

Report of the Group on Implementation of Goods and Service Tax

EXECUTIVE SUMMARY

This is a summary of the observations and recommendations of the Group on "Organizational Structure for Implementation of GST", that deliberated on the following issues :

I. Organisational structure required to handle a tax-payer base in excess of 50 lakh in GST regime ;

II. Compliance management ;

III. Dispute resolution mechanism ;

IV. Preparatory steps for field formations to usher in this momentous change ;

V. Co-ordination with State Government authorities concerned with State GST.

Re-engineering of business processes

2.1 In order to deal with more than 50 lakh taxpayers, which is five times the current base and also to provide an efficient tax administration, following recommendations are made for re-engineering of the present business processes :

(i) The registration process for all the three taxes, viz., CGST, SGST and IGST should be common and online, with physical verification of a small percentage of taxpayers based on assessment of risk.

(ii) A tax-payer may be given single PAN-based registration for all the business premises in a State.

(iii) There should be a single return for all the three taxes and the same should be filed online through a common portal.

(iv) The frequency of filing of returns for small taxpayers may be made half yearly or on annual basis. For medium and large taxpayers, the frequency can be quarterly and monthly respectively. Option to be given to all taxpayers to file monthly returns, if they wish to.

(v) Common facilitation centres to be set up in each State for all the three taxes, on an outsourced model.

(vi) The refund amount to be credited to the claimant's bank account.

(vii) For procedural and minor technical irregularities a fixed percentage as penalty may be prescribed in the law, which can be paid by taxpayers on their own assessment, without the requirement of issue of show-cause notice and follow up adjudication.

(viii) Submission of annual audit reports by the tax-payer above a specified threshold to be prescribed. Audit may be done by the professionals like CA/ CWA, format of the audit report to be finalised by the Board in consultation with ICAI/ICWAI.

(ix) A very small percentage of small taxpayers to be selected for audit, based on the risk parameters.

(x) The present practice of mandatory annual audit of the large taxpayers to be dispensed with. Based on stringent risk parameters, such units to be selected for audit.

Organisational structure under GST—Principles

3.1 Functional organizations, which encourage specialisation, would be more efficient and capable of handling a larger number of taxpayers as compared to territorial organizations.

3.2 GST Commissionerates to be organized mostly on functional basis and separate Commissionerates for Audit and Anti-evasion in each State, except in smaller States.

3.3 Multi-locational and high tax paying units and taxpayers in the complex business sectors to be audited by the Audit Commissionerates and rest by the jurisdictional GST Commissionerates.

3.4 Within an Audit Commissionerate, specialized sections/cells may be created for some important industries/services.

3.5 The work of three to four Anti-evasion and Audit Commissionerates may be supervised by officers of the level of Chief Commissioner (separate for Audit and Anti-evasion).

3.6 At the apex level, Offices of DG (Audit) and DG (Anti-evasion) in Delhi to coordinate the work with the field formations.

GST Commissionerates—Proposed organizational structure

4.1 The organizational structure to be decided based on the density of taxpayers. Four types of Commissionerates are proposed, with each Commissionerate having a specified territorial jurisdiction :

(1) One-tier functional Commissionerates

(2) Two-tier functional Commissionerates

(3) Three-tier territorial Commissionerates

(4) A combination of the above.

4.2 All the taxpayers having their business premises within the territorial jurisdiction of the Commissionerate would require to get registered with the said Commissionerate. Taxpayers having more than one premises in a State can choose any of the Commissionerates in the State for registration. Every Commissionerate would be given the jurisdiction for the entire territory of the State in which it is located.

4.3 One-tier Commissionerate : In case of big cities where large number of taxpayers are concentrated, one-tier structure may be followed, where work would be divided on functional

basis. Within a Commissionerate, different divisions would carry out specific areas of work, i.e., registration, scrutiny of returns, refund, adjudication, administration, appeal, recovery of arrears, etc.

4.4 Two-tier Commissionerates : Where the taxpayers are spread over a relatively large area, the Commissionerate will have territorial divisions but the work in the divisions will be organized on functional basis.

4.5 Three-tier Commissionerates : Where the taxpayers are spread over a very large area, the present structure of Commissionerate, Division and Ranges, based upon territorial jurisdiction to be followed.

4.6 Combination of the above : For areas having a non-uniform dispersal of taxpayers, combination of any of the three models suggested above.

4.7 Estimates of total number of Commissionerates : Ideally, there may be about 35,000 to 50,000 taxpayers per Commissionerate, depending upon dispersal of taxpayers. The Group estimates the following number of Commissionerates, which is broadly in line with the cadre review proposal :

150 GST Commissionerates

45 Audit Commissionerates

20 Anti-evasion Commissionerates.

4.8 Setting up of State level LTUs : LTUs may be set up in major States for providing better tax-payer services and co-ordination in matters relating to CGST, SGST and IGST.

Dispute resolution mechanism

5.1 Intelligence gathering : There should be an institutional mechanism for periodic or real-time sharing of information or intelligence between the Central and State Governments, like the existing REIC model.

5.2 Searches/seizure : Both the Central and State Governments should be authorized to issue search warrants separately under CGST/IGST or SGST laws, as the case may be. For this purpose, the legal provisions under the CrPC as made applicable to the Central Excise Act, 1944 may be replicated with suitable modifications. For CGST/IGST, search warrants may be issued by officers of the rank of Joint/Additional Commissioner or the Commissioner. The authority carrying out searches should inform the other tax authority immediately to enable it to join the operations, if necessary. The goods and documents, however, should be seized by the authority, which issues the search warrant.

5.3 Investigation : Investigations may be carried out independently by the concerned authority. GST laws may provide for handing over of such documents/goods to the other authority for further investigation within the ambit of their legal jurisdiction.

5.4 Arrest : Both the Central and State Government officials may be given the powers under CGST/IGST and SGST laws to arrest persons for serious/ repeat violations. Officers not below the rank of Commissioners may be vested with the powers to authorize arrest.

5.5 Prosecution : Both the Central and State Governments may be vested with powers to launch prosecution against certain offenders in the court of law. The existing procedures in Central excise, with suitable modifications, may be followed.

5.6 Show-cause notice (SCN) : The SCN may be issued independently under CGST, IGST or SGST laws.

5.7 Adjudication and appeal : The Group recommends two alternate models of dispute resolution under GST, analyzing the pros and cons of both, for consideration of the Board :

5.7.1 Model 1 : Separate adjudication processes by CGST and SGST adjudicating authorities and integration of the two processes only at the stage of appeals to Tribunals at State and National level. In this model, there are four stages. In the first and second stage, the adjudication and the appeal processes will be separately carried out by the authorities under the Central and State Governments ; in the third and fourth stages, appeals in the State and National level GST Appellate Tribunals will be heard jointly by members selected by both the Governments.

5.7.2 Model 2 : Integrated adjudication-cum-appeal body. In this model, adjudication and appeal process will be integrated under one single Tribunal, i.e., the National GST Appellate Tribunal (NGSTAT) which may be headed by a serving or retired judge of the Supreme Court. The officer working as adjudicator as well as the Commissioner (Appeals) would not be under the administrative control of CGST or SGST authorities, but function under the control of the proposed NGSTAT. Officers from Central or State Government as well as judicial service officers would be eligible to work on deputation. The adjudication for both the show-cause notices issued by CGST and SGST authorities would be carried out by one adjudicator, and he would issue a single/common order. Against the said order, an appeal would lie to Commissioner (Appeals), who would again pass a single order. Appeals against the order of Commissioner (Appeals), would lie to State level Tribunal, and further to National GST Appellate Tribunal. Adjudicators will be selected through a special process, ensuring appropriate representation of the Central and the State Governments and with adequate experience in handling VAT/GST matters along with members drawn from the judicial/legal fraternity.

