

# GOODS AND SERVICES TAX (COMPENSATION TO THE STATES FOR LOSS OF REVENUE) BILL, 2016

(No. \_\_ of 2016)

[\_th \_\_\_\_, 2016]

A Bill to provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years as per Section 18 of The Constitution (One Hundred and First Amendment) Act, 2016.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

## 1. SHORT TITLE AND COMMENCEMENT

- (1) This Act may be called the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

## 2. DEFINITIONS

- (1) “base year” shall have the meaning assigned to it in section 4;
- (2) “base year revenue” shall have the meaning assigned to it in section 5;
- (3) “compensation” means an amount determined under section 7;
- (4) “earlier law” shall have the meaning assigned to it in the State Goods and Services Tax Act of the respective State;
- (5) “Council” means Goods and Services Tax Council established as per the Article 279A of the Constitution;
- (6) “Goods and Services Tax Compensation Cess” means the cess levied under section 8;
- (7) “Goods and Services Tax Compensation Fund” shall have the meaning assigned to it in section 10;
- (8) “input tax” in relation to a taxable person, means the Goods and Services Tax Compensation Cess charged on any supply of goods and/or services to him, Goods and Services Tax Compensation Cess charged on import of goods, and includes the Goods and Services Tax Compensation Cess payable on reverse charge basis;
- (9) “input tax credit” means credit of ‘input tax’ as defined in section 2(8);
- (10) “projected growth rate” means the rate of growth projected for the transition period as per section 3;

- (11) “projected revenue” shall have the meaning assigned to it in section 6;
- (12) “State” shall include Union Territories with Legislature;
- (13) “taxable person” shall have the meaning as assigned to it in the Central Goods and Services Tax Act, 2016;
- (14) “taxable supply” means a supply of goods and/or services which is chargeable to the Goods and Services Tax Compensation Cess under this Act;
- (15) “transition date” shall mean, in respect of any State, the date on which the Goods and Services Tax Act of the concerned state comes into force;
- (16) “transition period” means a period of five years from the transition date;
- (17) words and expressions used but not defined in this Act and defined in the Central Goods and Services Tax Act, 2016 (... of 2016), shall have the meanings respectively assigned to them in that Act, in the context of GST Compensation Cess levied on taxable supplies of goods and/or services made in the course of intra-State trade or commerce; and
- (18) words and expressions used but not defined in this Act and defined in the Integrated Goods and Services Tax Act, 2016 (... of 2016) shall have the meanings respectively assigned to them in that Act, in the context of GST Compensation Cess levied on taxable supplies of goods and/or services made in the course of inter-State trade or commerce.

### **3. PROJECTED GROWTH RATE**

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be 14% per annum.

### **4. BASE YEAR**

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31<sup>st</sup> March 2016 will be taken as the base year.

### **5. BASE YEAR REVENUE**

(1) Subject to the provision of sub-sections (2), (3) (4) and (5) the base year revenue for a State shall be the sum of the revenue collected by the State and local bodies during the base year, on account of the taxes levied by the respective State or Centre, net of refunds, with respect to the following taxes imposed by the respective State or Centre, which are subsumed into goods and services tax:

- (a) Value Added Tax (VAT), sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile Entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;
- (b) Central Sales Tax (CST) levied by the Central Sales Tax Act, 1956;
- (c) Entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile Entry 52 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;

- (d) Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile Entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;
  - (e) Taxes on advertisement or any other tax levied by the concerned State under the erstwhile Entry 55 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;
  - (f) Duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile Article 268 of the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016; and
  - (g) Any cess or surcharge levied by the State Government under any Act which is included in the definition of 'earlier laws' as per section 2(39) of the State Goods and Services Act of the concerned State.
- (2) The Acts of the Central and State Governments under which the specific taxes are being subsumed into the goods and services tax shall be as notified.
- (3) The revenue collected during the base year in a State, net of refunds, on account of following taxes, shall not be included in the calculation of the base year revenue for that State:
- (a) Any taxes levied under any Act made under the erstwhile Entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
  - (b) Any taxes levied under the Central Sales Tax Act, 1956 (74 of 1956) on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
  - (c) Any cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and
  - (d) Entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile Entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016..
- (4) In respect of the State of Jammu and Kashmir, the base year revenue shall include the amount of service tax collected by the State Government.
- (5) In respect of States mentioned in article 279A(4)(g) of the Constitution, the amount of revenue foregone on account of exemptions given by the State Government to specific entities under the laws specified under sub-section (2) to promote industrial investment in the State would be included in the total base year revenue of the State, subject to the conditions as may be prescribed.
- (6) The base year revenue shall be calculated as per sub-sections (1), (2), (3), (4) and (5) on the basis of the figures of revenue collected net of refunds given in that year, as audited by the Comptroller and Auditor General of India.

(7) In respect of any State, if any part of revenues mentioned in sub-sections (1), (2) and (3) are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to the conditions as may be prescribed.

## 6. PROJECTED REVENUE FOR ANY YEAR

The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

**Illustration:** *If the base year revenue for 2015-16 for a concerned State, calculated as per section 5, is Rs. 100, then the projected revenue for, say, financial year 2018-19 shall be as follows:*

$$\text{Projected Revenue for 2018 - 19} = 100 \left( 1 + \frac{14}{100} \right)^3$$

## 7. CALCULATION AND RELEASE OF COMPENSATION

(1) The GST compensation payable to a State shall be provisionally calculated and released at the end of every quarter, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor General of India (CAG).

