bodies constituted for local planning, development and administration in the rural areas are referred as Rural Local Bodies (Panchayats) and the local bodies, which are constituted for local planning, development and administration in the urban areas are referred as Urban Local Bodies (Municipalities) and the Constitution of India gives protection to them through various articles, so while drafting the SGST laws due consideration should also be given to this fact. In that backdrop, the Committee strongly recommends that while drafting the SGST laws due consideration to the third tier of the Government as has been guaranteed by the Constitution be given and provisions of devolution of taxes to the local bodies be made.

3.22 **The Committee is perturbed to know that State Finance Commissions (SFC) in some of the States are either non-existent or even when exist their recommendations were not accepted by the respective State Governments. The Committee understands that each tier of the Government draws its powers through the Constitution and there is a clear demarcation of fields through List I, II and III within which each tier has to function. Any encroachment by any of them would paralyze the whole system and defeat the very foundation of our Constitution. Hence, the Committee while not venturing into the domain of the State List desires that for the betterment of our States in general and country in particular it would be prudent to abide by the recommendations of the SFCs.**

#### **Creation of National Compensation Fund**

3.23 The issue of creation of National Compensation Fund on the lines of National Calamity Fund also engaged the attention of the Committee. One of the Members opined that once the Government of India has decided to compensate the State Governments for any losses incurred by them after the introduction of GST, it would be judicious enough to make National Compensation Fund be part of the Bill. This would act as a confidence building measure and allay their fears as well to a great extent. The Standing Committee on Finance had in their report recommended for creation of such fund.

3.24 In their response, Secretary, Department of Revenue stated that to bridge the trust deficit of the States vis-à-vis the Centre, and to ensure that there is no revenue loss to them, a provision has been made in the Bill to provide compensation to States through a Central Legislation for loss of revenue arising on account of implementation of GST for a period which may extend up to five years on the recommendation of GST Council.

3.25 He further stated that as noted by the Fourteenth Finance Commission, GST Compensation would be a temporary feature, and hence, there is no need to create

a GST Compensation Fund through Constitutional Amendment. It is therefore proposed to consider creation of a GST Compensation Fund through Central Legislation.

**Recommendation**

**3.26 Endorsing the view envisaged by Fourteen Finance Commission, the Committee feels it would be wise to keep the GST Compensation Fund out of the purview of the Bill as has been done in the present case, because it is a temporary component and that too only for five years.**

**Dispute Settlement Authority**

3.27 Some of the Members were of the opinion that disputes arising out of the recommendations of the GST Council will be decided by a system to be evolved by GST Council. They were of the view that as the principles of natural justice hold that a party to a dispute cannot be a judge in its own cause, leaving disputes to be settled in accordance with the directives of the GST Council would be tantamount to allowing all disputes, which would necessarily involve one or more members of the GST Council as judges in disputes to which they are party.

3.28 With regard to the Dispute Settlement Authority, the Ministry of Finance (Department of Revenue) clarified that the States were apprehensive that the earlier proposed GST Dispute Settlement Authority under proposed new Article 279B will have powers of overriding the supremacy of the Parliament and the State Legislatures and will, thus, affect the fiscal autonomy of the States. The Parliamentary Standing Committee had, therefore, recommended that proposed Article 279B be omitted. On the recommendations of the Parliamentary Standing Committee on Finance and the Empowered Committee, it was decided to delete this provision, and instead, clause (11) in the proposed Article 279A was inserted to enable the GST Council to decide the modalities to resolve disputes arising out of its recommendations.

3.29 In the proposed Bill, every State would enjoy one vote in the GST Council. Thus there would be no possibility of 'crowding out' of small States in the GST Council.

#### **Recommendation**

3.30 **The Committee feels that each and every State is being represented in the GST Council by their Revenue/Finance/Taxation Minister. Be it a small State or a big State, in the GST Council, all of them enjoy equal status and power to cast one vote. In the event of difference, it can very well be presumed that the GST Council will try to evolve consensus on contentious issues before going for casting of votes, as all the States are members of the Council. Thus, modality to resolve any differences internally lies with the Council. If any Dispute Settlement Authority is created separately it will certainly hamper the functioning of the GST Council in general and Legislatures (Parliament and States) in particular. Thus, it would be judicious not to have a separate and distinct authority having far reaching powers and which could preempt and supersede the powers of Parliament and State Legislatures in the long run.**

3.31 **The Committee also feels that when concept of Empowered Committee (EC) was coined for the first time, it may not have been presumed how it would function, whether it would serve the purpose for which it would be created, how States would be represented/heard, how issues would be taken up and resolved, etc. But experience has shown that the faith with which the concept of EC was coined has actually delivered. Empowered Committee headed by one among the State Finance/ Revenue Ministers of all States deliberate meticulously on each of the issues raised by its Members and with the passage of time it had taken the shape of arbitration centre where disputes related to them or between two or many States are raised, deliberated and settled amicably without any arbitration charges or fees borne by the disputant States. It would not be over exaggeration of facts if the Committee would say that on the one hand EC had worked as a forum**

**where any issue of State importance could be raised and on the other hand it had gained the confidence of States in solving their problems and allaying their fears. Such confidence building measure had been initiated by the EC that it could well be termed as a forum where disputes are settled broadly with consensus.**

#### **Benefit to Consumers**

3.32 GST will largely eliminate cascading of taxes and this will benefit the consumers because manufacturers, traders and service providers are expected to be forced to pass on the benefit to ultimate consumers due to operation of market forces and competition. Simplification and automation under GST regime will reduce transaction cost, improve compliance and transparency and will curb undue rent seeking and profiteering in the long run. Such efficiency gains are expected to have beneficial effects on prices which will also ultimately benefit the consumers.

#### **Results of studies conducted in other countries like Australia, Canada and New Zealand on the impact of GST on consumer prices**

3.33 Ministry of Finance (Department of Revenue) in their written submission before the Committee stated that ‘Results of studies conducted in other countries cannot be directly applied to the Indian economy as India is at a different stage of development and has its own unique features. A study by National Council of Applied Economic Research (NCAER) commissioned by the Thirteenth Finance Commission has projected that after introduction of GST, the overall price levels will go down due to more efficient allocation of factors of production. It also projects that introduction of GST would lead to GDP growth in the range of 0.9 to 1.7 percent and export growth of between 3.2 and 6.3 percent’.

#### **Recommendation**

**3.34 The Committee feels that it would be too early to presume as to whether the price levels will go down or up in the post GST era. What has to be seen and watched by the Government with eyes open is whether the**

**benefit, if any, arises would certainly be passed on to the consumers or not. Hence, the Committee feels that at the most if price stability is achieved it would serve the very purpose of GST in the entire country as inflation, nowadays has not left even a single field untouched.**

#### **Role of Financial Institutions in post GST era**

3.35 The Committee was of the considered opinion that concerns of the Financial Institutions must be given due weightage as their views would be equally important as those expressed by other stakeholders in forming an opinion on the Bill.

3.36 In that backdrop, the Committee interacted with the representatives of various Financial Institutions during its study visit to Chennai, Kolkata and Mumbai. When the question was raised by the Committee as to whether the financial institutions were willing to play the role of nodal bank, receive the CGST and SGST and act as a 'clearing house' for the tax, all the financial institutions expressed their willingness to do so. The public Sector Banks informed the Committee that they should given a greater role under GST. The Committee asked the financial institutions to submit their written views on it.

3.37 In response thereto, the views received from United Bank of India and State Bank of India are as under:-

#### **United Bank of India**

3.38 GSTN which is a special purpose vehicle set up under u/s 125 of the Companies Act to provide IT infrastructure and service support to the Central and State Governments for implementation of GST has shareholders other than Government of India and State Government, three Banks, viz. ICICI Bank HDFC Ltd., HDFC Bank constitute 30% of the total shareholding of the company. No public sector bank is a stakeholder in the company. As the bulk of tax collection is undertaken by public sector banks, including State Bank of India, we hereby

submit to kindly consider inducting at least one of the public sector banks as stakeholder in the GSTN. However, if the same is not possible due to any administrative reason, at least a representation of public sector bank should be given in the Board of GSTN.

Since the fee earned on services being provided by the banks to customer may also be covered under the proposed GST, we submit before the Committee that filing of return and deposit of GST so collected be made applicable in the centralized manner as is being currently done by the Bank while levying service tax on the fees earned on services rendered to the customer.