Review mechanism

6.1 The review mechanism will be same for both the models :

(i) Officers of the rank of Commissioners, under the Central and the State Governments will review the orders passed by the adjudicating authorities lower in rank. On their recommendations, appeals can be filed with the Commissioner (Appeals).

(ii) Officers of the rank of Chief Commissioners, under the Central or the State Government will review the adjudication orders passed by officers of the rank of Commissioners or the orders-in-appeal passed by the Commissioners (Appeals). On their recommendations, appeals can be filed with the State level GST Tribunals.

(iii) Officers of the rank of Chief Commissioners, under the Central or the State Government will review the orders passed by the State level GST Tribunals. On their recommendations, appeals can be filed before the NGSTAT.

Alternate dispute resolution mechanisms

7.1 In order to reduce litigation, and discourage the stake holders from resorting to legal actions, the Group recommends setting up or continuation of the following three institutions :

Authority for Advance Rulings—Its scope may be sufficiently enlarged to bring within its ambit all categories of domestic and overseas taxpayers, including individuals, proprietary and partnership firms, public/private limited companies, PSUs and other categories of taxpayers. Its rulings shall be binding on all parties.

The present institution of Settlement Commission may be continued, with suitable modifications in its structure and powers to conform to the GST environment.

The office of ombudsman, with concurrent jurisdiction over CGST, SGST and IGST, may be set up in each State (may be combined for smaller States), with the responsibility of redressal of taxpayers' grievances.

re-organization of taxpayers grievance

Preparatory steps

8.1 Keeping in view the proposed roll-out date for GST on April 1, 2011, the preparation for the implementation should start forthwith.

8.2 The Joint Working Group (JWG) should be set up in each State with officers from both Central Excise and Service Tax Department and the Commercial Tax Departments. The major tasks proposed for the JWGs are :

- (a) Exchange complete database of the taxpayers.
- (b) Identify premises for setting up of new common-GST offices.
- (c) Jointly organize tax-payer education programmes.
- (d) Organise seminars, workshops, road shows, publicity through print and electronic media.
- (e) Create a web-site for dissemination of information on GST including FAQs, brochures, leaflets, pamphlets, etc.

8.3 On receipt of basic data, Chief Commissioner should frame tentative proposal for the re-organization of Commissionerates on the principles outlined above and send the same to the Board.

Common trade facilitation centres

8.4 Common trade facilitation centres for GST taxpayers should be set up across the country.

Scaling up of the IT infrastructure

8.5 One common Centralised portal for online registration, e-payment, and return filing, etc., should be developed and be in place at least three months before the introduction of GST. For this purpose, staff strength in the Directorate of Systems needs to be augmented forthwith.

Implementation of cadre review

8.6 The cadre review proposal needs to be pursued vigorously so that the additional manpower is available at the earliest for smooth switch-over to GST.

Familiarizing officers with broad framework of GST

8.7 The Department should immediately devise a programme for familiarising the staff with the broad framework, through in-house training in the Commissionerates, workshops, seminars, and training by NACEN and its Regional Training Institutes (RTIs).

CHAPTER I

Introduction

1.1 Introduction of Goods and Services Tax (GST) will be an important milestone in the history of indirect tax reforms in post-independence India. GST, at the Central and at the State level, is expected to provide relief to the industry, trade and consumers by doing away with multiple taxes on the same goods and services by subsuming most of the indirect taxes, avoiding cascading effect through the mechanism of an uninterrupted availability of input credit across the supply chain, and providing a simpler tax administration through harmonization of Central and State Tax systems.

1.2 At the outset, it would be worthwhile to briefly mention the basic features of the GST in terms of the First Discussion Paper on Goods and Services Tax released by the Empowered Committee of State Finance Ministers on 10th November, 2009, the response of the Ministry of Finance as reflected in the web-site of the Ministry, and subsequent discussions and deliberations thereon ;

(i) The GST shall have two components : one levied by the Centre (CGST), and the other levied by the States (SGST).

(ii) While the Centre would have a legislation for CGST, each State would have its own legislation for SGST. A model legislation would be prepared to ensure uniformity in the basic features of law, such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification, etc., across States and between the Centre and the States. To the extent feasible, uniform procedure for collection of both CGST and SGST would be prescribed in the respective legislations.

(iii) Both components would apply to every transaction of supply of goods and services for a consideration (including certain elements relating to imports into India), except for exempt categories or for those outside its purview. Both the Centre and the States would have jurisdiction for the collection/ administration of these taxes, as would be brought out in constitutional amendments expected in monsoon session of the Parliament.

(iv) Central excise duty (including AED), excise duty on medicinal and toilet preparations, service tax, CVD (additional duty of customs) on imports, special CVD (four per cent.), and cesses and surcharges are the Central taxes that would be subsumed within GST.

(v) VAT/sales tax, entertainment tax (unless levied by local bodies), luxury tax, entry tax not in lieu of octroi, and taxes on lottery, betting and gambling are the important State taxes that would be subsumed within GST. Some States have expressed their views to keep "purchase tax" outside the purview of GST. But Centre is steadfastly favouring its inclusion.

(vi) Tobacco and its products would be leviable to both CGST and SGST but being demerit/sin goods, the Centre could levy excise duty in addition to GST.

(vii) Currently, inter-State sale of goods is levied to Central sales tax (CST) which is origin-based and collected by the exporting State. No input tax credit of this tax is permitted. Under the GST regime, the Centre would levy and collect a tax called IGST (Integrated GST) on inter-State supply of goods or services in order to enable the SGST element of input tax credit to be passed on seamlessly across State boundaries. IGST would be equivalent to the sum of CGST and SGST. The levy and collection of IGST would follow the destination principle so that the revenue accrues to the State where the goods or the service on which tax is paid is finally consumed. Since the Centre would collect this tax, the taxpayer in the receiving State would be in a position to take credit of the tax paid by his supplier. Accounts would be settled between the Centre (read CBEC) and the States on a monthly basis through a clearing house mechanism.

(viii) Input tax credit of CGST shall be allowed to be utilized only for payment of CGST and similarly credit of SGST can be utilized only for the payment of SGST. No cross-flow of credit would be permitted except in the case of inter-State supplies, as mentioned in foregoing paragraph.

(ix) CGST and SGST paid on the export of goods and services (out of India) would be neutralized.

(x) There would be a threshold exemption for goods and services so as to keep the small dealers out of the tax net both under CGST and SGST. On threshold in terms of annual turnover, the Centre's view is that the threshold should be common for both States and Centre and also common for both goods and services. Over and above this, there would be a compounding/composition scheme (presumptive tax) for dealers with a turnover up to a certain threshold in respect of goods alone.

(xi) The Centre would like the registration of taxpayers to be based on PAN ; but the first discussion paper mentions that the registration of taxpayers would be linked to, and not based on PAN to facilitate exchange of data. Return formats for CGST and SGST should be common. Functions such as assessment, enforcement, scrutiny and audit would be undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States.

(xii) A constitutional mechanism would be put in place to strike a balance between State autonomy and harmonization. This mechanism would ensure that both the Centre and the States do not deviate from the mutually agreed structure in future.

