

Minutes of the 33rd GST Council Meeting held on 20th and 24th February 2019

The 33rd Meeting of the GST Council (hereinafter referred to as 'the Council') was held on 20th February, 2019 through video conferencing during which Agenda items 1- 4 and 6 were discussed and decided. For Agenda items 5 (Recommendations of the GoM for boosting Real Estate Sector under GST regime) and 7(i) (Interim report of GoM on Lottery), after discussion, it was decided that the same would be discussed in a physical meeting to be held in Delhi on 24th February, 2019. Accordingly, the Meeting of the 33rd GST Council was reconvened on 24th February, 2019 at Vigyan Bhawan, New Delhi. On both these occasions, the Meeting was chaired by the Hon'ble Union Finance Minister, Shri Arun Jaitley (hereinafter referred to as the Chairperson). A list of the Hon'ble Members of the Council who attended the meeting by video conferencing on 20th February, 2019 is at **Annexure 1** and those who attended the physical meeting on 24th February, 2019 is at **Annexure 2**.

2. A list of Officers of the Centre, the States, GST Council Secretariat and the Goods and Services Tax Network (GSTN) who attended the Meeting through video conferencing on 20th February, 2019 is at **Annexure 3** and those who attended the physical meeting on 24th February, 2019 is at **Annexure 4**.

3. The following agenda items were discussed during the 33rd Meeting of the Council.

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

Minutes of the Meeting of 20th February, 2019

Preliminary Discussion:

4. The Hon'ble Chairperson welcomed the Members for the 33rd Meeting of the Council. He informed that three States were represented in this meeting by an alternative Minister and he welcomed them, namely Dr. Ranjit Patil, the Hon'ble Minister from Maharashtra, Shri Subodh Uniyal, the Hon'ble Minister from Uttarakhand and Shri Suresh Bhardwaj, the Hon'ble Minister from Himachal Pradesh.

4.1. Dr. Amit Mitra, Hon'ble Minister from West Bengal conveyed his best wishes for the good health of the Hon'ble Chairperson. Thereafter, he stated that while he was agreeable to



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discuss other agenda items in this meeting by video conference, the agenda on Real Estate sector should be discussed in a regular meeting. He observed that in the video conference meeting, he was not even able to see which all Members were seated for discussion. He further stated that on this issue, he had also written a letter on 18th February 2019 to the Hon'ble Chairperson and highlighted that there were complex issues relating to low cost housing, black money etc., which could be deliberated in detail only in a physical meeting. He, therefore, strongly urged that the agenda item on Real Estate should be deferred and discussed in a regular meeting of the Council.

4.2. Dr. Thomas T.M. Isaac, Hon'ble Minister from Kerala stated that he fully shared the sentiments of the Hon'ble Minister from West Bengal. He had also written a letter yesterday to the Hon'ble Chairperson requesting not to discuss the issues of Lottery and Real Estate through video conference. He drew attention to the Minutes of the 1st Meeting of the Council held on 22-23 December, 2016 in which the desirability of holding Council meeting *via* video conference was suggested by the Hon'ble Minister from Tamil Nadu and on which the Hon'ble Chairperson had observed that the idea of video conference could be explored at a later date, specifically in cases of meeting where the agenda points were few and required just a formal approval. He stated that the issues being taken up during the meeting went beyond just formal approval and required substantial discussion. Furthermore, the desirability of postal ballot was also discussed and it was decided that it was not required. He added that during the 1st Meeting of the Council, the mechanism to resolve the issues where serious difference of opinion arises among the Members was also discussed. He further cited Rule 15 of Chapter VI of the Rules of Procedures and Conduct of Business in GST Council which deals with 'Division' and stated that it was unfortunate that the decision was being taken based on the interim report of GoM on Lottery when many Members including him were unable to attend the meeting of the GoM on Lottery. He added that the meeting of the GoM was held inspite of his and Punjab Minister's request to the Convenor of the GoM to postpone the meeting by a few days. He informed that due to health reason and doctor's advice, he was unable to travel and the Hon'ble Punjab Minister was presenting his Budget on the day of the meeting of the GoM. He stated that due to the manner in which the decision was being taken, he wanted to give advance notice to seek a division on the proposal on lottery. He stated that as per the Rules of Procedure, if a division was to be made, it should be in a physical meeting.

4.3. Shri J. Syamala Rao, Chief Commissioner, State Tax (CCST), Andhra Pradesh stated that the Hon'ble Minister of his State would join the meeting shortly. He added that the Hon'ble Minister had also written a letter yesterday to the Hon'ble Chairperson to postpone the discussion on the two agenda items on Lottery and Real Estate and to take them up in a physical meeting at an early date.

4.4. Shri Manish Sisodia, Hon'ble Deputy Chief Minister of Delhi stated that he had also written a letter yesterday to the Hon'ble Chairperson stating that the two agenda items on Real Estate and Lottery required detailed discussion and therefore this should be postponed and should be discussed in a physical meeting. Shri Manu Shrivastava, Principal Secretary, State Tax, Madhya Pradesh stated that the Hon'ble Minister would be joining the meeting shortly and he informed that the Hon'ble Minister desired that a physical meeting of the Council could be held in Delhi even at a very short notice to discuss the subject of Real Estate.

4.5. Shri Nitin Bhai Patel, Hon'ble Deputy Chief Minister of Gujarat stated that in view of the upcoming General elections and the fact that the Model Code of Conduct was likely to be

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introduced shortly, it was desirable that these major issues relating to Lottery and Real Estate were not kept pending and should be finalized today only as all Members were available on video conference as well. Shri Conrad K. Sangma, Hon'ble Chief Minister of Meghalaya wished the Hon'ble Chairman a speedy recovery and then stated that the issues on Lottery and Real Estate were very important and should be decided before the Lok Sabha Election. He added that it was in the interest of everyone that these two issues were moved forward at the earliest. Shri Sushil Kumar Modi, Hon'ble Deputy Chief Minister of Bihar stated that in the last meeting of the Council, the preliminary issues regarding the Real Estate were discussed and there was a worry that Real Estate sector was facing almost a crisis situation. Since the Report of the Group of Minister (GoM) on Real Estate had been received and there was a general consensus on the same, there was no need to postpone a decision on this issue as it was very important for the overall Indian economy. He further stated that in order to give boost to the Real Estate sector, this issue should be discussed in this meeting through video conference and everyone could place his views through video conference. He added that the issue should be discussed and decided in this meeting.

4.6. Shri Rajesh Agarwal, Hon'ble Minister from Uttar Pradesh wished the Hon'ble Chairperson good health and then stated that the issues of Lottery and Real Estate were discussed in the last meeting of the Council and both should be finalized in this meeting after discussion through video conference. Shri Anurag Goel, Commissioner, State Tax (CST), Assam stated that his Hon'ble Minister had instructed to convey that both the issues, namely Lottery and Real Estate, should be discussed through video conference and decided today. Shri C.P. Singh, Hon'ble Minister from Jharkhand stated that the issue of Real Estate was very important for his State and suggested that this should be discussed and decided today, so that action could be initiated from today itself. As regards the agenda on Lottery, he stated that his State did not have Lottery.

4.7. Shri Suresh Bhardwaj, Hon'ble Minister from Himachal Pradesh stated that Real Estate was a badly affected sector in his State and suggested that discussion on the issues relating to Real Estate sector should be held today through video conference so that some decision could be taken. He added that there was no Lottery in his State. Dr. Ranjit Patil, Hon'ble Minister from Maharashtra supported the observations of the Hon'ble Deputy Chief Minister of Gujarat made earlier. He added that Real Estate and Lottery were very important issues and should be discussed and decided through video conference and that there was no reason for them to be decided only in a physical meeting. Shri Jarkar Gamlin, Hon'ble Minister from Arunachal Pradesh stated that the issue of Lottery and Real Estate should be decided today over video conference. Shri M.S. Srikar, CST, Karnataka stated the Hon'ble Minister from Karnataka had directed to convey the view of the State. He stated that the State of Karnataka was a member of GoM on Real Estate and the Hon'ble Minister of his State was not able to attend the meeting on 8th February, 2019 as the Budget was being laid in the assembly on that day. He informed that the Hon'ble Minister had requested the Convenor of the GoM to postpone the meeting scheduled on 8th February 2019.

4.8. Captain Abhimanyu, Hon'ble Minister from Haryana wished the Hon'ble Chairman good health and then stated that the majority view was that the two important issues of Real Estate and Lottery should be discussed and decided today. He added that the subject of Real Estate was very important for his State but he did not have any objection to taking up a discussion and decision on Lottery too. Shri Mauvin Godinho, Hon'ble Minister from Goa

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stated that both the issues of Real Estate and Lottery should be discussed and decided today itself. He further stated that after the agricultural sector, the Real Estate sector was the largest source of employment and lately, downward trend was being observed in this particular sector which was a cause of worry. He observed that he was surprised to see that some Members who had earlier wanted to urgently address the issues relating to Real Estate sector were today opposing a decision on this very issue. He observed that so far, the Council had decided the issues with consensus keeping in view the overall interest of the economy of the country and exhorted that all the Members must rise above the considerations of individual States and should think of the nation and take a decision on this issue today.

4.9. Shri Shanti Kumar Dhariwal, Hon'ble Minister from Rajasthan stated that the GoM on Real Estate could not discuss the issues in detail and all members of the GoM were not present in its meeting. Hence, he did not agree with the findings of the GoM on Real Estate. He added that a meeting through video conference should only be for issues of urgent nature and this was not such an urgent issue. He further stated that States were not able to properly place their views through video conference and therefore suggested to defer this agenda item to be discussed during a physical meeting.

4.10. Shri Subodh Uniyal, Hon'ble Minister from Uttarakhand stated that he supported the recommendations of the GoM on Real Estate. He further added that his State did not have Lottery. Shri Wochamo Odyuo, Additional Commissioner, State Tax, Nagaland stated that they wanted the Agenda on Lottery to be discussed and decided today. Shri Somesh Kumar, Principal Secretary (Finance), Telangana stated that his State had a robust Real Estate sector and they wanted an early decision for this sector and it should be decided today. As regards lottery, he stated that his State did not have any lottery. Shri K.K. Sharma, Advisor to Governor (in-charge Finance), Jammu & Kashmir stated that the issue of Real Estate should be discussed on video conference as this matter was pending for the country as a whole for quite some time. He added that the GoM's recommendations were available and the pros and cons of the same could be discussed and then a final decision could be taken.

4.11. Shri V. Narayanasamy, Hon'ble Chief Minister of Puducherry stated that he had sent a letter yesterday to the Hon'ble Chairperson highlighting that the issues of Lottery and Real Estate had wide ranging ramifications and, therefore, these should be discussed in the Council meeting in the normal course and not through video conferencing. He added that the issues of lottery and real estate had been deliberated in the previous two to three Meetings of the Council and there had been lot of differences of opinion. He added that the issue of lottery was discussed during the last meeting of the Council in which he gave his views. He observed that both were larger issues with far reaching implications, and they needed to be discussed threadbare and it was not possible to do so through video conferencing. He further stated that any decision on the Real Estate sector not only affected revenue but there was also the issue of curbing the malpractices prevalent in the sector. For Lottery, there were different issues, namely online lottery, lottery run by States and lottery authorized by States and there were lots of ifs and buts on this issue. All these should be discussed in a physical meeting which could be convened even at a very short notice. He observed that till now, all issues had been decided in the Council by consensus and urged that on this issue too, the Hon'ble Chairperson should take a decision by consensus. He suggested that the Council meeting could be held in the next week itself.

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4.12. Shri Manpreet Singh Badal, Hon'ble Minister from Punjab expressed his happiness to see the Hon'ble Chairperson back in office and wished him good health. He stated that there was a division on the issues of Real Estate and Lottery and suggested to convene a physical meeting in Delhi even at a short notice of 3 to 4 days. He further stated that he would be happy to discuss these issues in a physical meeting. He observed that the intention behind these Agenda items was noble but certain rough edges needed to be addressed.

4.13. The Hon'ble Chairperson thanked all the Members for their good wishes. He then stated that there were 4 to 5 formal Agenda items which could first be taken up and then the issue of real estate could be discussed. During the discussion, it could be ascertained as to what was the extent of the difference of opinion and the extent to which it needed to be reconciled. He added that there was an urgency to decide the issue of Real Estate as this related to every State and lakhs of flats were lying unsold due to taxation issues. He stated that faster these issues were resolved, the better it would be for the States too. He suggested that the formal Agenda items could be done first and then the extent of divide or consensus on this issue could be ascertained.

4.14. The Hon'ble Chief Minister of Puducherry stated that the issue of apportionment of IGST to Puducherry and Delhi for the last financial year (2017-2018) had still not been resolved. In the last meeting, the Hon'ble Chairperson had requested the Revenue Secretary to deal with this matter. The Revenue Secretary had met the Finance Secretaries of Delhi and Puducherry but no consensus could be reached. He stated that Rs.219 crore was legally due to them and they were not able to draw this money at a time when there was paucity of funds in their State. He stated that a technical issue should not come in the way of giving them their due. The Revenue Secretary had advised to wait for the report of the C&AG but it was not known when the report would come. He added that the Government of India transferred the IGST amount to the Consolidated Fund of India without consulting them and they should not be penalized for it. He further requested the Hon'ble Chairperson to intervene in the matter and find an amicable solution.

4.15. The Hon'ble Deputy Chief Minister of Delhi supported the views expressed by the Hon'ble Chief Minister of Puducherry. He added that this issue needed to be sorted out expeditiously whereas the report of C&AG may take time. Dr. Ajay Bhushan Pandey, the Revenue Secretary and the Secretary to the Council (hereinafter referred to as the Secretary) stated that in his meeting with the Finance Secretaries of Delhi and Puducherry, he had explained that as on 31st March 2018, Rs.1,67,000 crore of IGST was lying in the Consolidated Fund of India and as the accounting principles were not finalized, the Government of India took the opinion of the Union Ministry of Law which opined that this money was part of the Consolidated Fund of India as on 31st March 2018 and therefore it had to be devolved. Hence, this sum was devolved as per the ratio determined by the Finance Commission. He stated that subsequently, the Council decided that the unsettled amount of IGST be apportioned in the ratio of 50:50 between the Centre and the States. He added that this position as well as the circumstances of devolution was explained to the Secretaries. He added that C&AG was also looking into this issue and based on their recommendation, the Council would need to take a view. He further added that the report of C&AG needed to be examined and the accounting rules needed to be finalised before the issue could be brought before the Council to take a view. He further added that for giving money to Delhi and


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Puducherry, all settled accounts would need to be re-worked, and in this view, there was a need to examine the report of C&AG to work out the mechanism to deal with the issue.

4.16. The Hon'ble Deputy Chief Minister of Delhi stated that it was not a correct proposition to say that only if C&AG stated that the method of devolution was wrong, then the Government of India would act. This issue should not be dependent on the C&AG report as in principle, both Delhi and Puducherry should have got the fund and the money due to the States should have been distributed to them. The Hon'ble Chief Minister of Puducherry stated that the money lying in the Consolidated Fund of India during that time should have been distributed between the Centre and the States. He added that they were yet to get the settlement amount for the month of December, 2018 and January, 2019. He further stated that for a procedural mistake of the Union Finance Ministry, C&AG could not say much for the money which was due to them. The mistake occurred due to transfer of the IGST amount to the Consolidated Fund of India.

4.17. The Hon'ble Chairperson stated that he would meet the Hon'ble Chief Minister of Puducherry and the Hon'ble Deputy Chief Minister of Delhi along with their officers and, if possible, the C&AG, on any convenient date, in order to explore how to address this issue. He stated that C&AG had made detailed comments on the procedure that was followed which needed to be taken into account. He added that the Central Government wanted to give the money due to the States and that he was willing to intervene on this issue.

4.18. Principal Secretary (Finance), Telangana stated that they had written to give provisional settlement of IGST up to March, 2019 towards the end of the Month so that the money came to the States during the month of March itself. He added that if the money was disbursed in a later month, then it would also affect the growth rate of the States. The Hon'ble Chairperson stated that he was aware of the importance of the month of March and that the fiscal deficit of States should also be within acceptable norm. With these remarks, he invited the Secretary to take up the formal Agenda items.

Agenda Item 1: Confirmation of the Minutes of 32nd GST Council Meeting held on 10th January 2019

5. The Secretary introduced this Agenda item and stated that the Minutes of the 32nd GST Council Meeting (hereinafter referred to as 'the Minutes') were circulated in advance and no comments had been received till now. He stated that if there were any suggestions, it could be given now; otherwise the Minutes could be adopted. The Hon'ble Chairperson stated that States could also send comments by tomorrow evening if they wanted to make some corrections in the recorded version of their Ministers.

5.1. The Hon'ble Minister from Uttar Pradesh stated that during the last meeting of the Council, he had requested the Hon'ble Chairperson to consider reduction in rate of tax on *Dry Singhara* and handmade Soap. He stated that neither the rate of tax had been reduced nor his version was recorded in the Minutes. The Hon'ble Chairperson stated that this could be suitably incorporated in the Minutes and the State could send the suggested correction in writing to the GST Council Secretariat. The Council agreed to this suggestion. Subsequently, the Commissioner, State Tax, Uttar Pradesh, provided the following version of the Hon'ble Minister from Uttar Pradesh for incorporation in the Minutes as a new paragraph 36.2 of the Minutes: 'The Hon'ble Minister from Uttar Pradesh stated that *Dry Singhara* was used by

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Sadhu-Sant, Kalpvasis and general public during Kumbh and other religious ceremonies during fast. Hence the State of Uttar Pradesh had requested time and again to exempt *Dry Singhara* from GST. He further stated that the present tax rate of 18% on handmade soap was quite high. He added that handmade soap was manufactured by small scale industries and by labour in the unorganized sector and that it was used by poor people in rural areas. Hence handmade soap should also be exempted from GST. The Hon'ble Chairperson observed that these requests should be examined by the Fitment Committee.'

6. For **Agenda item 1**, the Council decided to adopt the Minutes of the 32nd Meeting of the GST Council with the following change:

6.1. To insert a new paragraph 36.2. in the Minutes and to incorporate the following therein: 'The Hon'ble Minister from Uttar Pradesh stated that *Dry Singhara* was used by *Sadhu-Sant, Kalpvasis* and general public during Kumbh and other religious ceremonies during fast. Hence the State of Uttar Pradesh had requested time and again to exempt *Dry Singhara* from GST. He further stated that the present tax rate of 18% on handmade soap was quite high. He added that handmade soap was manufactured by small scale industries and by labour in the unorganized sector and that it was used by poor people in rural areas. Hence handmade soap should also be exempted from GST. The Hon'ble Chairperson observed that these requests should be examined by the Fitment Committee.'