### **State Bank of India**

3.39 (i) Financial services are exempt from GST/VAT in almost all countries. However, In India, service tax is leviable on fee based services provided by the banks and financial institutions. Presently, the tax is applicable on all fee based activities including the services provided to weaker section of society, whose accounts were opened for financial inclusion to achieve the social goal of the Government. Retail transactions, in terms of volume, constitute more than 90% in banks. The value of service for most of these transactions does not exceed Rs. 100/- considering the larger goal of the Government, it is requested that GST should not be applicable on services rendered to retail depositors. In case the Government wishes to levy GST on such services, some abatement may be considered so that the cost of services to retail customers does not go up, as GST rate is likely to be substantially higher than the present service tax rate. This will go a long way in continuing with affordable banking services to all.

3.40 (v) Considering the huge network of branches/ATM and also considering the complexities involved, we request that banks should be permitted to have a single registration and discharge GST liability centrally and credits of SGST should be available across States.

3.41 (xi) Newspaper reports that the GST rate is likely to be 20-22% as against service tax rate of 14%. Considering that in most of the countries, banking

services are outside GST, the increase in the tax rate will further increase the cost of banking services. This results into cost of doing business to be much higher in India as compared to other competing countries. To be internationally competitive, the GST rate for banking industry should be minimum and in no case should it be more than what is being levied today.

3.42 We request that the best practices followed internationally may be followed and banking services are kept outside GST. If this is not possible then, interest, trading in securities and foreign currency and services to retail customers should not be liable to GST and suitable provision should be there to avail of CenVAT credit of input services taken to provide activities involved in such services. Further, single registration coupled with IGST provision should be made available to enable CenVAT credit for consumers of banking services.

### **Recommendation**

**3.43 The Committee feels GSTN shall play a crucial role in implementation of GST as it shall provide the IT infrastructure for implementation of GST. It noted that Non Government shareholding of GSTN is dominated by private banks. This is not desirable because of two reasons . Firstly, public sector banks have more than 70% share in total credit lending in the country. Secondly, GSTN's work is of strategic importance to the country and the firm would be a repository of a lot of sensitive data on business entities across the country. In light of above, the Committee strongly recommends that Government may take immediate steps to ensure Non Government financial institution shareholding be limited to public sector banks or public sector financial institutions.**

**3.44 Endorsing the views of the SBI, the Committee having same feeling as the bank recommends that the best practices followed internationally may be followed and if possible banking services may be kept outside GST. Furthermore, if this is not possible then, interest, trading in securities and foreign currency and services to retail customers should not be liable to GST**

**and suitable provision should be there to avail of CenVAT credit of input services taken to provide activities involved in such services. Further, single registration coupled with IGST provision should be made available to enable CenVAT credit for consumers of banking services.**

**3.45 The Committee is of the considered opinion that if the GST rate is more than the service tax rate of 14%, the increase in the tax rate will further increase the cost of banking services. This results into cost of doing business to be much higher in India as compared to other competing countries. Therefore, the Committee recommends that to be internationally competitive, the GST rate for banking industry should be minimum.**

3.46 On a point raised during the meetings about the differential treatment to alcoholic liquor for human consumption, efforts made to encourage manufacturing activity and Floor Rates with Bands, the Department of Revenue in their written submission stated that:

#### **Treatment of alcoholic liquor for human consumption**

3.47 Only alcoholic liquor for human consumption has been excluded from the ambit of GST Constitutionally. All other forms of alcohol like alcohol for industrial use and medicinal and toilet preparation containing alcohol which falls in the taxing domain of the Central Government have been included in GST. This exclusion has been done to address the strong concern of the states regarding loss of revenue if potable alcohol was to be subsumed under GST.

#### **Incentives to State Government to encourage manufacturing activities**

3.48 The very nature of GST has features to incentivize manufacturing activity. As GST is a destination based consumption tax, higher the consumption of goods and services in a state, higher would be tax collection. It is well known that higher level of manufacturing activity results in a host of ancillary benefits such as creation of more jobs, higher earnings and higher standard of living, all of which

encourage higher consumption of goods and services within the state leading to higher tax collection.

### **Floor Rates with Bands**

3.49 To give flexibility to the States, the provision of ‘bands’ over the GST floor rates, to be recommended by the GST Council, has been introduced. Depending on the local situations and requirements, the States have the option to levy slightly higher tax within this band.

### **GST Rate**

3.50 I. On the aforesaid issue, experts in their written comments stated the following:

3.51 Once the enabling framework is created for the levy of GST, the next most crucial step in its implementation is the determination of the tax base and tax rate. This issue has been discussed in detail in the “Report of the Task Force on GST” that was submitted to the 13<sup>th</sup> Finance Commission. The Report recommends a broad base for the GST, and a combined Centre and State revenue neutral rate of 12%.

3.52 A broad base and moderate rate is an essential feature of a good tax system. Multiplicity of tax rates is also to be avoided. A majority of the VAT/GST system introduced in the last three decades embrace these features. For example, VAT/GST in New Zealand is levied on a comprehensive base at a single rate of 12.5% (at inception), in Singapore at 3%, Japan at 3%, Australia at 10%, South Africa at 16%, and Malaysia at 6% (most recent, implemented in 2015). Levy of GST on a comprehensive base makes it an economically efficient and productive source of revenue. In each of the examples cited, the revenue yield as a percent of GDP is estimated to be 0.5% or more for each percentage point of the GST rate. In New Zealand, the GST yield was the highest, at 0.74% of GDP (i.e., 12.5% GST was yielding revenues in excess of 9% of GDP).

3.53 The Centre and State revenues in India to be replaced by GST are a little less than 6% of GDP. The international benchmark revenue productivity of 0.5% of GDP yields a target revenue neutral rate for India of less than 12%. In their view, this remains a realistic option for India, which would be politically appealing, catalyse voluntary compliance, and provide a significant boost to investment and economic growth. While the tax base and rates are to be decided by the GST Council, the Bill should not create any barriers to levy of such a tax, i.e., it should allow the levy of tax to the broadest possible base.

#### **GST Rate – it must not be inflationary**

3.54 II. In terms of the proposed Article 279A (4)(e), the GST Council shall make recommendations to the Union and the States on ‘the rates including floor rates with bands of goods and services tax’. The GST rate is a very important factor in earning the trust of the tax payers. Howsoever efficient the GST machinery may be, the tax-payers won’t welcome GST happily if the GST rate is kept high because that will lead to high inflation. Even in developed countries like Australia and Canada, GST was opposed by the poorer sections of the taxpayers because of high GST rate.

#### **GST and Revenue Neutral Rate (RNR)**

3.55 The GST rate would normally be based on the Revenue Neutral Rate (RNR). In the present circumstances, the RNR is expected to be high because Petroleum and its products and Alcohol have been kept out of GST and consequently, the tax base would shrink. But, a high GST rate in line with high RNR would definitely lead to high inflation. India cannot afford to have high inflation at this stage of the economy. Therefore, it is submitted that **not to go strictly by the RNR while fixing the GST rate**. The newspaper reports suggested first a RNR of around 27%, and later it was reported to be somewhere between 20 and 23%. Internationally, GST rate normally varies between 16 to 20%, with exceptions like Australia at 10%, New Zealand at 15%, Japan at 8%,

Germany at 23% and Malaysia at 6%. France has four rates, the highest 20% and lowest 2.1%, while UK has two rates 20% and 5%. To start with, **India's GST rate should not go beyond 20% for standard rate and perhaps 14% for reduced rate.**

### **Recommendation**

3.56 **The Committee feels that although the GST Council has been entrusted with the task of fixing the rate including floor rates with bands in mutual consent with other State Governments who are part and parcel of the Council. But implementation of GST in other countries has shown GST rate is a very important factor in earning the trust of the consumers. If the GST rate is kept high, it will surely erode the confidence of the consumers badly and may lead to high inflation. Therefore, the Committee is of the considered view that while fixing the rate, the GST Council may opt for a broad base and moderate rate as it is an essential feature of a good tax system and as far as possible multiplicity of tax rates may be avoided.**

### **Non-Interference in the State Governments powers stated in Concurrent List**

3.57 The issue as to whether the proposed Article 246A intends to interfere in the State Governments powers mentioned under in the Concurrent List was also raised during the meeting of the Committee held on 3<sup>rd</sup> July, 2015. Replying to the Query, the Secretary, Department of Revenue informed the Committee that *“GST is a composite tax. Both the Centre and the States will have the power to levy it. Therefore, a separate specific provision is being made in Article 246A to enable both the Parliament and the State Legislatures to enact a proposal to levy and collect this tax. In no way this is diluting the powers of the States.” This will in no way interfere with the powers of the States under the Concurrent list.*

### **IT Preparedness**

3.58 Building IT infrastructure and developing IT services through GSTN: Central and State Governments have jointly registered Goods and Services Tax Network (GSTN) as a not-for-profit, non-Government Company to provide shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST. GSTN was incorporated in March 2013. GSTN is working on creating a GST portal and related ICT infrastructure together with an interface with State IT systems. To support the States, GSTN will prepare the necessary software for front-end modules which would include Registration and Returns. GSTN would also prepare back end processing modules like assessment, audit, etc. which would be required by the various States. In case the States want to develop their own software for backend modules, they shall be free to do so and in case they want to use the backend modules prepared by GSTN, they shall be provided the same.

