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An Analysis of the impact of COVID-19 crisis on Goods and Services Tax (GST) Regime in India**Prof. (Retd.) Subhram Rajkhowa *****Gaurav Goswami****

Abstract: The Goods and Services tax (GST) in a nascent stage in India has a significant bearing on the polity of the nation. It has both bearings and ramification on the federal character of the State. Due to the advent of the Coronavirus disease (COVID-19) crisis, the GST set up in India had to go through significant changes, modification and accommodation to tackle the intricacies of the exigency situation. The Goods and Services Tax Council (GST Council) being represented by both the Centre and the states also became an institution for discussion, deliberation and creative work out for both of the participants to cater to their demands and requirements. This article is an attempt to find out the important issues which came up for consideration during the COVID-19 crisis, their discussion in the GST Council meetings, important changes that have been brought in the GST laws and critical evaluation of its impact on the federal character of the country.

Key words: Coronavirus Disease (COVID-19), Goods and Services Tax Council (GST Council), Compensation, Cess.

Introduction

Goods and Services Tax (GST) has been brought in India with the purpose of creating a structure uniformly applicable to the indirect taxation system. The advent of Goods and Services Tax has been dubbed as the single-largest tax reform since independence.¹ The form of taxation prevalent in the country before the implementation of GST resulted in ubiquitous cascading effect of taxes, definitional nodus, stupefaction regarding the nature of transaction, interpretational issues, narrow credit mechanism,

incongruity of the mechanisms of imposing taxes, exemptions, non-abatement of conflict between the different states as well as between the Centre and the states among others led to the creation of a uniform taxation system which could bring about a single tax for the entire nation.² Thus, the distortions in the taxation system were set to be redressed by shifting from production to a destination based tax on final consumption.³ The proposal for GST was settled at reducing cascading effects of taxes, elimination of Central sales Tax, and

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¹ .Pinaki Chakraborty, *GST in India-Simple Tax in a Complex Federal System 1* (Orient Black Swan, New Delhi, 1st edn.,2019)

² . Sanjiv Agarwal and Sanjeev Malhotra, *Goods and Services Tax –Laws, Concepts & Impact Analysis of Select Industries 10* (Bloomsbury, New Delhi, 2nd edn., 2017).

³ . Tarun Jain, *Goods and Services Tax – Constitutional Law & Policy 4* (Eastern Book Company, Lucknow, 1st edn., 2018).

eradication of incentive regimes among others.⁴

With this noble intention of reformation, Goods and Service Tax has been implemented in India by the 101st Constitution Amendment Act, 2016 culminating into the enactments viz. Central Goods and Services Tax Act, 2017; Integrated Goods and Services Tax Act, 2017; Union Territories Goods and Services Act, 2017 and The Goods and Services Tax (Compensation to States) Act, 2017 and also allowing the states to create their own statutes in that regard. The implementation of the GST though been done with great vigor and fervor, however suffered a number of setbacks and cracked out its loopholes. Despite the honest intentions, the loopholes culled out in the form of issues related with GST Network (GSTN), the postponement of refunds of the GST amount paid, the transitional issues of carrying of Input Tax Credit (ITC) from the old Value Added Tax (VAT) regime, the problems faced by the informal sectors which came to the fore⁵. Issues related to GST problems emerged due to shoddy planning and poor implementation at the beginning.⁶

The problems were much aggravated and goaded by the advent of the Corona Virus Disease pandemic better known as COVID-19, a kind of which has not been witnessed during the past 100 years. Its magnitude can be gauged from the initial helplessness by the international community compelling the World Health Organization (WHO) to declare it as a pandemic calling upon the international community to brace it from the frontiers of health, economy etc. As

lockdown was declared throughout the country from March 2020, the business operations stopped substantially and the economic activities shrunk which affected the entire administration of GST. COVID-19 added woes to the wounds in the form of decrease of revenue collection for the states. The endeavoured approach are to look at the concerned issues and the challenge posed during the crisis. The country situated as such that the death crisis also gravely affected the economy of the country for reasons stated hereinafter.

The production and manufacturing processes being severely affected resulted in huge shortfall in revenue generation. The present paper therefore explores the resource base by way of GST during the pandemic.

The pandemic situation which came up as a bolt from the blue led to the opening up of extending the base of GST, elimination of unnecessary limitation on the right to recover input tax, evaluation to find out appropriate technology, efficient measures for the collection of GST etc.⁷ The issues relating to Input Tax Credit (ITC), delay in payment of GST, payment of compensation to the States were few of the important issuers amongst others.⁸ The government was in a position under such circumstances to take measures for extending the date of payment, extend of refund and also extending of validity of E-way bills among others measures.

