CLASS NOTES
POLITY – GST COUNCIL

HISTORY

- **In the year 2000, the then Prime Minister introduced the concept of GST and set up a committee to design a GST model for the country.**
- In **2003, the Central Government formed a taskforce on Fiscal Responsibility and Budget Management, which in 2004 recommended GST to replace the existing tax regime** by introducing a comprehensive tax on all goods and services replacing Central level VAT and State level VATs.
- **It recommended replacing all indirect taxes except the customs duty with value added tax** on all goods and services with complete set off in all stages of the value chain.
- The **movement towards GST was articulated by the then Union Finance Minister in his Budget speech for 2006-07. Initially, it was proposed that GST would be introduced from 1st April 2010.**
- The **Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for GST.**
- **Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of GST** and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies
- **Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on the GST in November, 2009.** This spelt out features of the proposed GST and has **formed the basis for discussion between the Centre and the States so far.**
- Constitutional body for making recommendations to the Union and State Government on issues related to Goods and Service Tax.
- **Chaired by the Union Finance Minister and other members are the Union State Minister of Revenue or Finance and Ministers in-charge of Finance or Taxation of all the States.**
- **The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2016, for introduction of Goods and Services tax**
- **As per Article 279A (1) of the amended Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A.**

ORGANISATION

- As per Article 279A of the amended Constitution, the **GST Council which will be a joint forum of the Centre and the States, shall consist of the following members: -**

1. **The Union Finance Minister as Chairperson;**
2. **The Union Minister of State in charge of Revenue or Finance as Member;**
3. **The Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as Members.**

- **As per Article 279A (4), the Council will make recommendations** to the Union and the States on important issues related to GST, like the **goods and services that may be subjected or exempted from GST, model GST Laws, principles that govern Place of Supply, threshold limits, GST rates including the floor rates with bands, special rates for raising additional resources during natural calamities/disasters, special provisions for certain States**.
- **Inclusion of the Chairperson, Central Board of Excise and Customs (CBEC), as a permanent invitee (non-voting) to all proceedings of the GST Council**
- Creation of the GST Council Secretariat, with its office at New Delhi;
- Appointment of the Secretary (Revenue) as the Ex-Officio Secretary to the GST Council
- **Create one post of Additional Secretary to the GST Council in the GST Council Secretariat (at the level of Additional Secretary to the Government of India), and four posts of Commissioner in the GST Council Secretariat (at the level of Joint Secretary to the Government of India).**

MANDATE OF GST

- **Cabinet also decided to provide for adequate funds for meeting the recurring and non-recurring expenses of the GST Council Secretariat**, the entire cost for which shall be born by the Central Government. **The GST Council Secretariat shall be manned by officers taken on deputation from both the Central and State Governments.**
- **Art 246A empowers both Parliament and, except in the case of inter-state trade or commerce, the state Legislature to levy the GST.** On inter-state transactions, **Art 269A stipulates that the GST "shall be levied by the Government of India and such tax shall be apportioned between the Union and states on the recommendations of the Goods and Services Tax Council"**

FUNCTIONS

- The GST Council **makes recommendations to the Union and the States on—the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;**
  - **The goods and services that may be subjected to, or exempted from the goods and services tax;**
  - **Model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;**
  - The threshold limit of turnover below which goods and services may be exempted from goods and services tax;the rates including floor rates with bands of goods and services tax;
- The Goods and Services Tax Council shall make recommendations to the Union and the States on
  1. **Any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;**
  2. **Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand**; and

- **The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.**
- While discharging the functions, the **Council shall be guided by the need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services.**
- **One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.**
- The Goods and Services Tax **Council shall determine the procedure in the performance of its functions.**
- **Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting**, in accordance with the following principles, namely: —
    1. the **vote of the Central Government shall have a weightage of one third of the total votes cast**
    2. the **votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast**, in that meeting
- The **success of GST and effective dispute prevention depends on creation of a sound information technology (IT) infrastructure. In this regard, the goods and services tax network (GSTN) – a nongovernment private limited company – has been set up under erstwhile Section 25 of the Companies Act, 1956**
- **GST Council has decided on a four-slab structure, as mentioned earlier, along with a cess on luxury and `sin' goods such as tobacco.**
- In line with the practice followed in other countries with federal structures, **fiscal transfers in India are guided by the principle of 'equalisation', which neutralises insufficiency in fiscal capacity (but not revenue effort) across states**
- The **objective of fiscal transfers is to correct vertical and horizontal imbalances** (Rao and Singh, 2005) – **referring to the simultaneous imbalance between means and responsibilities in two different tiers of governments because states bear expenditure responsibilities disproportionate to their sources of revenue** (Rangarajan and Srivastava, 2011)
- Under the current system of transfers in India, **tax devolution plays a dual role of correcting vertical as well as horizontal imbalances while grants-in-aid are primarily targeted towards achieving a degree of equalisation among states.**
- **Article 268, which facilitates levy of duties by the Centre but equips the states to collect and retain the same. Similarly, Articles 269, 270, 275, 282 and 293 define ways and means of sharing resources between the Centre and states.**
- **Art 280 provides an institutional framework to facilitate Centre-state transfers in the form of Finance Commissions (FC) which determines the share of states in tax revenues of the Centre.**
- **Regarding financial relations between the Centre and states, the Seventh Schedule (Article 246) of the Indian Constitution lays down the respective fiscal powers and functional responsibilities following the principles of federal finance under three categories**
- Well-defined areas for the **application of Central GST (CGST), State GST (SGST) and integrated GST (IGST) to avoid conflict and given the proposed dual-tier structure**
- Both **Parliament and state assemblies have power to make laws on taxation of goods and services, while the GST Council will settle inter-state or Centre-state disputes by consensus.**