3.59 The Committee was given to understand that an 'As-Is' Study was conducted by the NSDL to assess the capacities of the existing State IT systems and operational procedures, and to identify gaps with respect to the envisaged GST system. It is also expected that development of IT infrastructure and services is to complete by March, 2016.

3.60 The Committee is aware that Goods and Services Tax Network (GSTN) a not-for-profit, non-Government Company has been jointly set up by the Central and State Governments and it will provide shared IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders. Further, it is expected that GSTN would complete the development of IT infrastructure and services by March, 2016 i.e. exactly one month before the date from which the Government of India intends to implement it throughout the country.

3.61 Apprehensions related to level of IT preparedness have been expressed at various fora together with concerns related to its implementation. There are many questions to be answered and many more will arise at the time of its implementation and how it is to be linked with the system available with states,

but at the very same time what has to be seen is its long lasting benefits that would accrue to the nation in the years to come.

3.62 The Committee feels that together with IT preparedness, training would be a crucial element to look for. Our is a society where most of the population is not techno savvy and there would be hitch in using it by those who are at the helms of affairs. Hence, to overcome all these apprehensions it would be imperative to impart training to the personnel's at all levels and at the very onset so that their fear about its usage, implementation, affects, etc may be removed and results in building their confidence in doing or performing various tasks.

### **Recommendation**

**3.63 In that backdrop, the Committee recommends that all out effort should be made to improve upon the IT preparedness of the States, so that the apprehensions related to its level of preparedness may gets addressed. For its smooth implementation, the Committee immediately recommends implementation of comprehensive training programmes at all levels to allay the fears of consumers, stakeholders, organisations, etc. A message should go loud and clear to all that we as a country are ready to adopt tax reform of unparallel nature. The Committee also recommends that for having no discernible blemishes in the implementation of GST, it is imperative that not only IT preparedness is at very high level but also prerequisites like IT infrastructure, unified tax credit clearing mechanism, etc may be put in place for its implementation.**

### **Apprehension among State Governments**

3.64 Many State Governments/UTs either submitted their written views or appeared before the Committee on the Bill. Doubts clubbed with apprehensions of numerous types were raised and brought to the notice of the Committee. Apprehensions were cast over the losses in revenue and their sources after the implementation of Goods and Services Taxes in India. Similarly, there were apprehensions relating to/ demands from all corners that whether States may be

empowered to levy higher taxes on tobacco and tobacco products, 100% compensation for a period of 5 years should be given, Abrupt deletion of entry 52 from the state list may financially cripple the local bodies, Flexibility may be given to the states to fix SGST rates as per their needs from time to time, to protect the revenue of the local bodies special category states may be allowed to levy entry tax, Inclusion of petroleum products in the present bill with the safeguard that it shall be operationalised on the recommendation of GST Council on a date later than five years, In clause 19 of the Bill, instead of the words “for such period which may extend to five year” words “for a period not less than five years” may be replaced. Similarly, for the words “Parliament may” the words “Parliament shall” be substituted, Amend the entry 62 to read it as under 62 taxes on entertainment, betting and gambling”. Similar demands in respect of Entertainment, Amusement, Betting & Gambling that proposed Amendment by way of insertion of clause 16 (e) be omitted, Taking into consideration of adverse impact on environment, proposes for levy of an additional non-rebatable cess subject to suitable framing of guidelines, “Taxes on food grains contributed by the States to National Food Grains Pool subject to any limitations imposed by Parliament by law”, etc.

### **Recommendation**

**3.65 Having heard the views of the main stakeholders i.e. State Governments/UTs, the Committee feels that States are like the arteries of the India and if the arteries find themselves choked the whole body will fall. Hence, for the sake of our survival, what needs to be done is to protect and preserve our arteries. Based on that analogy, the Committee feels that although the apprehensions brought to the notice of the Committee are not unwarranted but due care have been taken constitutionally to overcome any constraints come in their way. All these initiatives ushered by the Government of India having been evolved and brought in the form of current Bill are based on the views expressed in the Empowered Committee meetings. To allay the fear of all State Governments in general and manufacturing**

states in particular, safeguards like 1% additional tax on supply of goods, compensation to States/UTs for losses in the revenue, States have been given the voting weightage of 2/3rd , decision in GST Council to be arrived at by the majority of not less than 3/4th , etc on the recommendation of the GST Council have been provided. More so, all this has been done constitutionally so that there may not be any doubt in the minds of the States/UTs.

3.66 Therefore, the Committee feels due consideration has been given by the Government of India to the aforesaid apprehensions raised by the States/UTs while coming forward with this comprehensive Constitutional Amendment Bill. The Committee feels that apprehensions cast over the introduction of goods and services taxes are early hiccups and with the introduction of it, the States/UTs would realise that they have many more options available to them to generate and augment their revenue source. Survival of the Union is on the States, the Committee close by saying that would the body (Centre) survive if arteries get choked, so vibrancy of the States comes first for the survival of the Centre.

THE CONSTITUTION (ONE HUNDRED AND TWENTY-SECOND  
AMENDMENT) BILL, 2014

**AS REPORTED BY THE SELECT COMMITTEE**  
**No.- of 2015**

	<p style="text-align: center;">THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) BILL, 2015</p> <p style="text-align: center;"><i>[Words underlined indicate the amendments suggested by the Select Committee and asterisks indicate omissions ]</i></p>	
	<p>A</p> <p>BILL</p>	
	<i>further to amend the Constitution of India.</i>	
	BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—	
	<b>1.</b> (1) This Act may be called the Constitution (One Hundred -----Amendment) Act, 2015.	Short title and commencement.
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.	
	<b>2.</b> After article 246 of the Constitution, the following article shall be inserted, namely:—	Insertion of new article 246A.
	"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with	Special provision with respect to goods and services tax.

	respect to goods and services tax imposed by the Union or by such State.	
	<p>(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.</p> <p><i>Explanation.</i>—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."</p>	
	<b>3.</b> In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.	Amendment of article 248.
	<b>4.</b> In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.	Amendment of article 249.
	<b>5.</b> In article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.	Amendment of article 250.
	<b>6.</b> In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.	Amendment of article 268.
	<b>7.</b> Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.	Amendment of article 268A.
	<b>8.</b> In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.	Amendment of article 269.
	<b>9.</b> After article 269 of the Constitution, the following article shall be inserted, namely:—	Insertion of new article 269A.

	<p>"269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.</p> <p><i>Explanation.</i>—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.</p>	Levy and collection of goods and services tax in course of inter-State trade or commerce.
	<p>(2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."</p>	
	<p><b>10.</b> In article 270 of the Constitution,—</p>	Amendment of article 270.
	<p>(i) in clause (1), for the words, figures and letter "articles 268, 268A and article 269", the words, figures and letter "articles 268, 269 and article 269A" shall be substituted;</p>	
	<p>(ii) after clause (1), the following clause shall be inserted, namely:—</p>	
	<p>"(1A) The goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2)."</p>	
	<p><b>11.</b> In article 271 of the Constitution, after the words "in those articles", the words, figures and letter "except the goods and services tax under article 246A," shall be inserted.</p>	Amendment of article 271.
	<p><b>12. After article 279 of the Constitution, the</b></p>	Insertion of new

	<b>following article shall be inserted, namely:—</b>	article 279A.
	<b>'279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred ----- Amendment) Act, 2015, by order, constitute a Council to be called the Goods and Services Tax Council.</b>	Goods and Services Tax Council.
	<b>(2) The Goods and Services Tax Council shall consist of the following Members, namely:—</b>	
	<p><b>(a) the Union Finance Minister .....Chairperson;</b></p> <p><b>(b) the Union Minister of State in charge of Revenue or Finance.....Member;</b></p> <p><b>(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.</b></p>	
	<b>(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.</b>	
	<p><b>(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—</b></p> <p><b>(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></p> <p><b>(b) the goods and services that may be subjected to, or exempted from the goods and services tax;</b></p> <p><b>(c) model Goods and Services Tax Laws, principles of levy, apportionment</b></p>	