The shortfall in indirect taxes from April to November 2020 was led by shortfall in customs and GST collections for the centre. Revenue collection from customs stood at 45.7 percent of Budget Estimates and the GST collections for the centre were 48 percent of Budget Expenditure during

⁴. R. Kavita Rao and Sacchidananda Mukherjee, *Evolution of Goods and Services Tax in India* 170 (Cambridge University Press, 1st edn., 2019).

⁵. <https://documents1.worldbank.org/curated/ru/846611542608567754/The-Challenges-of-the-Goods-and-Service-Tax-GST-implementation-in-india.docx> (last visited December 22, 2021 at 5 p.m.).

⁶. <https://timesofindia.indiatimes.com/blogs/cash-flow/gsts-problems-are-worsened-by-shoddy-planning-and-poor-implementation-at-the-start/> (last visited on December 22, 2021 at 8 p.m.).

⁷. <https://www.pwc.com/gx/en/services/tax/publications/the-impact-of-covid-19-on-vat-gst-regimes.html> (last visited on December 23, 2021 at 6 p.m.).

⁸. <https://www.ijilr.org/9-emerging-gst-issues-due-to-covid-19-and-its-impact-on-the-indian-business> (last visited on February 1, 2022 at 1 p.m.).

April to November, 2020.⁹ This period of four months indicated the gravity of the problem, practically stalling the economic progress of the nation.

Considering the plight of the economy, the government also launched the platform for 'Transparent taxation-Honoring the Honest' in August, 2020 with an objective to impart greater efficiency, transparency and accountability, and to eliminate physical interface between taxpayers and tax officers.¹⁰

The Government also took an important decision to process pending refund claims with the intention of providing relief to the taxpayers during the COVID-19 period though the GST law provides for 15 days for issuing acknowledgement or deficiency memo and total 60 days for disposing off refund claims without any liability to pay interest.¹¹ This measure as is evident very much was adopted towards providing much needed succor so that the prompt processes of refund claims could result in some financial relief.

A bird's eye view on the problems posed by the covid-19 pandemic can be analyzed from the discussion and decisions taken in the GST Council Meetings which were held after the pandemic started. A detailed view of the issues created by the pandemic as discussed in GST Council meeting are referred to in brief.

40th GST Council Meeting

The 40th GST Council meeting was held on 12th June, 2020 after almost three months of the occurrence of the COVID-19

pandemic.¹² During the discussion in the meeting on the agenda of confirmation of the Minutes of the 39th GST Council Meeting which was held on 14th March, 2020, the Hon'ble Member from Madhya Pradesh expressed his gratitude towards the Centre as 1386 crore Rupees was released as compensation and the borrowing limit for the states was also raised from 3% to 5% of Gross State Domestic Product (GSDP).¹³ He further stated that during the pandemic when he looked for the Department of Home and Health with which he had regular meetings, he came to the findings that the medical equipments used in the fight against COVID-19 attracted GST and had not been given any benefits.¹⁴ This was a serious issue raised by the Minister which attracted much attention.

The Hon'ble Chief Minister of Puducherry while referring to some other important issues stated that there were several procedural matters in the agenda which were required to be thoroughly discussed in the agenda, but they were put up only for the information of the Council. On the other hand, the major items where real focus was to be put upon were the loss of revenue, compensation to be given to the States and the issue of increase in tax on some items. He further stated that both the Centre and the states were facing difficult situation on account of COVID-19 crisis. The earlier regime of Sales Tax, which was a major source of revenue for the States, has now been replaced with GST and accordingly States have to be dependent on GST for revenue and also on compensation given by the GST Council. It may be stated that smaller states are more dependent on compensation.¹⁵

⁹ Government of India, "Economic Survey 2020-21" (Ministry of Finance, 2021), vol.2 p.no. 56 available at <https://www.manupatra.com> on 04/01/2022 (last visited on June 20, 2022 at 4.30 p.m.).

¹⁰ *Ibid.* 62.

¹¹ *Instruction No. 2/1/2020 -GST* dated 9th April, 2020 issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy wing.

¹² Minutes of the 40th GST Council Meeting held on 12th June, 2020, available at: <https://gstcouncil.gov.in/40th-gst-council-meeting> (last visited on April 20, 2022 at 4.00 p.m.).

¹³ *Id.* at 6, para. 4.6.

¹⁴ *Ibid.*

¹⁵ *Id.* at 7, para. 4.8.

The Hon'ble Chief Minister of Puducherry actually drew the attention of the Council towards the issue of compensation to be given to the states which was not awarded to the states in due time and the states were facing a hard time.