Agenda Item 2: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government

7. The Secretary stated that Notifications, Circulars and Orders issued after 10th January, 2019 (i.e. the date of 32nd Council Meeting) and till 13th February, 2019 were required to be ratified by the Council. He further stated that during the 24th Meeting of GIC held on 12th February, 2019, certain decisions were taken for which the relevant circulars had not been issued at the time of circulation of the Agenda notes. Subsequently, three Circulars had been issued, namely, Circular No.89/08/2019-GST dated 18th February, 2019 (relating to clarification regarding mis-match of data reported in Table 3.2 of FORM GSTR-3B and in Table 7B of FORM GSTR-1); Circular No.90/09/2019-GST dated 18th February, 2019 (relating to clarification regarding compliance of Rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter-State supplies); and Circular No.91/10/2019-GST dated 18th February, 2019 (relating to clarification regarding tax payment made for supply of warehoused goods while being deposited in a Customs bonded warehouse for the period July, 2017 to March, 2018). He stated that all these details were available in the presentation on this Agenda item which was circulated to the States in advance of the Council meeting (attached as **Annexure 5** of the Minutes) and no comments were received from the States. He proposed that the Council may ratify the Notifications, Circulars and Orders. The Council agreed to the same.

8. For **Agenda item 2**, the Council approved the deemed ratification of the following Notifications, Circulars and Orders issued by the Central Government after 10th January 2019 (the date of 32nd Council Meeting) and till date which are available on the website, www.cbic.gov.in.

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MINUTE BOOK

Act/Rules	Type	Notification/Circular/Order Nos.
CGST Act/CGST Rules	Central Tax	1 to 8 of 2019
	Central Tax (Rate)	1 of 2019
IGST Act	Integrated Tax	1 to 3 of 2019
	Integrated Tax (Rate)	1 to 2 of 2019
UTGST Act	Union territory tax	1 of 2019
	Union territory tax (Rate)	1 of 2019
Circulars	Under the CGST Act	88 to 91 of 2019
	Under the IGST Act	4 of 2019
ROD Orders	Under the CGST Act	1 to 2 of 2019
	Under the UTGST Act	1 of 2019
Orders	Under the CGST Act	1 of 2019

8.1. The Notifications, Circulars and Orders issued by the States which are *pari materia* with above Notifications, Circulars and Orders were also deemed to have been ratified.

Agenda Item 3: Decisions of the GST Implementation Committee (GIC) for information of the GST Council

9. Introducing this Agenda item, the Secretary stated that the decisions of the GIC post the 32nd Meeting of the Council were circulated to all States and was part of this Agenda item. He further stated that the presentation on the decisions of GIC was also circulated to the States (attached as **Annexure 5** to the Minutes) in advance of the Council Meeting, and no comments had been received from any States. He stated that the decisions of the GIC were placed before the Council for information.

10. For **Agenda item 3**, the Council took note of the decisions taken by the GIC between 10th January 2019 (date of 32nd GST Council meeting) and 12th February 2019.

Agenda Item 4: Decisions/recommendations of the 4th Meeting of the IT Grievance Redressal Committee for information of the Council

11. Introducing this Agenda item, the Secretary stated that presentation relating to the decisions / recommendations of the 4th Meeting of the IT Grievance Redressal Committee (ITGRC) was circulated to the States (attached as **Annexure 5** to the Minutes). He suggested that the Council may take note of the decisions.

11.1. The Hon'ble Minister from Rajasthan stated that on 29th January 2019, they had forwarded to the Council Secretariat, 9 cases containing directions of the Hon'ble High Court of Rajasthan for inclusion in the Agenda of the ITGRC and suggested that the same should be taken up in the next meeting of the ITGRC. The Hon'ble Minister from Himachal Pradesh stated that there was one decision of the Hon'ble High Court of Himachal Pradesh which also needed to be included in the next meeting of the ITGRC. The Secretary stated that the GST Council Secretariat had requested all States to give details of the court cases where the Hon'ble High Courts had given directions to consider the cases and the inputs received from

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the States would be placed before the next ITGRC which would be held at the earliest possible. He suggested that the Council could take note of the decisions/recommendations of the ITGRC. The Council agreed to the same.

12. For **Agenda item 4**, the Council took note of the decisions/recommendations of the 4th Meeting of the IT Grievance Redressal Committee.

Agenda Item 5: Recommendations of the GoM for boosting Real Estate Sector under GST regime

13. The Hon'ble Chairperson invited discussion on the agenda and stated that any decision on this agenda would be taken by consensus keeping in mind the tradition of the GST Council. He further stated that so far voting had been avoided and he intended to avoid it now too. The Hon'ble Minister from West Bengal expressed his reservation to even initiating the discussion on the agenda and stated that a substantive number of States had opposed to take up this agenda on video conference in the beginning of the meeting itself and if discussion on the agenda started, then it would mean taking a decision without having consensus. The Hon'ble Chairperson stated that this issue had been discussed in last 2-3 meetings and he meant to start the discussion so that members could express their views but it would not mean that decision would be taken without consensus. He advised that the discussion on this issue should not be vetoed.

13.1. The Hon'ble Deputy Chief Minister of Gujarat stated that as the GoM had submitted its recommendation before the Council, it should not be kept pending without discussion. Thus, discussion on it should be conducted so that the difficulty faced by this sector could be brought out before the Council. The Hon'ble Deputy Chief Minister of Bihar, supported the view and expressed his agreement with all the recommendations of the GoM and added that the tax rate of 3% proposed by the GoM on affordable houses may be reduced to 1%. He further drew the attention of the Council to mixed use projects i.e. projects having both residential and commercial property. He stated that the residential complexes also had some commercial activities like *Kirana* shop, vegetable shop, Parlor etc. within the same complex which catered to the needs of residents and hence 10% commercial property should be allowed in a residential complex and such mixed properties should be given the same treatment as proposed for the residential property. He also stated that Bihar supported the GoM proposal of exemption from tax to development rights like TDR etc.

13.2. The Hon'ble Minister from Punjab stated that this was a typical proposal with noble intentions but it had many rough edges. He stated that as a Member of GoM, he had raised a number of issues and had asked the Fitment Committee to address those issues before bringing a proposal in the Council. However, it seemed that most of the issues had not been addressed so as to bring complete clarity on the proposal. He therefore proposed that the Hon'ble Chairperson should convene a physical meeting to discuss this issue and such a physical meeting could be convened by giving 3-4 days' notice. Taking the discussion forward on the agenda, he stated that the most disturbing feature of the proposal was regarding power to tax land which was a dent in the power of the States in view of Entry No. 49 of List II in Schedule 7 of the Constitution. Though it was stated in the agenda that the power to tax land was outside the GST, but it was only partially correct since in the Agenda, only 30% of the gross value of residential apartment had been excluded towards land value. The land cost comprised a higher component *vis-à-vis* the value of residential property and in some cases, it went upto 80% and even 90% of the value of the property. The concept of abatement of 30%



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meant that land was being exempted to the extent of 30% of the gross value only and hence some part of land was being taxed even when it was outside the purview of GST. Further, it was not clear what would happen in a case where builder separated supplies - one of the land and another of construction. He further raised the issue that the long-term leasing beyond 30 years should also be treated as sale of land since it was subjected to Stamp Duty by the States. Hence, on such long-term lease, no Service Tax was paid in the pre-GST period, as immovable property was outside the purview of Service Tax levy though some States had received notice for payment of tax on such long-term leases. He further stated that such long-term leases in some cases were further sub-leased to private enterprises and the stamp duty was also paid and these enterprises partnered with States in the economic development. He referred to the General Clauses Act and stated that the definition of land includes both land and benefits arising out of land. Thus, such transactions should be kept outside GST.

13.3. The Hon'ble Minister from Punjab raised another issue that levy of tax @18% on premium for long term lease for completed property would create an absurd situation where the GST on premium would be higher than the proposed tax of 5% on the property sold after completion. Thus, the sector would be having double taxation i.e. under the State law as well as GST law and hence long-term lease and TDR be kept out of the GST for all purposes, leaving it to States until Real Estate sector was brought under GST. He further stated that the proposed operational part did not suggest any mechanism of reversal of ITC (Input Tax Credit) in respect of completed property; valuation of unsold property; valuation of apartment after issue of completion certificate, as with the passage of time, the apartment may fetch higher value. Further, introducing composition without ITC would result in huge evasion by booking credit against projects that were taxable. He stated that in view of the aforesaid observations, and also the fact that many issues remained to be clarified in the proposal such as 80% sourcing from registered taxpayers, whether it would be done project-wise or registration-wise; how would this 80% be apportioned between commercial and residential property, etc. He added that rate of tax on this sector should be discussed after having clarity on the issues he had raised. He observed that decision on these issues should not be left to Officers' Committee as this would tantamount to excessive delegation.

13.4. The Hon'ble Chief Minister of Puducherry supported the views expressed by the Hon'ble Minister from Punjab and stated that first the issues raised by Punjab should be discussed threadbare and then decision be taken in the next meeting. He further added that a decision on this issue was attempted in the last 2-3 meetings of the Council and then finally referred to the GoM. He suggested to call a physical meeting of the Council next week to discuss this issue and then decide by consensus. The Hon'ble Minister from Rajasthan also supported the observations made by the Hon'ble Minister from Punjab and requested clarification from GoM on each point.

13.5. The Secretary informed that the issues raised by the Hon'ble Minister from Punjab had been discussed in the GoM and requested Chief Commissioner, State Tax (CCST), Gujarat to elaborate on the same. Dr. P.D. Vaghela, CCST, Gujarat stated that with respect to premium on long term lease, the GoM had recommended that GST should be charged only on such TDR which was attributable to residential properties sold after completion. Further, mechanism of reversal of ITC under different scenario would be discussed by the Law Committee and the Fitment Committee while the proposal from the State of Bihar to consider 10% of the commercial property to be covered as part of residential property would have compliance issue.

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13.6. The Hon'ble Minister from Punjab queried that if these issues were yet to be decided, then how Council could take a decision today and suggested that a call could be taken later. The Hon'ble Deputy Chief Minister of Delhi drew attention towards the article written by Dr. Arvind Subramanian, former Chief Economic Advisor which stated that the entire Real Estate Sector should be brought under GST. He stated that he still supported the proposal to bring the entire Real Estate segment under GST whereas now only some part of it was coming under GST. He cautioned that this was becoming like VAT. He further stated that under-construction projects, if brought under GST with levy of tax without ITC, it would lead to generation of black money. In fact, the Real Estate Sector wanted to be out of GST. He suggested to take a strong decision and bring the entire Real Estate sector under GST. The Hon'ble Minister from Rajasthan stated that when recommendation had not been examined by the Fitment Committee and the Law Committee, it was not correct to discuss such a proposal. Shri Priyavrat Singh, Hon'ble Minister from Madhya Pradesh also proposed a physical Council meeting for comprehensive discussions as the present proposal did not address the Real Estate Sector issue peculiar to rural and semi urban area, issues of mixed projects having larger commercial area or smaller area. Further, he stated that if tax was to be lowered to 5% on bigger buildings, then how poorer people were benefitting.

13.7. Shri D. Jayakumar, Hon'ble Minister from Tamil Nadu supported the recommendation of the GoM to levy the tax @ 3% or less without ITC for affordable housing property and @ 5% on non-affordable residential property. He also stressed on the need to reduce tax on safety matches and on job work for engineering goods. Shri T. S. Singh Deo, Hon'ble Minister from Chhattisgarh, stated that he disapproved a meeting on this important subject through video conferencing and he would also like to register his disagreement with the proposal. He stated that tax @ 3% without ITC on 'Affordable Housing' would mean that houses under Pradhan Mantri Awas Yojana, MIG and LIG were being covered under this proposal and the tax burden of 3% would be passed on to the customer. He gave example from a case study in his State of a builder having total tax liability of Rs. 84,75,00,026/-. After deduction of ITC, the liability to pay tax in cash was Rs. 10,896/- i.e. 99.87 % was adjusted from ITC. As per the proposed agenda, tax of 5% without ITC on the non-affordable houses would be payable and the cash tax liability would increase to Rs. 35,31,261/- which would be borne by the consumer. As a result, the liability of tax on the consumer would increase from Rs. 10,896/- to Rs. 35,31,261/- which would be entirely borne by the customer. In addition, he also objected to the inclusion of the land and observed that the proposed abatement of 1/3rd of total value towards land was inappropriate as land value was based on many factors like area/ places etc.

13.8. Summing up, the Hon'ble Chairperson stated that the Hon'ble Minister from West Bengal and some others had raised *ab initio* objection and were against discussing the proposal. Some Members like Hon'ble Ministers from Puducherry, Punjab and Chhattisgarh had suggested to call a physical meeting at short notice. On the other hand, some Members had suggested to take a decision in this meeting itself as many flats were lying unsold. Keeping in mind all these viewpoints, he suggested that the Council meeting could be adjourned and reconvened as a physical meeting on the coming Monday (25th February 2019). The Hon'ble Deputy. Chief Minister of Delhi stated that they had assembly budget session scheduled for Monday (25th February 2019) and Tuesday (26th February 2019). The Hon'ble Minister from Punjab proposed to continue the meeting on Sunday (24th February 2019). The Hon'ble Minister from West Bengal stated the meeting could be convened on Wednesday (27th February 2019) which would give time to examine the proposal in detail by getting more

data like the one highlighted by the Hon'ble Minister from Chhattisgarh. The Hon'ble Chairperson observed that data of individual builders may not be authentic as the component of cash and ITC may not be reliable; instead it was considered appropriate to analyze data obtained from NBCC which was a Government of India undertaking and they would have no cash dealing in their transactions and similarly, the States could consider obtaining data from State PWD and that the data from NBCC and PWD would be realistic to evaluate cash component for payment of tax as proposed.

13.9. The Hon'ble Minister from West Bengal drew attention to the data of tax rate and the tax paid in cash on page no. 173 of the agenda note where it was reflected that effective tax rate on the sector was 8.8% whereas the tax paid in cash was only 1.7 %. He stated that this limited data was also required to be examined in detail and proposed to have the meeting not before Wednesday. The Hon'ble Minister from Punjab applauded the decision of Hon'ble Chairperson to hold the meeting at a short notice and suggested to have the meeting on Sunday or Wednesday. He stated that the Fitment Committee or any other committee may come with a supplementary agenda on the issues which were raised during this meeting. The Secretary suggested that the Fitment Committee could meet on Saturday and all States could send their suggestions in writing to the Council for discussion in the Fitment Committee. The Hon'ble Minister from Maharashtra stated that they also had assembly session on Monday and, therefore proposed to continue the meeting on Sunday. The Hon'ble Chairperson while acknowledging the requests from States, stated that this was a time of assembly sessions and elections and most of the Ministers were busy. Thus, it would be appropriate to hold the Council meeting on Sunday i.e. 24.02.2019 while the Fitment Committee should meet on Saturday i.e. 23.02.2019.

14. For **Agenda item 5**, the Council decided to defer the discussion and to take up the matter in a reconvened physical meeting of the Council to be held on 24th February 2019.

Agenda Item 6: Draft notifications and Removal of Difficulty order giving effect to the decisions of 32nd GST Council Meeting regarding MSME (including small traders)

15. The Secretary stated that the Draft notifications and Removal of Difficulty order arising out of the decisions of the 32nd Meeting of the Council relating to increasing the annual turnover threshold for registration and providing a Composition Scheme for services was prepared and placed before the Council for approval. He invited Shri Upender Gupta, Principal Commissioner (GST Policy Wing), CBIC to brief the Council on this Agenda item. The Principal Commissioner (GST Policy Wing), CBIC stated that the decisions of the Council for increasing the annual turnover threshold for registration and for providing a Composition Scheme for services required amendment to the GST Law. However, as the Council had taken a decision to implement these two decisions from 1st April 2019, it could only be done through a rate notification. He informed that the draft notifications were placed before a joint meeting of the Law Committee and the Fitment Committee on 15th February 2019 which had approved the same. He stated that after the approval of the Council, this would be vetted by the Union Law Ministry before issue.

15.1. The Principal Commissioner (GST Policy Wing), CBIC further stated that like other composition taxpayers, the composition taxpayers under the new scheme would also be eligible to avail the facility of filing annual return with quarterly payment which the Council had approved in its last Meeting for Composition taxpayers supplying only goods. He stated that for this, a suitable provision in Law would need to be made. In addition, there would be a

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need to incorporate a provision of reversal of input tax credit for those service providers who opted for the new composition scheme. He stated that these two issues would need to be discussed by the Law Committee and then brought before the GIC for approval. He requested the Council to permit GIC to approve the recommendations of the Law Committee on these two issues. The Council agreed to the same.

15.2. Shri Saswat Mishra, CST, Odisha stated that in the draft exemption notification for enhancing registration threshold to annual turnover of Rs.40 lakh, it appeared that it was a compulsory provision in law and that taxpayers could not opt for registration and pay tax if their annual turnover was less than Rs.40 lakh. He, therefore, suggested to add another clause providing that this provision would not apply to persons seeking registration under Section 25(3) of the CGST / SGST Act. The Secretary stated that the intention was always to give an option to taxpayers with annual turnover below Rs.40 lakh to take GST registration. If there was some problem with the language in conveying this position, then this would be addressed.

15.3. CST, Odisha further stated that in the Removal of Difficulty Order, there was a confusion in the language and he would give a suggestion in writing to the Principal Commissioner (GST Policy Wing), CBIC. The Secretary suggested that the Council could approve the two notifications and the Removal of Difficulty Order placed before the Council along with suitable modification as may be proposed by the CST, Odisha, and this could be issued after due vetting by the Union Law Ministry. The Council agreed to the proposal.

16. For **Agenda item 6**, the Council approved the draft Notification relating to: (i) introduction of a composition scheme for supply of Goods and Services or both (for those taxpayers who are not eligible for the present composition scheme) up to an aggregate turnover of Rs. 50 lakh; (ii) to increase the annual turnover threshold for registration to Rs.40 lakh for the States as mentioned in the notification; and (iii) Removal of Difficulty Order relating to Composition scheme with the amendments as suggested by CST, Odisha and after vetting by the Union Law Ministry. The Council further approved that for the new Composition scheme for services/goods suppliers, a suitable provision for filing annual return with quarterly payment and reversal of input tax credit for those opting for the new Composition scheme will be formulated by the Law Committee and would be approved by the GST Implementation Committee (GIC).

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

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

17. Discussion on this Agenda item was deferred to be taken up in the physical meeting of the Council to be held on 24th February 2019.

Agenda Item 7(ii): Proposal to extend the date for filing the FORM GSTR-3B

18. The Hon'ble Advisor to Governor (I/c Finance), Jammu & Kashmir stated that FORM GSTR-3B return for the month of January 2019 was due on 20th February, 2019. However, due to the prevailing law and order situation in Jammu & Kashmir, internet services, especially on the mobile phones, had remained suspended which had caused difficulty to the taxpayers in filing their return for January, 2019. He requested that the date for filing FORM GSTR-3B Return for January, 2019 for taxpayers located in Jammu & Kashmir should be extended till 28th February 2019. The Hon'ble Chairperson suggested that the request of the State of Jammu & Kashmir could be agreed to. The Council agreed to the same.