	<p><b>of Integrated Goods and Services Tax and the principles that govern the place of supply;</b></p> <p><b>(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;</b></p> <p><b>(e) the rates including floor rates with bands of goods and services tax;</b></p> <p><b>(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;</b></p> <p><b>(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</b></p> <p><b>(h) any other matter relating to the goods and services tax, as the Council may decide.</b></p>	
	<p><b>(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.</b></p>	
	<p><b>(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.</b></p>	
	<p><b>(7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its</b></p>	

	<b>meetings.</b>	
	<b>(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.</b>	
	<p><b>(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:—</b></p> <p><b>(a)the vote of the Central Government shall have a weightage of one-third of the total votes cast, and</b></p> <p><b>(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.</b></p>	
	<p><b>(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—</b></p> <p><b>(a)any vacancy in, or any defect in, the constitution of the Council; or</b></p> <p><b>(b)any defect in the appointment of a person as a Member of the Council; or</b></p> <p><b>(c)any procedural irregularity of the Council not affecting the merits of the case.</b></p>	
	<b>(11) The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendations."</b>	
	<b>13. In article 286 of the Constitution,—</b>	Amendment of article 286.
	<p><b>(i)in clause (1),—</b></p> <p><b>(A)for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of</b></p>	

	<p>services or both, where such supply takes place" shall be substituted;</p> <p>(B)in sub-clause (b), for the word "goods", at both the places where it occurs, the words "goods or services or both" shall be substituted;</p> <p>(ii)in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;</p> <p>(iii)clause (3) shall be omitted.</p>	
	<b>14.</b> In article 366 of the Constitution,—	Amendment of article 366.
	<p>(i)after clause (12), the following clause shall be inserted, namely:—</p> <p>'(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;'</p> <p>(ii)after clause (26), the following clauses shall be inserted, namely:—</p> <p>'(26A) "Services" means anything other than goods;</p> <p>(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;'</p>	
	<b>15.</b> In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "article 162 or article 241", the words, figures and letter "article 162, article241 or article 279A" shall be substituted.	Amendment of article 368.
	<b>16.</b> In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—	Amendment of Sixth Schedule.
	(i)in clause (c), the word "and" occurring at	

	<p>the end shall be omitted;</p> <p>(ii) in clause (d), the word "and" shall be inserted at the end;</p> <p>(iii) after clause (d), the following clause shall be inserted, namely:—</p> <p>"(e) taxes on entertainment and amusements."</p>	
	<b>17. In the Seventh Schedule to the Constitution,—</b>	Amendment of Seventh Schedule.
	<p>(a) in List I — Union List,—</p> <p>(i) for entry 84, the following entry shall be substituted, namely:—</p> <p>"84. Duties of excise on the following goods manufactured or produced in India, namely:—</p> <p>(a) petroleum crude;  (b) high speed diesel;  (c) motor spirit (commonly known as petrol);  (d) natural gas;  (e) aviation turbine fuel; and  (f) tobacco and tobacco products.";</p> <p>(ii) entries 92 and 92C shall be omitted;</p>	
	<p>(b) in List II — State List,—</p> <p>(i) entry 52 shall be omitted;</p> <p>(ii) for entry 54, the following entry shall be substituted, namely:—</p> <p>"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale</p>	

	<p>in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";</p> <p>(iii)entry 55 shall be omitted;</p> <p>(iv)for entry 62, the following entry shall be substituted, namely:—</p> <p>"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council."</p>	
	<p><b>18.</b> (1) An additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in sub-section (2).</p>	<p>Arrangement for assignment of additional tax on supply of goods to States for two years or such other period recommended by Council.</p>
	<p>(2) The net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.</p> <p>(3) The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under sub-section (1).</p> <p>(4) Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.</p> <p>(5) For the purposes of this section, "State" shall have the meaning assigned to it in clause (26B) of article 366 of the Constitution.</p>	

	<p><b>19.</b> Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a* period **** of five years.</p>	<p>Compensation to States for loss of revenue on account of introduction of goods and services tax.</p>
	<p><b>20.</b> Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.</p>	<p>Transitional provisions.</p>
	<p><b>21.</b> (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:</p> <p style="padding-left: 40px;">Provided that no such order shall be made after the expiry of three years from the date of such assent.</p> <p>(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.</p>	<p>Power of President to remove difficulties.</p>

**RAJYA SABHA SELECT COMMITTEE ON THE GOODS AND SERVICES  
TAX**

**NOTE OF DISSENT BY  
MADHUSUDAN MISTRY, MANI SHANKARAIYAR, BHALCHANDRA  
MUNGEKAR**

**New Delhi, 20 July 2015**

We are in favour of a Goods and Services Tax that is simple and comprehensive. The Constitution (122nd) Amendment Bill, 2015 is neither. It is pitted with compromises, exclusions and exceptions that make it impossible for us to extend our support to the Bill in the absence of the amendments we have proposed being incorporated in the Bill, as drafted at present.

**First**, to ensure that GST rates are moderate and reasonable and do not impose an unfair burden on consumers, particularly poor consumers, it is necessary that a ceiling rate be specified in Article 246A so that, in the pursuit of higher revenues, the GST Council desists from crossing the ceiling. We have proposed a ceiling of 18% as a reasonable, moderate, adequately revenue-generating GST rate.

Second, we find the proposal to levy an additional 1% tax to be market-distorting, especially in view of the fact that we have proposed 100% compensation for a minimum of five years to States that might lose revenues. Further, in our view, the compensation should be deposited in a GST Compensation Fund, under the administrative control of the GST Council, as proposed by the Standing Committee on Finance

**Third**, the single most crucial word in the Bill is "supply lies", which is used in clause 9 and clause 18 without being defined. We have, therefore, sought to amend clause 9 through two provisos to article 269 (A) to clarify that goods moving from one unit to another unit of a firm in

different States under the same ownership, or when two or more firms are collaborating in units located in different States for the manufacture of the same end-product, should be excluded from the term "supply Isupplies". This would also apply to the same term used in clause 18. However, representatives of the Government have failed to define this term in the Committee on the ground that three governmental committees are engaged in defining the term in preparing Bills fro GST, SGST and IGST. We believe that a Select Committee of the Rajya Sabha cannot be subordinated to bureaucratic committees and that it would not be proper for the Select Committee to commend a draft Constitution amendment to Parliament without a proper agreed definition of this key term.

**Fourth,** given that the fundamental aim of GST is to establish a common market for the whole country, we are unable to support a GST Bill that excludes indefinitely from the purview of the GST tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption. We propose that all three be included in clause 12 of the Constitution amendment bill with the condition that the GST Council take a decision for their inclusion in GST within a period of five years.

**Fifth,** we cannot support a GST Council that is unduly weighted in favour of the Centre. In the interests of true "cooperative federalism", the share of the States in voting in the GST Council must be enhanced to 75% and the share of the Centre brought down to 25%.

**Sixth,** we cannot support a Bill that transgresses the elementary principle of law that parties to a dispute cannot be judges in their own cause. The failure to incorporate a GST Disputes Settlement Authority, as was provided

for in the 2011 Bill, is a serious lacuna that must be filled. The GST Council, comprising members who will necessarily be party to any dispute relating to the implementation of GST, must be supplemented and reinforced with a GST Disputes Settlement Authority in toto as provided for in the 2011 Bill.

**Seventh,** the sources of revenue of the Panchayats and Municipalities, as provided for in Parts IX and IXA of the Constitution, must be safeguarded and they must be assured of their due share in the revenue buoyancy that is expected to arise from the enactment and implementation of the GST. It is only with such assurance, through the amendments we have suggested in this regard to the Bill, that we might find it possible to support the proposed legislation.

**Eighth,** special consideration might be given by the GST Council to any State or Union territory, with or without a Legislature, such as Goa and Puducherry, whose population does not exceed twenty lakh.

Further, we strongly protest the failure to include in the Report of the Committee the detailed rationale for the various amendments we have moved to the Constitution (One Hundred and Twenty Second) Amendment Bill, 2015, while providing ample space for the Government to explain its rationale. Accordingly, we attach in the Annexe to this Note of Dissent the amendments we have moved to the draft Report of the Select Committee.