(xiii) For the IGST Model for inter-State transactions to work effectively a strong IT infrastructure is necessary. The major responsibilities of IT infrastructural requirement will be shared by the Central Government through the use of its own IT infrastructure facility. The issues of tying up the State infrastructure facilities with the Central facilities as well as further improvement of the States' own IT infrastructure, including TINXSYS, should be addressed expeditiously and in a time bound manner.

1.3 Keeping in view the above contours of the GST scheme, the Group examined the present organisational structure in the Central Excise and Service Tax Department, identified the business processes that need re-engineering and made recommendations for a seamless transition to the GST regime.

CHAPTER II

Central excise and service tax—Present structure

2.1 There are at present 23 Central Excise and Service Tax Zones in the country, each headed by a Chief Commissioner. These zones include 93 Central Excise Commissionerates, 7 Service Tax Commissionerates and 4 Large tax-payer Units (LTUs). Besides the seven exclusive Service Tax Commissionerates, 65 Central Excise Commissionerates in the country also deal with service tax. In addition, a majority of the Central Excise Commissionerates also attend to the customs work relating to bonded warehouses, ICDS/CFSS, etc. On an average, each Central Excise Commissionerate comprises 5 or more Divisions, each headed by an Assistant/Deputy Commissioner. Each Division has about 5 Ranges, each headed by a Superintendent and assisted by Inspectors. The main functions of the Commissionerate are :

(i) Monitoring of revenue

(ii) Administration

(iii) Supervision of subordinate formations

(iv) Audit

(v) Anti-evasion

(vi) Adjudication

(vii) Legal

(viii) Review and appeals.

2.2 Commissioners (Appeals) decide the appeals against the orders passed by officers below the rank of Commissioner of specific Commissionerates.

2.3 The State-wise distribution of the Central Excise/Service Tax Commissionerates is as follows :

Name of the State	Name of the Zone	No. of Central Excise/Service Tax/ LTU Commissionerates
Gujarat	Ahmedabad	5 Central Excise, 1 Service Tax
	Vadodara	6 Central Excise
Karnataka	Bangalore	3 Central Excise + 1 Service Tax + LTU
	Mysore	3 Central Excise
M. P. and Chhattisgarh	Bhopal	3 Central Excise
Orissa	Bhubaneswar	2 Central Excise
Punjab, J & K, H. P. and Chandigarh	Chandigarh	4 Central Excise
Tamil Nadu	Chennai	5 Central Excise + 1 Service Tax + LTU
	Coimbatore	5 Central Excise
Kerala	Cochin	4 Central Excise
Delhi, Haryana	Delhi	6 Central Excise + 1 Service Tax + LTU
Andhra Pradesh	Hyderabad	4 Central Excise
	Vishakhapatnam	4 Central Excise

Rajasthan	Jaipur	2 Central Excise
West Bengal	Kolkata	10 Central Excise + 1 Service Tax
U. P. and Uttaranchal	Lucknow	3 Central Excise
	Meerut	4 Central Excise
Maharashtra	Mumbai-I	4 Central Excise + 2 Service Tax + LTU
	Mumbai-II	4 Central Excise
	Nagpur	3 Central Excise
	Pune	4 Central Excise
Bihar, Jharkhand	Ranchi	3 Central Excise
North East	Shillong	3 Central Excise

2.4 The States having a higher concentration of Commissionerates are as below :

Name of State	No. of Central Excise/Service Tax/LTU Commissionerates
Gujarat	11 Central Excise + 1 Service Tax
Maharashtra	16 Central Excise + 2 Service Tax + LTU
Karnataka	6 Central Excise + 1 Service Tax + LTU
Tamil Nadu	10 Central Excise + 1 Service Tax + LTU
West Bengal	10 Central Excise + 1 Service Tax
Delhi and Haryana	6 Central Excise + 1 Service Tax + LTU
Andhra Pradesh	8 Central Excise

2.5 The Divisions and Ranges in a typical Central Excise Commissionerate discharge the following main functions :

(i) Division

(a) Revenue monitoring and supervision over Ranges

(b) Registration

(c) Refunds

(d) Anti-evasion and follow up action of audit paras

(e) Adjudications

(f) Administration

(g) Provisional assessments

(ii) Range

(a) Monitoring of revenue collection

(b) Scrutiny of returns

(c) Submission of various reports and returns

(d) Post facto verification of registered persons

(e) Export of goods and other customs related work

(f) Follow up action relating to audit/legal/anti-evasion

(g) Verification of refund claims

(h) Arrears recovery

(i) Adjudication

(j) Verification of various applications and declarations.

CHAPTER III

Re-engineering of business processes for transition to GST

3.1 Even though GST is expected to be a comparatively simpler and user-friendly tax to administer, there is still a challenge of handling a larger tax base of at least 50 lakh, both in terms of ensuring compliance and in providing effective facilitation. Presently, CBEC is administering about 13 lakh taxpayers under Central excise and service tax. Thus, in the proposed GST regime dealing with five times the number of taxpayers that the Department presently has, would be a real challenge.

3.2 GST is a major departure from the current systems of parallel tax administration by the Centre and State. The new regime would entail concurrent tax administration by the Centre and State on the same supply chain of goods and services. There is, thus, a strong need for harmonization of business processes and procedures between the Central and State Government to take advantage of the synergy between the two tax administrations and also to avoid duplication of compliance requirements for taxpayers.

3.3 The principal means of enabling this will no doubt be a robust IT infrastructure. There is, however, an opportunity to develop new tax administration systems and procedures. Introduction of GST will entail large scale changes in the business processes as well as in the organizational structure of CBEC.

3.4 The Group studied the business processes presently followed under Central excise and service tax law, existing processes and practices followed by State tax authorities and international practices. Based on study of various practices, the following core business processes/changes have been identified as being vital to the new tax administration :

- (i) Registration process
- (ii) Filing of return and processing and payment of tax
- (iii) Minimum information to be contained in a GST invoice and books of account of all taxpayers
- (iv) Tax compliance issues—Audit and anti-evasion
- (v) Dispute resolution system
- (vi) A robust IT system to streamline the operations of the tax administration
- (vii) Establishing an organization to handle a large number of taxpayers.

Online common registration

3.5 It is proposed that the registration process for all the three taxes, viz., CGST, SGST and IGST should be common and online. There should be a single registration form for all the three taxes, and taxpayers should be able to obtain the registration number by submitting their applications online. The registration details can then be shared with the State tax authorities through a backend process in the system. The present practice of verification of premises of the taxpayers should normally be dispensed with, and only in exceptional cases verification should be carried out on the basis of certain risk parameters to be built into the system. For this purpose a common portal is required to be developed which can be accessed by any prospective taxpayer, either himself or through his authorized representative. In order to verify genuineness of a taxpayer, details like PAN allotted by the Income-tax Department, KYC (know your customer) compliant Bank Account No., Registration No. allotted by the registrar of companies, etc., need to be furnished by the applicant. Once the information submitted by the applicant are validated through third party sources as mentioned above, the registration can be given without physical verification of the premises of the taxpayer. Once the UID (Unique Identity) project becomes operational, the records available thereunder, may also be made use of for the purpose of validation. All the existing registrants shall also obtain new registrations. Registration number should incorporate PAN, i.e., it should be based on PAN, and not merely linked to PAN.

