

## Table Agenda

### Agenda Item 14: Any other agenda item with the permission of the Chairperson.

#### Agenda Item 14(iv): Minutes of meeting on GST on Liquor license fee convened on 20<sup>th</sup> February 2018

A meeting to discuss GST on license fee on alcoholic liquor for human consumption under the chairmanship of Finance Secretary, Dr. Hasmukh Adhia was held on 20<sup>th</sup> February, 2018 in room No. 41, North Block, New Delhi. The list of officials who attended the meeting is **Annexure 1**.

2. The meeting began with Finance Secretary asking JS, TRU-II to give a brief outline of the subject under discussion. In his introductory remarks, JS, TRU-II stated that the States had been requesting that there should not be any GST on the license fee on alcoholic liquor for human consumption collected by them as the same is in the nature of tax and thus there cannot be a tax on tax. Also, the alcoholic liquor for human consumption is outside the purview of GST. He further added that the representatives of States of Punjab, Haryana and Himachal Pradesh suggested that the name of the license fee may be changed to “registration vend charge” which will enable them to claim exemption from GST under notification No. 12/2017-CT(R) “*Services provided by the Central Government, State Government, Union territory or local authority by way of (a) registration required under any law for the time being in force*”. He further stated that the issue was discussed in the Fitment Committee and it was opined that merely a name change of the license fee collected by States may not suffice because the machinery provisions of the law may perhaps need changes. JS further added that the Government of Telangana had promulgated an ordinance vide Telangana Ordinance No. 5 of 2017 dated 28.06.2017 for amending the Telangana Excise Act, 1968 with retrospective effect from 02.06.2014 which, *inter alia*, inserted an Explanation to Section 28 of the said Act, so as to render any fees or charges by whatsoever name called to be deemed as Excise Duty or Countervailing duty on Excisable articles levied under the said Act. By virtue of the ordinance effecting the retrospective amendment, the licence fees collected is deemed as Excise duty/Countervailing duty, and thus would not attract GST.

2.1. Finance Secretary, thereafter, asked the States to elaborate on the revenue model of collection of excise duty and license fee, the amount of license fee and excise duty collected.

2.2. **Punjab:** Sh. V. P. Singh, Excise and Taxation Commissioner, Punjab stated that the States have power under Entry 8 of the State list to regulate and control alcoholic liquor, under Entry 51 to levy duties of excise on manufacture of alcoholic liquor for human consumption and under Entry 54 to levy tax on sale of alcoholic liquor for human consumption. This is the prerogative of the States and is not amenable to GST. He stated that granting license is not a business undertaken by the State and is not for furtherance of business; it is rather regulation to control the use of alcohol. Thus, the license fee is in the form of punitive levy and is to desist the use of alcoholic liquor. There is no quid pro quo involved in the provision of license and the license fee is part of excise revenue of the State.

2.3. Sh. M. P. Singh, Additional Chief Secretary, Punjab stated that as per Punjab Excise Act, 1914 the definition of “excise revenue” means revenue derived or derivable from any payment, duty, fee, tax, confiscation or fine imposed or ordered, etc. under the provisions of this Act, or of any other law for time being in force relating to liquor or intoxicating drugs, but does not include a fine imposed by a court of law. It was stated that revenue derived from auction of liquor license is part of excise revenue of State.

2.4. **Haryana:** Sh. Sanjeev Kaushal, Additional Chief Secretary, Haryana suggested that the matter should be examined as there is possibility of litigation on the levy. He suggested that a specific entry be made in the exemption list for the FY 2017-18 in relation to license fee.

2.5. It was stated by the Finance Secretary that creating a separate entry would not be feasible. However, addressing the issue by way of a clarification may be explored. It was enquired by the FS if the issue at hand also concerned the period prior to implementation of GST, to which Sh. Kaushal replied that the service tax issue remains for the period prior to GST.

2.6. **Himachal Pradesh:** Sh. R. Selvam stated that under Service Tax, there was tax incidence of Rs 383 crore for the period 1.4.2016 to 30.6.2017. He further added that circular No 192/02/2016-ST dated 13.04.2016 clarified that taxes, duties, cesses etc. are not a consideration and hence should not attract levy of tax.

2.7. It was stated by J.S.(TRU-II) that the amendment in the Negative List so as to levy Service Tax on services provided by Government to business entities was made w.e.f. 1.4.2016.

2.8. **Telangana:** Sh. V. Anil Kumar, Commissioner Commercial Taxes, Telangana stated that the State Government had amended the Telangana Excise Act, 1968 with retrospective effect from 02.06.2014 which, *inter alia*, inserted an Explanation to section 28 of the said Act, so as to render any fees or charges by whatever name called to be deemed as Excise Duty or Countervailing duty on excisable articles levied under the said Act and thus liquor license fee charged by the State of Telangana was/is not leviable to Service Tax/GST.

2.9. **Uttar Pradesh:** Sh. Sanjay Pathak, Joint Commissioner GST, UP stated that the Excise department has minimized the license fee and therefore, most of the incidence was of excise duty. The license fee collected in 2016-17 is around Rs 1500 Cr. Sh. V. Anil Kumar added that Andhra Pradesh has also adopted similar model.