This Note of Dissent is submitted in view of the failure of the Select Committee to take our points adequately into account.

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(Madhusudan Mistry) Mani Shankar Aiyar (Bhalchandra Mungekar

## **Annexe**

to

Note of Dissent submitted by  
Madhusudan Mistry, Mani Shankar Aiyar and Bhalchandra Mungekar

**Text of amendments to the draft Report submitted by  
Madhusudan Mistry, Mani Shankar Aiyar, Bhalchandra Mungekar**

### **Clause 2**

#### **Paragraph 5.4**

In the third line, after "concerned" and before "the Ministry of Finance"  
**add:**

"the members moving the amendment stressed the need to keep GST rates moderate and reasonable so that consumers, particularly poor consumers, are not excessively burdened, and to this end proposed that the GST Council be bound by the Constitution to not exceed 18% as the rate for an adequately revenue-generating GST. They clarified that there is the precedent of a specific rate of taxation provided for

in article 276(2) as also in clause 18 of the Bill before the committee."

### **Clause 9**

#### **Paragraph 32.3A**

**Add** new paragraph to read as follows:

"These members rejected the argument made by Government representatives that as the definition of the term was being decided by three government committees working on GST, SGST and IGST there was no need to define the term in the Constitution, stating that a Select Committee of Parliament cannot be subordinated to ongoing work of governmental committees and, therefore, it would be improper to commend a Bill to Parliament that did not adequately define so crucial a term as "supply /supplies".

### **Clause 12**

#### **Paragraph 35.3A**

**Add** new paragraph to read as follows:

Some members proposed that under clause 4(c), among the "principles" to be considered by the GST Council while preparing GST laws the principle of "share of local bodies in revenue buoyancy and compensation for losses sustained through taxes subsumed" should be included as articles 243H and 243X provide for State Legislatures to, by law, ensure the "sound finances" of the local bodies. This would also enable State Finance Commissions set up under articles 243 I and 243 Y to provide for augmenting the share of local bodies in revenue buoyancy generated by the adoption of GST.

#### **Paragraph 35.38**

**Add** a new paragraph to read as follows:

With reference to sub-clause (4) (g) which provides for "special consideration" to certain States, some members proposed, in keeping with article 243 (2), that "special consideration" may also be extended to States like Goa and Union territories like Puducherry by adding at the end of 4(g) "and any State or Union territory having a population not exceeding twenty lakhs". This proposal was made in response to the specific request of Goa and Puducherry to be given special consideration in view of their small size and limited sources of revenue.

#### **Paragraph 35.4**

**Amend** the last sentence to read: "These items have been kept out of GST **for the present** to protect the revenue interest of the States"

#### **Paragraph 35.4A**

**Add** the following paragraph to read as follows:

Some members sought the inclusion in clause 12(5) of highly revenue-generating products like tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption within a period not later than five years so that India, within a few years, fulfills the fundamental GST objective of making

the entire nation a single common market for all products.

### **Clause 13**

#### **Paragraph 39.3A**

**Add** the following new paragraph to read as follows:

Some members sought the definition in the Constitution amendment Bill itself of the term "supply" in proposed clause I(A) of article 286

### **Clause 14**

#### **Paragraph 40.1**

**Add** at the end of the draft sentence the words: "so as to progressively ensure a true common market for all goods"

#### **Paragraph 40.2**

**Add** at the end of the draft sentence the words: "so as to avoid the circular definition of 'services' meaning 'anything other than goods'."

### **Clause 16**

#### **Paragraph 46.1**

**Amend** the opening line to read as follows: "With a view to progressively promoting a common market in all goods and services," before "Some members"

#### **Paragraph 46.2**

**Add** at the end of the present draft sentence the following words: "as it does not figure in the Constitution?"

#### **Paragraph 46.8A**

**Add** the following new paragraph:

Some members did not accept Government's views as set out under paragraphs 46.6, 46.7 and 46.8 as the overarching objective of GST is to progressively render India a common market for all goods and services, including so-called 'demerit' goods. If a higher rate of tax has to be imposed on such goods, the GST Council may be authorised to do so.

## **Clause 18**

### **Paragraph 52.5**

**Add** at the end of the draft sentence the following words: "because these members have proposed that, under clause 19, 100 percent compensation be provided for a period not less than five years. In view of guaranteed compensation for any loss incurred by any State or Union territory, there is no need to levy a market-distorting 1% additional levy"

## **Clause 19**

### **Paragraph 53.4A**

**Add** the following new paragraph:

Some members proposed the addition of the words: ", as well as The Panchayats and The Municipalities through State Legislatures" so as to ensure the "sound finances" of the local bodies while respecting the Constitutional order that as local bodies are in the State List it is for State Legislatures, by law, to "authorise a Panchayat/Municipality to levy, collect and appropriate" such taxes. They held that a mere recommendation to this effect by the Select Committee would not be binding in the sense that an appropriate provision in the Constitution would be.

## **Chapter IV**

### **Dispute Settlement Authority**

#### **Paragraph 62.1**

**Amend** the second sentence to read as follows:

They were of the view that as the principles of natural justice hold that a party to a dispute cannot be a judge in its own cause, leaving disputes to be settled in accordance with the directives of the GST Council would be tantamount to allowing all disputes, which would necessarily involve one or more members of the GST Council as judges in disputes to which they are party.



A.  
NAVANEETHAKRISHNAN.  
MEMBER OF PARLIAMENT  
(RAJYA SABHA)

9, OLD TAMIL NADU HOUSE,  
UTIL YA MARG,  
ANAKYAPURI, NEW DELHI.

LEADER,  
AIADMK PARTY IN RAJYA SABHA.  
DELHI,

NEW

21.07.2015.

The Hon'ble Chairman,  
Select committee on Constitution (One Hundred and Twenty -  
Second Amendment) Bill,2014, Rajya Sabha, New Delhi

Respected Sir, Vanakkam,

A Dissent Note by AIADMK party on the report of  
the Select Committee on the Constitution ( One Hundred  
and Twenty-Second Amendment) Bill,2014 is submitted after  
having gone through the report.

Than  
king  
You,

Yours Sincerely,

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(A. NAVANEETHAKRISHNAN)

**DISSENT NOTE BY AIADMK PARTY ON THE REPORT OF  
THE SELECT COMMITTEE ON THE CONSTITUTION  
(ONE HUNDRED AND TWENTY-SECOND AMENDMENT)  
BILL, 2014**

The views of the AIADMK Party on the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 on Goods and Services Tax (GST) passed by the Lok Sabha on 6th May, 2015, and which is presently under consideration of the Select

Committee by the Rajya Sabha, are in consonance with the letters dated 17.8.2014 and 19.12.2014 addressed by our Leader and the Hon'ble Chief Minister of Tamil Nadu to the Hon'ble Prime Minister and the letter dated 10.9.2014 addressed to the Union Finance Minister, in so far as they impinge upon the fiscal autonomy of States, and are as follows: -

**I. PROVISIONS RELATING TO GOODS AND SERVICES TAX COUNCIL:**

GST Council as a constitutional body impinges on the legislative sovereignty of both Parliament and the State Legislatures.

It also completely jeopardizes the autonomy of the States in fiscal matters. In spite of our repeated objections, the present Bill also envisages the formation of the GST Council. We strongly object to the provision for the GST Council.

Ideally it should not exist. The existing mechanism of the Empowered Committee of State Ministers which dealt with VAT issues is adequate. No statutory GST Council is required.

Furthermore, the decision making rule and voting weightage in the proposed Council are completely unacceptable. They give the Government of India an effective veto in the GST Council and no distinction is sought to be made amongst the States in weightage. Hence, if at all a Council is formed, the weightage of the vote of the Central Government should be reduced to **one-**

**fourth** of the total votes cast and that of the States should be increased to **three-fourths** of the total votes cast. Further, the weightage of each State's vote should be in proportion to the representation of each State in the Council of the States. This is important as the changeover to GST has different implications for different States based on their size and reliance on own tax revenues.

However, the Select Committee has not considered these views on the GST Council and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

## **II. PROVISIONS RELATING TO PETROLEUM AND PETROLEUM PRODUCTS:**

Petroleum and Petroleum products, which are currently outside the purview of State VAT in most States, are proposed to be covered under GST in the Constitution Amendment Bill though the date on which such tax will be levied on these products has been left to the recommendation of the GST Council. Bringing these products under the ambit of GST will entail huge revenue loss to the States as Input Tax Credit will have to be provided eventually. Further, there is no guarantee that GST will not be prematurely imposed on these products. Hence, considering the limited revenue resources of the State, as has been repeatedly insisted upon by our Leader, the Hon'ble Chief Minister of Tamil Nadu Puratchi Thalaivi Amma, Petroleum and Petroleum products should be totally kept outside GST.