Single registration for all premises in a State

3.6 Presently, each factory premises is required to be separately registered under the Central excise law. Consequently, each unit files a separate return to the Department, and it is treated as a separate entity for the purpose of audit, issue of show-cause notice, adjudication, court cases, etc. In case of service tax, the same procedure is broadly applicable with the exception that in case of taxpayers having a centralized accounting system, the Department may grant a single registration at the place where Central accounting system of the taxpayer operates. In case of VAT, however, single registration is allowed covering all business premises of a particular taxpayer, viz., his factory, wholesale and retail premises located in different premises but within the jurisdiction of that particular State. The taxpayer, in such cases, files a consolidated return covering all such premises. The Group felt that since the number of taxpayers who will get registered under GST will be large and many of them will be operating from multiple locations, a single registration covering all the business premises of an applicant in a particular State on the lines of VAT would provide a more practical solution. However, if the taxpayer is having business premises in more than one State, then he would require separate registration for each State.

Online common filing of returns

3.7 The Group also recommends that there should be a single return for all the three taxes, i.e., CGST, SGST and IGST, and the same should be filed online through a common portal (same portal which is used for registration). The return can be filed either by the taxpayer himself or through his authorized representative or through the service centres. The above procedure would greatly facilitate compliance and would provide a single window to the GST payers, increasing their comfort level.

Reduction in frequency of returns for small taxpayers

3.8 Excise returns are currently filed on monthly or quarterly basis, depending upon the turnover of the taxpayer. In service tax, returns are filed on half-yearly basis. Keeping in mind the fact that small taxpayers, (those whose turnover is say less than Rs. 100 lakh) account for a small percentage of the total Revenue, the Group felt that the frequency of filing of returns by the small taxpayer may be made half-yearly or annual. For taxpayer having a turnover of Rs. 100 to 200 lakh, the frequency can be quarterly. However, an option should be given to the taxpayers to file the return on monthly basis also.

Common facilitation centres

3.9 As the legal provisions and procedures under the GST law may be quite different from the existing provisions under Central excise, service tax or State VAT laws, the success of implementation of GST would depend to a great extent on the quality of taxpayers' services. In this context, the Group recommends that a large number of GST facilitation centers be set up across the country. It is proposed that the facilitation centers should be common for all the three taxes, i.e., CGST, IGST and SGST. For this purpose, a close partnership between the CGST and the SGST authorities would be essential. Since the service desk set up under ACES is reported to be working quite satisfactorily, the possibility of upgrading this service desk and expanding its ambit to cover CGST, IGST as well as SGST may be explored.

Online payment of refund

3.10 At present, refund issued to the taxpayer through cheque which are required to be collected personally by the claimant. It is proposed that in the GST regime, the procedure

3.10 At present, refund is paid to the taxpayers through cheques which are required to be collected personally by the claimant. It is proposed that in the GST regime, the procedure would need to be worked out in such a way that the refund amount would be credited to the claimant's bank account directly, as this would reduce the interface between the Department and the taxpayer.

Compounding of procedural/technical lapses

3.11 Certain tax laws provide for a fixed amount of penalty or penalties linked with the period or extent of lapse. Thus, the amount of penalty may be fixed depending on the period of delay in filing of returns. Similarly, in cases where an input tax credit has been taken wrongly up to a certain amount (say up to Rs. 1 lakh or one per cent. of the total tax credit taken by a taxpayer in a year), a fixed amount of penalty may be prescribed in the law itself. In the proposed GST law, a number of such irregularities may be specified which would come within the ambit of compounding. In all cases where such specified irregularities have been noticed by the taxpayer or is brought to his notice by the Department, the taxpayer may be given an option to pay the fixed amount of penalty, as prescribed under the law, along with the differential amount of tax, if any, and the interest, of his own volition without the requirement of issuance of a show-cause notice and follow up adjudication. The above proposal will enable the Department to effectively deal with a large number of procedural lapses that are likely to occur, which may not have much impact on Revenue, and thus, the workload of the Department would considerably reduce.

Audit of taxpayers

3.12.1 It is proposed that a lower percentage of small taxpayers may be selected for audit, based on risk parameters. The law may also provide that if the Department wants to audit small taxpayers, who are not selected on the basis of the risk parameters, then prior permission of at least the Joint/Additional Commissioner should be obtained.

3.12.2 The Group recommends that taxpayers above a prescribed threshold of turnover should be statutorily required to have their accounts audited on an annual basis by certified chartered/cost accountants. This statutory audit is intended to be a comprehensive one covering conformance with various aspects of legal requirements and also on areas of misuse. In order to ensure voluntary compliance, it is also proposed that the Department may prescribe submission of an annual audit report by the taxpayers above a specified threshold. It would be useful to have such audit reports uploaded to our system, so that the same is available for online scrutiny by the Department. The format in which these would be prepared could be prescribed by the Board in consultation with the Institute of Chartered Accountants of India/Institute of Costs and Works Accounts of India/Institute of Company Secretaries of India, which would incorporate various legal requirements in respect of which compliance would be verified by these professionals. Based on the scrutiny of these audit reports, taxpayers could be selected for Departmental audit. In the case of taxpayers not covered by statutory audit, they would be selected for audit based on risk parameters.

3.12.3 As far as the large taxpayers are concerned, since annual audit reports are proposed by the Group to be submitted to the GST authorities by the taxpayers, the present practice of mandatory annual audit of the units may be dispensed with. Based on the scrutiny of the annual audit reports received from the taxpayers, these units may be selected for audit, with the approval of the Commissioner, based on more stringent risk parameters.

3.12.4 In order to avoid duplication of audit of the same taxpayers by audit teams of both the Centre and State, there is a need for a joint planning of audit visits between the two agencies. This could be ensured by periodically exchanging proposed audit programme and result of such audits.

CHAPTER IV

Proposed organizational structure for the implementation of GST

4.1 The basic difference between Central excise and the proposed goods and services tax is that GST would be a tax on supply of goods and not on manufacture. The nature of scrutiny of returns as well as audit and anti-evasion, under the proposed GST regime is bound to have a different focus. One important feature of the proposed GST is that there would be a Central and State GST to be charged simultaneously across the entire supply chain of goods and services covering imported goods and services as well. GST is a destination-based consumption tax. Even though CGST and SGST would be administered separately by Central and State administrations, the basic features and procedures followed by the Centre and the States would be similar.

4.2 The organisational structure that has been proposed by the Group for implementation of GST is based on certain assumptions which are listed out below :

- (a) More than 50 lakh taxpayers
- (b) Robust IT infrastructure
- (c) Online and common registration procedure for CGST, SGST and IGST
- (d) Selective physical verification of applicants based on risk parameters
- (e) On-line filing of returns through a common portal
- (f) System-based processing of returns
- (g) Discontinuation of sealing of export cargo by excise officers (if this is not implemented, a substantial increase in the existing manpower may be required), and evolving an alternate scheme.
- (h) Availability of additional staff as per cadre review proposal.

4.3 The present organisational structure followed in Central excise is three-tier structure, i.e., Commissionerate, Division and Ranges. This structure was designed when physical control was followed and it required regular interaction of the officers with the taxpayers. Moreover role of the Department was more as a regulator. In the last three decades, physical control has been replaced by self removal procedure on almost all commodities. Department has liberalized various procedures and requirement of maintenance of statutory records and submitting various documents has also been simplified to a great extent. But, we have not made any changes in the three-tier organisational structure followed by us. CBEC has attempted to evolve a new organisational structure with the introduction of service tax when exclusive Service tax Commissionerates were set up. Some of the Service Tax Commissionerates have been organised on partly functional basis. In some Commissionerates, work has been divided based upon group of services.