Provided further that in case any excess amount has been released as GST compensation to a State in any financial year during the transition period, as per the CAG audited figures of revenue collected, the excess amount so released shall be adjusted against the GST compensation amount payable to the State in the subsequent financial year.

(2) The total GST compensation payable for any financial year during the transition period to any State shall be calculated as follows:

- (a) The projected revenue for any financial year during the transition period, that could have accrued to a State in the absence of GST, shall be calculated as per section 6.
- (b) The actual revenue collected by a State in any financial year during the transition period would be the actual revenue from State Goods and Services Tax collected by the State, net of refunds given by the State under Chapter XI of the SGST Act, and the Integrated Goods and Services Tax apportioned to that State, as certified by the Comptroller and Auditor General of India.
- (c) Total GST compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State as defined in sub-section (b).

(3) The loss of revenue at the end of any quarter in any year for a State during the transition period shall be calculated at the end of every quarter as follows:

- (a) The projected revenue that could have been earned by the State in absence of GST till the end of the relevant quarter of the respective financial year would be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, as calculated as per section 6.

*(Illustration: If the projected revenue for any year calculated as per section 6 is Rs. 100, the projected revenue that could be earned till the end of third quarter for the purpose of this sub-section shall be Rs. 75.)*

(b) The actual revenue collected by a State till the end of relevant quarter in any financial year during the transition period would be the actual revenue from State Goods and Services Tax collected by the State, net of refunds given by the State under Chapter XI of the SGST Act, including Integrated Goods and Services Tax apportioned to that State, as certified by the Principal CCA (CBEC).

(c) The provisional GST compensation payable to any State at the end of the relevant quarter in any financial year shall be the difference between the projected revenue for till the end of the relevant period as per sub-section (3)(a) and the actual revenue collected by a State in the said period as defined in sub-section (3)(b), reduced by the provisional GST compensation paid to a State till the end of the previous quarter in the said financial year during the transition period.

(4) In case of any difference between the final GST compensation amount payable to a State calculated as per provisions of sub-section (2) upon receipt of the audited revenue figures from the CAG, and the total provisional GST compensation amount released to a State in the said financial year as per sub-section (3), the same shall be adjusted against release of GST compensation to the State in the subsequent financial year.

(5) Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the GST Compensation Fund in a manner as may be prescribed.

*Explanation.—* For the purpose of this section, the actual revenue collected would include the collection on account of SGST net of refunds of SGST given by the State under Chapter XI of the concerned SGST Act, and any collection of taxes on account of the taxes levied by the respective State under the laws specified under section 5(2), net of refunds of such taxes.

## 8. LEVY AND COLLECTION OF GST COMPENSATION CESS

There shall be levied and collected in accordance with the provisions of this Act, a cess to be called the GST Compensation Cess at such rate as may be notified, but not exceeding.... per cent, on the value determined under section 15 of the CGST Act, 2016, and on such supplies of goods and services, including imports of goods and services, and those supplies on which tax is payable on reverse charge basis under section 7(3) of the CGST Act, which may be prescribed on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years, w.e.f. the date from which the CGST Act is brought into force.

Provided that no such cess shall be leviable under this section on supplies made by a taxable person permitted to opt for composition levy under section 8 of the CGST Act, 2016.

(1)

## 9. RETURNS, PAYMENTS AND REFUNDS

(1) Every taxable person registered under CGST Act, 2016, making a taxable supply of goods and/or services, shall furnish such returns in such formats, as may be prescribed, along with the returns to be filed under the Central Goods and Services Tax Act, 2016, shall pay the amount payable under the Act in the manner as may be prescribed and apply for refunds of cess paid and refundable in such form as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the format to be filed, the provisions of the Central Goods and Tax Act, 2016, and the rules made thereafter, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods and/or services, as they apply in relation to the levy and collection of Central Goods and Services Tax on such supplies under the said Act or the rules made thereunder, as the case may be.

## 10. CREDITING PROCEEDS OF CESS TO GST COMPENSATION FUND

(1) The proceeds of the GST Compensation Cess leviable under section 8 shall be credited to a non-lapsable fund known as the GST Compensation Fund in the Public Account, and shall be utilized for purposes specified in section 8.

(2) All amounts payable to the States under section 7 shall be paid from the Goods and Tax Compensation Fund.

(3) Fifty percent of the amount remaining unutilized in the GST Compensation Fund at the end of the transition period shall be transferred to the Consolidated Fund of India, and shall be distributed between the Centre and the States and amongst the States as per provisions of clause (2) of article 270 of the Constitution; and the balance fifty percent shall be distributed amongst the States in the ratio of their total revenues from SGST in the last year of the transition period.

## 11. OTHER PROVISIONS RELATING TO CESS

(1) The provisions of the Central Goods and Tax Act, 2016, and the rules made thereafter, including those relating to assessment, input tax credit (subject to sub-section (3)), non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, apply *mutatis mutandis* in relation to the levy and collection of the cess leviable under section 8 on the intra-state supply of goods and services, as they apply in relation to the levy and collection of Central Goods and Services Tax on such intra-state supplies under the said Act or the rules made thereunder, as the case may be.

(2) The provisions of the Integrated Goods and Tax Act, 2016, and the rules made thereafter, including those relating to assessment, input tax credit (subject to sub-section (3)), non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-state supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods and Services Tax on such inter-state supplies under the said Act or the rules made thereunder, as the case may be.

(3) Provided further that the input tax credit in respect of GST Compensation Cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of GST Compensation Cess on supply of goods and services leviable under section 8.