However, the Select Committee has not considered these views on the provisions relating the petroleum and petroleum products and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

### **III. PROVISIONS RELATING TO TOBACCO AND TOBACCO PRODUCTS:**

States should also be empowered to levy higher taxes on Tobacco and Tobacco products over and above SGST similar to what has been allowed to the Centre.

However, the Select Committee has not considered these views on the provisions relating to tobacco and tobacco products and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

### **IV. PROVISIONS RELATING TO ADDITIONAL LEVY OF 10/0 IN THE COURSE OF INTER-STATE TRADE OR COMMERCE:**

Manufacturing States like Tamil Nadu stand to permanently lose substantial revenue if GST is implemented, as GST will be based on the destination principle. Though the Bill envisages that an additional tax on supply of goods to the extent of 1% in the course of inter-State trade or commerce for a period of 2 years or such other period as the GST Council may recommend, it also empowers the Government of India to exempt goods from this additional levy of 1%. The Select Committee has recommended that this additional levy of 1 per cent shall be restricted to "all forms of supply made for a consideration".

None of these formulations relating to the levy of 1 per cent additional tax really meet the requirements of a manufacturing State

like Tamil Nadu. **Instead, the States should be permitted to retain 4% of CGST part of the IGST on all inter-State sales/transfer of both goods and services.** This will enable a substantial reduction in the compensation payable to the States. At the same time, since it would come out of the CGST part of the IGST, hence it would not place the destination States at any disadvantage with regard to revenue flow.

However, the Select Committee has not considered these very valid views on the issue of taxation of interstate rate and has not recommended appropriate amendments. Hence the AIADMK Party dissents from the report of the Select Committee.

#### **V. PROVISIONS RELATING TO COMPENSATION OF REVENUE LOSS TO THE STATES:**

The Bill provides for Parliament to enact a law to provide for compensation to the States for such period which may extend to 5 years on the recommendation of the GST Council.

The Select Committee has suggested a modification indicating provision of compensation for a period of five years. While this removes the uncertainty regarding the period for which the compensation would be provided, it still falls short of the demands of the States regarding the extent of compensation.

In the 14<sup>th</sup> Finance Commission's Report it has been recommended that 100% compensation may be provided for the first 3 years, 75% for the 4th year and 50% for the 5<sup>th</sup> year. In discussions it appears that the Government of India is in line with this view.

However, taking into account the permanent loss that would accrue to the States, the AIADMK party suggests that **1000/0 compensation should be provided for a period of not less than 5 years** and a consensus should be arrived at on the methodology of computation of compensation and the mechanism to administer the compensation. As the Select Committee's report falls short of the expectations of the AIADMK Party we dissent from the report of the Select Committee.

## **VI. CONSENSUS ON IMPORTANT ISSUES RELATING TO GOODS AND SERVICES TAX:**

As our Leader, the Hon'ble Chief Minister of Tamil Nadu has pointed out, it would be appropriate to arrive at a **broad consensus** on a number of other important issues relating to GST like revenue neutral rates, floor rates with bands, commodities to be excluded from GST, IGST model and clarity on dual administrative control before proceeding further with the enactment, so as to allay the genuine fears of the States over loss of fiscal autonomy and permanent revenue loss.

The Select Committee has also gone beyond its brief on the issue of Revenue Neutral Rate (RNR) and recommended that to start with, India's GST rate should not go beyond 20% for standard rate and perhaps 14% for reduced rate. This is a matter for the Empowered Committee of State Finance Ministers/ GST Council on which to take an appropriate view. Hence the AIADMK Party is unable to accept this recommendation in the Select Committee's report.

On behalf of the AIADMK Party, the Select Committee of the Rajya Sabha was requested to duly take into account the above serious concerns relating to the Constitution (One Hundred and Twenty-second

Amendment) Bill, 2014 while finalizing the report of the Committee.

As these views have not been duly considered by the Select Committee, this note may be appended to the Report as a dissent note containing the views of the AIADMK Party.

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## **Dissent Note to the Select Committee Report on Constitution 122<sup>nd</sup> Amendment (GST) Bill**

Some provisions of the Constitution (One Hundred and Twenty Second Amendment) Bill i.e. Goods and Services Tax Bill are likely to adversely impact the federal structure of the country.

There is a need for decentralization of powers and devolution of the taxes in favour of the States and further to the Local bodies. Fiscal Federalism and protection of the powers of the states is important while a frame work is created for a Pan Indian Common Economic Zone and market through goods and services Tax Structure.

The key issue arises in Clause XII of the Bill is the formation of a GST Council. According to the Clause, 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. Naturally, the Centre will have enormous power in the GST Council, given its structure prescribed in the Bill. So, the weightage of the Centre in the council should be reduced to at least one-fourth of the total votes cast and that of the States should be increased to at least three-fourth of the total votes cast. The clauses are designed in a way that the Centre will have absolute powers in deciding tax proposals. This is likely to harm the concept of Union and States. It will be turning into a structure of Union alone.

While special provision with respect to the states of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Mizoram, Nagaland,

Sikkim, Tripura, Himachal Pradesh and Uttarakhand is made. Similar provision could have been made in case of Puducherry.

For protecting a particular local brand of MSME product and protecting Agri-based products, for promoting farmers and industry, States should have leverage.

GST should not be in the interest of big corporate houses, who want a free flow of goods and services with the technology promoted and owned by them. With the Centre having an absolute say over the decision making process on the GST, the States will lose its financial independence in the long run and corporate will dictate the policies of even the local Governments. So, these concerns must be given due consideration in the Bill.

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(K.N.BALAGOPAL)

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## Recommendations/Observations at a Glance

1. **CLAUSE 1 TO CLAUSE 8 : THESE CLAUSES HAVE BEEN ADOPTED WITH NO CHANGE.**
  
2. **Clause 9 - The Committee feels that since imposition of GST on the supplies of goods and services in the course of inter-State trade would not lead to cascading of taxes, the Clause may be adopted with no change.**
  
3. **CLAUSE 10 & CLAUSE 11 : THESE CLAUSES HAVE BEEN ADOPTED WITH NO change.**
  
4. **Clause 12 - After having deliberated on the issue of finances of local bodies, the Committee strongly feels that the revenues of local bodies need to be sustained and protected for ensuring that standards of local governance are maintained. The Committee, thus, strongly recommends that the State Governments take adequate measures to ensure that adequate revenues flow to the local bodies, and their resources are not adversely affected. The Committee noted that Article 243H and 243X contain provisions for State Legislatures to authorize Panchayats and Municipalities to collect and appropriate taxes in the State list. The Committee further noted that Article 243I and 243Y provide for setting up of State Finance Commissions to make recommendations regarding devolution of funds to local bodies. The Committee noted that the above provisions notwithstanding, local bodies find managing their resource requirements quite challenging.**

**In light of above, with respect to Article 279A 4(e), the Committee strongly recommends that the word 'band' used in the proposed Article may be defined in GST laws. The Committee recommends the following definition of 'band':**

*“Band” : Range of GST rates over the floor rate within which Central Goods and Service Tax (CGST) or State Goods and Services Tax (SGST) may be levied on any specified goods or services or any specified class of goods or services by the Central or a particular State Government as the case may be.*

With respect to Article 279A(5), taking note of the provision that inclusion of petroleum products into GST can take place only on recommendation of GST Council which could happen only with the consent of both the Centre and the States, the Committee recommended that the clause be adopted with no change.

The Committee is aware that while discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

In view of the clarifications submitted by the Department of Revenue and Legislative Department, the Committee finds no merit in disturbing the voting pattern proposed in the Bill, as the same has been worked out on a formula where no one is at an disadvantageous or dominating position be it Centre or States. Moreover, under clause 2 Parliament and the Legislature of every State shall have power to make laws with respect to GST simultaneously.