Territorial v. Functional division of work

4.4 The present system followed in the Central excise organisation is that majority of the business processes relating to one taxpayer is handled by one office, viz., range and therefore work has been divided based upon territorial jurisdiction at range, division and Commissionerate level. This territorial organisational structure is possible, where the organisation has to deal with a small number of taxpayers. But, this structure may not be feasible in the GST scenario when more than 50 lakh taxpayers and more than 70 lakh registrants including IGST registrants would require to be handled by CBEC. On the other hand, in the functional division of work, the organisation is structured along various types of work to be carried out. In the context of GST, the functional division could be based upon registration, audit, refund, adjudication, legal, recovery, taxpayer services, etc. The benefits of functional organisation are obvious and the most important is that it encourages specialisation. Considering the above, it is felt that the Department should move towards functional organisation, wherever possible.

4.5 The Group after extensive discussions and deliberations arrived at the conclusion that the new organisational structure to suit the GST environment should be as follows :

(a) GST Commissionerates having a functional or combination of functional and territorial jurisdiction ;

(b) Separate Commissionerates for Audit and Anti-evasion.

Exclusive Audit and Anti-evasion Commissionerates

4.6.1 GST will be based on a system of voluntary compliance by the taxpayers. In the GST environment, the most important compliance/control mechanism will be audit and anti-evasion. Accordingly, the group felt the need to strengthen the audit and anti-evasion set-up in the Department. The audit work in a Central Excise Commissionerate is presently carried out by the audit teams directly supervised by an AC level officer, who reports to the Commissioner, except in the case of MLU (multi-locational units) where audit of multi-locational units belonging to the same taxpayer is co-ordinated by the office of ADG (Audit). Similarly, the anti-evasion work in the Commissionerates is carried out by the Anti-evasion wing of the Commissionerate Headquarters and the Preventive Units of the Divisions in some cases. The Directorate General of Central Excise Intelligence, which has been entrusted with the responsibility of intelligence and investigation work in relation to Central Excise and service tax throughout the country, has consistently outperformed Commissionerates in terms of the quality of the cases booked and the value of goods/amount of duty involved in offence cases. Two basic factors appear to have contributed to the success of DGCEI. Firstly, the officers of DGCEI are exclusively engaged in anti-evasion work and are not burdened with any other routine work. Being a specialised agency, the middle and senior level officers are able to devote their full time for closely monitoring the cases, and providing the necessary guidance to the subordinate staff. Secondly, a certain degree of specialisation also develops in organisations which exclusively deal with any particular item of work, anti-evasion in this case. Similarly, the audit work also needs to be completely revamped in the GST regime, and a specialised approach to audit is the need of the hour. Giving due weightage to all these factors, the Group strongly felt that the audit and anti-evasion work set-up should be reorganised and separate Commissionerates should be created for handling these two items of work.

4.6.2 The issue whether audit of all the taxpayers in a State should be undertaken only by the Audit Commissionerate or some of the work can be kept with the jurisdictional GST Commissionerate, was also deliberated. The Group felt that the taxpayers having multi-locational units in a State, high revenue-paying units and some of the complex business sectors may be audited by the Audit Commissionerate and other taxpayers may be audited by the jurisdictional GST Commissionerate.

4.6.3 The Group further felt that within an Audit Commissionerate, specialised cells may be created industry or service-wise to carry out audit specific to the identified sectors, e.g., specialised audit groups for banking and financial services in Mumbai, for mining industry in Chhattisgarh, or for petrochemical industry in Gujarat. This will no doubt enhance the domain knowledge of the audit officers and bring about a professional approach thereby benefiting the taxpayers. These specialised groups may also provide policy inputs to the Board.

4.6.4 As far as anti-evasion is concerned, the Group felt that the anti-evasion work may not be made a regular line function of a jurisdictional GST Commissionerate but should be handled by a more specialised and exclusive Anti-evasion Commissionerate to be set up in each State, except where the number of taxpayers is small, e.g., the North-Eastern States, Uttarakhand, Himachal Pradesh, J&K, etc. However, in States like Maharashtra and Gujarat, there may be a need for more than one Anti-evasion Commissionerate.

4.6.5 The entire staff of Audit/Anti-evasion Commissionerates need not be concentrated at the headquarters but could be placed at different places within a State, depending upon administrative requirements.

4.6.6 Given the importance of audit and anti-evasion work, the Group also recommends that the work of supervision of these Audit/Anti-evasion Commissionerates may be entrusted to officers of the rank of Chief Commissioners, who may be in-charge of 3-4 such Commissionerates. At the apex level, in order to ensure proper co-ordination of the work of various Chief Commissioners in-charge of Audit and anti-evasion, it is proposed that DG (Audit) and DG (Anti-evasion) be made Nodal Officers reporting to the Board.

Proposed structure of the GST Commissionerates

4.7.1 Under the GST, CBEC would be required to administer manufacturers, all types of dealers, service providers and inter-State dealers. The geographical dispersal of taxpayers in a State and amongst the States is not uniform. Some of the taxpayers have more than one premises in a State. Considering these factors, the Group felt that in the GST scenario, a uniform organisational structure for entire country is not a good idea and we may think of different types of organisational structure depending upon dispersal/density of taxpayers in an area. On this consideration, the following three types of Commissionerates are proposed by the Group, with each Commissionerate having a clearly defined geographical jurisdiction :