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18.1. The Hon'ble Deputy Chief Minister of Bihar stated that he had received information from many States that since the evening of 19th February 2019, difficulty was being faced in filing FORM GSTR-3B Return for January, 2019 due to technical glitches. He suggested to extend the date of filing FORM GSTR-3B Return for January, 2019 for the entire country by 1 or 2 days if the glitch was not resolved in the next one hour or so. The Secretary informed that approximately only 25,000 returns had been filed during the last one hour and he requested CEO, GSTN to further elaborate on this issue. Shri Prakash Kumar, CEO, GSTN stated that from 11.30 AM today, there had been issues relating to 'Captcha' which had slowed the process of return filing which normally at this time, should be about one lakh in an hour. He stated that his team was working to resolve the glitch. However, he recommended that the date of filing FORM GSTR-3B Return for January 2019 could be extended by 2 days for the entire country. The Hon'ble Chairperson suggested that the date for filing FORM GSTR-3B Return for the month of January, 2019 for the rest of the country (excluding Jammu & Kashmir) could be extended by 2 days, i.e. to 22nd February 2019. The Council agreed to the suggestion.

18.2. For **Agenda item 7(ii)**, the Council agreed to extend the date for filing FORM GSTR-3B for the month of January 2019 for the State of Jammu & Kashmir till 28th February 2019 and for the rest of the country till 22nd February 2019.

Other Issues

19. The Hon'ble Minister from Tamil Nadu stated that he would send his written speech to the GST Council Secretariat and requested that it should be taken note of in the Minutes. In the written speech, the Hon'ble Minister from Tamil Nadu drew attention to a recent letter addressed by the Hon'ble Chief Minister of Tamil Nadu to the Hon'ble Prime Minister and to the Hon'ble Union Finance Minister on the need for early settlement of the accumulated IGST due to the State. It was a cause of concern for them that if the accumulated IGST for 2017-18 had been devolved correctly, the Government of Tamil Nadu would have received Rs.6,582 crore as SGST and Rs.1,492 crore as devolved CGST. After adjusting for GST compensation of Rs.632 crore already released and estimated devolution for the amount incorrectly devolved under Article 270 amounting to Rs.2,983 crore, the net loss to Tamil Nadu still comes to Rs.4,459 crore. Tamil Nadu was a major loser for the Constitutionally incorrect and improper dispensation adopted by the Union Ministry of Finance.

19.1. The speech also referred to the long pending request of the State of Tamil Nadu for exemption and reduction in the rates of 77 goods and 10 services including Wet Grinders, Matches, Aluminium utensils including its raw materials and job work relating to engineering works pertaining to MSME sector which provides avenues for self-employment and livelihood to crores of people.

Agenda Item 8: Date of the next meeting of the GST Council

20. The Hon'ble Chairperson stated that keeping in view the sentiments expressed by the Members of the Council, the 33rd Meeting of the GST Council was adjourned and it shall meet again in person on 24th February 2019 in Delhi to continue discussions on the issues relating to Real Estate and Lottery.

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

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Minutes of the Meeting of 24th February, 2019

22. The thirty third Meeting of the Council reconvened on 24th February 2019 at Vigyan Bhawan, New Delhi under the Chairpersonship of the Hon'ble Union Finance Minister Shri Arun Jaitley (hereinafter referred as the Chairperson).

23. The following agenda items were discussed during the reconvened 33rd Meeting of the Council:

(a) **Agenda item 5:** Recommendations of the GoM for boosting Real Estate Sector under GST regime

(b) **Agenda item 7:** Any other agenda item with the permission of the Chairperson

(i) Interim report of GoM on Lottery

24. The Hon'ble Chairperson stated that the 33rd Meeting of the Council was adjourned on 20th February 2019 to meet physically on 24th February 2019 and he welcomed everyone to the reconvened 33rd Meeting of the Council. At the outset, he informed that due to the ongoing Budget sessions in different State Assemblies, alternative Ministers had been nominated by four States and he formally welcomed them and stated that the Council would be enriched by their experience. These Hon'ble Ministers are: Dr. Banwari Lal from Haryana, Shri Mahender Singh Thakur from Himachal Pradesh, Shri Thokchom Radheshyam Singh from Manipur and Ms. Santana Chakma from Tripura. Commencing the discussion, he stated that during the meeting of the Council by video conference on 20th February 2019, the recommendations of the Group of Ministers (GoM) on Real Estate Sector was discussed. Subsequently the Fitment Committee further discussed the issues on 23rd February 2019. He then invited Dr. Ajay Bhushan Pandey, Revenue Secretary and Secretary to the Council (hereinafter referred to as the Secretary) to take up the discussion on the agenda items.

Agenda Item 5: Recommendations of the GoM for boosting Real Estate Sector under GST regime

25. The Secretary invited Shri Manish Kumar Sinha, Joint Secretary, TRU-II, to apprise the Council regarding the deliberations and recommendations of the Fitment Committee.

25.1. JS TRU-II stated that he had prepared a presentation (attached as **Annexure 6** to the Minutes) on the important issues that were discussed in the Fitment Committee which met till 9:00 PM on 22.02.2019 and the recommendations of the Fitment Committee related to taxation of residential housing segment in the Real Estate Sector, transition issues, definition of 'Affordable Housing' and how to maintain the credit chain integrity. The presentation had been arranged according to each of the recommendations of the GoM on the issue and the corresponding feedback of the Fitment Committee on it. He added that the Fitment Committee, during the process, had stayed within the recommendations of the GoM and tried to provide only the missing details in the proposal as was pointed out during the Council meeting held on 20.02.2019. The Fitment Committee recommendations on various issues were as under: -

- (a) As regards GoM recommendations regarding an effective rate of tax of 5% without ITC for non-affordable residential property and an effective rate of tax @ 3% or less without ITC for 'Affordable Housing' properties, the Fitment Committee had to suggest the definition of the term 'Affordable Housing' and thereafter appropriate

tax rate for Affordable and non-affordable housing. The Fitment Committee considered the various data such as percentage distribution of house units sold in metropolitan and other cities of different values and of different standard sizes as per CREDAI data; existing tax pay out in cash in the real estate sector in different categories of housing and the sectoral revenue data pertaining to 7 major zones where the Real Estate Sector was concentrated so as to come out with recommendations in relation to the issue under reference. After detailed discussions, the Committee concluded that:

- i. As regards the definition of 'Affordable Housing', it already existed in the Notification relating to GST rates giving references such as of low-cost house up to 60 sqm in the erstwhile scheme of JNNURM, single residential units and houses under construction under PMAY, etc. Among these, a credit linked subsidy scheme of RBI was also there which covered houses for economically weaker sections, low income group houses, MIG-I and MIG-II houses having covered area up to 30 sqm, 60 sqm, 160 sqm and 200 sqm respectively. All these four categories, *inter alia*, were presently covered under the category of affordable houses as part of GST Rate Notifications.
 - ii. Thus, the definition of 'Affordable Housing', should, *inter alia*, include the existing schemes of the State and the Central Governments covered under GST Notification No.11 of 2017-Central Tax (Rate) dated 28.06.2017 and an additional criteria of RBI priority Sector lending guidelines having financial limit of Rs.30 lakh in non-metro and Rs.45 lakh in metro cities.
 - iii. The Fitment Committee had also suggested that metropolitan cities should include Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon and Faridabad only), Hyderabad, Mumbai (the entire Mumbai metropolitan region) and Kolkata.
 - iv. As regards Affordable residential houses under construction, tax rate of 3% without ITC appeared to be high. Thus, an effective rate of 1% without ITC was recommended to be considered by the Council.
- (b) As regards mixed properties, the Fitment Committee had recommended that commercial development could be allowed up to 15% (on carpet area basis) as part of the residential property and it should attract GST @ 5% in case of both 'Affordable Housing' and non-affordable housing complex.
 - (c) Further, a mixed property which was not eligible for the new tax rate (i.e. cases where percentage of commercial property exceeded 15%), it should be taxed at the merit rate as prevailing now along with ITC facility; whereas the residential property should be taxed at the new rate without ITC.
 - (d) Fitment Committee had suggested some safeguards relating to input supplies of builders going out of the value chain. It should be made mandatory for the residential property developer to buy 80% inputs and input services, excluding cement and capital goods, from registered tax payer and tax rate on resulting shortfall might be fixed at a flat rate of 18% on Reverse Charge Mechanism (RCM) basis. Cement, in case procured from unregistered person, should be charged to tax at the rate of 28% on RCM basis, even if it was within the limit of 20%, subject to other actions under the Act. Capital Goods to be procured only from registered person, and should not be used for computing the 80:20 ratio (neither in numerator nor in denominator).
 - (e) As regards concerns regarding the disruption of credit chain, the Fitment Committee had recommended that reporting of purchases and the method of apportionment may be made through the ITC Table of GSTR 3B to make it similar to ITC procedure of initial claim and thereafter reversal. Further, where supply had been shown to be

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received from a GST registered person who was found non-existent, it would be deemed that the purchase had been done from a non-registered person. RCM payment to be done on pro-rata basis, every month, with final adjustment at the end of the year. Fitment Committee was also of the view that alternatively, the proposal might be simplified by shifting tax liability on entire unregistered purchases on the developers under RCM at the merit rate of each purchase.

(f) There would be certain details required to be worked out *vis-à-vis* transition from the old tax regime of ITC based taxation to the proposed scheme of taxation. Following principles would be adopted, while drafting the Notification: -

- i. ITC would be available only to the extent (calculated on pro-rata basis) of the value of the supply made out of the total value of supply for the project till the appointed date.
- ii. ITC taken less *vis-à-vis* the supply made would be quantified and could be used to adjust the future tax liability; whereas ITC taken in excess of supply made (calculated on pro-rata basis) would be recovered.
- iii. The ITC with respect to work in progress and inputs lying in stock would lapse. The ITC balance lying in the ledger after paying the liability relating to supplies made prior to the date of transition would lapse.
- iv. Credit pertaining to Capital Goods would be distributed between residential and commercial property on pro-rata basis by considering the life cycle of capital goods as 60 months. ITC reversal on capital goods to the extent of the remaining part of life cycle after 01.04.2019 and utilized in projects to which above rate applies would be done.

(g) As regards TDR and FSI related issues, it would be exempted in respect of supplies relating to residential properties under construction by way of shifting the time of supply to the date of issue of completion certificate using powers under Section 148 so as to avoid interest liability prior to issuance of Completion Certificate. Liability to pay GST on Transfer of Development Rights (TDR), Long Term Lease Premium, Floor Space Index (FSI) with respect to residential property which was sold after issue of completion certificate would be taxable in the hands of the recipient under RCM and the value of supply and a formula with respect to computation of tax was suggested by the Fitment Committee as follows: -

GST payable on TDR, Long term lease (premium), FSI, etc. attributable to immovable property for which completion certificate (CC) has been received during the relevant return period X (Total area of residential property unsold on the date of issuance of CC ÷ Total area of the residential property in respect of which CC has been issued during the relevant return period).

(h) The apportionment of credit between residential and commercial project would be done on self-assessment basis by the developer subject to audit and intelligence-based enforcement. Guidelines to apportion the purchases between residential and commercial projects would be as under:

- i. Purchases exclusively for commercial property might be apportioned to commercial projects.
- ii. Purchases exclusively for residential property might be apportioned to residential projects.
- iii. Purchases common to both commercial and residential construction might be apportioned in the ratio of the carpet area of residential and commercial projects under construction.


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- iv. 80:20 ratio would be verified for residential segment at the end of the year and at the end of the project.
- v. Apportionment between immovable residential property sold "before Completion Certificate" and "after Completion Certificate" might not be required (ITC not available).
- (i) The date of implementation of this scheme could be 1st April 2019.
- (j) As regards whether the scheme should be optional or mandatory, the Fitment Committee felt that having multiple methods of taxation would create complication.
- (k) The Fitment Committee also considered regarding any legal challenge for taxing TDR and concluded that there were none.
- (l) On the question whether the Real Estate should be brought under GST, the Fitment Committee noted that it involved larger issue of taxation which would require change in the Act and also possibly the Constitution of India. The Hon'ble Chairperson stated that possibly a Committee could be constituted to consider the issue of taxation of Real Estate.

25.2. Starting the discussion on the subject, the Hon'ble Minister from Punjab stated that in the Council meeting held on 20.02.2019, he had stated that there were certain operational and procedural issues which had been missed out from the Agenda that was circulated for discussion and the proposal was sub-optimal. Further, he gave the example of British Gen. Montgomery of the Second World War period, that his success in the Second World War was due to his meticulousness for details. However, he had started overlooking small operational requirements in the subsequent years and hence subsequently failed. In GST also, the Council should watch out for such complacency. In the case of taxation of job work in textiles, which the Council considered in earlier meeting at length, a better design ultimately came out by considering it in detail. He appealed that his arguments be heard out and implemented if found acceptable. In his opinion, land was out of GST and if Government gave land to somebody on 99 years lease for developing an industrial park, a levy of 18% GST and 7% Stamp Duty would make the entire project unviable. The Hon'ble Chairperson stated that the Council would take note of this and find a solution to this issue.

25.3. The Hon'ble Minister from Punjab thereafter requested the Council to hear Shri V.K. Garg, Advisor (Financial Resources) to Chief Minister, Punjab. Advisor, Punjab thereafter raised two issues. The first issue was that the Council was considering rate reduction of under construction houses, since there was sluggishness reported in the Real Estate Sector. The buyers, due to higher tax rate on under construction house, were waiting for it to be completed and thereafter buying it after completion to save GST since sale and purchase of completed property was out of GST. He gave the example of the sale of property worth Rs.1 crore. which under the old tax rate of 12% would have been sold for Rs.1.12 crore. However, under the proposed tax rate of 5%, considering that the seller would lose the ITC of Rs.7 lakh which became his cost, the seller would fix the base price of the unit at Rs. 1.07 crore and the buyer would have to pay a tax of 5% on the base price of Rs.1.07 crore making the total price close to Rs.1.12 crore again. Hence, from the point of view of the buyer, the position would remain the same as earlier and hence even if the tax rate was reduced, it would still be advantageous for him to wait for the project to be completed where he would have to pay no GST. In the restaurant sector also, similar things happened when the restaurants raised their base price after the tax on the sector was reduced to 5% without ITC. Hence, the proper solution to the problem lay in bringing both under-construction as well as completed property on the same

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footing. The issue related to policy decision, but States would not be impacted by it as they would get Stamp Duty.

25.4. The second issue, he explained, was that the proposed solution should be such that tax administration should be able to implement it in a transparent manner, instead of placing different tax liability for different people in different situations leaving scope for manipulation and evasion. In the proposal, tax was leviable not only in different manner but also there were provisions for apportionment of credit, reporting and reversal of credit, making the whole scheme complex. He explained further that in the proposed solution, complications had crept in inasmuch as there were three categories of properties, viz. purely residential property, purely commercial property and the residential property having 15% commercial property. Further, within each category, there would be two sub categories, one under-construction properties and the second, properties being sold after completion certificate. Thus, every credit that accrued in the business would have to be apportioned in these sub-categories. Ordinarily, in an industrial scenario, input output cycle lasted for two to three months within which the output supply happened. However, it was not so in construction of residential complexes where the output supply might spread out from first year to the tenth year and hence the relationship between the apportionment of input output supply would be difficult to determine as the link between input and the output might have been lost. Thereafter, he gave the example of proposed taxation on TDR stating that as per the proposal, TDRs were supposed to be taxable at the rate applicable to the respective Housing scheme to which they pertained. In such a scenario, if anyone bought leasing and development rights of 100 acres of land, developed it in three or more phases, say as commercial, affordable, high end residential and mixed properties, the situation might so arise that in the first year, he might get customers to sell only commercial properties and utilize full credit in the year. Further, next year, he might be getting customers to sell all residential properties but since minimal credit would have accrued during the year in view of the services and inputs having been procured in the previous year, he would be required to reverse the minimal ITC. Thus, the entire scheme opened scope for large scale evasion and hence such a scheme where the project was implemented in phases would be difficult to implement. He further submitted that in his opinion, such a scheme would be a nightmare to implement.

25.5. The Hon'ble Deputy Chief Minister of Bihar welcomed the Chairperson's move to call a physical meeting of GST Council in Vigyan Bhawan. He stated that his State favoured tax rate of 5% for non-Affordable category housing and 1% for Affordable Housing without the benefit of ITC. He stated that he had read the statement of the Hon'ble Finance Minister of West Bengal in newspapers on the subject who had also proposed cut in tax rates for 'Affordable Houses'. Further, the inclusion of 15% commercial property being allowed in residential property development keeping in mind necessity of *kirana* shops, barber shops, repair and maintenance shops, etc. was a good suggestion. His State also supported the tax exemption on TDR, etc. However, as regards the issue as to whether the proposed tax rates should be optional or mandatory, he would favour that the option be given to buyers under old project to pay tax at old rate but for the new projects, there should be no option and the proposed tax rate should be compulsory. He further stated that most of the problems of the Real Estate sector would be resolved with solutions proposed by the Fitment Committee and the remaining unforeseen problems might be resolved as and when they arose.

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25.6. The Hon'ble Deputy Chief Minister of Gujarat stated that the GoM had recommended tax rate of 5% for non-affordable category of housing whereas 3% rate or lesser for 'Affordable Housing'. Accordingly, his request was that the Council should address these two issues first, including the definition of 'Affordable Housing' and discuss the other issues subsequently. In his opinion, the whole sector had become stagnant due to the problems in construction sector and that when the customers had come to know that tax rate might be reduced, they had stopped buying. Thus, he requested that issues relating to tax rate on non-affordable and 'Affordable Housing' and definition of metropolitan cities be resolved expeditiously by the Council and discussion on other issues could be taken up later. Shri Mahender Singh Thakur, Hon'ble Minister from Himachal Pradesh, supported the tax rate of 5% for non-affordable and 1% for the affordable category. He also supported the idea to resolve other issues as and when they arose rather than attempting to resolve all of them at one go. Shri Prakash Pant, Hon'ble Minister from Uttarakhand stated that the GoM recommendation of taxing the non-affordable houses @ 5% would have made the costly houses cheaper whereas the recommended tax rate of 3% for the affordable category of houses would not have reduced the prices significantly. Thus, the Fitment Committee recommendations of reducing the tax rate further to 1% in Affordable category was a welcome step as it would lead to reduction of prices in this category also. He, therefore, supported the tax rate of 5% without ITC and 1% without ITC for non-Affordable and Affordable categories of residential properties respectively.

25.7. The Hon'ble Chairperson requested the Members to concentrate first on resolving the twin issues of rate applicable to the sector as well as the definition of 'Affordable Housing' and that the other issues could be dealt with later. The Hon'ble Minister from West Bengal expressed his gratefulness to the Hon'ble Chairperson for shifting the Council Meeting from Video Conference to a physical meeting. As regards the proposal, he stated that while the overall objective to address the problems in the construction sector in order to bring buoyancy in the sector was a welcome step, at the same time, simplicity and equity was also desirable in taxation. As regards the tax rates, as had been pointed out by him in his letter to the Hon'ble Union Finance Minister in the immediate past, mere 0.76% of the overall tax, i.e. at most 1% was paid in cash by the builders in 'Affordable Housing' segment. Thus, the proposal of the Fitment Committee to introduce 1% tax was agreeable which was also in line with his suggestion. For non-affordable category, he had written in his letter to the Hon'ble Chairperson that keeping in view the principle of equity, the GST rate for houses in the price segment from Rs.45 lakh to Rs.1 crore should be at 5% without ITC while the houses above Rs.1 crore (or maybe Rs. 1.5 crore), being rich men's purchases, be at 7% without ITC. The differential tax rates could be supported on the ground of simplicity along with equity in the economy. His suggestion to the Council was therefore, to consider two tax rates of 5% and 7% in non-affordable category as against the GoM recommendation of 5% for all houses above Rs. 45 lakh which could pass the test of simplicity but not of equity.