In the GST Council, all the decisions have to be taken collectively by the Centre and States and in order to take decision on any issue 75% votes are necessary. So, in order to strike a fine balance Centre vote share has been kept at 1/3<sup>rd</sup> and that of the States at 2/3<sup>rd</sup>. In that backdrop, the Committee recommends that these amendments may not be necessary since our Constitution is a federal Constitution and so, it is necessary to make the provisions providing for a manner

**that disallow the dominance of one over the other. Keeping this in view, the voting formula has been worked out. Hence, the clause may be adopted with no change.**

**The Committee, having noted the point mentioned by the Department of Revenue that the GST Council shall decide only the 'modalities' to resolve disputes, did not agree to recommend inclusion of Article 279B as was proposed in Constitution(115<sup>th</sup> Amendment) Bill, 2011.**

**5. Clause 13 - The term 'supply' would be defined in the various GST laws relating to CGST and SGST. Hence, the Committee feels that it would not be appropriate to insert the definition of supply in this clause. This clause has been adopted with no change.**

**6. Clause 14 - Endorsing the view of the Department, the Committee feels that 'services' has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes. Further, having noted the points mentioned by the Department of Revenue regarding inclusion of petroleum products under GST, the clause may be adopted with no change.**

**7. Clause 15 & Clause 16 -These clauses have been adopted with no change.**

**8. Clause 17- 2.108 Regarding the aforesaid Entry, the Committee is of the view that Entry 92C was inserted by the Constitution (Eighty-Eighth Amendment) Act, 2003 to empower the Union to impose service tax on certain services read with article 268A of the Constitution.**

**Notwithstanding, the service tax levied under the Finance Act, 1994 were continuing as such. The amendment was carried out in the Constitution but the provision was never brought into force. Since Parliament has enacted the said**

constitutional provision and as such the provision stands as the part of Constitution; and therefore, unless it is omitted by a Constitution Amendment Act by Parliament, it will continue to sit in the Constitution. On the need for formal repeal, the Law Commission, in its One Hundred and Forty-eighth Report on “Repeal of Certain Pre-1947 Central Acts”, has observed that “the statutes, unlike human beings, do not die a natural death, with the possible exception of statute whose life is pre-determined by the Legislature at the time of their enactment. A statute, unless it is expressly enacted for a temporary period, survives until it is killed by repeal. To this extent, statutes enjoy immortality.” Therefore, it is necessary to omit the said provision to ward of any future doubts about GST.

The Committee is of the view that the entry in the list II- State List empowers the State Government to make laws in respect of the subjects mentioned therein. The Committee is also of the considered view that taxes on electricity and water have been treated separately from taxes on other goods and services in the Constitution. Entry 53 of the List II (State List) deals with taxes on sale or consumption of electricity, and this entry is not being touched by the Constitution (122nd Amendment) Bill, 2014. The Committee also noted the rationale for the provisions relating to alcohol for human consumption and tobacco as provided by the Department of Revenue. Hence, the clause may be adopted with no change.

9. **Clause 18- 2.139** The Committee feels that the provision of 1% additional tax in its present form is likely to lead to cascading of taxes. Therefore, the Committee strongly recommends that in the concerned GST law, an explanation should be given that for the purpose of Clause 18, the word ‘supply’ would mean:

*Supply: "All forms of supply made for a consideration".*

**10. Clause 19 - 2.158 In view of the clarifications given by the Legislative Department, the Committee feels that there is no justification for substitution of the word ‘may’ with ‘shall’.**

**Having regard to the concerns expressed by the various States and some of the Members of the Committee in their submissions made before the Select Committee, the Committee recommends amendment in clause 19. The amended clause 19 should read as follows:**

*“19. Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for the loss of revenue arising on account of implementation of the Goods and Services Tax for a period of five years.”*

**11. Clause 20 & Clause 21 : This clause has been adopted with no change.**

**12. The Committee feels that the concerns expressed by all the Members of the Committee related to local bodies and Municipalities are not unwarranted. Based on the years of experience and being witnessed to their work in their respective constituencies they were of the view that their interest needs to be protected. The same view was also endorsed by nearly all the stakeholders who have either submitted their memorandum or appeared before the Committee on the Bill.**

**But, at the same time we may not forget that the Constitution of India clearly defines the ambit under which the Centre and each of the State has to function. Any encroachment into the State List would disturb the whole system and could strain the Centre-State relations.**

**The Committee feels that although the issues raised by the Members to protect and preserve the interest of local bodies are valid, it would not be**

appropriate for the Committee to advise, recommend and guide the State Governments what they have to do with regard to the interests of the local bodies.

As per the provisions of the Bill, while the Parliament would pass law relating to CGST, every State Government has to pass a similar law relating to SGST. Hence, while drafting the SGST, the role of the drafters and the concerned State Governments becomes all the more important as they have a duty to protect the revenue sources of the Panchayats, Municipalities, etc, enshrined under Constitution of India. The Committee also feels that here the role of the GST Council is also very important, because while recommending to the Centre and State Governments for subsuming of the taxes, cesses and surcharges levied by the Union, the States and the local bodies in the goods and services tax under article 279 (4) (a), it may also ensure protection of revenue sources of local bodies under provisions of article 279 (4) (c) and (h).

In the light of the above, the Committee feels that in a cooperative federalism, each unit of it interacts cooperatively and collectively resolves their problems by taking appropriate action at their end. On the same analogy, Government at the helm of the affairs is duty bound both morally and constitutionally to protect the interest of local bodies by giving them suitable space of functioning and power to levy and generate taxes for their day today functioning. Having full faith in our Constitution from where each tier of the Government draws its powers, the Committee believes that all the State Governments would enact laws on the basis of Model GST Laws recommended by the GST Council and while making such laws States would abide by the constitutional provisions relating to Panchayats and Municipalities.

Concerned about the very existence and survival of local bodies, the Committee feels that Local government is a State subject figuring as item 5 in List II of the

**Seventh Schedule to the Constitution. Article 243 G of the Indian Constitution enshrines the basic principle for devolution of power to the local bodies. In the nation's journey towards becoming an economic power, local bodies play an important part in enabling infrastructure availability to the citizens. Local bodies are institutions of the local self governance, which look after the administration of an area or small community such as villages, towns, or cities. The local bodies in India are broadly classified into two categories. The local bodies constituted for local planning, development and administration in the rural areas are referred as Rural Local Bodies (Panchayats) and the local bodies, which are constituted for local planning, development and administration in the urban areas are referred as Urban Local Bodies (Municipalities) and the Constitution of India gives protection to them through various articles, so while drafting the SGST laws due consideration should also be given to this fact. In that backdrop, the Committee strongly recommends that while drafting the SGST laws due consideration to the third tier of the Government as has been guaranteed by the Constitution be given and provisions of devolution of taxes to the local bodies be made.**

**The Committee is perturbed to know that State Finance Commissions (SFC) in some of the States are either non-existent or even when exist their recommendations were not accepted by the respective State Governments. The Committee understands that each tier of the Government draws its powers through the Constitution and there is a clear demarcation of fields through List I, II and III within which each tier has to function. Any encroachment by any of them would paralyze the whole system and defeat the very foundation of our Constitution. Hence, the Committee while not venturing into the domain of the State List desires that for the betterment of our States in general and country in particular it would be prudent to abide by the recommendations of the SFCs.**

**13. Endorsing the view envisaged by Fourteen Finance Commission, the Committee feels it would be wise to keep the GST Compensation Fund out of the purview of the Bill as has been done in the present case, because it is a temporary component and that too only for five years.**

**14. The Committee feels that each and every State is being represented in the GST Council by their Revenue/Finance/Taxation Minister. Be it a small State or a big State, in the GST Council, all of them enjoy equal status and power to cast one vote. In the event of difference, it can very well be presumed that the GST Council will try to evolve consensus on contentious issues before going for casting of votes, as all the States are members of the Council. Thus, modality to resolve any differences internally lies with the Council. If any Dispute Settlement Authority is created separately it will certainly hamper the functioning of the GST Council in general and Legislatures (Parliament and States) in particular. Thus, it would be judicious not to have a separate and distinct authority having far reaching powers and which could preempt and supersede the powers of Parliament and State Legislatures in the long run.**

**The Committee also feels that when concept of Empowered Committee (EC) was coined for the first time, it may not have been presumed how it would function, whether it would serve the purpose for which it would be created, how States would be represented/heard, how issues would be taken up and resolved, etc. But experience has shown that the faith with which the concept of EC was coined has actually delivered. Empowered Committee headed by one among the State Finance/ Revenue Ministers of all States deliberate meticulously on each of the issues raised by its Members and with the passage of time it had taken the shape of arbitration centre where disputes related to them or between two or many States are raised, deliberated and settled amicably without any arbitration charges or fees borne by the disputant States. It would not be over exaggeration of facts if the**