- **States are free to levy VAT on sale of petroleum and crude products until a decision is taken by the GST Council.**
- At present, the **Central Government imposes more than 20 cesses but it mobilises the maximum revenue through additional duty on excise on motor spirit and high speed diesel** – popularly known as the road cess.
- **No act or proceedings of the GST Council shall be invalid merely by reason of— any vacancy in, or any defect in, the constitution of the Council; or**
    - **Any defect in the appointment of a person as a Member of the Council;**
    - **Any procedural irregularity of the Council not affecting the merits of the case.**
- **The GST Council shall establish a mechanism to adjudicate any dispute —between the GoI & one or more States; or**
    1. **Between the GoI and any State or States on one side and one or more other States on the other side; or**
    2. **Between two or more States, arising out of the recommendations of the Council or implementation thereof.**
- **Incontrovertibly one nation one tax has left states fund starving during emergencies and has dismantled India's fiscal federalist structure.**
- **GST council under Article 115 exempts liquor & petroleum products from GST ambit since these two are the main source of revenue for the state.**
- **First liquor was completely banned in the state of Bihar. Prohibited production and consumption of liquor cost Rs 4,000 crore (estimated) to exchequer.**
- **It makes the situation worse for Bihar where 43% children (under five years) are stunting**
- **The second source of revenue is petrol and diesel. The Union government has increased the central excise duty, cess and surcharge. VAT charges on petrol and diesel in Bihar is lower in comparison with other states.**
- **Bihar charges only 26% or Rs 16.65/litre, whichever is higher (30% of VAT on surcharge as irrecoverable). Nineteen percent or Rs 12.33/litre, whichever is higher (30% of VAT on surcharge as irrecoverable) while Rajasthan charging the highest VAT 36% VAT+Rs 1500/KL road development cess and 26% VAT+ Rs.1750/KL road development cess respectively on petrol and diesel**
- **First five years of GST, a 14% guaranteed compensation was provided to the States**, and would end in 2022. "But many **States are seeking an extension of this mechanism thereafter.**
- **GST Council would now decide indirect taxes for Indians, instead of their elected lawmakers doing so.**
- **In 2018, the idea of bodies along the lines of the GST council to manage healthcare, rural development and agriculture was in popular demand.**
- **Much of the functioning of the GST Council was smooth for the first three years. When, states were being paid a handsome compensation and did not have to worry about tax revenue.**
- **The entire GST apparatus has been severely tested the past year as GST revenues started to slow down given India's poor economic performance.**
- **By the end of 2019, GST compensation had started to get delayed, with states not receiving their bimonthly payout on time.**
- **The GST Council would have been expected to provide a forum to discuss and debate solutions to the compensation crisis. Instead what was seen was that the Union tried to bypass the council**.
- To create an alternative to get funds for state, **the Union government unveiled two options – both involving states borrowing funds to meet the compensation shortfall.**