25.8. As regards the second issue regarding the definition of 'Affordable Housing', he stated that in the presentation of JS, TRU-II, there was a shift from earlier recommendation of GoM based on 'either area or price' to a criterion which was based on 'area and price'. Thus, effectively to the definition of Affordable Housing in different Notifications, an additional criterion of financial limit was being proposed. Hence, the question to be considered by the Council was should there be two criteria, i.e. area based as well as financial limit based or fulfilment of any one of the criteria would be sufficient to qualify as 'Affordable Housing'.

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The Hon'ble Chairperson explained that a reference to carpet area in the definition would be definitive whereas a reference to price would be open to misuse inasmuch as a Rs. 70 lakh worth property would be sold by unscrupulous elements with Rs. 40 lakh in cheque and remaining Rs.30 lakh in cash. At the same time, it was also true that area wise cost of flat in metro *vis-à-vis* non-metro cities was at huge variance with each other. Therefore, a criterion on the basis of area as well as cost left very little scope for manipulation whereas the criteria based only on cost left huge scope for manipulation. Thus, the Council needed to weigh all the options before coming to a conclusion. The Hon'ble Minister from West Bengal thereafter stated that the next issue related to tax on TDR/JDA. In this regard, he supported the view of the State of Punjab that it was a land matter and hence a State subject to which the Council should be sensitive. The proposal regarding tax on TDR was complicated not only in respect of tax rate but in respect of time of supply (after obtaining completion certificate) as well as type of project. Thus, the Council needed to have clarity on the subject before coming to any conclusion.

25.9. The Hon'ble Chairperson suggested that at the moment, the Council could decide on the two principal issues relating to the proposal, i.e. applicable tax rates on affordable and non-affordable category of houses and definition of 'Affordable House'. As regards remaining issues, these could be decided to the extent feasible and the remaining issues could be decided later based on the recommendations of a Group of Ministers or Officers who could continue to discuss these issues and resolve them in the next 4-5 months.

25.10. The Hon'ble Minister from West Bengal thereafter listed out certain complications in the proposal such as the mention of recovery from a builder where he had taken excess ITC and also the provision of mixed property having 15% commercial development under residential property. He added that such complications further gave rise to interpretation such as who would recover the ITC and how it would be recovered, how to calculate the 15% commercial portion in the mixed property, etc. and hence the complications would benefit no one other than the persons raising the disputes. Similarly, the provision of apportionment and recovery of tax under RCM *vis-à-vis* 80-20 condition was also questionable as to why 20% should at all be allowed to be purchased from unregistered dealers. Such a provision would be grossly misused by obtaining labour, sandstone, chips, etc. from unregistered dealers which were by themselves evasion prone. Similarly, if the Capital Goods were not to be included in 80-20 calculation, the tendency would be to lease them rather than to buy them so as not to bring them into books of account. The proposal that in case the inputs were procured from a non-existent dealer, recovery would be made, was also questionable as to whether the proposal was promoting hawala and rent seeking behavior of officers would also come into picture. Similarly, the proposal regarding lapse of ITC could be circumvented by adopting ways to utilize the ITC for other goods and services. Summing up his arguments, he urged the Council to necessarily discuss and consider the proposal (a) on rates keeping equity and simplicity in mind; (b) whether the word "and" to be introduced or not in the definition of 'Affordable Houses' and that if a cap price of Rs. 35 lakh to Rs. 45 lakh was inserted in addition to the area-based definition, it would create problems.

25.11. The Hon'ble Minister from Kerala stated that he agreed with the arguments put forth by the Hon'ble Minister from West Bengal that proposals were complicating an already complex issue. As regards the rates of taxation, the data presented before the Council largely showed that effective tax to be paid in cash was rising for all and that there should be equity in

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the burden of tax. The analysis of data also showed that effective rate of tax was rising in the affordable category from 7.46% to 9.3% whereas in the non-affordable category, with the proposed tax rate, the tax burden was actually rising only by 2.23-2.93%. Thus, the issue of equity raised by the Hon'ble Minister from West Bengal was very important and hence the proposed tax rates needed to be tweaked further from two tier to three-tier. He proposed that for affordable houses, tax rate should be 1%, for houses priced at Rs.45 lakh to Rs.1 crore, it should be 5% and for houses of more than Rs.1 crore, it should be 7% without ITC. He stated that with a three-tier rate structure, a little bit complication would enter, but the Council would be able to arrive at a revenue neutral rate if it calculated the weighted averages. Further, as regards the definition of 'Affordable Houses', he did not support the idea to have value limits in addition to area limits. By placing such limits, the scheme would become complicated. Government determined affordable housing scheme might include flats beyond the value of Rs.35 to 40 lakh, and should still be allowed at the same rate as 'Affordable Housing'. Government Housing schemes at present were divided further under infrastructure status or non-infrastructure status and further four more categories, viz. up to 30 sqm, 60 sqm., 160 sqm and 200 sqm. It would be advisable to leave out the flats of areas of 160 sqm and above as also transaction value concept out of the definition of 'Affordable Housing'.

25.12. The Hon'ble Chairperson raised a question whether a flat of 60 sqm in a metro *vis-à-vis* a tier-II city carried the same price. The Hon'ble Minister from Madhya Pradesh stated that they were different in terms of cost; a 60 sqm flat in Cuffe Parade in Mumbai would cost more than a Rs.1 crore whereas a flat of same size in Bhopal would cost around Rs.25 lakh. The Hon'ble Chairperson observed that in such a situation, without a value limit, definition of Affordable House would be incomparable from city to city and prone to misuse. The Hon'ble Minister from Kerala stated that apart from the things discussed so far, he also had a serious difference with the proposition that there should be a GoM for recommending as to whether to bring land into GST and did not support the same. In his opinion, the States were not left with any revenue generating resources after the introduction of GST and in absence of that, the States had to explore areas to generate additional revenue like increasing registration charges on motor vehicles. He thus opined that the Council should evaluate the experience of GST before bringing any new items under GST. After GST, some flexibility was required so that State could realise resources during emergency requirements. Further, as regards the condition of 80% procurement from the registered dealers and allowing 20% from non-registered dealers, the question was as to when capital goods were not to be included in the calculation, should this limit not be raised to 90%. In the proposal before the Council, the value chain was proposed to be broken in order to have a revenue neutral rate but by breaking the value chain, the capability of tax administration to collect the tax on the missing value chain would be compromised. Thus, Council should have a serious discussion on the issues which the Hon'ble Minister from West Bengal had raised.

25.13. The Hon'ble Chairperson again asked members to arrive at a definition of 'Affordable Houses' and as to how to reconcile the fact that in metro areas, the price of the same size of flat was much higher than that in non-metro areas and this needed to be discussed and resolved. The Secretary explained that this aspect came up in the Officer's meeting and it was pointed out that affordability varied in non-metro and metro cities. Thus, the proposed definition of 'Affordable Housing' contained the expression "and" in order to include the value criteria as also to leave out the flats of areas of 160 sqm and above from the RBI definition for credit linked scheme to ensure that chances of misuse were reduced. If only

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monetary limit was kept, the provision was likely to be misused as some developers were constructing flats only under MIG Scheme, flats of areas of 160 sqm in the suburbs of Mumbai and the consensus was that they should not get the benefit of reduced tax rate. Hence value cap in addition to the area condition was required.

25.14. The Hon'ble Chief Minister of Puducherry thanked the Hon'ble Chairperson for convening a physical meeting. He stated that as per the ongoing discussion, he would confine himself to the discussion regarding rate of tax and definition of 'Affordable Housing'. As regards the houses pertaining to Below Poverty Line (BPL) i.e. houses up to 60 sqm, and those LIG houses under Pradhan Mantri Awas Yojana (PMAY), Rajiv Awas Yojana (RAY), Jawaharlal Nehru National Urban Renewal Mission (JNNURM) scheme, beneficiary led LIG Housing scheme, concessional rate of 1% was agreeable. If the MIG-I and MIG-II flats of areas of 160 sqm and 200 sqm respectively were included in the definition, it would be injustice to the poor and hence he proposed that MIG-I and MIG-II houses be kept at the tax rate of 3%. As regards the remaining houses under non-affordable housing, 5% tax rate needed to be discussed and debated in the Council. Further, under indirect tax, people in rural areas and tier-II cities as well as urban areas pay the same rate of tax. However, people living in metro areas got far more facilities in terms of infrastructure and governmental support, and hence the tax rate in tier-II/III cities should be lower as compared to metro areas where rate could be upto 8% to maintain an equilibrium. The transitional provisions seemed to be complicated and needed to be simplified. Further, regarding TDR, he stated that it needed to be discussed in detail since of late, States' rights were being taken away one by one by the Centre and if the States' rights associated with the taxation on land were also taken away, they would lose revenue from registration. Therefore, he favoured constitution of a GoM to discuss the transitional issues as well as issues relating to TDR/JDA, etc.

25.15. The Hon'ble Deputy Chief Minister of Delhi stated that the current meeting to address the crisis in Real Estates Sector exemplified to the general public as to how GST Council would deal with a crisis in any Sector of economy. He further stated that inventory in the Real estate Sector was rising and he felt that it should be brought under GST as this Sector absorbed a lot of black money. The role of black money in this sector started right from the stage of mining of raw materials like sand, sandstones, etc. up to the finishing level such as tiles, electrical fittings, etc. If the entire Sector was brought under GST, then the real benefit of GST would accrue to the Sector benefitting everybody. However, because of the limitation that land was out of GST, the Council had decided GST @12% for under-construction houses. Now it was proposed to bring it further into Composition Scheme from regular tax chain. Presence of ITC chain from the point of view of taxpayers, was beneficial as he faced a single tax and from the point of view of officers, the entire value chain was exposed to them *vis-a-vis* assessment and plugging evasion whereas the introduction of Composition would stop that benefit. For this reason, he supported the view of Advisor, Punjab. He also stated that in order to evaluate the experience of GST in this sector in last one and a half year, State wise data for tax collected at the rate of 12% should be shared.

25.16. The Hon'ble Chairperson responded that to some extent, points raised by the Hon'ble Minister from Punjab were noteworthy and that in the Real estate Sector, except two to three big players who were dealing ethically, rest of the players were selling their houses absorbing a lot of black money. They had not acted ethically and did not pass the benefit of ITC to consumers creating situation similar to restaurant where there was a feeling that the benefit of

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ITC was not being passed on. Thus, the buyers were under the impression that in case they waited for the houses to be completed, they would save 7%-8% in the cost. It was also a fact that the industry could not win the confidence of the buyers looking at the state of affairs in the NCR region. An exercise done by the Fitment Committee and also by the West Bengal independently had come to a similar conclusion that 4.7% - 4.8% was the revenue neutral rate for normal under-construction houses whereas 0.8% to 1% was the revenue neutral tax rate for the Affordable Houses. GoM had recommended a tax rate of 5% and 3% for non-affordable and affordable segments respectively whereas the Fitment Committee had recommended that 5% and 1% respectively were the appropriate revenue neutral rate. NBCC and CPWD data supported the above conclusion and in the last meeting also, it was submitted by the Hon'ble Minister from Chhattisgarh that 3% tax rate in the affordable segment would push up the prices.

25.17. The Hon'ble Minister from Chhattisgarh stated that he had submitted in the last meeting that tax rate of 3% without ITC in Affordable segment would push up prices and that 1% rate was closest to the revenue neutral rate. This seemed to be confirmed from the data as analyzed by the Fitment Committee. The Hon'ble Minister from West Bengal stated that the presented data also showed that for premium housing, the revenue neutral rate seemed 7% to 8%. The Hon'ble Deputy Chief Minister of Delhi stated that as per the prevailing situation, there were more than 5 lakh houses ready, but could not be sold and hence, there was no doubt that the Sector required a push. However, the Council was going for a long-term decision relating to demand generation in the Sector, thus, minimum grey areas should be left. The Hon'ble Chairperson expressed agreement and stated that leaving loopholes would affect revenue of both the Central and the State Governments. The Hon'ble Deputy Chief Minister of Gujarat stated that as the situation currently existed, either the GST or State taxes were levied and collected on raw materials. If under-construction buildings having Before Use Certificate (BU Certificate) were sold, GST was payable. However, if the same building was sold after BU certificate, no GST was payable. As a result, an artificial demarcation of tax was created in the market and if Council could arrive at the same treatment for sale of building before and after BU certificate, then, no problem would arise. But the big question was whether such a solution could be arrived at within the given framework of law.

25.18. The Hon'ble Chairperson requested the views of the Council Members on the proposed agenda from the point of view of Tier-II and Tier-III cities also to arrive at a proper solution. The Hon'ble Minister from Madhya Pradesh stated that Affordable Housing in Tier-II and Tier-III cities could not be compared with houses in metro cities. In cities like Indore, Bhopal and Jabalpur, property prices were high due to high land costs and hence were comparable to metros whereas in smaller Tier-III cities, prices were not that high. Hence, he felt that there was a need to use both area as well as price restrictions to define the criteria for 'Affordable Housing'. He further stated that as per his opinion, in non-affordable housing, there should be two rates of taxes, i.e. 3% and 5% without ITC or could be 5% and 7% without ITC for low end premium houses and high-end premium houses respectively. He added that the State should not suffer by not charging tax on premium category houses. The Hon'ble Chairperson enquired as to whether there should be higher abatement for land for premium Housing since the cost of land pushed up the price of premium housing on account of it being situated in a central area with high land costs.

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25.19. The Hon'ble Minister from Goa congratulated the Hon'ble Chairperson on the practical and democratic approach adopted by him and also complimented the Hon'ble Deputy Chief Minister of Gujarat for the work done by the GoM on Real Estate. He stated that tax rate of 5% without ITC for non-Affordable Housing was agreeable. Further, GoM had recommended 3% or lower GST without ITC for Affordable category which the Fitment Committee had suggested to be kept at 1%. In his opinion, in the current meeting, the Council should decide primarily on tax rates and definition of Affordable Housing. He added that the reason for such a suggestion was that this important industry had come to a grinding halt leading to unemployment. The medium and low segment builders were all suffering and were on the verge of closure whereas the big builders were surviving as they knew how to survive when the cash flow was low. He again pleaded that ancillary issues relating to taxation of TDR/JDA and transition issues, etc. be discussed later. Further, consideration of Agenda should not be linked to elections but should be considered as a requirement of the industry. The most important thing to be noticed by the Council Members in the proposal was that there was no interference with the taxation powers of the land and rather the Council could discuss when to bring the land under GST at a later date. In the end, he appealed that in the past also, the Council Members had varying views but these were resolved with extensive discussion in the interest of public which should be done in the present situation too.

25.20. The Hon'ble Minister from Chhattisgarh expressed his displeasure at the short time of about 15 minutes being available to read the report of the Fitment Committee which officers took one whole day to decide. He further stated that the Council Members had also taken a lot of time to discuss this complex issue. However, with these 15 minutes of reading and understanding of the proposal, he wished to bring complexities in the proposal to the knowledge of the Council in as much as GST was stated to be a 'Good and Simple Tax'. He gave an example of a 2000 sq. ft. under-construction house in Raipur and Mumbai which were different in price primarily due to land cost with data as follows:

Sl. No	Item for Comparison	Raipur	Mumbai
1	Cost	Rs.60 lakhs	Rs.180 lakhs
2	Present Tax Rate	12%	12%
3	Tax Payable	7.2 lakhs	21.6 lakhs
4	ITC available (approx.)	5.6 lakhs	8.22 lakhs
5	Net Tax Payable in Cash (3-4)	1.6 lakhs	13.8. lakhs
6	New Tax Rate	5% without ITC	5% without ITC
7	Tax Payable in cash @5%	3 lakhs	9 lakhs
8	Difference Tax Payable Increase/Decrease (3-5)	+1.4 lakhs	-4.8 lakhs
9	% Increase/Decrease	+87%	-32%

25.21. He added that with the above data, it was not clear to him as to what was the objective of the scheme. Whether it was to gain revenue or to arrive at an equitable tax rate or to encourage the rotation of properties. In his opinion and as supported by the data, the Real Estate Sector was in crisis because cash was not flowing into the economy. In fact, the data as presented by the Central Government at slide no.8 of the presentation, upon further analysis of the impact of the proposed tax, reflected that in case of High Rise Buildings, on low end finish houses as well as affordable houses, net impact of new tax was higher by 2.23% and 9.3% due to proposed GST @ 5% and 3% without ITC respectively; whereas the premium houses in


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High Rise Buildings became cheaper and impact of GST @ 5% led to reduction of cost. Similarly, in Low rise buildings, impact of GST payment in cash on low end finish houses was very nominal while the impact of GST on affordable houses in Low Rise Buildings (taxable @ 3%) was making cost higher by 7.6%.

25.22. He further stated that the conclusion that could be drawn from the above slide was that the above proposition of tax of 5% without ITC and 3% without ITC was not equitable. It raised a question as to who was being taxed under 'Affordable Housing'. He added that in Affordable Housing such as PMAY, RAY and other schemes, the Government was either giving money for building in the villages or giving interest subsidy and wondered whether with this 3% tax, the Council wanted to tax the Government and take the money back instead of supporting the poor. Further, in his opinion, the criteria to define the 'Affordable Housing' should take into account both area and value. As far as land was concerned, he considered it to be totally non-negotiable and taxation of land should not be touched at all.

25.23. Shri Sudhir Mungantiwar, Hon'ble Minister from Maharashtra stated that he agreed with the proposal to tax Affordable houses at 1% and non-Affordable houses at the rate of 5% without ITC. He proposed inclusion of Mumbai Metropolitan Region (MMR) on the lines of inclusion of NCR along with Delhi and also of Pune in the list of metros. He further added that in his State, old Housing societies were required to go for redevelopment as buildings had become old and dangerous to live in. Similarly, there was a slum redevelopment programme in various areas of Mumbai. He suggested that these two models should be considered by the Council for being taxed only on the construction cost. He appealed to the Council to decide on this matter also rather than leaving it to the next meeting.

25.24. The Hon'ble Minister from Rajasthan stated that taxation of land was a State subject and should not be considered by the Council for bringing it into GST at the moment while the definition of 'Affordable Housing' should be left for the States to decide. He added that in his opinion, reduction of GST rate would not help the Real Estate Sector to come out of recession and hence the builder should have the option to adopt either the old rate (12% with ITC) or new tax rate (5% without ITC). He further stated that the structural reforms should be seen from the financial perspective and discipline and not from the election perspective. He further stated that he supported tax rate of 5% on non-affordable housing in non-metro cities. He also suggested that it should be left to the State to decide what area may be allowed for affordable and non-affordable housing projects.