The Joint Secretary of Revenue stated that revenue in the months of September and October, 2019 and March, 2020 have been negative vis-a vis the corresponding months in 2018-19.¹⁶ This growth again recovered to 8 to 9% during months of December, January and February. However, due to COVID related issues, it fell down to minus 8% during the month of March. The collections were however, Rs. 32,172 crore and Rs. 62,151 crore in the months of April and May respectively.¹⁷ The Joint Secretary further mentioned that since certain return filings were deferred during the year, more deferred revenues were expected.¹⁸ The statements made by the Joint Secretary of Revenue inferred that the GST compensation was delayed due to deferment of payment of GST.

The Hon'ble Minister from Punjab while recognizing the impact of COVID -19 on both the central and state governments stated that because of COVID-19 pandemic, he saw that apart from the Health department, every other department in the State seemed to go into hibernation.¹⁹ This is a time where he thought that every department of the Government, whether State or Union, needs to actually work overtime as these are the times which brings out the character of the nation and its leaders.²⁰ This statement of the Minister from Punjab was a significant one who understood the exigency of the situation and called for a united effort of the departments of both the governments.

The Hon'ble Minister representing Goa stated that they did not receive any

compensation since March which is about 743 crore and they were landing in a debt trap.²¹

Another issue which was related to late fee and penalty which came up for consideration where the Hon'ble Finance Minister of west Bengal stated that as there was *force majeure* that the taxpayers couldn't file the returns as the entire nation went into lockdown so the matter should be open for discussion whether to charge interest or not. At that time the important thing was to promote the return filing so that taxes can come. In the matter of penalty to be imposed for non filing of GST returns, he stated that penalty should also not be there as it was also a force majeure with no fault on the part of the taxpayers.²² He further stated that they should be as liberal as possible so that the tax starts coming.²³

However, the Finance Secretary in that regard clarified that the issue was not about the interest to be put for the lock down period ,but rather regarding the fact that if someone had to file return by June, 30 but couldn't do so and filed the return in December whether should be charged or not? As the lockdown period is over and if someone still does not pay the taxes till next year or till October, November or December then whether interest should be charged or not?²⁴ The Finance Secretary in that regard opined for the imposition of interest. In case of extension of date of filing he opined that there will be no relaxation for big taxpayers and relaxation should be there for only small tax payers and upto 9% rate and late fees may not be charged from them.²⁵

Thus, it can be seen that the 40th GST Council meeting reflected that the major issues during that period were the non-payment of GST Compensation in time, delay in filing GST Returns and also loss of revenue.

¹⁶ .*Id.* at 13, para. 6.3.

¹⁷ .*Ibid.*

¹⁸ .*Ibid.*

¹⁹ .*Id.* at 18, para. 6.12.

²⁰ .*Ibid.*

²¹ .*Id.* at 19, para. 6.14.

²² .*Id.* at 29, para. 8.16.

²³ .*Ibid.*

²⁴ .*Ibid.*, para. 8.18

²⁵ .*Id.* at 30, para. 8.18.

41st GST Council Meeting

The 41st GST Council Meeting was held on 27th August, 2020²⁶ and was a very important meeting in perspective of the economic crisis on account of the COVID-19. The GST compensation to the states was a matter of serious concern in that meeting.

The backbone of the economy of states literally broke down and they explored all possible means to stall the slide and tide over the crisis. Many of the states demanded compensation packages as provided for under the rules and regulations.

The Finance Secretary stated that after the meeting on 14th March, 2020, which was the 39th GST Council meeting, that compensation of around Rs. 65,000 crore has already been released to the states, while during the period of April, May, June and July, the total collection has been only around 21, 000 crore only.²⁷

The Hon'ble Deputy Chief Minister from Bihar on the issue of compensation submitted to the Chairperson that the only option to solve such problem was to borrow from the market. He stated that it would be better if central Government could borrow and compensate the states, but understanding the limitation of the Centre which had Rs. 12 lakh crore of borrowing that financial year resulting in fiscal deficit crossing 5.5%.²⁸ He therefore opined for pragmatic approach to be required to be adopted. The projected revenue shortfall, assuming collections in Financial year 2020-21 to be 65% of 2019-20 which would be around Rs. 3.65 lakh crore. Even in case of 80% collection, the shortfall would be around 2.73 lakh crore.²⁹ This referred to the low revenue collection for the COVID-19 period.