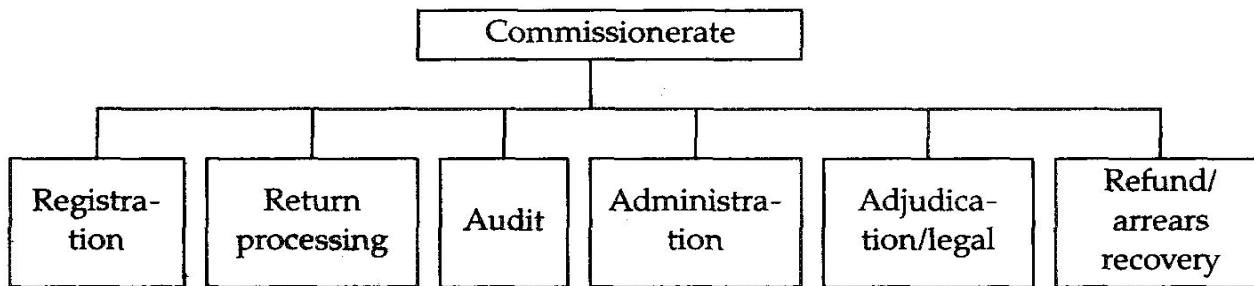
(1) One-tier functional Commissionerate

(2) Two-tier functional Commissionerate

(3) Three-tier territorial Commissionerate

One-tier Commissionerate

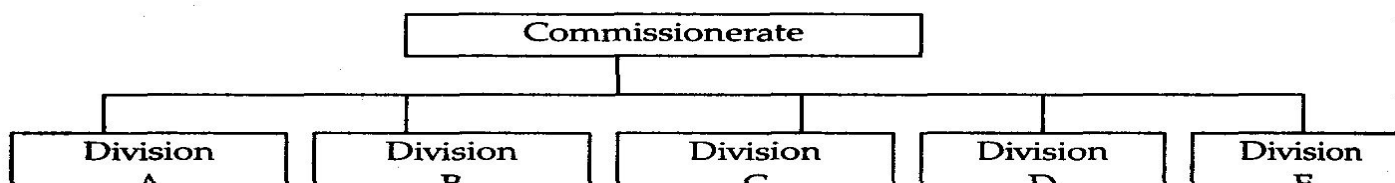
4.7.2 In case of cities, with a large concentration of taxpayers, one-tier Commissionerates are recommended. In this type of organisational structure, the work of the Commissionerate would not be organised on territorial basis as in the case of present Divisions and Ranges. The entire work would be organised on functional basis, covering specific functions such as registration, processing of returns, refund, adjudication, administration, appeal, recovery of arrears, etc. Thus, within a Commissionerate, different Divisions (not to be confused with territorial Divisions) would carry out specific tasks like registration, refund, etc. There may be separate sub-divisions within a particular Division. For example, in the Registration Division, there may be sub-divisions to deal with taxpayers on the basis of alphabetical characters or territorial or on any other basis. The basic idea of one-tier structure is to promote specialisation and improve efficiency since a particular group of officers will deal with specific business processes only. Moreover, it would avoid movement of files through multiple vertical layers (from Range to Division and from Division to Commissionerate Head Quarters) which presently is the case. For example, if a show-cause notice is to be issued at the level of the Commissioner, the draft show-cause notice is first prepared by the Range officer, which is submitted to the Division and then to the Commissionerate Head Quarters, a new file being opened at each stage. A Commissionerate organised on functional basis would tend to minimize duplication of work. The organisational structure of the one-tier Commissionerate is explained with the help of the following line diagram.

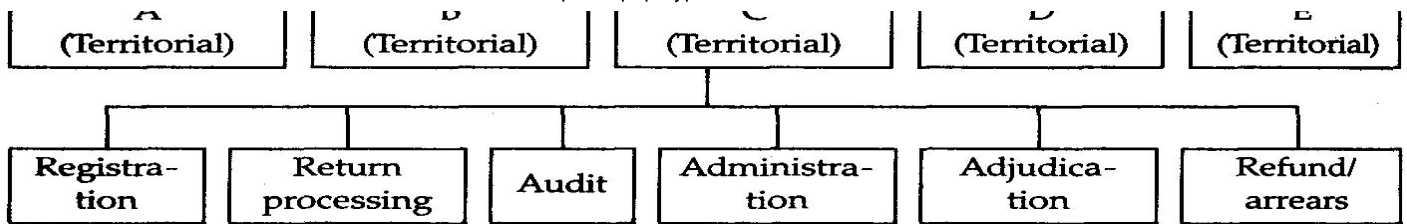


Two-tier structure

4.7.3 This type of structure is recommended where the taxpayers are spread over a relatively large area (within 50-100 kms. from the Commissionerate Head Quarters). In such cases it may not be feasible to carry out all tasks centrally from the Commissionerate Head Quarters, because the taxpayers are spread over a larger area. Therefore, Commissionerates with two-tier structures will have territorial Divisions and these Divisions could be organized functionally. In other words, the Divisions would be created

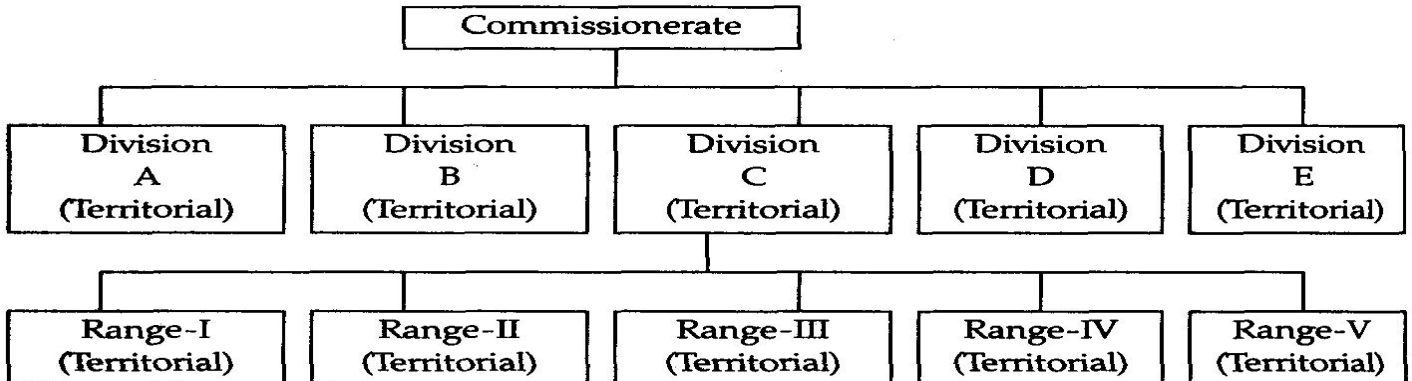
on territorial basis, but the work at the Divisional level would be organised on functional basis, e.g., separate sections in the Division looking after registration, processing of returns, refund, adjudication, recovery, etc. The two-tier structure is explained below diagrammatically :





Three-tier structure

4.7.4 This structure is proposed for the Commissionerates where the taxpayers are spread over a very large area e.g. present Central Excise Commissionerates of Belgaum, Meerut-II, Guwahati and follow the model of the present Commissionerates with Divisions and Ranges based upon territorial jurisdictions as shown below :



Combination of one-tier, two-tier and three-tier Commissionerates

4.7.5 The Group also felt that Commissionerates can also be organised based upon combination of more than one type. For example, if a Commissionerate has 3 Divisions in the city and 2 Divisions away from that city, for the 3 Divisions in the city functional organisation (one-tier) can be adopted and for other 2 Divisions, 2-tier organisation can be followed.

4.7.6 The Commissionerates of all the three types mentioned above will have clearly specified geographical jurisdiction and will have control over taxpayers having their places of business in that particular area. However, many of the taxpayers falling in the territorial jurisdiction of a particular Commissionerate may have other premises falling in other Commissionerates' jurisdiction within the same State. Taxpayers having multiple premises within a State would be free to register with any Commissionerate within that State. It would, therefore, be necessary to authorise all the Commissionerates located in a State, which has more than one Commissionerate to have concurrent jurisdiction over the entire State. This would ensure that Commissioner is legally empowered to conduct checks, verifications, audit and anti-evasion functions, relating to his taxpayers, in the entire State.

4.7.7 The Group was informed that ACES which works on a C-D-R (Commissionerate-Division-Range) mapping can be modified to suit the new organisational structure.

Estimation of number of Commissionerates in GST

4.7.8 For effective administration of GST, the Group felt that ideally there may be about 35,000 to 50,000 taxpayers per Commissionerate depending upon dispersal of taxpayers. The number of taxpayers may be more in one-tier structure Commissionerate like in Mumbai. Based upon this assumption, it is felt that following number of Commissionerates may be required in the GST scenario :

- 150 GST Commissionerates
- 45 Audit Commissionerates (to audit Customs Post-clearance Audit also)
- 20 Anti-evasion Commissionerates.
-

4.7.9 The above proposal is broadly in line with cadre review proposal also. The Group strongly felt that the present cadre review proposal, as approved by the Board, needs to be pursued vigorously so that the staff as per the present workload in the department becomes available at the earliest. This will provide a reasonable cushion and be greatly instrumental in a smooth switch-over.

Strengthening the Directorate of Systems

4.8 The Group also strongly felt that the success of GST would primarily depend upon a strong IT infrastructure. This not only requires procurement of hardware for running the system but a complement of skilled officials for the DG (Systems). Therefore, the office of DG (Systems) needs to be strengthened substantially and at the earliest.