25.25. The Hon'ble Deputy Chief Minister of Bihar stated that a lot of discussion was going on that tax on land and that associated services were not covered in GST. He pointed out that Schedule-II of Section 7 of the GST Act laid down that "*lease tenancy, easement, license to occupy land, lease or letting out the building including commercial, industrial or residential complexes for business or commerce*" were 'services' and hence could be taxed under GST. The point to be noted was that the Council was not taxing the land but taxing the services associated with land.

25.26. The Hon'ble Chairperson sought a clarification as to whether the activity of Government giving land on lease for 99 years was covered under GST to which JS, TRU-II submitted that it was covered but was exempted by Sl.No. 41 of Notification 11 of 2017. Shri V.K. Garg, Advisor, Punjab submitted that taxation of land was mainly covered under the Constitution of India, Income Tax Act and the Finance Act, 1994 (Service Tax - now

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superseded by GST). As per the Entry 49 of List-II of the Constitution, tax on land and associated revenue should accrue to the States which the States had been exercising for decades. Under Income Tax Act, a dispute arose as to whether long term leasing was liable to TDS deduction under Section 194 I of the Income Tax Act which was answered by judicial fora that transactions of long-term leasing was a deemed sale and hence was not liable to TDS. Thus, the Constitution as well as the Income Tax Act considered the long-term lease as a deemed sale.

25.27. He further stated that as regards the treatment of long-term lease under Service Tax, tax on leasing of vacant land or agricultural land was exempted from Service Tax. Entry 97 of the Schedule III of the Constitution under which Service Tax Act was enacted, was interpreted to provide that if anything was not liable to tax out of any Entry in the List-II, then tax could be levied under Service Tax. The Judicial fora had upheld that for certain aspects regarding land, it could be treated as land while some other aspects could be treated as service and hence taxation under Service Tax got legitimized. However, strictly speaking, land being in List-II, tax should not have been levied on the services associated with the land. It was settled that if additional tax was imposed on any sector, the capacity to exploit the Sector got reduced. When this issue was discussed in the Council, the prime question before the Council was as to whether the activity associated with the land was goods or service. It was certainly not 'goods'. Entry in the GST law defining the same as "services" was made but the question arose as to whether it was in consonance with other taxation laws and the Constitution. He added that in his view, under GST law, everything that was out of GST had either been excluded or was specifically exempted. For example, alcohol and petroleum products were excluded from GST while electricity was exempted. The question was that when GST Council refrained from taxing the subjects such as sale of land, alcohol etc. which fell in the jurisdiction of States, should it tax the services associated with it. The sale of land was kept out of GST whereas for building under construction where the service under works contract had been rendered, it was made taxable. However, in case of lease of land, since these were in the nature of deemed sale, taxation should be avoided and also for the reason that 18% service tax and 7% Stamp Duty would come to 25% tax on leasing which was avoidable.

25.28. CCST, Gujarat explained that in Navi Mumbai Vs. Government of India case, the Hon'ble High Court of Bombay held that lease should be treated as "service" and accordingly while introducing GST, Article 246A was amended to contain a non-obstante clause to provide powers to tax benefits arising out of land. Thus, right to tax such benefits under GST was always there and the only question was as to whether tax should be levied or not. The Hon'ble Chairperson observed that the point that the Hon'ble Minister from Punjab had put forward was that one needed to avoid over-burdening of a Sector with taxes and if not so done, the larger objective of the Government to boost the economy would not be satisfied. JS TRU-II explained that at the moment, since taxation on Real Estate Sector and land was not being dealt with holistically, the Fitment Committee had tried to address the problem of taxation of rights associated with land in a limited manner by way of exempting TDR/JDA, etc. as long as it was supplied as input to residential houses under construction. Further, when completed house was sold after issue of completion certificate, these rights would become taxable with the upper ceiling of tax limited to the tax applicable to that segment of housing. Thus, the situation of multiple taxation of the transactions during the construction of house got resolved to the extent it was before the Fitment Committee. The Secretary further explained that as far as taxation of commercial lease was concerned, the same was not being affected by



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the current proposal inasmuch as the leasing of land for construction of residential houses was getting taxed in both situations, i.e. prior to as well as after this proposal. The only difference that had come was that ITC was not available in the current proposal.

25.29. Shri Himanta Biswa Sarma, Hon'ble Minister from Assam stated that it was correct that the Council had approved to tax under-construction properties at the rate of 12% and 8% for non-affordable and 'Affordable Houses' respectively. Thus, the issue whether land was a State subject or not should have been discussed at the time when the proposal of taxation was introduced. Currently, the Council was considering the proposal to bring the tax rate down from 12% with ITC to 5% without ITC and 8% with ITC to 1% without ITC. If the consumer got benefitted from this reduction, then it should be done, and if not, the Council could consider lowering the rates further. Thus, discussion on GST *vis-à-vis* land was not the subject for consideration and if it had to be discussed academically for bringing land under GST, a Committee or GoM might be formed to discuss the same. The Hon'ble Minister from Goa stated that the only contentious issue before them was the proposed tax rate of 3% for Affordable Houses as pointed out by the Hon'ble Minister from West Bengal and other States which the Fitment Committee after analysis, had recommended to be brought down to 1% and which was also agreeable to most of the Members. Thus, currently, there was no dispute left to be discussed. The Hon'ble Minister from Chhattisgarh stated that the issue of houses under PMAY becoming taxable was worth considering and discussing.

25.30. The Hon'ble Chairperson summarizing the discussion stated that so far, the discussion did not reflect wide disparity of opinion *vis-à-vis* tax rate. It was also noted from the views expressed that the criteria for the metro residential house and non-metro residential house under affordable category should not be same in the definition of 'Affordable Houses'. Thus, the definition of 'Affordable Housing' had to be evolved in such a manner which covered even residential properties in upcoming Tier-II and Tier-III cities of the States with a consideration for metro cities like Delhi and Mumbai also as comparing the Tier-II cities with metros might not be a fair proposition. Thus, the larger consensus seemed to be that in the definition for 'Affordable Houses', the criteria needed to be evolved by including both size and value parameters. The Hon'ble Minister from West Bengal stated that keeping in view the discussions, he agreed with the view that MIG-I and MIG-II houses of area of 160 sqm and 200 sqm respectively were big and hence, could be excluded from the category of Affordable Housing. The Hon'ble Chairperson continued that for metro-cities, the definition of Affordable Housing could be houses of covered area up to 60 sqm which would be approximately 800 sq ft whereas in non-metro areas, the covered area requirement could be up to 90 sqm which would be around 900 sq ft and could be 3-bedroom or a 2-bedroom house. In both cases, value limit could be either Rs.40 lakh or Rs. 50 lakh as it would take care of future inflation also.

25.31. The Hon'ble Minister from Chhattisgarh stated that tax on Housing under Prime Minister Awas Yojana should be completely exempted or some threshold limit should be worked out below which exemption should be available. Secretary explained that PMAY covered the houses up to 160 to 200 sqm which were proposed to be left out of the definition of 'Affordable Housing'. He further stated that in some 'Affordable Houses', both individual and the Government contributed, while in some cases, the whole house itself was constructed by the Government and in such cases, there should not be any tax. The Hon'ble Chairperson explained that the Hon'ble Minister from Chhattisgarh had proposed a tax rate of zero

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whereas in a situation where zero per cent tax rate was kept, the benefit of Input Tax Credit would not be available. The Hon'ble Minister from Chhattisgarh replied that in the current proposal of taxation, the benefit of Input Tax Credit was being denied altogether. The Hon'ble Chairperson explained that keeping the tax rate of 1% would make a difference because zero tax rate would lead to a situation where due to absence of returns in that sector, issues of traceability of raw materials, misuse of schemes, etc. would arise. Thus, the tax rate of 1% had been suggested to rule out such a possibility.

25.32. The Hon'ble Chief Minister of Puducherry suggested that as regards the tax rate, Hon'ble Chairperson might consider keeping 1% tax rate up to 60 sqm whereas for remaining houses up to 200 sqm, a tax rate of 3% might be considered. The Hon'ble Chairperson explained that as per data for affordable houses, the effective tax came to 1% and 3% tax rate would not be a revenue neutral rate in any case. In the case of non-Affordable category, it came to 5% or at higher range of 7% - 7.5%. By introducing the concept of value in the definition, the Council was trying to benefit the upcoming cities in various States where the prices had gone up and quality housing was otherwise not available. In these cities which were fast developing and upcoming, a house up to 90 sqm would be considered decent for living and not as a luxury. The Hon'ble Minister from Goa asked to consider area limit upto 100 sqm as builders often included the area of the staircase and other common areas. The Hon'ble Minister from Punjab stated that data from NBCC seemed to be outdated when majority of the inputs were taxable at the rate of 28% which had since been brought down to 18%. Secretary replied that the data was the latest one and was obtained last week and it was made available item-wise and flat area-wise.

25.33. The Hon'ble Chairperson explained that apart from NBCC and CPWD, he obtained the information from certain reputed builders of Delhi and Mumbai who were operating in a structured transparent manner. They had also submitted that their Input Tax Credit came to 7% - 8% and therefore, tax rate of 5% and 3% were verified by them which seemed to corroborate the figures except the fact that the 3% on 'Affordable Housing' segment seemed to be higher. It was confirmed by not only the Fitment Committee but by the Hon'ble Minister from Chhattisgarh and other independent enquiries from the persons involved in the sector. Thus, the tax rate of 5% and 1% without ITC would be revenue neutral in the current situation. The Hon'ble Minister from Tamil Nadu stated that their State agreed to the resolution of the Council on the taxation of Affordable and non-Affordable houses.

25.34. The Hon'ble Chairperson enquired whether it could be taken that there was broad consensus in the Council for tax rate of 5% without ITC for non-Affordable Housing and 1% without ITC for Affordable Housing for residential houses under construction and whether value limit could be taken as Rs. 60 lakh in metro areas and include Mumbai Metropolitan Area and Delhi NCR in the definition. The Hon'ble Minister from Chhattisgarh requested that he would still request that there should be some Housing schemes which should be exempted from GST altogether such as houses up to the value of Rs. 30 lakh. The Hon'ble Chairperson stated that the Members in the Council had often discussed the issues at length and come to a conclusion by stepping back from their stated official position to arrive at a consensus in the interest of common people. He suggested to observe how the decision panned out and stated that the issue raised by the Hon'ble Minister from Chhattisgarh regarding a threshold below which there should be no tax for under construction property could be revisited at a later date, if so required.

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25.35. The Hon'ble Chairperson further stated that apart from tax rates, 2-3 more issues remained to be decided like when computation of 80-20 to be done and also the date from which the new tax rate should be made applicable. He further stated that if the Council Members agreed, the date of implementation of the scheme could be announced as 1st March 2019 and the Council could delegate the responsibility to the Fitment Committee to draft the required Notifications to make the scheme operational. He requested all the State Governments to nominate their concerned experienced officers to the Fitment Committee meetings in order to work out the notification required to put the scheme into operation within the next 10 days taking into account the points raised by the Members during the discussion. The Hon'ble Ministers from Kerala, West Bengal and Bihar stated that the new tax rates should be made applicable from 1st April 2019. The Council agreed to this suggestion.

25.36. The Hon'ble Minister from West Bengal again raised the issue that the consensus on the definition of 'Affordable Housing' seemed to have not been achieved. The Hon'ble Chairperson suggested that the area for Affordable Housing be fixed as up to 60 sqm for metro and houses up to 90 sqm for non-metro areas to be eligible under Affordable Housing scheme and the cost ceiling for the Affordable houses should be Rs.40 lakh or Rs. 50 lakh as proposed by the Council Members. The Hon'ble Ministers from Madhya Pradesh, West Bengal and Uttar Pradesh proposed a cost ceiling of Rs. 40 lakh whereas Hon'ble Minister from Goa proposed it to be Rs. 50 lakh to avoid flow of black money into the Sector. The Hon'ble Minister from Chhattisgarh suggested a limit of Rs. 45 lakh keeping in mind the financial limit of Rs.45 lakh in the incentive scheme of the Reserve Bank of India. The Council agreed to this suggestion and also that this value limit would apply universally to metro and non-metro areas. The Hon'ble Ministers from Gujarat and West Bengal proposed that the area ceiling should be based on carpet area. The Council agreed to this proposal.

25.37. The Hon'ble Chairperson asked JS TRU-II to explain the proposal on TDR once again. JS TRU-II explained that the proposal on TDR was that it was to remain exempt during the sale of houses under construction, i.e. houses which were sold before completion. After the completion certificate was issued, the tax on TDR would be payable on the sale of flat and the tax rate would be applicable to the same class of houses, i.e. non-affordable or affordable to which it belonged. The Hon'ble Chairperson suggested that since most of the members would be busy with elections and there were some procedural issues to be sorted out relating to TDR, apportionment and reversal of credit, Council might mandate the Fitment Committee and the Law Committee to meet jointly and prepare the Notifications and Circulars covering all aspects. States, who were not members of the Fitment Committee or the Law Committee might send their representative officers to join the meeting. By around 10th of March 2019, the Fitment and the Law Committee should prepare draft notifications and circulars detailing all the guidelines. The Hon'ble Chairperson also directed that the point raised by the Hon'ble Minister from Chhattisgarh be noted in the minutes regarding revisiting the tax rates on houses for poor/below poverty line houses in order to examine them whenever a review of the taxation of the Real Estate Sector was taken up.

25.38 The Hon'ble Minister from Kerala stated that the circulars and notifications drafted by the Fitment Committee and the Law Committee should be considered by the GoM on Real Estate before issuing the same. The Hon'ble Chairperson suggested that instead, GST Council might meet through video conference. The Hon'ble Minister from West Bengal supported the idea of meeting through video conference to discuss this issue. The Hon'ble Minister from

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Jharkhand stated that the houses for weaker sections such as below poverty line should not suffer any tax. He further stated that building a house was very important and one had to make effort multiple times with all his might to build a house. Decision on the issue was necessary as the Government had promised to citizens to provide house for all by 2022. CCST, Gujarat requested Chairperson that officers from Punjab should attend the meetings of the Fitment Committee and the Law Committee. The Hon'ble Minister from West Bengal also suggested to consider making the new proposed taxation rates for real estate sector optional for the on-going projects.

26. For **Agenda item 5**, the Council approved the following:

- a. GST to be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;
- b. GST to be levied at effective GST rate of 1% without ITC on affordable housing properties.
- c. The new rate to become applicable from 1st of April, 2019.
- d. Definition of affordable housing shall be: -
 - i. A residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value upto Rs. 45 lakh (both for metropolitan and non-metropolitan cities).
 - ii. Cities covered under the definition of metropolitan cities shall be Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).
- e. Tax on TDR/ JDA, long term lease (premium), FSI, to be exempted for such residential property on which GST was payable. For properties sold after obtaining the completion certificate, tax on TDR/ JDA/ long term lease (premium)/ FSI etc. shall be payable at the rate applicable to that segment i.e. affordable or other than affordable category.
- f. The Fitment Committee and the Law Committee to meet jointly and prepare the Notifications and Circulars covering all aspects including the abatement, apportionment and reversal of Input Tax Credit, Transitional provisions, taxation of development rights etc., which should then be approved by the GST Council.

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

(i) Interim report of GoM on Lottery

27. The Hon'ble Chairperson invited Members to commence discussion on this Agenda item. The Hon'ble Minister from Kerala, starting the discussion, questioned as to why this issue needed to be taken up now. He observed that the outcome of discussion in Real Estate sector was much better in this meeting as compared to Video Conferencing due to the constructive participation of the Members. The question was why there should be a tearing hurry to take a decision on this issue as national economy was not getting affected due to lack of decision on this issue. He added that the Report of GoM on Lottery was an interim report. As a member, neither he nor the Hon'ble Minister from Punjab could attend the last meeting of the GoM. He suggested that the issue should be referred back to the GoM which should deliberate on this issue in greater detail.

27.1. The Hon'ble Minister from Kerala further stated that more bilateral level discussions were also needed on this issue. He stated that the State of Punjab was running lottery indirectly through middle men but the State was now considering to run the lottery directly.

He was also in discussion with the State of Maharashtra as to how to run lottery directly. He had also discussed the matter with the States of the North-Eastern region and keeping in view that a meagre revenue of Rs.10-15 crore was involved, the State of Kerala was willing to become an agent to the North Eastern States and pay this amount. He added that lottery was not a question of revenue alone but also a law and order problem that is created by the agents in Kerala. He added that presently, the rate of tax on lottery was 28% and wondered what was the rationale to reduce it and who would derive benefit from such reduction. He added that the beneficiaries of such rate reduction would not be the States but the middlemen. He fervently appealed to the Hon'ble Chairperson that this issue should not be pushed in a hurry and further discussion should be allowed in the GoM. He assured that the State of Kerala would participate in the discussion in the GoM and that the GoM would come back to the Council with its recommendation. He stated that the present situation was that there was no recommendation of the GoM and, if it was to be discussed, then he would have no choice but to demand a division on introduction of this item in the agenda itself. He observed that he had ideological reservations on GST but he had always participated constructively in the deliberations of the Council and he would not like to be an initiator of a formal vote in the House. He recalled that the former Hon'ble Minister from Jammu & Kashmir, Dr. Haseeb Drabu used to often talk about the spirit of this federal body and reminded that in the last meeting, the Hon'ble Chairperson had also assured that he would stick to the norm of consensus in this body.

27.2. The Hon'ble Minister from Goa expressed his concern on the issue of Lottery and stated that he was a member of the GoM and though the issues were elaborately discussed there, he felt that a little more time was needed to discuss the issues further. He observed that even though the revenues could get affected, so far, the decisions in the Council had been taken in the spirit of federalism and he would not like to see the Hon'ble Minister from Kerala unhappy on account of decision on this issue. He added that the Council was only discussing the issue with a view of rationalizing tax rate on Lottery to one particular rate. He observed that timing perhaps might not be right to take a decision on this issue. He further stated that he would agree to defer the issue provided other similar issues like on-line gambling, casinos, etc. which were relevant for States like Goa and Sikkim also became part of the terms of reference of the GoM on Lottery as these too involved issues of multiple taxation. These should also be discussed in the GoM and then brought before the Council.

27.3. The Hon'ble Minister from Punjab stated that he could not attend the last meeting of the GoM due to his commitments regarding the Budget presentation in the State Assembly. He stated that there was an anomaly in the scheme of taxation of Lottery, namely, exemption from tax for inter-State supplies by a lottery distributor to a sub-distributor of another State and this anomaly needed to be corrected as it broke the destination principle. He added that this issue needed to be discussed in the GoM.

27.4. The Hon'ble Chief Minister of Puducherry stated that he agreed with the views expressed by the Hon'ble Minister from Kerala. He added that the issue of Lottery had been discussed in several meetings of the Council and some States were running it through agencies and some were also running it on-line. There was a serious issue of illegal lottery and States were unable to control it due to technological issues. He added that some distributors from the adjoining States were running lottery in their State as well and no action could be taken against them. He further stated that the Hon'ble Minister from Punjab was not

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able to attend the last meeting of the GoM and also the Hon'ble Minister from Goa had highlighted the need for further discussion in GoM which had till now only given an interim report. Hence, the GoM should be allowed to give its final report before it was discussed in the Council.