The Finance Secretary however, stated that the distinction between shortfall

on account of GST implementation and COVID related shortfall had to be made as the current crisis was going to be a prolonged, one unlike local disasters which occurred in the past. The sources of revenue collection of the centre were much impacted. He proposed that there could be multiple options to handle the present situation. One view would be to borrow the entire shortfall amount, but the combined borrowing by the Centre and the States will have adverse affect on the economy in terms of macro-economic stability, increased in interest rates, bond yield rate which would affect the investment and working capital availability to the industry at an affordable industry rate which help the economy recover faster.³⁰

As to the distinction made by the Finance Secretary in regard to the GST implementation loss and COVID-19 induced loss, was not supported by the state of Tamil Nadu³¹ and Kerala. However, the Hon'ble Minister from Assam supported the theory of combined borrowing.³²

Hon'ble Chairperson for the meeting Ms. Nirmala Sitharaman stated that there was never a second thought on Centre being duty bound to give compensation to the States. There has never been a situation as to Centre versus states. Federal India needs extraordinary solutions urgently to help states which are at the forefront of fighting with COVID-19. She stated that she was discussing with the Reserve Bank of India so that Centre and the States does not rush put to the market to crowd out and harden up the yield in the market. The discussion with the RBI was going on to see the possibility of a special window through which borrowing can be made with interest rates being pegged close to G-sec (Government Security) and compensation being paid to the states in a bi-monthly manner. She further stated that a relaxation of 0.5% in states FRBM (Fiscal Responsibility and Budget Management) limit may be worked out and RBI (Reserve

²⁶ .Minutes of the 41st GST Council Meeting held on 27th August, 2020, available at: https://gstcouncil.gov.in/41_st_gst-council-meeting (last visited on April 22, 2022 at 7.20 p.m.).

²⁷ .*Id.* at 2, para. 4.1.

²⁸ .*Id.* at 8, para. 6.

²⁹ .*Id.* at 9, para. 6.

³⁰ .*Id.* at 48, para. 38.

³¹ .*Ibid.*, para. 39.

³² .*Ibid.*, para. 40.

Bank of India) would also be approached to offer a reasonable yield.³³

Thus, the 41st GST Council meeting reflected a number of issues such as growing concern of the states for delay in payment of compensation and combined borrowing by both the states and the Centre to tackle the loss. However, the centre's assurance that it would not shy away from its duty from paying the compensation seemed to put the states in a confident position.

42nd GST Council Meeting

The 42nd GST Council meeting was held on October, 5 and October 12, 2020.³⁴ One of the important agenda in the meeting was the extension of the levy of GST Compensation cess beyond transition period. In that regard, the Secretary General requested the GST Council to take a view and consider the recommendation that the levy of compensation cess be extended beyond the transition period of five years for such period as may be required to meet the gap. The Council approved to extend the levy of Compensation cess beyond 2022 till the entire shortfall is covered.³⁵

The Hon'ble Minister from West Bengal stated that the proposal was well and good and the Compensation cess collected beyond the transition period may be used for paying off interest and the principal amount and accordingly, the period for which the levy has to be effected beyond the transition period ought to be decided.³⁶ The Hon'ble Minister from Punjab also praised the proposal and submitted that the end date should not be defined and the levy should be extended till full compensation is settled.³⁷

In the agenda item no. 9A which was about GST Compensation options on ways of meeting the shortfall as discussed on 5th

October, 2020, the Joint Secretary, Department of Revenue stated that after the discussion on ways to meet shortfall in cess collection in the 41st meeting held on 27-08-2020 where states were given two options to meet their GST Compensation shortfall for the then financial year from market borrowing.³⁸ The Hon'ble Minister from Chattisgarh informed that the Hon'ble Chief Minister from Chhattisgarh was not in a position to accept either of the options. In spite of providing two options, the states should have been provided with the opportunity to choose any form of mechanism to manage the shortfall in cess collection. He further stated that keeping in view the principles of co-operative federalism and section 18 of the Constitution (One hundred and First Amendment) Act, 2016, it was not proper to seek opinion on a matter which had already been decided and incorporated in the Constitution (One hundred and First Amendment Act), 2016 and that the GST (Compensation to States) Act, 2017 does not make any differentiation in the shortfall in revenue either on account of implementation of GST or due-to COVID-19 or any other reason. He urged that the GST Council must live by the letter, word and spirit of the Constitution.³⁹

The Hon'ble Minister from Rajasthan stated that he agreed with the views of the Hon'ble Minister from Chattisgarh and stated that during the debate on GST in the Parliament, doubts were expressed regarding availability of compensation to the States and the draft Act was amended to remove the word 'may' and insert the word 'shall' in its place. He stated that it was the Constitutional duty of the Centre to compensate the States and not giving compensation to the States was harming the States, more so during the COVID-19 pandemic.⁴⁰

The Hon'ble Minister from Tamil Nadu stated that in the financial year 2020-21, for the period till July, 2020,

³³ *Id.* at 49, para. 41.

³⁴ Minutes of the 42nd GST Council Meeting held on 5th and 12th October, 2020, available at: <https://gstcouncil.gov.in/42nd-gst-council-meeting> (last visited on April 25, 2022 at 5.30 p.m.).