Points raised during the discussion

4.9.1 During the conference, questions were raised about the state of preparedness of the department in the event of GST being implemented with effect from 1.4.2011. Doubts were raised about the implementation of the cadre review by the time GST is introduced and some of the participants wanted to know the fallback strategy, if any, to handle the additional taxpayer base. Secretary (Revenue) also mentioned that the implementation of GST can be successful only when the IT infrastructure for online registration, online filing of returns and e-payment is ready.

The Group strongly feels that considering the urgency and importance of GST, there is no reason why the cadre review proposal which is justified on the basis of current taxpayer base and concomitant workload should not come through. However, it is a fact that even if the cadre review proposal is approved, it will take some time for the officers to be put in place. In such an event, the existing organisational structure could, with some modifications, undertake the important items of work such as registration/re-registration of taxpayers, e-filing of returns and e-payment. However, the Group feels that the IT infrastructure must be in place to enable undertaking these essential items of work. A minimum time-period of six months should be made available to CBEC to undertake the change-over.

4.9.2 In the Conference it was also pointed out that the staffing pattern in the State Government and CBEC is different. The organisational structure in the State is bottom heavy whereas in the case of CBEC it is the reverse case. Concern was expressed as to how synergy would be established between Centre and States in the GST scenario.

As per the data available from some of the States, total number of staff available at Gr. B, C, and D in some of the States is 3-5 times more than the staff available in Central Excise and Service Tax Commissionerates in that State. On this point, the Group felt that the best management practices followed internationally is to make the organisation officer-oriented with the extensive use of IT infrastructure. Gradually, the business processes should be IT-enabled and officers at senior level should be able to devote more time on analysis. Therefore, the organisational structure followed by CBEC is found to be better and more effective. In course of time, the States may choose the model that best suits their requirement.

4.9.3 In the Conference, it was also felt that proposals of this Group may result into considerable dislocation of staff.

On this point, the Group felt that the problem may not be as acute, as a large number of taxpayers are also situated in different parts of States. On the basis of available statistics, the Group observed that substantial majority of the taxpayers under GST may not be having more than one business premises and may be located at places other than metro/big cities and therefore tax offices in different parts of the State may have to be set up and we may need our officers in both the two-tier and three-tier Commissionerates also. Moreover, sub-divisional offices for Audit and Anti-evasion may also have to be set up at various places in a State.

4.9.4 A suggestion was also made in the Conference that LTU (Large taxpayer Units) presently functioning at four places have yielded very encouraging results and therefore they should be continued.

The Group felt that LTU can be continued at the State level for CGST, SGST and IGST. However, it was felt that whether the present special dispensation or benefit given to LTU should be continued or not is a policy decision which needs to be taken by the Board. The Group felt that the two major benefits presently available to LTU like transfer of credit from one unit to another and removal of goods from one unit to another unit without payment of duty would not be relevant in the GST. Therefore, if it is decided to continue LTU concept, then the present legal provision of optional joining of LTU would require relook and perhaps a mandatory provision for bringing a few major assesses into the LTU would have to be considered.

CHAPTER V

GST—Dispute resolution mechanism

5.1 The success of GST will depend to a great extent on an efficient dispute resolution mechanism. Dispute settlement will be a very crucial area in the overall framework of GST for the following reasons:

- (a) It is expected that over 50 lakh taxpayers will be paying the CGST and the SGST, and a large number of them, IGST as well. This number is likely to increase over the years.
- (b) Since GST will be a new tax, disputes may arise over interpretation of legal statutes, avilment of credit (of input taxes), scope of exemption, admissibility of refund/rebate and a plethora of new issues in respect of which there would be no settled law.
- (c) In the GST regime, since the Centre and the State Governments will be administering more or less the same law, most of the disputes relating to CGST and SGST will involve common issues and there is a need to ensure uniformity of decisions in respect of such disputes. Even in case of disputes involving SGST arising in a particular State, it will have all India ramifications since similar issues might arise in case of CGST or SGST in other States. Unless a uniform approach is adopted in settling such disputes, it may not be possible to usher in an efficient and simple system of indirect taxation in the country that GST seeks to achieve.

5.2 As already discussed, GST will have three components: CGST, IGST and SGST. The first two taxes will be levied and collected by the Central Government and the third by the State Governments. Administration of these taxes may entail disputes between:

- (i) Central Government and CGST taxpayers
- (ii) Central Government and IGST taxpayers
- (iii) Central Government and State Governments on settlement of dues/compensation on account of IGST
- (iv) State Government and SGST taxpayers.

5.3 Presently, any dispute between the Government and the taxpayer is settled by a separate dispute resolution machinery, set up either by the Centre or the State Government, as the case may be. But in case of GST, since both CGST and SGST are to be levied on the supply of same goods and/or services, most of the time the dispute will have to be adjudicated on the basis of the same set of facts and evidence, and this may necessitate creation of a single body that has representatives from both the Central and the State Governments.

5.4 The Group has studied the existing processes and would like to suggest certain broad framework for dispute resolution in the GST regime. However, before suggesting the specific models for dispute resolution, the role of the Centre and the State Governments at each stage of the enforcement mechanism needs to be examined and clearly defined.

(i) Collection of intelligence/information

Collection of intelligence constitutes the first stage of any enforcement mechanism. This activity can be independently undertaken by the Centre and/or the State Governments. However, there should be an institutional mechanism for periodic or real-time sharing of information or intelligence between the Central and State Governments. The existing REIC model wherein Customs, Central Excise, Income-tax, DGFT, Banks, SEBI, Registrar of Companies, Police and Commercial Taxes Department of the State Governments and other agencies participate may be considered for replication in the GST regime.

(ii) Searches/seizure

CGST/IGST and SGST laws may provide for searches of business and residential premises of the taxpayer and seizure of goods/documents under the respective laws, on the basis of search warrants to be issued by the departmental officers. For this purpose, the legal provisions relating to searches and seizures under the CrPC as made applicable to the Central Excise Act, 1944 may be replicated with suitable modifications. For example, in the proposed GST regime, search warrants may be issued by officers of the rank of Joint/Additional

LACIE Act, 1944 may be replicated with suitable modifications. For example, in the proposed GST regime, search warrants may be issued by officers of the rank of Joint/Additional Commissioner or the Commissioner. Both the Central and State Governments should be authorised to issue search warrants separately under CGST/IGST or SGST laws, as the case may be, and the searches should be carried out by the respective agency. Whenever the Central or the State Government carries out searches at any place, it should inform the other tax authority immediately to enable it to join the operations, if necessary. The goods and documents, however, should be seized by the authority, (i.e., either the State or the Central Government), which takes the lead in the search and issues the search warrant.

(iii) Investigation

Investigations may be carried out independently by the concerned authority, (e.g., either the Centre or the State Government) that has collected the intelligence and carried out the search operations. However, if required, the documents seized by one Government, may be shared with the other Government which may also undertake independent investigations, relying on the documents they have received from the agency that has initiated the case. In GST regime, the law itself may provide for handing over of such documents/goods to the other authority for further investigation within the ambit of their legal jurisdiction.

(iv) Arrest

Both the Central and State Government officials may be given the powers to arrest persons alleged to be involved in the violations of CGST/IGST and SGST laws respectively, involving evasion of taxes of a particular threshold limit, to be specified in law, or involved in repeat offences. For this purpose, officers not below the rank of Commissioners may be vested with the powers to authorise arrest of persons.

(v) Prosecution

Both the Central and State Governments may be vested with powers to launch prosecution against certain offenders in the court of law. The existing procedures in Central excise, with suitable modifications, may be followed in launching prosecution.