27.5. The Hon'ble Minister from West Bengal stated that he also could not attend the last meeting of the GoM due to some other commitments. He supported the proposal of the Hon'ble Ministers from Kerala and Goa. He suggested that the GoM should meet again as in the last meeting, four members of the GoM were not present. The Hon'ble Minister from Goa stated that there was a need to arrive at some consensus soon as due to high rate of tax on Lottery, unethical practices like *Matka*, *Satta*, etc. were picking up. He added that the issue should be discussed holistically and remedies arrived at. The Hon'ble Deputy Chief Minister of Delhi stated that few major States namely Punjab and Kerala could not attend the last meeting of the GoM and it was clear that more dynamic discussion was needed in the GoM before its recommendation could be brought back to the Council.

27.6. The Hon'ble Minister from Assam stated that this issue had been alive from the very first days of GST and the State of Kerala wanted to tax Lottery at the rate of 28%. He questioned as to why there should be a discriminatory tax rate regime on Lottery and as to why Lottery of Kerala (State-organized) should be taxed at the rate of 12% whereas lottery of North-Eastern States (State-authorized) should be taxed at the rate of 28% when it was run as per the prescribed guidelines by the Union Ministry of Home Affairs. He stated that any type of discriminatory tax rate should be removed. He further stated that even if the matter was deferred today, eventually there was a need to arrive at a just solution on this issue and the rate of tax would need to be made uniform, be it 12%, 18% or 28%. He added that discriminatory rate of tax should not be persisted with. He reiterated that the Union Home Ministry had allowed lottery to be run through authorized representatives and they were running the lottery as per those guidelines.

27.7. The Hon'ble Chairperson enquired whether inter-State sale of lottery could be prohibited. The Hon'ble Minister from Kerala stated that prior to GST regime, in his State there was a tax on paper lottery under the Paper Lotteries Act and they had made stringent law by legislation under the Gambling Act because of which, for eight years, no outside lottery could be run in the State of Kerala.

27.8. The Hon'ble Minister from Assam stated that legally a State which was running its own lottery could not ban Lottery from other States and that market access would need to be allowed to the Lottery of other States as well. The Hon'ble Minister from Kerala stated that on this account they had taken recourse to Section 4 of the Gambling Act to stop the outside lotteries. The Hon'ble Chairperson enquired that if Kerala had a State monopoly over lottery and there was no outside lottery running, then what was the issue regarding the rate of tax on lottery of other States like Mizoram, Assam etc. The Hon'ble Minister from Kerala stated that their position on this had been that such State authorized Lottery distributors violated provisions of Section 4 of the Gambling Act. He informed that court cases were going on this issue and there was also a CAG report on it and subsequently, Central Government banned such lotteries in the State of Kerala. He added that such lotteries (State-authorized) could run in their State now when GST was implemented, and the tax as per Paper Lotteries Act had

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become in-operational and the only control left was the differential tax rate of 12% and 28% and hence the differential rates should be maintained.

27.9. The Hon'ble Minister from Assam stated that they were not demanding to lower the rate of tax on lottery. He questioned the rationale of taxing Lottery at the rate of 12% when so many goods of common use were getting taxed at the rate of 18%. He stated that he was not requesting to apply tax rate of 12% on Lottery for North-Eastern States; rather they were requesting a uniform tax rate of 28% for all Lotteries. He stated that this issue should not be looked at from any political or election perspective. The Hon'ble Minister from West Bengal reiterated that meeting of the GoM had taken place without four members who should also participate in the deliberations and the Hon'ble Minister from Goa had also wanted to discuss some more issues in the GoM. The Hon'ble Chairperson enquired whether the State of West Bengal was running its own lottery directly. The Hon'ble Minister from West Bengal clarified that they ran a Paper lottery. He also informed that the Hon'ble Calcutta High Court had upheld the two GST rate model for Lottery.

27.10. Summing up, the Hon'ble Chairperson observed that there were two competing viewpoints on the issue of rate of tax on Lottery. One viewpoint was represented by the State of Kerala which wanted to continue with the differential rate of tax for Lottery run by State and Lottery authorized by State. The other competing view was of the North-Eastern States which had stated that because of lack of governmental infrastructure to run lottery across the country, they had authorized agents to run the lottery and the 16% difference in the two rates was affecting sale of their lotteries.

27.11. The Hon'ble Minister from West Bengal stated that their State had only paper Lottery which was taxed at the rate of 12% and even though the sale of West Bengal run Lottery had grown, the revenue was miniscule as compared to revenue from the Lottery run by other States. The Hon'ble Chairperson observed that it appeared from page number 9 of the Agenda note that the revenue of West Bengal would go up if rate of tax for all Lotteries was made 28%. He wondered why the GST revenue of the North-Eastern States from Lottery was so little when their Lottery was selling so much. In this context, he stated that the data needed to be reverified and it could also be discussed in the GoM.

27.12. The Hon'ble Chief Minister of Meghalaya stated that the spirit behind GST was one nation, one tax but on one item, namely, Lottery, there were two tax rates which was against the spirit of GST. He questioned why extra benefit should be given to the State-run Lotteries. The Hon'ble Chairperson observed that the North-Eastern States had to keep agents as they did not have enough governmental infrastructure to run lottery. The Hon'ble Deputy Chief Minister of Gujarat observed that in the context of one nation, one tax, there was a need to look at keeping one rate of tax on lottery and there was no need to fix the tax rate on the basis as to who ran the lottery. The Hon'ble Chairperson wondered whether State run Lotteries of Kerala and West Bengal were sold outside their State. The Hon'ble Minister from Kerala and West Bengal stated that their State did not sell lottery in other States. The Hon'ble Minister from Kerala stated that his objection to continuing the discussion on the issues was mainly due to the fact that report of the GoM did not reflect the opinions of all the members of the GoM.

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27.13. The Hon'ble Minister from Assam stated that if the Hon'ble Minister from Kerala wanted a division, then he would also press for a counter division on this issue. The Hon'ble Minister from Goa stated that this issue was very important and presence of only two members of the GoM during the previous deliberation of GoM would not do justice to the subject. He recalled that during the initial period, when the rate of tax on lottery was being worked out in the Council, the Hon'ble Minister from Kerala had even threatened to walk out and that the Hon'ble Chairperson, with his sagacity, had worked out a consensus. He appealed that the Council could presently live with this consensus and the matter could be considered further by the GoM.

27.14. The Hon'ble Chairperson stated that if a State was entitled to disallow other States to run lottery, then the question was how such a power could be created. Once this was done, then other States would not be impacted. The Hon'ble Minister from Kerala stated that the Central Government brought in Lottery (Regulation) Act to ensure that the revenue from Lottery accrued to the Government. He stated that gambling, lottery, etc. was allowed, even though it was a sin activity, because the revenue accrued from it went for public use. However, there were provisions in the law to ensure that it should not become an addiction. He added that if a State sub-contracted lottery to profit making middlemen who sometimes circumvented provisions of law, then it took away the benefit of revenue from lottery. He stated that earlier, they had several times appealed to the Central Government to frame laws under the Gambling Act to prevent outsiders from running the lottery. Shri H. Rajesh Prasad, Commissioner, State Tax, Delhi stated that the Hon'ble Supreme Court had given a judgement that banning Lottery in a State which was itself running Lottery would be a violation of Article 301 of the Constitution relating to freedom of trade and commerce.

27.15. The Hon'ble Minister from Assam reiterated that it was not tenable to fix the rate of lottery on the basis of who was running the Lottery. He stated that it was insulting for the North-Eastern States when there was reference to middlemen, etc. as they were running the lottery as per the law and after the scrutiny of the Courts of Law. He stated that what was being referred to as middlemen were actually the dealers and agents of the State and States should not be discriminated on the basis of the manner of running the Lottery. He also argued that if differential rate of tax for Lottery was to be kept, then the GoM should also consider keeping differential rate of tax for cement, paper, petroleum, etc. produced by a government run factory and those produced by privately run factories. He recalled that earlier too, when the decision regarding two rates of tax on Lottery was taken, he had protested against it, but had agreed to it to break the deadlock. He emphasized that any person appointed by a State to run the lottery should not be dubbed as a middleman. The Hon'ble Chief Minister of Puducherry reiterated that as some members could not participate in the earlier deliberation of the GoM, the matter should be further discussed in the GoM. The Hon'ble Deputy Chief Minister of Gujarat stated that keeping in view the fact that the Hon'ble Minister from Kerala could not attend the earlier meeting of the GoM due to hospitalization, one more meeting of the GoM could be held.

27.16. The Hon'ble Chief Minister of Puducherry reiterated that GoM should be allowed to further deliberate and recommend on this matter. He stated that his Union Territory was also suffering because their manufactured goods were going outside the UT and as a result, revenue was not accruing to the UT. However, because of it, he could not say that they would walk out of GST. He observed that presently his UT was surviving due to 14% compensation.

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He added that they were providing land, infrastructure, etc. to the units in their Union Territory but the revenue was going to other States and he would also like to suggest that 50% of revenue arising out of such goods supplied to other States should be retained in the manufacturing State.

27.17. The Hon'ble Minister from Kerala stated that the two-rate structure on lottery had been upheld by the Hon'ble Kolkata High Court and now this was again proposed to be re-considered. He stated that there were issues like revenue of North-Eastern States. He clarified that he did not use the word middlemen for the State Ministers, but his concern was that the State was authorizing to run the Lottery which was run with a motive of profit maximization. He stated that there were several excerpts in the report of CAG regarding corruption by private people running Lottery. He clarified that he was not against the States who authorized to run Lottery but he was against those who actually ran those Lotteries.

27.18. The Hon'ble Minister from Jharkhand enquired as to in which of the States lottery was being run. The Hon'ble Chairperson stated that this was indicated in paragraph 9 of the Agenda note on this subject. The Hon'ble Chairperson requested the Hon'ble Deputy Chief Minister of Gujarat and the Hon'ble Minister from Punjab to suggest a further roadmap on this issue.

27.19. The Hon'ble Minister from Punjab suggested that the issue could be referred back to the GoM or a reference could be made to the Attorney General of India or the decisions of the Hon'ble High Court of Kolkata could be taken up to Hon'ble Supreme Court for review. The Hon'ble Chairperson stated that in his view, the issue was not about the legality; rather the North-Eastern States appointed agents due to lack of Governmental infrastructure to sell lottery across the country and the Hon'ble Minister from Kerala held a view that differential rate of tax was justified as one was earned by the State whereas the other was earned by the private parties. The Hon'ble Deputy Chief Minister of Gujarat suggested that the issue could be kept pending. He observed that the revenue came to the State in whatever manner the Lottery was organized.

27.20. The Hon'ble Chairperson suggested that the GoM could meet again and find a solution. The Council agreed to this suggestion. The Hon'ble Chairperson further stated that the meeting of GoM should be fixed after ascertaining the convenience of the Hon'ble members of the GoM, particularly those who held opposite view points.

28. **For Agenda item 7(i)**, the Council agreed that the issue be considered further by the GoM on Lottery and its recommendations be brought before the Council.

Other Issues

29. The Hon'ble Chief Minister of Puducherry raised the issue of IGST apportionment for 2017-18 in respect of Delhi and Puducherry which was still unresolved and money belonging to them instead had gone to the Consolidated Fund of India. He stated that the money was rightfully due to the States and hence they had to make provision in the budget. The Hon'ble Chairperson stated that since the matter could not be resolved at official level, he would be ready for a meeting with the Ministers from both the UTs of Delhi and Puducherry at their convenience to resolve the issues. The Hon'ble Chief Minister of Puducherry further stated that the share of IGST for December 2018 and January 2019 had not been received so far. The

Hon'ble Minister from Punjab also raised the issue of GST arrears which were pending to be released from Centre.

29.1. The Hon'ble Minister from Tamil Nadu circulated a written speech during the meeting where he reiterated the request of Tamil Nadu seeking intervention of the Hon'ble Chairperson for early settlement of the outstanding IGST amount to the State for 2017-2018 as it would help them in tiding over the financial constraints. He stated that the net loss to Tamil Nadu from the incorrect dispensation adopted by the Ministry of Finance was estimated at Rs. 4459 crore. It was also mentioned in the written speech that his State had sent a number of proposals relating to reduction/exemption of taxes for consideration of the Fitment Committee and placing them before the Council for a decision such as reduction and exemption of tax on 77 goods and services, the proposal relating to job works and reduction in rate of tax on safety matches, etc.

29.2. The Hon'ble Minister from West Bengal raised the issue of inverted tax structure in the railway Sector which needed to be addressed as there was a lot of accumulated credit while the refund of credit was blocked. The petro chemical sector was also suffering from a similar problem.

Agenda Item 8: Date of the next meeting of the GST Council

30. The Hon'ble Chairperson stated that the next meeting of the Council would be held through video conference to consider the recommendations of the Fitment Committee and the Law Committee on the various outstanding issues relating to Real Estate. He said that tentatively it would be held on 15th or 17th March 2019 for which intimation would be sent in due course.

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



(Arun Jaitley)

Chairperson, GST Council



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Annexure 1

List of Hon'ble Ministers who attended the 33rd GST Council Meeting on 20th February 2019

Sl No	State/Centre	Name of Hon'ble Minister	Charge
1	Govt of India	Shri Arun Jaitley	Union Finance Minister
2	Govt of India	Shri S.P. Shukla	Minister of State (Finance)
3	Arunachal Pradesh	Shri Jarkar Gamlin	Minister (Tax & Excise)
4	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
5	Chattisgarh	Shri T.S. Singh Deo	Minister for Commercial Taxes
6	Delhi	Shri Manish Sisodia	Deputy Chief Minister
7	Goa	Shri Mauvin Godinho	Minister for Panchayat
8	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
9	Haryana	Capt. Abhimanyu	Excise & Taxation Minister
10	Himachal Pradesh	Shri Suresh Bhardwaj	Minister (Education)
11	Jammu & Kashmir*	Shri K K Sharma	Advisor to Governor (I/c Finance)
12	Jharkhand	Shri C.P. Singh	Minister - Department of Urban Development, Housing and Transport
13	Kerala	Dr. Thomas T M Isaac	Finance Minister
14	Madhya Pradesh	Shri Priyavrat Singh	Minister (Energy)
15	Maharashtra	Dr. Ranjit Patil	MoS Home (Urban), Urban Development, Skill Development and Entrepreneurship, Law & Judiciary, Parliamentary affairs
16	Meghalaya	Shri Conrad K. Sangma	Chief Minister
17	Puducherry	Shri V. Narayanasamy	Chief Minister
18	Punjab	Shri Manpreet Singh Badal	Finance Minister
19	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal affairs, Parliamentary affairs
20	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
21	Uttarakhand	Shri Subodh Uniyal	Minister (Agriculture)
22	Uttar Pradesh	Shri Rajesh Agarwal	Finance Minister
23	West Bengal	Dr. Amit Mitra	Finance Minister

* Note - The name of the Advisor to Hon'ble Governor (I/c Finance) of Jammu & Kashmir is included in the Annexure vide the Union Ministry of Law & Justice opinion (dated 21.12.2018 in E.O.No: 321956/B/2018 vide F.No: 835/Ref-Law Ministry/GSTC/2018) that in a State where there is President's/Governor's rule, the person so authorised by the Governor of the State can be conferred membership of the GST Council to represent the State for the purpose of Article 279A of the Constitution in the capacity of Minister.

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Annexure 2

List of Hon'ble Ministers who attended the 33rd GST Council Meeting on 24th February 2019

Sl No	State/Centre	Name of Hon'ble Minister	Charge
1	Govt of India	Shri Arun Jaitley	Union Finance Minister
2	Assam	Dr. Himanta Biswa Sarma	Finance Minister
3	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
4	Chattisgarh	Shri T.S. Singh Deo	Minister for Commercial Taxes
5	Delhi	Shri Manish Sisodia	Deputy Chief Minister
6	Goa	Shri Mauvin Godinho	Minister for Panchayat
7	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
8	Haryana	Dr. Banwari Lal	MoS Public Health Engineering Deptt.
9	Himachal Pradesh	Shri Mahender Singh Thakur	Minister for Irrigation and Public Health, Horticulture & Sainik Welfare
10	Jammu & Kashmir	Shri K. K. Sharma	Advisor to Governor (I/c Finance)
11	Jharkhand	Shri C.P. Singh	Minister - Department of Urban Development, Housing and Transport
12	Kerala	Dr. Thomas T M Isaac	Finance Minister
13	Madhya Pradesh	Shri Priyavrat Singh	Minister for Energy
14	Maharashtra	Shri Sudhir Mungantiwar	Finance Minister
15	Manipur	Shri Thokchom Radheshyam Singh	Minister for Education and Labour Employment
16	Meghalaya	Shri Conrad K. Sangma	Chief Minister
17	Puducherry	Shri V. Narayanasamy	Chief Minister
18	Punjab	Shri Manpreet Singh Badal	Finance Minister
19	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal affairs, Parliamentary affairs
20	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
21	Tripura	Ms. Santana Chakma	Minister for Social Welfare & Social Education and Animal Resource Development Department
22	Uttar Pradesh	Shri Rajesh Agarwal	Finance Minister
23	Uttarakhand	Shri Prakash Pant	Finance Minister
24	West Bengal	Dr. Amit Mitra	Finance Minister


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Annexure 3

List of Officials who attended the 33rd GST Council Meeting on 20th February 2019

Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Dr. A. B. Pandey	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Adviser
3	Govt. of India	Shri Pranab Kumar Das	Chairman, CBIC
4	Govt. of India	Dr. John Joseph	Member (Budget), CBIC
5	Govt. of India	Dr. Rajeev Ranjan	Special Secretary, GST Council
6	Govt. of India	Shri J. P. S. Chawla	Pr. CCA
7	Govt. of India	Shri P.K. Mohanty	Adviser (GST), CBIC
8	Govt. of India	Shri Sandeep M. Bhatnagar	Member, CBIC
9	Govt. of India	Shri Upender Gupta	Pr. Commissioner (GST), CBIC
10	Govt. of India	Shri Yogendra Garg	Pr. ADG, GST, CBIC
11	Govt. of India	Shri G. D. Lohani	Joint Secretary, TRU I, DoR
12	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
13	Govt. of India	Shri S. K. Rehman	ADG, GST, CBIC
14	Govt. of India	Shri D. S. Malik	DG (M&C)
15	Govt. of India	Shri Rajesh Malhotra	ADG (M&C)
16	Govt. of India	Shri N. Gandhi Kumar	Deputy Secretary, DoR
17	Govt. of India	Shri Pramod Kumar	Deputy Secretary, TRU-II, DoR
18	Govt. of India	Shri Amaresh Kumar	Joint Comm., GST Policy Wing, CBIC
19	Govt. of India	Shri Ravneet Khurana	Joint Comm., GST Policy Wing, CBIC
20	Govt. of India	Shri Darpan Amrawanshi	Dy. Comm., GST Policy Wing, CBIC
21	Govt. of India	Shri Harsh Singh	Technical Officer, TRU-II, DoR
22	Govt. of India	Shri Kumar Asim Anand	Asst. Comm., GST Policy Wing, CBIC
23	Govt. of India	Shri Harish Y. N	OSD, TRU-II, DoR
24	Govt. of India	Shri Paras Sankhla	OSD to Union Minister
25	Govt. of India	Shri Nikhil Varma	OSD to MoS (Finance)
26	Govt. of India	Shri Mahesh Tiwari	PS to MoS
27	Govt. of India	Dr. Vikash Shukla	Media Advisor to RS
28	Govt. of India	Shri Nagendra Goel	Adviser, CBIC
29	GST Council	Shri Shashank Priya	Joint Secretary
30	GST Council	Shri Dheeraj Rastogi	Joint Secretary
31	GST Council	Shri Rajesh Agarwal	Director
32	GST Council	Shri G. S. Sinha	Director
33	GST Council	Shri Jagmohan	Director
34	GST Council	Shri Arjun Meena	Under Secretary
35	GST Council	Shri Rakesh Agarwal	Under Secretary
36	GST Council	Shri Rahul Raja	Under Secretary
37	GST Council	Shri Mahesh Singarapu	Under Secretary
38	GST Council	Shri Debashish Dutta	Under Secretary