³⁵ *Id.* at 23, para. 26.

³⁶ *Id.* at 24, para 26.2.

³⁷ *Ibid.*

³⁸ *Id.* at 24-25, para. 28.

³⁹ *Ibid.*, para. 28.3.

⁴⁰ *Id.* at 26, para. 28.4.

compensation of Rs. 12,258.94 crore is due to be paid to the States, and it was a matter of grave urgency that the GST compensation payments are made immediately to enable them to continue the battle against Covid-19. He further stated that it is for the centre to find out the necessary funds to compensate the states if there was a shortfall in the cess collection.⁴¹

The Hon'ble Minister from Kerala stated that he believed that the Council as a federal institution must be strengthened and that all the members must strive to have a professional to decision making and must compromise to develop a consensus.⁴² He further stated that a concept of distinction was made suddenly between losses incurred due to implementation of GST and due to other causes which was never thought while preparing the GST Act.⁴³ He stated that the definition of the compensation and the calculation of compensation were elaborately mentioned in the Act itself without any reference to any other factor such as act of nature, act of God, and origin of the loss.⁴⁴ He further stated that even if one accepts this concept of differentiation between the causes, it was all the more important that the compensation should be paid immediately since COVID had already come and the impact was being felt during that time, and the shortfall must be made good immediately.⁴⁵

The Hon'ble Minister from Telangana stated that the distinction of loss of revenue on account of implementation of GST and COVID was artificial.⁴⁶

The Hon'ble Minister from Assam stated that the Central Government was also facing the COVID-19 crisis as the States did and that the entire vaccination programme had been taken over by the Centre which would involve expenditure of huge amount. This is in addition to the handling of the situation at

Ladakh. He stated that this was the time to strengthen the hands of the Centre rather than having difference of opinion.⁴⁷

The 42nd meeting also reflected the same problems of delay in providing GST compensation to states. It also raised issues on the mechanism of borrowing to compensate the loss. Many of the states also opposed the distinction tried to be made out by the centre for loss of revenue on account of implementation of GST and due to COVID-19 crisis.

43rd GST Council

The 43rd GST Council Meeting was held in the backdrop of the second wave of COVID that engulfed the country. It was held on 28th May, 2021.⁴⁸ During the intervening period, the GST Implementation Committee (GIC) and various other committees have been at work in terms of pursuing the decisions taken by the GST Council and taking necessary steps to ameliorate the adversities of the pandemic situation.⁴⁹ Minutes of the meeting indicated that that fifty three decisions were taken by the GST Implementation Committee, in the intervening period and as many as thirty eight were trade facilitative measures such as relief in return filing, capping of late fees, extension of due dates for filing etc.⁵⁰

The Secretary to the GST Council stated that in the preceding five to six months, without there being changes made in the laws and without increasing the rates, the revenue collection really improved and one of the reason was that the decisions could be taken in a timely manner through the Committees that have been formed by the GST Council where a large numbers of states are represented.⁵¹ This however reflects the position of the government

⁴¹ *Ibid.*, para. 28.6.

⁴² *Id.* at 32, para. 28.19.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.* at 33, para. 28.21.

⁴⁷ *Id.* at 34, para. 28.23.

⁴⁸ Minutes of the 43rd GST Council meeting held on 28th May, 2021, available at: <https://gstcouncil.gov.in/43rd-gst-council-meeting> (last visited on May 2, 2022 at 9.30 p.m.).

⁴⁹ *Id.* at 3, para. 3.1.

⁵⁰ *Id.* at 6, para.7.3.

⁵¹ *Ibid.*

claiming due credit for the achievement but with many industries having shut down, the claim stands contested.

The meeting further stated that in view of the situation, Ad-hoc exemption order No. 4/2021-Cusoms dated 03/05/2021 has been issued granting exemption from IGST (Integrated Goods and Services tax) on those goods for COVID-19 relief imported free of cost for free distribution, till 30th June, 2021, which are covered under the Customs notification no. 27/2021-Customs dated 20/04/2021 as amended and No. 28/2021-Customs dated 24/04/2021.⁵² This exemption order was anticipated to ease the tax incidence on donated COVID-19 relief material meant for free distribution in the country.⁵³

On the oxygen concentrator specifically, a view was taken, subject to decision of the Hon'ble Supreme Court, to bring down the rate from 12% to 5% whether it was purchased domestically or purchased from outside the country or whether it was gifted by someone. As far as drugs were concerned, a view was taken that medical grade oxygen, oxygen concentrator, pulse oximeter and COVID-19 test kits will be taxable at reduced rate from 12% to 5% .The benefits were to be extended till 31st August, 2021 and if further extension is required and there is no sitting of GST Council meeting, the same can be done by the Union Finance Minister.⁵⁴