2.10. JS(TRU-II) stated that if the States are sure that the licence fee collected vide their respective statutes is in the nature of excise duty, the issue of taxability of the same would not arise. In conclusion, Finance Secretary asked the State Governments to submit reports regarding the nature of the levy on alcoholic liquor for human consumption. It was agreed that the submissions made by the officials of the various State Governments shall be placed before the GST Council to concur in the request made to issue a clarification that GST is not leviable on licenses for alcoholic liquor for human consumption. This would also apply, *mutatis mutandis*, to the demands by service tax/central excise authorities of service tax on licenses for alcoholic liquor for human consumption in the pre-GST era, i.e., from period from 1<sup>st</sup> April 2016 to 30 June 2017.

2.11. The meeting ended with a vote of thanks to the Finance Secretary.

#### **Submissions of State Governments pursuant to the meeting held on 20<sup>th</sup> February, 2018**

3.1 The Government of Punjab vide DO No. PA/ETC/2018/10 dated 26-02-2018 addressed to the Finance Secretary have stated that Punjab Government has been levying license fee, special development fee, extra license fee, etc for many decades. All the fees are defined under Punjab Excise Act 2014 as excise revenue which fact has also been upheld by the Hon'ble Supreme Court in the case of Har Shankar & Ors. Etc vs The Dy. Excise & Taxation Commissioner on 21 January, 1975.

*“The rules made under section 59(d) authorize the imposition of additional fees and such authorization would operate on all licenses to be effective thereafter. We are accordingly of the opinion that the payments demanded from the appellants are lawfully due to the State Government. Such payments are ‘excise revenue’ within the meaning of section 60(1) as of the Act. Section 3(9) of the Act defines “excise revenue” to mean “revenue derived or derivable from any payment, duty, fee, tax, confiscation or fine, imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs, but does not include a fine imposed by a court of law. The payments due from the appellants holding licenses in Form L-14A are also due to the Government on account of any contract relating to the excise revenue” as provided in section 60(1)(c) of the Act. It is therefore open to the Government to recover its dues in the manner authorized by section 60.”*

3.2. In view of the above, it has been asserted that GST is not attracted on these levies which are part of State Excise Revenue. Recently, some notices have been issued to some liquor licencees by GST officers demanding GST on the same. Therefore, a clarification has been requested that GST is not leviable on any fee, levy or payment received by State Governments, which form part of State Excise Revenue as per the respective State Excise Acts.

3.3. The Additional Chief Secretary, Government of Haryana, Excise and Taxation Department vide memo No. SPL-1/ST-2 dated 27-02-2018 have requested for a suitable clarification that GST is not leviable for all fees received by the State Government which is part of the excise revenue in accordance with the State excise laws. In support of their contention, they have stated that all the recoveries which constitute revenue of excise as defined in the State Excise law and as upheld by various judicial pronouncements are not subject to GST. In addition, they have contended that alcoholic liquor for human consumption is excluded from the definition of GST and instead excise is levied on the same.

3.4. Telangana, as mentioned above, has passed an ordinance No. 5/2017 dated 28-06-2017 to amend the Telangana Excise Act 1968. By virtue of this amendment an explanation to section 28 has been inserted as follows: -

**“ Explanation:-** For the removal of doubts, it is clarified that any fees or charges by whatsoever name called, collected in pursuance of this section or clause (d) of section 22 or any other section of this Act or any rules made under this Act, from time to time, for granting any lease, license or exclusive privilege for different purposes mentioned in sub-section (a) of section 17, shall irrespective of the time, mode and manner of such collection, be deemed to be and always deemed to have been Excise duty or Countervailing duty on excisable articles levied and collected under section 21.”.

3.5. An email has been received from the Joint Commissioner, GST, Uttar Pradesh enclosing therewith a request made on GST liquor licence for exemption. However, during the aforesaid meeting, for the reasons mentioned at para 2.8 above, it was submitted that it was not really an issue for them.

4. The Council may consider and take a decision on the proposal contained in paragraph 2.10.

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### **Annexure 1**

1. Dr Hasmukh Adhia, Finance Secretary - Chair
2. Dr. John Joseph, Member (Budget), CBEC
3. Shri Sanjeev Kaushal, Additional Chief Secretary, Government of Haryana
4. Shri M.P. Singh, Additional Chief Commissioner, Government of Punjab
5. Shri Amitabh Kumar, JS, TRU-II
6. Shri V.P. Singh, Excise and Taxation Commissioner, Government of Punjab
7. Shri V. Anil Kumar, CCT, Government of Telangana
8. Shri R. Selvam, Excise Commissioner of State Tax and Excise, Government of Himachal Pradesh
9. Shri Santosh Reddy, OSD, Government of Telangana
10. Shri Sanjay Pathak, Joint Commissioner, Commercial Tax Department, Government of Uttar Pradesh
11. Shri Pramod Kumar, DS, TRU-II
12. Shri Harsh Singh, TO, TRU-II