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39	GST Council	Shri Sandeep Bhutani	Superintendent
40	GST Council	Shri Mukesh Gaur	Superintendent
41	GST Council	Shri Vipul Sharma	Superintendent
42	GST Council	Shri Amit Soni	Superintendent
43	GST Council	Shri Anis Alam	Superintendent
44	GST Council	Shri Dipendra Kumar Singh	Superintendent
45	GST Council	Shri Sunil Kumar	Superintendent
46	GSTN	Shri Prakash Kumar	CEO
47	GSTN	Ms Kajal Singh	EVP (Services)
48	Govt. of India	Shri Kishori Lal	Pr. Commissioner, Chandigarh Zone, CBIC
49	Govt. of India	Shri Pramod Kumar	Pr. Commissioner, Delhi Zone, CBIC
50	Govt of India	Shri Yogesh Agrawal	Commissioner, Meerut Zone, CBIC
51	Govt of India	Shri Neerav Kumar Mallick	Commissioner, Bhopal Zone, CBIC
52	Govt of India	Shri M. Subramanyam	Commissioner, Bengaluru Zone, CBIC
53	Govt. of India	Shri S. Kannan	Pr. Commissioner, Chennai Zone, CBIC
54	Govt. of India	Shri Javed Akhtar Khan	Commissioner, Ahmedabad Zone, CBIC
55	Govt. of India	Shri Sanjay Mahendru	Commissioner, Mumbai Zone, CBIC
56	Govt. of India	Shri Viney Kumar Paul	Commissioner, Guwahati Zone, CBIC
57	Govt. of India	Shri Srinivas Mandalika	Pr. Commissioner, Hyderabad Zone, CBIC
58	Govt. of India	Shri M Srihari Rao	Commissioner, Vishakhapatnam Zone, CBIC
59	Govt. of India	Shri Ranjeet Kumar	Commissioner, Ranchi Zone, CBIC
60	Andhra Pradesh	Dr D.Sambasiva Rao	Special Chief Secretary, Revenue
61	Andhra Pradesh	Shri J. Syamala Rao	Chief Commissioner, State Tax
62	Andhra Pradesh	Shri T. Ramesh Babu	Commissioner, State Tax
63	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Spcl Chief Secretary, Revenue
64	Arunachal Pradesh	Shri Anirudh S Singh	Commissioner (Tax & Excise)
65	Arunachal Pradesh	Shri Tapas Dutta	SNO
66	Assam	Shri Anurag Goel	Commissioner, State Tax
67	Bihar	Dr. Pratima	Commissioner cum Secretary, State Tax
68	Bihar	Shri Arun Kumar Mishra	Additional Secretary, State Tax
69	Bihar	Shri Sanjay Kumar Mawandia	Special Commissioner, State Tax
70	Bihar	Shri Rajesh Kumar	Additional Commissioner, State Tax
71	Bihar	Ms Sima Bharti	Joint Commissioner, State Tax
72	Bihar	Shri Ajitabh Mishra	Joint Commissioner, State Tax
73	Chhattisgarh	Ms. Reena B. Kangale	Secretary cum Commissioner, State Tax
74	Chhattisgarh	Ms. Nimisha Jha	Joint Commissioner, State Tax


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75	Chhattisgarh	Shri Deepak Giri	Dy. Commissioner, State Tax
76	Chhattisgarh	Shri Manish Mishra	Dy. Commissioner, State Tax
77	Chhattisgarh	Shri Narendra Verma	Dy. Commissioner, State Tax
78	Delhi	Ms. Renu Sharma	Pr. Secretary, Finance
79	Delhi	Shri H. Rajesh Prasad	Commissioner, State Tax
80	Delhi	Shri Rajesh Goyal	Addl. Commissioner (Policy), State Tax
81	Delhi	Shri A K Singh	Deputy Secretary, Finance
82	Delhi	Shri L S Yadav	Asst. Commissioner (Policy), State Tax
83	Goa	Shri Dipak Bandekar	Commissioner, State Tax
84	Gujarat	Shri Arvind Agarwal	ACS, Finance
85	Gujarat	Dr. P.D. Vaghela	Chief Commissioner, State Tax
86	Gujarat	Shri Sanjeev Kumar	Secretary (Economic Affairs) Finance Department
87	Gujarat	Shri Ajay Kumar	Special Commissioner, State Tax
88	Haryana	Shri Sanjeev Kaushal	Addl Chief Secretary, E & T Dept
89	Haryana	Shri Vijay Singh	Addl Commissioner, State Tax
90	Himachal Pradesh	Shri Jagadish Chander Sharma	Principal Secretary (Excise & Taxation)
91	Himachal Pradesh	Shri Rajeev Sharma	Commissioner, State Tax and Excise
92	Himachal Pradesh	Shri Rakesh Sharma	Joint Commissioner, State Tax & Excise
93	Jammu & Kashmir	Shri P K Bhatt	Commissioner, State Tax
94	Jharkhand	Shri Prashant Kumar	Secretary cum Commissioner, State Tax
95	Jharkhand	Shri Ajay Kumar Sinha	Addl. Commissioner, State Tax
96	Jharkhand	Shri Brajesh Kumar	State Tax officer
97	Karnataka	Shri Srikar M.S.	Commissioner, State Tax
98	Kerala	Ms. Tinku Biswal	Commissioner, State Tax
99	Madhya Pradesh	Shri Manu Shrivastava	Pr. Secretary, State Tax
100	Madhya Pradesh	Shri D. P Ahuja	Commissioner, State Tax
101	Madhya Pradesh	Shri Sudip Gupta	Jt. Commissioner, State Tax
102	Maharashtra	Shri Rajiv Jalota	Commissioner, State Tax
103	Manipur	Shri Rakesh Ranjan	Pr. Secretary, Finance
104	Manipur	Ms Mercina R. Panmei	Commissioner, State Tax
105	Manipur	Shri Y. Indrakumar Singh	Asst. Commissioner, State Tax
106	Meghalaya	Shri Abhishek Bhagotia	Commissioner, State Tax
107	Meghalaya	Shri L Khongsit	Jt. Commissioner, State Tax
108	Meghalaya	Shri G G Marbaniang	Asst. Commissioner, State Tax
109	Meghalaya	Shri K War	Asst. Commissioner, State Tax
110	Meghalaya	Shri B Wallang	Asst. Commissioner, State Tax
111	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary, Taxation Department
112	Mizoram	Shri H K Lalhawngliana	Jt. Commissioner, State Tax

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113	Mizoram	Shri Hrangthanmawia	Assistant Commissioner, State Tax
114	Nagaland	Shri Wochamo Odyuo	Addl. Commr, State Tax
115	Nagaland	Shri Kilannaro	Joint Commissioner, State Tax
116	Nagaland	Shri Imtilemla Lkr.	Joint Commissioner, State Tax
117	Nagaland	Shri Lima Imsong	Deputy Commissioner, State Tax
118	Odisha	Shri K K Meena	Pr. Secretary, Finance
119	Odisha	Shri Saswat Mishra	Commissioner, State Tax
120	Puducherry	Shri D. V. Candavelou	Secretary, Finance
121	Puducherry	Shri L Kumar	Commissioner, State Tax
122	Punjab	Shri M. P Singh	ACS-cum-Financial Commissioner (Taxation)
123	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to CM
124	Punjab	Shri Vivek Pratap Singh	Excise & Taxation Commissioner
125	Punjab	Shri Pawan Garg	Dy. Excise & Taxation Commissioner
126	Rajasthan	Dr. Prithvi Raj	Secretary Finance (Revenue)
127	Rajasthan	Shri Preetam b. Yaswant	Commissioner, State Tax
128	Rajasthan	Ms Meenal Bhosle	OSD, Finance
129	Rajasthan	Shri Ketan Sharma	Addl. Commissioner, GST, State Tax Dept
130	Rajasthan	Shri Arvind Mehta	Joint Commissioner, State Tax
131	Sikkim	Smt. Dipa Basnet	Secretary-cum-Commissioner, State Tax
132	Tamil Nadu	Shri Ka. Balachandran	Pr. Secretary, CT and Registration Deptt.
133	Tamil Nadu	Dr. T.V Somanathan	ACS/Commissioner, State Tax
134	Tamil Nadu	Shri K Gnanasekaran	Additional Commissioner, State Tax
135	Tamil Nadu	Shri C. Palani	Jt. Commissioner, State Tax
136	Telangana	Shri Somesh Kumar	Principal Secretary (Finance)
137	Telangana	Shri Anil Kumar	Commissioner of State Tax
138	Telangana	Shri Laxminarayan Jannu	Addl. Commissioner, State Tax
139	Telangana	Shri U Srinivasulu	Addl. Commissioner, State Tax
140	Tripura	Shri Nagesh Kumar B	Chief Commissioner, State Tax
141	Tripura	Shri Ashin Barman	Superintendent, State Tax
142	Uttar Pradesh	Shri Alok Sinha	ACS, State Tax
143	Uttar Pradesh	Ms Amrita Soni	Commissioner, State Tax
144	Uttar Pradesh	Shri Vivek Kumar	Addl. Commissioner, State Tax
145	Uttar Pradesh	Shri C P Mishra	Joint Commissioner, State Tax
146	Uttar Pradesh	Shri D K Sachan	Joint Commissioner, State Tax
147	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, State Tax
148	Uttar Pradesh	Shri Brijesh Mishra	Joint Commissioner, State Tax
149	Uttarakhand	Shri Piyush Kumar	Addl. Commissioner, State Tax
150	Uttarakhand	Shri Vipin Chand	Addl. Commissioner, State Tax
151	Uttarakhand	Shri Rakesh Verma	Jt Commissioner, State Tax
152	West Bengal	Shri H K Dwivedi	ACS, Finance
153	West Bengal	Ms. Smaraki Mahapatra	Commissioner, State Tax
154	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, State Tax

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Annexure 4

List of Officials who attended the 33 rd GST Council Meeting on 24 th February 2019			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Dr. A. B. Pandey	Revenue Secretary
2	Govt. of India	Shri Pranab Kumar Das	Chairman, CBIC
3	Govt. of India	Dr. John Joseph	Member (Budget), CBIC
4	Govt. of India	Dr. Rajeev Ranjan	Special Secretary, GST Council
5	Govt. of India	Shri Sandeep M. Bhatnagar	Member, CBIC
6	Govt. of India	Shri J. P. S. Chawla	Pr. CCA, CBIC
7	Govt. of India	Shri P.K. Mohanty	Adviser (GST), CBIC
8	Govt. of India	Shri Upender Gupta	Pr. Commissioner (GST), CBIC
9	Govt. of India	Shri Ritvik Pandey	Joint Secretary, DoR
10	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
11	Govt. of India	Shri Yogendra Garg	Pr. ADG, GST, CBIC
12	Govt. of India	Shri S. K. Rehman	ADG, GST, CBIC
13	Govt. of India	Shri D. S. Malik	DG (M&C)
14	Govt. of India	Shri Rajesh Malhotra	ADG (M&C)
15	Govt. of India	Shri Kush Mohan Nahar	MCCO, PIB
16	Govt. of India	Shri N. Gandhi Kumar	Deputy Secretary, DoR
17	Govt. of India	Shri Pramod Kumar	Deputy Secretary, TRU-II, DoR
18	Govt. of India	Shri Parmod Kumar	OSD, TRU-II, DoR
19	Govt. of India	Shri Amaresh Kumar	Joint Comm., GST Policy Wing, CBIC
20	Govt. of India	Shri Ravneet Khurana	Joint Comm., GST Policy Wing, CBIC
21	Govt. of India	Shri Kumar Asim Anand	Asst. Comm., GST Policy Wing, CBIC
22	Govt. of India	Shri Harsh Singh	Technical Officer, TRU-II, DoR
23	Govt. of India	Shri Harish Y. N	OSD, TRU-II, DoR
24	Govt. of India	Shri Paras Sankhla	OSD to Union Minister
25	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
26	Govt. of India	Shri Abhishek Gupta	OSD to Chairman, CBIC
27	Govt. of India	Dr. Vikash Shukla	Media Advisor to RS
28	Govt. of India	Shri Nagendra Goel	Adviser, CBIC
29	GST Council	Shri Shashank Priya	Joint Secretary
30	GST Council	Shri Dheeraj Rastogi	Joint Secretary
31	GST Council	Shri Rajesh Agarwal	Director
32	GST Council	Shri G. S. Sinha	Director
33	GST Council	Shri Jagmohan	Director
34	GST Council	Shri Arjun Meena	Under Secretary
35	GST Council	Shri Rakesh Agarwal	Under Secretary
36	GST Council	Shri Rahul Raja	Under Secretary
37	GST Council	Shri Mahesh Singarapu	Under Secretary
38	GST Council	Shri Debashish Dutta	Under Secretary
39	GST Council	Shri Umed Singh Rawat	Superintendent
40	GST Council	Shri Sandeep Bhutani	Superintendent
41	GST Council	Shri Mukesh Gaur	Superintendent
42	GST Council	Shri Vipul Sharma	Superintendent
43	GST Council	Shri Amit Soni	Superintendent
44	GST Council	Shri Anis Alam	Superintendent
45	GST Council	Shri Dipendra Kumar Singh	Superintendent

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46	GSTN	Ms Kajal Singh	EVP (Services)
47	GSTN	Shri Sarthak Saxena	OSD to CEO
48	Govt of India	Shri R C Sankhla	Commissioner, Lucknow Zone, CBIC
49	Govt. of India	Shri Vijay Mohan Jain	Commissioner, Panchkula Zone, CBIC
50	Govt. of India	Shri Pramod Kumar	Pr. Commissioner, Delhi Zone, CBIC
51	Govt of India	Shri Yogesh Agrawal	Commissioner, Meerut Zone, CBIC
52	Govt of India	Shri M. Subramanyam	Commissioner, Bengaluru Zone, CBIC
53	Govt. of India	Dr. Tejpal Singh	Pr. Commissioner, Ahmedabad Zone
54	Govt. of India	Shri Sanjay Mahendru	Commissioner, Mumbai Zone, CBIC
55	Govt. of India	Shri Viney Kumar Paul	Commissioner, Guwahati Zone, CBIC
56	Govt. of India	Shri Srinivas Mandalika	Pr. Commissioner, Hyderabad Zone, CBIC
57	Govt. of India	Shri M Srihari Rao	Commissioner, Vishakhapatnam Zone, CBIC
58	Govt. of India	Shri Nitin Anand	Commissioner, Ranchi Zone, CBIC
59	Andhra Pradesh	Shri J. Syamala Rao	Chief Commissioner, State Tax
60	Andhra Pradesh	Shri T. Ramesh Babu	Commissioner, State Tax
61	Assam	Shri Anurag Goel	Commissioner, State Tax
62	Assam	Shri Shakeel Saadullah	Joint Commissioner, State Tax
63	Bihar	Shri Arun Kumar Mishra	Additional Secretary, State Tax
64	Chandigarh (UT)	Shri Rakesh Kumar Popli	Addl. Comm. Cum Collector, E&T
65	Chandigarh (UT)	Shri R K Choudhary	Asst. Comm., E & T
66	Chhattisgarh	Ms. Reena B. Kangale	Secretary cum Commissioner, State Tax
67	Chhattisgarh	Shri S. L. Agarwal	Special Commissioner, State Tax
68	Delhi	Ms. Renu Sharma	Pr. Secretary, Finance
69	Delhi	Shri H. Rajesh Prasad	Commissioner, State Tax
70	Delhi	Shri Rajesh Goyal	Addl. Commissioner (Policy), State Tax
71	Goa	Shri Dipak Bandekar	Commissioner, State Tax
72	Gujarat	Shri Arvind Agarwal	ACS, Finance
73	Gujarat	Dr. P.D. Vaghela	Chief Commissioner, State Tax
74	Gujarat	Shri Ridhidesh Rawal	Dy. Commissioner, State Tax
75	Haryana	Shri Sanjeev Kaushal	Addl Chief Secretary, E & T Dept
76	Haryana	Shri Vijay Kumar Singh	Addl Commissioner, State Tax
77	Himachal Pradesh	Shri Rajeev Sharma	Commissioner, State Tax and Excise
78	Himachal Pradesh	Shri Rakesh Sharma	Joint Commissioner, State Tax & Excise
79	Jammu & Kashmir	Shri P K Bhatt	Commissioner, State Tax
80	Jharkhand	Shri Ajay Kumar Sinha	Addl. Commissioner, State Tax
81	Jharkhand	Shri Brajesh Kumar	State Tax officer
82	Karnataka	Shri Srikar M.S.	Commissioner, State Tax
83	Kerala	Ms. Tinku Biswal	Commissioner, State Tax
84	Madhya Pradesh	Shri Manu Shrivastava	Pr. Secretary, State Tax
85	Madhya Pradesh	Shri D. P Ahuja	Commissioner, State Tax
86	Madhya Pradesh	Shri Sudip Gupta	Jt. Commissioner, State Tax

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87	Maharashtra	Shri Kira Shinde	Dy. Commissioner, State Tax
88	Maharashtra	Shri Pravin Kulkarni	Dy. Commissioner, State Tax
89	Manipur	Shri Y. Indrakumar Singh	Asst. Commissioner, State Tax
90	Meghalaya	Shri L Khongsit	Jt. Commissioner, State Tax
91	Mizoram	Shri L. H. Rosanga	Commissioner, State Tax
92	Mizoram	Shri R. Zosamlana	Joint Commissioner, State Tax
93	Odisha	Shri Saswat Mishra	Commissioner, State Tax
94	Odisha	Shri Nidhi Kumar Rautray	Addl. Secretary, Finance
95	Puducherry	Shri K. Sridhar	Deputy Commissioner, State Tax
96	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to CM
97	Punjab	Shri Vivek Pratap Singh	Excise & Taxation Commissioner
98	Rajasthan	Dr. Prithvi Raj	Secretary Finance (Revenue)
99	Rajasthan	Shri Preetam B. Yaswant	Commissioner, State Tax
100	Rajasthan	Shri Ketan Sharma	Addl. Commissioner, GST, State Tax
101	Tamil Nadu	Shri Ka. Balachandran	Pr. Secretary, CT and Registration Deptt.
102	Tamil Nadu	Shri C. Palani	Jt. Commissioner, State Tax
103	Telangana	Shri Anil Kumar	Commissioner of State Tax
104	Telangana	Shri Laxminarayan Jannu	Addl. Commissioner, State Tax
105	Tripura	Shri Ashin Barman	Superintendent, State Tax
106	Uttar Pradesh	Shri Alok Sinha	ACS, State Tax
107	Uttar Pradesh	Shri C P Mishra	Joint Commissioner, State Tax
108	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, State Tax
109	Uttarakhand	Shri Piyush Kumar	Addl. Commissioner, State Tax
110	Uttarakhand	Shri Rakesh Verma	Joint Commissioner, State Tax
111	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, State Tax