To support Lymphatic Filarisis (an endemic) elimination programme being conducted in collaboration with World Health Organization (WHO), the GST Rate on Diethylcaramazine (DEC) tablet was also recommended to 5%.⁵⁵

In providing special relief measures for taxpayers whose aggregate turnover was upto Rs. 5 crore, NIL rate of interest was to be applicable for first 15 days from the due

date of furnishing the return in FORM GSTR-3B or filing of PMT-06 Challan, reduced rate of 9% thereafter for further 45 days and 30 days for March, 2021 and April, 2021 respectively. Waiver of late fee for delay in furnishing return in FORM-GSTR 3B for the tax periods March/QE (Quantitative Easing) March, 2021 and April, 2021 for 60 days and 45 days respectively, from the due date of furnishing FORM GSTR -3B. NIL Rate of interest for first 15 days from the due date of furnishing the statement in CMP-08(Composition Taxpayers) by composition dealers for QE March, 2021 and reduced rate of 9% thereafter for further 45 days.⁵⁶ These measures provided much needed relief though according to same, much more was called for.

Whereas, for large tax payers whose aggregate turnover was more than Rs.5 crore , a lower rate of interest @ 9% for first 15 days after the due date of filing return in FORM GSTR 3-B for the tax period May, 2021 . Waiver was also allowed for late fee for delay in furnishing returns in Form GSTR-3B for the tax period May, 2021 from the due date of furnishing FORM GSTR-3B.⁵⁷

The aforesaid meeting made elaborate discussion on extending the date for filing returns, waiver of late fee on certain conditions, and also reduced rate of interest.

44th GST Council Meeting

The 44th GST Council Meeting was held on 12th June, 2021.⁵⁸ An important issue which appeared in the minutes of the meeting was the discussion on agenda item no. 11 of the 43rd GST Council meeting which talked about extending the scope of ad hoc exemption notification to include the import of Covid-19 related materials on

⁵⁶ .*Id.* at 22, para. 13.23.

⁵⁷ .*Ibid.*

⁵⁸ Minutes of the 44th GST Council meeting held on 12th June, 2021, *available at:*

https://gstcouncil.gov.in/44th-gst-council-meeting (last visited on April 26, 2022 at 5.00 p.m.).

⁵² .*Id.* at 10-11, para. 10.2.

⁵³ .*Ibid.*

⁵⁴ .*Id.* at 39, para. 15.31.

⁵⁵ .*Ibid.*, para. 15.32.

payment basis and provided free to the people, to the State/Centre or state agencies.⁵⁹

In that regard, as to the notification which was already issued, there was already consensus between the parties, but there were differences of opinions on the issue of including more COVID related items and reduction of taxes upon them. Therefore, a Group of Ministers (GoM) was constituted on 29/05/2021 with the Chief Minister of Meghalaya as the Convener with Members from seven other States.⁶⁰

The Convener informed that the exemptions would lead to Input Tax Credit related issued in the long run; whereas zero rating would require amendments under the GST law and it may tinker with fundamentals of the GST Rate structure.⁶¹ Also 0.1 % rate would adversely affect in short, medium as well in the long term.⁶²

He further mentioned that in case of vaccines, as 85-90% of vaccines were procured by the states or the Central government out of which over 50% were being procured by the Central Government, the major impact of the rate would not fall upon the end consumers.⁶³

However, there were objections as to the recommendation of the Group of Ministers. Hon'ble members from West Bengal, Kerala and Odisha requested for zero rating. The Hon'ble member from West Bengal stated that zero rating should be considered and an ordinance could be passed which could amend the laws and later a Bill could be taken to the Parliament.⁶⁴

The Member from Chhattisgarh also expressed his disagreement against the recommendation made by the Group of Ministers and also protested against its

formulation. He referred to section 9(1) of the Central Goods and Services Act, 2017 which states that "at such rates, not exceeding twenty percent, as may be notified by the Government of on the recommendations of the Council and collected in such a manner as may be prescribed and shall be paid by the taxable person."⁶⁵ So, Central Goods and Services tax was permissible upto 20% and no minimum limit was prescribed. So he was in disagreement with the suggestion of the fitment committee which stated that zero rating was against the provisions of law.⁶⁶