- **The Union government reported the media that voting on the compensation options was out of the "jurisdiction" of the GST council.**
- Analysts had pointed out that the **council, while marketing itself under the rubric of "cooperative federalism" was actually giving vast powers to New Delhi.**
- **GST Council awards the Union government a weightage of one-third (33.33%) of the total votes cast. While, other states and Union territories combined have two-thirds (66.66%). Every decision of the council meanwhile requires three-fourths (75%) of the total vote to be passed.**
- **It's easy for the Union to get its policies passed by the council. It requires only the votes of 21 other states . It is impossible for the council to pass a vote that the Union opposes since it alone controls 33.33% of the vote. This is true even if every state and Union territory votes against New Delhi. The Centre thus has a veto in the council.**
- To make this skew worse, **the GST Council is managed by the government of India's Revenue Department, which reports to the Union Minister of Finance, who in turn represents the Union government in the GST Council.**
- As of now, **out of the total 30 states and Union Territories (excluding Jammu & Kashmir), 20 are having ruling party govt or its allies (including parties who voted with ruling alliance on recent legislation in Parliament).** This essentially means that a vote in the Council could largely be an academic exercise — **unless a number of the ruling alliance allies switch sides.**
- **GST Council took taxation out of public legislatures – the standard in every democracy – and uniquely made it part of a closed chamber**.
- Since the council provides such vast powers to New Delhi, it is likely that **politicians at the Centre saw in it a way to manage subjects that, till now, are totally or partially in the domain of the states without going through the normal democratic process – that is actually winning a state election.**
- **However, given the poor performance of the GST council in managing the GST and the federal disputes that have arisen as a result, it is unlikely that states would agree to more such bodies in the near future.**
- **GST Council is the highest decision-making body on indirect taxes**.
- **Council has seen struggling to reach the consensus on the matter of GST compensation to the states even during the pandemics.**
- **Council shown inability of centre to borrow money in the wake of increasing bond prices and the increase in borrowing rates. Instead it is encouraging states to st borrow against future GST receipts.**
- **Decision making in the council is not yet on the basis of making consensus.**
- Under the GST structure, **taxes are levied under 5%, 12%, 18% and 28% slabs.**
- **On top of the highest tax slab, a cess is levied on luxury, sin and demerit goods, and the proceeds from the same are used to compensate states for any revenue loss. But due to a slowdown in the economy, collections have fallen short of the money needed for compensating states.**
- **Fiscal federalism cannot be drive in normal way unless centre acts as a fiscal leader in federalism.** Centre has to go for borrowing for the states. GST council should adopt such role while dealing with the crisis of GST compensation.
- **Centre forcing states to borrow while imposing all kinds of conditionalities to borrowing beyond the limit of 3% of state GDP** is most unfortunate and goes against the spirit of federal accommodation in our polity.
- **Functioning of the council should be sensitive towards health and financial emergency situations .**

- **The state governments argue that the Centre is best placed to borrow cheaper from the market. The Centre has an option to borrow via a special window created by RBI.**
- **The opposition states wants to put the issue of borrowing for voting in the GST council but centre is reluctant for such voting because despite of having possible 20 states in its support it needs 75% of votes in the favour of centre** .
- **It is worrying that when Centre conceives of itself as a private player in a market economy.** While adopting the logic of a private contract, the Centre jeopardising the social contract upon which our democratic system rests.
- The Attorney General of India K.K. Venugopal had given his legal view on the compensation cess issue where he has opined that **there is no obligation on the Centre under the GST laws to compensate for the loss of revenue.**
- He had opined that the **GST Council has to find ways to meet any revenue shortfall arising out of GST implementation.**
- **The GST Council, could not force the Centre to borrow to provide the resources if the latter was not willing to.**
- **GST Council was mandated to meet once in every quarter. Unfortunately, this solemn mandate has been violated twice over**, by not calling a meeting of the Council for two consecutive quarters
- As per the voting rules for the Council, **every decision has to be taken by a majority of not less than three-fourth of the weighted votes of the members present,** with the vote of the central government having a weightage of one-third of the total votes cast, and votes of all the state governments together having a weightage of two-thirds of the total votes cast.
- **Only about 30 per cent of the overall revenue of the states — Maharashtra, Tamil Nadu, Gujarat, and Karnataka — comes from the Union government. But for the remaining 27 states, roughly 60 per cent of their revenues are obtained through transfers from the Union government. For the smaller Northeastern states, these transfers from the Union government constitute 80-90 per cent of their total revenues**.
- **In effect, the states that contribute the most to the GST pool are the least dependent on transfers from the Union government while the ones that contribute the least are the most dependent.**
- **The problem of longer standing is that such net-transfers have become increasingly one-sided**, particularly over the last 25 years or so.
- **Re-constructed the composition of taxation away from the fair and progressive channel of direct taxation towards the inherently regressive and unfair channel of indirect taxes.**
- **Union has shifted a large proportion of taxation (roughly 18 per cent of its revenues) into cesses, a special form of taxes that remain outside the GST pool and hence do not have to be shared with the states.**
- **Since 2014, cess revenues grew 21 per cent every year leading to a doubling in terms of its share of GDP.** In effect, while the common citizen has been paying higher taxes every year, a large part of these taxes went solely to the Union government.
- **The combined effect of these problems is that all states (collectively) get a lower share of overall revenues, and that individual states face an ever-increasing disparity in the ratio of funds**
- The **"one state one vote" model (each state, regardless of its size or contribution to the GST pool has one vote in the GST Council) causes further grave injustice.**
- **Twelve states representing nearly 70 per cent of India's population do not want to levy Covid taxes on their people. But 19 states representing the remaining 30 per cent of the population seem keen to continue to levy GST on Covid products.**

- **Had there been a proportional representation of voting in the GST Council either as a proportion of the size of a state or by its contribution to the GST revenue pool, Covid products would have been tax free by now.**
- **When direct tax policy decisions are legislated by Parliament, which has proportional representation from states according to their size of population, why should indirect tax policy decisions be subject to a "one state one vote" formula?**
- **(GST) Council voted for the first time in its 38th meeting held on December 18, 2019**. The proposal to have a higher single rate for lotteries went through by a majority, with 21 votes in favour.
- **During the pandemics 5% GST was levied on Covid vaccine.**