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Annexure 5

33rd Meeting of GST Council



Deemed ratification & Issues for consideration

Agenda



- **Agenda No. 2** - Deemed Ratification of Notification / Circulars issued post 32nd Meeting of GST Council
- **Agenda No. 3** - Decisions taken by the GIC post 32nd Meeting of GST Council
- **Agenda No. 4** - Decisions / recommendations of the IT Grievance Redressal Committee for information of the GST Council

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Agenda No. 2

Deemed Ratification (1/2)



- Ratification of following notifications, circulars & orders issued post 32nd meeting (dated 10th January, 2019) of GST Council:

Act/Rules	Type	Notification / Circular / Order Nos.
CGST Act/CGST Rules	Central Tax	1 to 8 of 2019
	Central Tax (Rate)	1 of 2019
IGST Act	Integrated Tax	1 to 3 of 2019
	Integrated Tax (Rate)	1 to 2 of 2019
UTGST Act	Union territory tax	1 of 2019
	Union territory tax (Rate)	1 of 2019

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Agenda No. 2

Deemed Ratification (2/2)



- Ratification of following notifications, circulars & orders issued post 32nd meeting (dated 10th January, 2019) of GST Council:

Act/Rules	Type	Notification / Circular / Order Nos.
Circulars	Under the CGST Act	88 to 91 of 2019
	Under the IGST Act	4 of 2019
ROD Orders	Under the CGST Act	1 to 2 of 2019
	Under the UTGST Act	1 of 2019
Orders	Under the CGST Act	1 of 2019

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**Agenda No. 3****GIC decisions post 32nd GST Council Meeting (1/5)****Decision by Circulation (30.01.2019)**

- Extension of last date for filing **FORM GSTR-7** for the months of October, 2018 to December, 2018 till 28.02.2019

✓ Notification No. 07/2019 – CT dated 31st January, 2019 issued

- Extension of time limit for submitting the declaration in **FORM GST TRAN-1** under rule 117(1A) of the CGST Rules in certain cases till 31.03.2019

✓ Order No. 01/2019-GST dated 31st January, 2019 issued

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Agenda No. 3**GIC decisions post 32nd GST Council Meeting (2/5)****Decision by Circulation (01.02.2019)**

- Extension of last date for filing **FORM GSTR-8** for the months of October, 2018 to December, 2018 till 07.02.2019

✓ RoD Order No. 02/2019-CT dated 1st February, 2019 issued

- Relaxation of the condition from requirement to furnish Bank Guarantee for import of aircrafts for participation in Aero Show organised by the Central Government

✓ Notification No. 4/2019-Customs dated 7th February, 2019 issued

- Approval of the New Return System

✓ Final documents shared with GSTN on 6th February, 2019

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Agenda No. 3

GIC decisions post 32nd GST Council Meeting (3/5)



Decision by Circulation (06.02.2019)

- Extension of last date for filing **FORM GSTR-7** for the month of January, 2019 till 28.02.2019

✓ Notification No. 08/2019 – CT dated 8th February, 2019 issued

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Agenda No. 3

GIC decisions post 32nd GST Council Meeting (4/5)



Decision of 24th GIC (12.02.2019)

- Examination as prescribed in sub-rule (1) of rule 83 of CGST Rules

✓ Notification yet to be issued

- Clarification regarding mis-match of data reported in Table 3.2 of **FORM GSTR-3B** & in Table 7B of **FORM GSTR-1**

✓ Circular 89/08/2019-GST dated 18th February, 2019 issued

- Clarification regarding compliance of rule 46(n) of the CGST Rules while issuing invoices in case of inter- State supply

✓ Circular 90/09/2019-GST dated 18th February, 2019 issued

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Agenda No. 3**GIC decisions post 32nd GST Council Meeting (5/5)****Decision of 24th GIC (12.02.2019)**

- Clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018
✓ Circular 91/10/2019-GST dated 18th February, 2019 issued
- Amendment to question No. 61 of the SOP on TDS
✓ Amended SOP issued on 18th February, 2019
- Approval of the amended AOA (Articles of Association) and MOA (Memorandum of Association) of GSTN
✓ Amended AOA (Articles of Association) and MOA (Memorandum of Association) of GSTN approved

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Agenda No. 4**Decisions/recommendations of the ITGRC (1/3)****IT grievance redressal process**

- Circular No. 39/13/2013 dated 03.04.18 prescribing the procedure for taxpayers for lodging their grievance due to technical glitch in the GST system was issued
- GIC to act as IT Grievance Redressal Committee (IT-GRC) for resolving problems of the taxpayers who have not been able to file their documents such as TRAN-1, GSTR-3B / GSTR-1 or Registration/ migration etc. due to technical glitches at Common Portal
- Taxpayers are required to submit their grievance application of technical glitch to the designated field nodal officer of State /Center along with evidence

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Agenda No. 4**Decisions/recommendations of the ITGRC (2/3)**

- Field nodal officers to examine the taxpayers application and the supporting evidence and if it is prima facie found to be a case of technical glitch then send the issues after collating with their remarks/ recommendation to the GSTN Nodal officer by email
- GSTN issued a SOP on 12.04.18 which is to be followed by the Nodal officers of the States / Center while referring the technical glitches to GSTN

IT Grievance Redressal Committee (IT-GRC) meetings

- Four meetings of IT-GRC have been held till now
- Three meetings were held on 22.06.18, 21.08.18 & 26.10.18
- **Fourth IT-GRC** meeting was held on 12.02.19 and after examination and deliberation on 461 TRAN-1 cases, IT-GRC decided to allow 165 cases

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Agenda No. 4**Decisions/recommendations of the ITGRC (3/3)**

- Total 1239 TRAN-1 cases (including cases where writ petitions have been filed in various High Courts) were presented to IT-GRC out of which a total of 570 cases have been approved
- Total 258 TRAN-2 cases have also been approved

Implementation of the Decisions of ITGRC

- TRAN 1 filing has been enabled for the approved taxpayers in the system
- E-mails have been sent by GSTN to the taxpayers asking them to file TRAN 1
- A total of 1307 cases of TRAN-1 have been received from the nodal officers till 17.12.18 by GSTN
- Another lot of around 600 cases of TRAN-1 have been examined by GSTN and will be presented to the IT-GRC for decision shortly
- Rest of the cases are under investigation and checking of logs in the system

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REAL ESTATE

Agenda Item 5
33rd GST Council Meeting
24th February, 2019

Scheme of Presentation

1. Introduction
2. GST Rate Structure
3. Affordable Housing
4. Eligibility Criteria for Affordable Housing
5. Safeguard Measure – RCM on purchase below 80%
6. TDR/FSI Related Issues
7. Credit Apportionment
8. Principles for Transition
9. Option or Mandatory
10. Other Issues


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Recommendation of GoM on Real Estate

- Effective GST @ 5% without ITC for non-affordable residential properties, and
- Effective GST @ 3% or less without ITC for affordable residential properties may be levied.

Recommendation of GoM on Affordable Housing

- Definition of affordable housing may be revised which inter alia include –

- The existing schemes of State and Central Government covered under GST notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017.

And

- An additional criteria of RBI's priority sector lending guidelines having financial limit of Rs. 30 lacs in non-Metro and Rs. 45 lacs in metro cities.

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Percentage of house units sold in Metropolitan and other Cities for different values:-

Value \ Cities	Other Cities	Metropolitan
Below 25 lakhs	67	34
25-50 lakhs	20	
50-75 lakhs	11	31
75-100 lakhs		15
100-150 lakhs	2	13
Above 150 lakhs		8
Weighted average unit value (Rs Lakh)	29.8	88

- Metropolitan Cities: Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai MR
- Other Cities: Data from 12 cities: Ahmednagar, Bhiwadi, Bhopal, Indore, Jaipur, Kanpur, Lucknow, Ludhiana, Nashik, Panipat, Pune, Raipur

Standard size as per CREDAI

- **1 BHK: 450 sq ft**
- **2 BHK: 675 – 700 sq ft**
- **3 BHK: 900 - 960 sq ft**

The size is in “RERA carpet area”

Super area varies between 1.35 to 1.5 of the RERA carpet area

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Revenue Data

Sl. No.	CGST Zone	Effective Tax Rate (in %)	Tax paid in cash (in %)	Range (in %)
(1)	(2)	(3)	(4)	(5)
1	Meerut (Noida)	6.9	0.4	0 - 2.8
2	Bengaluru	9.3	1.0	0.1 - 2.0
3	Kolkata	10.3	1.4	0 - 4.7
4	Chennai	11.6	4.8	0 - 11.7
5	Hyderabad	9.3	0.5	0 - 4.9
6	Bhubaneswar	9.9	2.0	0 - 9.0
7	Mumbai	10.8	2.1	0 - 6.2
Summary		8.8	1.7	0 - 11.7

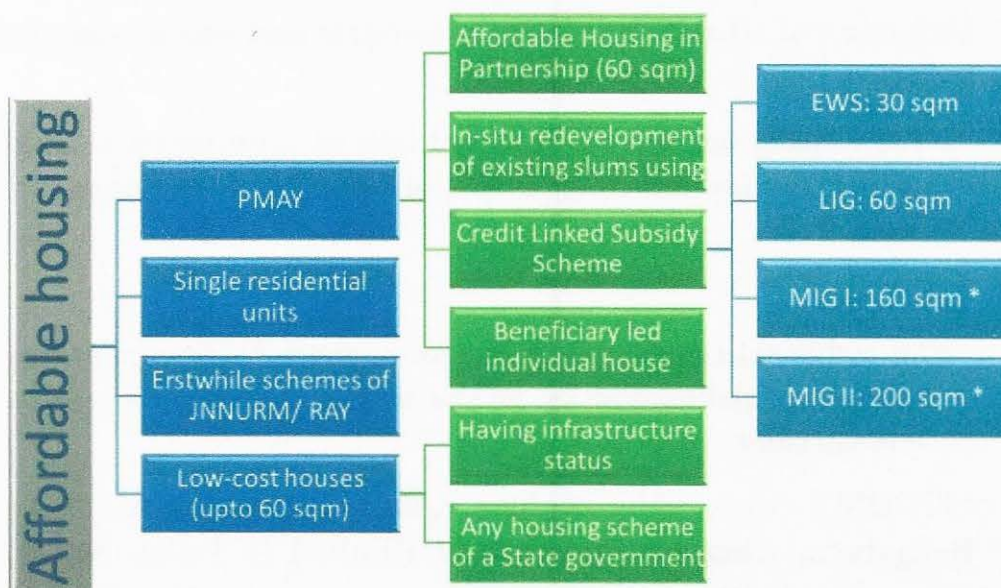
Existing tax payout in the Real Estate Sector

Calculation of GST payable as per present rate structure						
Sl. No.	Category of Housing Unit	High Rise Building			Low Rise Building	
		Low end finish	Premium Quality	Affordable	Low end finish	Affordable
1	Cost of property (per sq. ft.)	4000	10000	3000	3000	2500
2	Cost of construction	1700	3000	1500	1400	1100
3	Input tax credit	280.5	495	247	231	181
4	GST payable (cash + credit)	480	1200	240	360	200
5	Net GST payable	199.5	705	0	129	19
6	Percentage GST Payable	4.99%	7.05%	0.00%	4.30%	0.76%

Source: NBCC

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Current scope of "affordable housing"



GST Rate Structure

- Effective GST @ 5% without ITC for non-affordable residential properties, and
- Effective GST @ 3% or less without ITC for affordable residential properties may be levied.
- FITCOM's View: Regarding affordable residential properties many officers felt that rate of 3% appears to be higher and effective rate of 1% without ITC would be appropriate.

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Affordable Housing

- Definition of affordable housing may be revised which inter alia include –

- The existing schemes of State and Central Government covered under GST notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017.

And

- An additional criteria of RBI's priority sector lending guidelines having financial limit of Rs. 30 lacs in non-Metro and Rs. 45 lacs in metro cities.
- FITCOM's View: Metropolitan Cities should include only **Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata, Mumbai (entire MMR).**

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Eligibility Criteria for Mixed Properties

FITCOM's View:

- In mixed properties commercial portion to be allowed upto 15% (on carpet area basis).
- The commercial property in such mixed properties shall attract GST @ 5% in case of both affordable housing and non affordable housing complex.
- The mixed property which is not eligible for the new tax rate (i.e cases where percentage of commercial property exceeds 15%), shall be taxed as follows:
 - Commercial property shall be taxed at the merit rate as operational now along with ITC facility.
 - Residential property shall be taxed at new rate without ITC.

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Safeguard Measure: 80% mandatory sourcing

Fitment Committee's suggestion:

- Tax rate on such shortfall may be fixed at flat rate of 18% with Cement as exception.
- Cement, in case procured from unregistered person, shall be charged at 28% on RCM basis, even if it is within the limit of 20% subject to other action under the Act.
- Capital goods to be procured only from registered person, and shall not be used for computing the 80:20 ratio (neither in numerator nor in denominator)

Maintaining Credit Chain Integrity

Fitment Committee Recommendations:

- The method of apportionment may be made through GSTR 3B to make it similar to ITC procedure.
- Further, where supply has been shown to be received from a GST registered person who is non-existent, it shall be deemed that the purchase has been made from a non-registered person.
- RCM payment to be done on pro-rata basis, every month, to be adjusted at the end of the year.
- (Fitment Committee was of the view that the proposal may be simplified by shifting tax liability on all purchases from unregistered persons on the developers under RCM at the merit rate of each purchase.)


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Principles for Transition

- ITC shall be available only to the extent (calculated on pro-rata basis) of the value of the supply made out of the total value of supply for the project till the date of transition.
- ITC taken less vis-à-vis the supply made shall be quantified and can be used to adjust the future tax liability.
- ITC taken in excess of supply made (calculated on pro-rata basis) shall be recovered.

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Principles for Transition contd..

- The ITC with respect to work in progress and inputs lying in stock shall lapse. The ITC balance lying in the ledger after paying the liability relating to supplies made prior to the date of transition shall lapse.
- Credit pertaining to Capital Goods shall be distributed between residential and commercial property on pro-rata basis. Life cycle of capital goods shall be considered 60 months. ITC reversal on capital goods to the extent of the remaining part of life cycle after 01.04.2019 and utilized in projects to which above rate applies shall be done.

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TDR/FSI Related Issues

Fitment Committee's Recommendations:

- It is proposed that the withdrawal of exemption on TDR, Long Term lease (premium) etc. attributable to property remaining unsold on completion may be done as per the following formula:
- *GST payable on TDR, Long term lease (premium), FSI etc. attributable to immovable property for which completion certificate(CC) has been received during the relevant return period X (Total area of residential property unsold on the date of issuance of CC ÷ Total area of the residential property in respect of which CC has been issued during the relevant return period).*
- Liability to pay GST on development rights, long term lease of land (premium), FSI etc. shall be shifted to the date of issuance of completion certificate under section 148, so that the interest liability starts after issuance of completion certificate and not from the time of supply.

TDR/FSI Related Issues: Example

Facts and Assumptions

- Value of TDR = Rs 1 Cr @ Tax Rate=18%
- Units in the residential complex = 10 (1000 sqft each)
- Total area of residential property = 10,000 sqft
- Total area of residential property unsold = 6,000 sqft
- Value of property sold nearest to completion = Rs 20 lacs
- No of units transferred to land owner upon barter = 5
- Value of TDR in case of barter = (No. of units transferred to land owner upon barter) x (Value of property sold nearest to completion) = 5 x Rs 20 lacs = **Rs 1 Cr**

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TDR/FSI Related Issues: Example

- TDR etc supplied against money
 - Tax Amount = Rs 1 Cr x 18% = Rs 18 lacs
 - Exemption withdrawal = Rs 18 lacs x (6000/10000) = **Rs 10.8 lacs**
- TDR etc supplied in barter of property
 - Tax Amount = Rs 1 Cr x 18% = Rs 18 lacs
 - Exemption withdrawal = Rs 18 lacs x (6000/10000) = **Rs 10.8 lacs**
- Cap on the exemption withdrawal
 - 5% of value of unsold property = 5% x (Rs 20 lacs x 6) = Rs 6 lacs
 - Therefore, the withdrawal of exemption shall be done of **Rs 6 lacs** in both the cases and not Rs 10.8 lacs.

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TDR/FSI Related Issues...

- Liability to pay GST on TDR etc may be placed on the recipient under RCM.
- Further the withdrawal may be limited to 5% (1% in case of affordable) of value of unsold property.
- Value of supply of service by way of transfer of development rights in case of barter is equal to value of similar dwelling or commercial units charged by the builder/developer

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Credit Apportionment

- Apportionment between residential and commercial project
- It shall be done on self assessment basis by the developer.
- The same shall be subject to audit and intelligence based enforcement. Guidelines to apportion the purchases between residential and commercial projects are as under:
 - Purchases exclusively for commercial property may be apportioned to commercial projects.
 - Purchases exclusively for residential property may be apportioned to residential projects.

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Credit Apportionment

- Purchases common to both commercial and residential construction may be apportioned in the ratio of the carpet area of residential and commercial projects under construction.
- 80:20 ratio shall be verified for residential segment at the end of the year and at the end of the project.
- Apportionment between immovable property sold "before Completion certificate" and "after Completion certificate": This shall not be required as ITC will not be available in both the cases.

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Other Issues...

- **Issue 1:** The date of implementation of the proposed scheme should be 1st April 2019.
- **Fitment Committee Comments:** The compliance burden shall be reduced if the scheme is implemented from new financial year. Further it shall give time to the industry to make transition to the new tax structure.
- **Issue 2:** Whether the scheme is to be made optional or mandatory?
- **Fitment Committee Comments:** The scheme may be made optional for the ongoing projects as it shall ease the compliance burden and avoid the ordeal of transition provision compliance.

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Other Issues...

- **Issue 3:** To keep long term lease and TDR outside the GST for all purposes and leave them exclusively for States until real estate is fully brought in GST. Definition of immovable property under General Clauses Act defines it to include both land as well as the benefits arising out of land
- **FITCOM's View:** There is no legal challenge to levy of GST on supply of development rights or long term lease of land.
- **Issue 4:** To bring real estate into GST
- **FITCOM's View:** It involves larger issue of taxation of land and would require changes in the Act. A committee may be constituted to work out the details.

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