The Joint Secretary however stated that, Zero rating would mean that GST would not be imposed on the final product, and at the same time, refund of accumulated Input Tax Credit on input goods and services to be claimed or refunded. Besides, only section 16 of the IGST Act is there, which provides for zero rating. Once this section is applied, then it is required to prescribe through law that Input Tax credit would be available even if no GST would be applicable in such goods and services. This can be done under Article 17(2) of the Central Goods and Services Tax Act, 2017. Whereas the refund of accumulated Input Tax credit which could be achieved through section 54(3) of the Central Goods and Services Tax Act, 2017. The entire problem revolved around the fact that the first step which is the application of zero rating was possible only in case of export or supplies made to Special Economic Zones (SEZ) s. Besides if an amendment is to be made in section 16 of the IGST Act, 2017 it will never be applicable to intra state supply and therefore amendments will also be required to be made in the Central Goods and Services Tax Act and State Goods and Services Tax act.⁶⁷

The GST council made several recommendations on the existing GST rates on important products. Important medicines like Tocilizumab and Amphotericin B was

⁵⁹ . *Id.* at 1, para. 2.1.

⁶⁰ . *Ibid.*, para. 2.3.

⁶¹ . *Id.* at 2, para. 3.2.

⁶² . *Ibid.*

⁶³ . *Ibid.*, para. 3.3

⁶⁴ . *Id.* at 10, para. 21.

⁶⁵ . *Id.* at 8-9, para. 14.

⁶⁶ . *Ibid.*

⁶⁷ . *Id.* at 13, para. 31.

put to Nil from the rate of 5%. The rate on Remdesivir was lowered down from 12% to 5%. Medical Grade Oxygen, Oxygen concentrator and generator including personal imports thereof, ventilators, ventilator masks, canula and helmet, Bipap machine, High flow nasal canula (HFNC) device were brought down to 5% from 12%.⁶⁸ COVID Testing kits and specified Inflammatory Diagnostic Kits, namely D-Dimer, IL-6, ferritin and LDH were also lowered from 12% to 5%. Other COVID-19 relief material such as Pulse oximeters including personal import thereof, hand sanitizers, temperature checking equipment, Gas/electric/other furnaces for crematorium, including their installation, ambulances were lowered down from 28% to 12%.⁶⁹

Critical evaluation

The above narrated discussion on impact of COVID-19 on GST made it visible the requirement of constant adjustment in the policy and taxation laws in the country. A serious threat to the federal structure was made due to the pandemic as there was distrust between the Centre and the states. Constant changes were to be made in extension of the dates of payment. The trade related issues of communication, network disruption, rise in fuel prices, scarcity of labour, shutting of workstations all these led to constant changes in the working structure of the tax regime. A feasible difference in the co-operation can be seen between the Centre and the states as there have been constant deliberations for both the centre and the states to sort out the matters. Market flexibility and legal anachronism needed much delve and quintessential mechanisms.

It may be stated that crisis always opens the door for a new beginning. The COVID-19 crisis has created an opportunity for the tax policy makers for new mechanisms to tackle complex systems, creating innovative measures, dynamic and flexible Rules and also to build a structure

on the basis of co-operative federalism. The COVID-19 crisis as may be inferred from the discussion on the meetings of the GST Council, gave rise to issues of revenue loss, delay in giving compensation to the states, delay in filing returns, issue on means for market borrowings, extension of dates for filing of returns, reduction of GST rates on important items with special reference to COVID, waiver of late fee etc. But the issues have been much resolved by a conjoint effort of both the Centre and the states.

It may be further stated issues also evolved regarding the Rules and procedures to be adopted in GST Council Meetings. The clause (8) of the article 279 A of the Constitution of India provides that The Goods and Services tax Council shall determine the procedure in the performance of its functions. GST Council meetings represents majority as for a valid meeting of the members of GST Council, at least 50 percent of the total number of the members should be present at the meeting. Besides, every decision made during the meeting should be supported by at least 75 percent majority of the votes of the members who are present and voting at the meeting. Besides, the principle which is applicable is that the vote of central government shall have the weightage of one third of the total votes. The states shall have weightage of two third of the total votes which are cast in the meeting.⁷⁰

The Hon'ble Minister from the State of Tamil Nadu raised an important point that there was a need to prescribe a process that the recommendations of the GST Council requiring law amendment were implemented from a given date or within certain time frame as CGST (Central Goods and Services Tax) and SGST (State Goods and Services Tax) amendments may take time. Those states or Centre who do the amendment later

⁶⁸.*Id.* at 30.

⁶⁹.*Id.* at 31.