**Committee would say that on the one hand EC had worked as a forum where any issue of State importance could be raised and on the other hand it had gained the confidence of States in solving their problems and allaying their fears. Such confidence building measure had been initiated by the EC that it could well be termed as a forum where disputes are settled broadly with consensus.**

**15. The Committee feels that it would be too early to presume as to whether the price levels will go down or up in the post GST era. What has to be seen and watched by the Government with eyes open is whether the benefit, if any, arises would certainly be passed on to the consumers or not. Hence, the Committee feels that at the most if price stability is achieved it would serve the very purpose of GST in the entire country as inflation, nowadays has not left even a single field untouched.**

**16. The Committee feels GSTN shall play a crucial role in implementation of GST as it shall provide the IT infrastructure for implementation of GST. It noted that Non Government shareholding of GSTN is dominated by private banks. This is not desirable because of two reasons . Firstly, public sector banks have more than 70% share in total credit lending in the country. Secondly, GSTN's work is of strategic importance to the country and the firm would be a repository of a lot of sensitive data on business entities across the country. In light of above, the Committee strongly recommends that Government may take immediate steps to ensure Non Government financial institution shareholding be limited to public sector banks or public sector financial institutions.**

**Endorsing the views of the SBI, the Committee having same feeling as the bank recommends that the best practices followed internationally may be followed and if possible banking services may be kept outside GST. Furthermore, if this is not possible then, interest, trading in securities and foreign currency and services to**

retail customers should not be liable to GST and suitable provision should be there to avail of CenVAT credit of input services taken to provide activities involved in such services. Further, single registration coupled with IGST provision should be made available to enable CenVAT credit for consumers of banking services.

The Committee is of the considered opinion that if the GST rate is more than the service tax rate of 14%, the increase in the tax rate will further increase the cost of banking services. This results into cost of doing business to be much higher in India as compared to other competing countries. Therefore, the Committee recommends that to be internationally competitive, the GST rate for banking industry should be minimum.

17. The Committee feels that although the GST Council has been entrusted with the task of fixing the rate including floor rates with bands in mutual consent with other State Governments who are part and parcel of the Council. But implementation of GST in other countries has shown GST rate is a very important factor in earning the trust of the consumers. If the GST rate is kept high, it will surely erode the confidence of the consumers badly and may lead to high inflation. Therefore, the Committee is of the considered view that while fixing the rate, the GST Council may opt for a broad base and moderate rate as it is an essential feature of a good tax system and as far as possible multiplicity of tax rates may be avoided.

#### **Non-Interference in the State Governments powers stated in Concurrent List**

18. In that backdrop, the Committee recommends that all out effort should be made to improve upon the IT preparedness of the States, so that the apprehensions related to its level of preparedness may gets addressed. For its smooth implementation, the Committee immediately recommends implementation of comprehensive training programmes at all levels to allay the fears of consumers,

stakeholders, organisations, etc. A message should go loud and clear to all that we as a country are ready to adopt tax reform of unparalleled nature. The Committee also recommends that for having no discernible blemishes in the implementation of GST, it is imperative that not only IT preparedness is at very high level but also prerequisites like IT infrastructure, unified tax credit clearing mechanism, etc may be put in place for its implementation.

19. Having heard the views of the main stakeholders i.e. State Governments/UTs, the Committee feels that States are like the arteries of the India and if the arteries find themselves choked the whole body will fall. Hence, for the sake of our survival, what needs to be done is to protect and preserve our arteries. Based on that analogy, the Committee feels that although the apprehensions brought to the notice of the Committee are not unwarranted but due care have been taken constitutionally to overcome any constraints come in their way. All these initiatives ushered by the Government of India having been evolved and brought in the form of current Bill are based on the views expressed in the Empowered Committee meetings. To allay the fear of all State Governments in general and manufacturing states in particular, safeguards like 1% additional tax on supply of goods, compensation to States/UTs for losses in the revenue, States have been given the voting weightage of 2/3rd , decision in GST Council to be arrived at by the majority of not less than 3/4th , etc on the recommendation of the GST Council have been provided. More so, all this has been done constitutionally so that there may not be any doubt in the minds of the States/UTs.

Therefore, the Committee feels due consideration has been given by the Government of India to the aforesaid apprehensions raised by the States/UTs while coming forward with this comprehensive Constitutional Amendment Bill. The Committee feels that apprehensions cast over the introduction of goods and services taxes are early hiccups and with the introduction of it, the States/UTs

would realise that they have many more options available to them to generate and augment their revenue source. Survival of the Union is on the States, the Committee close by saying that would the body (Centre) survive if arteries get choked, so vibrancy of the States comes first for the survival of the Centre.

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## **8. Message from Lok Sabha - Reported**

Secretary-General reported to the House, a message from the Lok Sabha informing the Rajya Sabha that the Lok Sabha at its sitting held on the 12<sup>th</sup> May, 2015, had adopted a Motion informing that the Lok Sabha concurs in the recommendation of the Rajya Sabha that the Lok Sabha do agree to leave being granted to withdraw the Motor Vehicles (Amendment) Bill, 2014, which was passed by the Lok Sabha on the 18<sup>th</sup> of December, 2014 and laid on the Table of the Rajya Sabha on the 19<sup>th</sup> of December, 2014.

1-01 p.m.

*The House adjourned and re-assembled at 2-01 p.m.*

2-01 p.m.

## **9. Government Bill — Motion for Reference of the Bill to a Select Committee — Adopted.**

### **The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014.**

Shri Arun Jaitley, Minister of Finance, Corporate Affairs and Information and Broadcasting, moved the following motion:—

“That the Bill further to amend the Constitution of India, as passed by Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following Members:—

1. Shri Bhupender Yadav
2. Dr. Chandan Mitra
3. Shri Ajay Sancheti
4. Shri Madhusudan Mistry
5. Shri Mani Shankar Aiyar
6. Dr. Bhalchandra Mungekar
7. Shri Naresh Agrawal
8. Shri K. C. Tyagi

9. Shri Derek O'Brien
10. Shri A. Navaneethakrishnan
11. Shri Satish Chandra Misra
12. Shri K.N. Balagopal
13. Shri Dilip Kumar Tirkey
14. Shri C.M. Ramesh
15. Shri Praful Patel
16. Shrimati Kanimozhi
17. Shri Anil Desai
18. Shri Naresh Gujral
19. Mir Mohammad Fayaz
20. Shri D. Raja
21. Shri Rajeev Chandrasekhar

with instructions to report to the Rajya Sabha by the last day of the first week of the next Session.”

2-03 p.m.

The motion was adopted.

%2-21 p.m.

#### **10. Statement by Minister**

Shri Nitin Jairam Gadkari, Minister of Road Transport, Highways and Shipping, made a statement regarding certain allegations against him made by some Members in the context of a CAG Report laid on the Table of the Rajya Sabha on the 30th of April, 2015

Thereafter, some Members sought clarifications.

Y2-57 p.m.

*The House adjourned and re-assembled at 3-12 p.m.*

List of Organisations heard during the visit of the “The Constitution  
(One Hundred and Twenty-Second Amendment) Bill, 2014”.

1. Gail (India) Limited
2. Oil India Limited
3. Oil and Natural Gas Corporation
4. Indian Overseas Bank
5. Indian Bank
6. UCO Bank
7. United Bank of India
8. Bank of Baroda
9. State Bank of India
10. Chambre de Commerce
11. Tamil Nadu Vanigar Sangankalin Peramaippu
12. Puducherry Trader's Federation
13. Karaikal Chamber of Commerce
14. Pondicherry Chamber of Industries
15. Tamil Nadu Chamber of Commerce & Industry
16. The Bengal Chamber
17. Tamil Nadu Small & Tiny Industries Association
18. The Tamil Nadu Automobile & Allied Industries Federation
19. The Tamil Nadu Food Grains Merchants Association Ltd
20. Tamil Nadu Chamber Brick Manufacturers Association
21. The Southern India Mills' Association
22. Salem City Chamber of Commerce
23. The Southern India Chamber of Commerce and Industry
24. FICCI
25. All India Federation of Tax Practitioners
26. The Film & Television Producers Guild of India Ltd
27. CII
28. Indian Broadcasting Foundation
29. Advertising Agencies Association of India
30. Express Industry Council of India
31. ASSOCHAM
32. SIAM
33. Indian Foundation of Transport Research and Training
34. All India Confederation of Commercial Taxes Associations