⁷⁰ .GST Council: Article 279 A available at [https://www.finactservices.com/gst-council-article-279a/#:~:text=One-half%20of%20the%20total,the%20performance%20of%20its%20functions.\(last visited on July 15, 2022 at 4.20 p.m.\)](https://www.finactservices.com/gst-council-article-279a/#:~:text=One-half%20of%20the%20total,the%20performance%20of%20its%20functions.(last%20visited%20on%20July%2015,%202022%20at%204.20%20p.m.)).

than the given date may do it with retrospective effect so that the date of implementation of decisions of Council gets frozen.⁷¹

To this issue, the Finance Secretary stated that this caused certain litigation in the Court as the decisions of the Council could not be simultaneously implemented through notifications or amendments by Centre and all States, tax payers try and take advantage of the same. He further emphasized that once the Council recommends certain amendments to be made in Central Act as well as State Acts, the amendments should be carried out as early as possible and particularly now, as due to COVID-19, there will be problems in holding sessions of the parliament and Legislature, therefore if the Council had taken decisions then even an Ordinance could be considered so that our tax revenue gets protected as many of the amendments made, actually protect the tax revenue. The Finance Secretary further stated that if the amendments were not carried out expeditiously then many of these matters would end up in litigation and Court may take an adverse view because of the differences among various Acts.⁷²

In this regard it may be seen that the GST Council Meeting follows a democratic process. However, there were some intricate issues which came up while dealing with the proceedings in the GST Council. For example in the 40th GST Council Meeting the Hon'ble Minister from Uttar Pradesh requested that whatever matters are assigned to Law and Fitment committees, the reports of the committees should be tabled before the Council in its subsequent meeting, since the council meets in every three months⁷³. Hon'ble Member from Chhattisgarh opposed the recommendation of the GOM (Group of Ministers) which was formed after

the 43rd GST Council and also registered his protest at its formulation.⁷⁴

An analysis of the discussion of the GST Council meeting shows that the issues arising out of COVID- 19 are related to requirement relaxation in filing returns, non-timely disbursal of GST Compensation and the issue of exempting GST or reduction of GST rates from items related to COVID-19. The states while dealing with such issues never protested against benefits to be provided to the people in general. Though there have been issues related to the rates to be fixed in products, as specifically can be seen in the objection of the Hon'ble Minister of Chhattisgarh towards the recommendation of the Group of Ministers(GOM), yet the intention was to provide greater benefit to the people as reflected from the deliberations.

On the other hand, there have been serious delays in giving compensation towards the states which led to financial crunch. The states continued to face precarious condition leading them to fervently bring them out of the situation. They were just like begging for the compensation to be provided within time. The high interest to be accommodated was also a matter of concern. But ultimately the Centre did not shy away from its duty to pay compensation though it could not be provided within time due to COVID-19 situation. This might have been occasioned by shortfall in generation of revenue due to the then prevailing situation.

In fine, a reading of the provisions of the law, rules and regulations very much reveals that the system adopted has been in accordance with the established systems prevailing in other countries. No doubt there were certain title problems at the initial stages, but these are being gradually overcome to a certain extent. With the passage of time, much of the concerns related to the trade and industry as well as rationalization of the rates have led to ameliorative measures. On the front of law,

⁷¹ .Minutes of the 40th GST Council Meeting, p.no. 26, para. 8.8. available at <https://gstcouncil.gov.in/40th-gst-council-meeting> (last visited on June, 2022 at 3.00 p.m.)

⁷² .*Ibid.*, para. 8.10.

⁷³ .*Id.* at 64, para. 26.10.

⁷⁴ .*Supra* note 65.

the Constitutional amendment has been worked out effectively, but the same has been deliberately left out of the present purview of analysis, it has not been within the focal lens.

Conclusion

From the above discussion it may be inferred that the operation of GST especially during the period of COVID-19 crisis, had to pass through a critical process of discussion and deliberation. The participant states in the GST Council Meetings properly expressed their concern and emphasized the requirement of sufficient funds to handle the crisis but on many of the occasions without hampering the federal set up of our country for their own narrow interests. The Union also tried to provide sufficient assistance to the states though there have been delays in releasing the compensation funds to the states. The federal set up of a country does not merely depend upon on some financial assurance or security from the centre, but much on the basis of mutual trust, co-operation and also to think about the larger interest of the nation being a part of the nation and especially during the time of emergency. COVID-19 crisis created a situation where both the Centre and the states got an opportunity to deliberate as well as well to sort out issues through creative and tactical ways to arrive at decisions suitable to tackle the critical situation. This is an experience as well as a lesson to move towards a healthy federal nation on participation of each of the parties.

It may be suggested in the end that the federal bonding is much more required to be strengthened especially at the time of crisis. As there was delay in payments of GST Compensation, the states had to suffer a lot during that period. Attempts were also made to dissect the situation of COVID-19 as a means to unload some of the liability of the Union. But these do not result in good ends. An attempt shall always be made create ways to for discussion and deliberation as well as finding a solution with regard to the disparities of problems faced by the different states. However, only

reduction of interest rates or borrowing or increase of tax on sin products will not solve the problem. Governments should try to find out ways for more revenue generation models in that regard to tackle fiscal instability.