(vi) Show-cause notice (SCN)

The SCN should be issued independently under CGST, IGST or SGST laws by the concerned tax authorities. In case of CGST and IGST, SCNs can be approved by officers of the rank of Superintendent, AC/DC, JC/ADC, and Commissioner, depending upon the amount of taxes, sought to be evaded.

(vii) Adjudication and appeal

In the GST regime, cases may fall into one of the following three categories :

- (a) Cases involving violations of SGST laws only.
- (b) Cases involving violations of CGST/IGST laws only.
- (c) Cases involving both CGST/IGST and SGST.

5.5 After detailed deliberations, the Group recommends the following two models for consideration for dispute resolution under GST.

MODEL-I

5.5.1 Separate adjudication processes by CGST and SGST adjudicating authorities and integration of the two processes only at the stage of Appeals to Tribunals at State and National level.

In this model, there are four stages. In the first and second stages, the adjudication and the appeal processes will be independently carried out by the authorities under the Central and State Governments ; in the third and fourth stages, appeals in the State and National GST Appellate Tribunals will be heard jointly by members selected by both the Governments :

(a) Adjudication : The adjudication process will be carried out separately by the adjudicating authorities specified by the State or Central Government, even if the cases involve both CGST/IGST and SGST. As far as Central Government is concerned, the Group recommends that the cases involving CGST/IGST may be adjudicated by officers of the rank of Superintendent and Asst./Deputy/Joint/Addl./Commissioners, depending on the amount of tax involved in a case. The State Government may appoint adjudicating authorities of appropriate levels to separately adjudicate the cases involving SGST.

(b) First-stage appeal : (Appellate Commissioner)—Commissioners (Appeals) will be appointed by the Central and State Governments, who will separately hear and pass orders on appeals against orders passed by the adjudicating authorities, under the Central or State Government cases, as the case may be.

(c) Second-Stage Appeal (State level GST Tribunals) (similar to CESTAT model) :

Appeals against the orders of the Commissioners (Appeals) or the adjudication authorities under the Central and State Governments, can be filed before the State level GST Tribunals, similar to CESTAT, to be set up in almost all States, except in smaller States, where regional benches can be set up. These Tribunals may comprise Members (Technical), drawn one each from the Central and State Government and one Member (Judicial). The eligibility criteria of the Members are in annexure II.

(d) National GST Appellate Tribunals

The apex body for dispute resolution in a State will be the National GST Appellate Tribunal (NGSTAT). Ministry of Finance a few years back mooted the proposal of a National Tax Tribunal for settlement of disputes relating to the Central taxes. It was proposed that such Tribunal will have jurisdiction over all matters, dealt with by the respective High Court of the State.

Cases involving a dispute between the Central Government and the State Government which are not covered by the proposed GST Council, headed by the Union Finance Minister and comprising representatives of the Central and State Governments, may be decided by the NGSTAT. Similarly, cases on points of law and or involving settlement of dues between the Centre and the States under the IGST may also be directly referred to these Tribunals.

Appeals against orders of the GST Tribunals shall lie with the National GST Appellate Tribunals, which will comprise of two Members (Technical), drawn one each from the Central and State Government and one Judicial Member. This may be on the pattern of earlier proposed National Tax Tribunals (NTT). The eligibility criteria of the Members are in annexure-II. To start with, National GST Tribunals may be set up in 10 different locations, to be decided on the basis of number of appeals filed in a State/region or the number of assesses. Appeals against the orders of these Tribunals will lie directly with the Supreme Court. The High Courts will have jurisdiction under articles 226 and 227 of the Constitution.

During the conference, a question was raised that it may not be possible to set up such Tribunals, proposed by the Group, because the Supreme Court may not approve of this. In this context, the Group would like to respond that normally, the tribunals are set by the executive branch of the Government through enactments, vetted by the Ministry of Law and the Supreme Court is not involved with the process, except when the legality of such enactments is challenged before it. However, the Group felt that the recent decision of the Supreme Court may be favourable to the Group's recommendation for setting up such Tribunals. Recently, on 8th June, 2010, a five-member Bench of the Supreme Court upheld the legality

of the Companies (Second Amendment) Act, 2002 providing for the establishment of the National Company Law Tribunal and National Company Law Appellate Tribunal to deal exclusively with company law cases for their speedy disposal. Barring the judicial review powers under articles 226 and 227 of the Constitution, almost all jurisdictions exercised by the High Courts in regard to the company matters would now be transferred to these Tribunals.

Merits

It is convenient to administer this model as the adjudicating authorities under the Central and State Governments will work independently under their respective Governments.

De-merits

The demerits of this model basically stem out of the dual nature of GST to be administered parallelly by two agencies. Some of these are as follows :

(a) There will be duplicity of adjudication by two different adjudicating authorities on the same set of facts and on the same transactions, which will add to the woes of the taxpayers who will have to approach two Governments.

(b) This process may result in chaos as there may be conflicting judgments by the State and Central Government on the same transactions which will have bearing on both CGST and SGST.

(c) There will be no finality to a dispute as the disputes will be decided by different adjudicating authorities with different pace and remain pending before different appellate fora. For example, while the adjudicating authority under SGST may rule that a particular service is not leviable to GST, the CGST authorities may consider it otherwise and issue SCN asking the taxpayer to pay the tax. Similarly, while a classification dispute may be pending with adjudicating authority under SGST, a valuation dispute or case of wrong availment of ITC, may be pending at a much higher level say before the Tribunal. Since many of these issues are interconnected, the decision on a particular issue may have wide ramifications. However, the taxpayer in such cases would like to see a finality to the issue under dispute, failing which he may lose his competitive advantage, that would jeopardise his business.

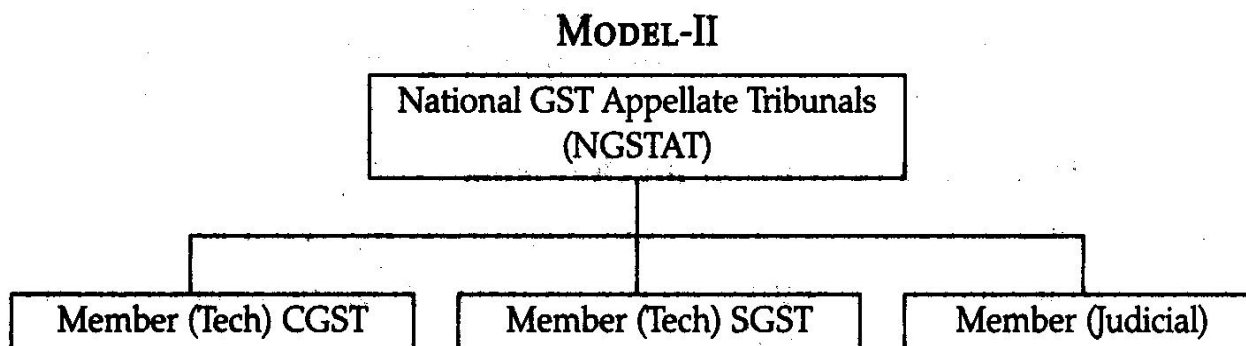
(d) Cases involving wrong availment of ITC, if decided differently by the adjudicating authorities under the Centre and the respective State Governments, will have impact on the quantum of settlement under the IGST mechanism. This will give rise to non-reconciliation of dues for indefinite period and would increase the disputes and litigation between the Centre and the States.

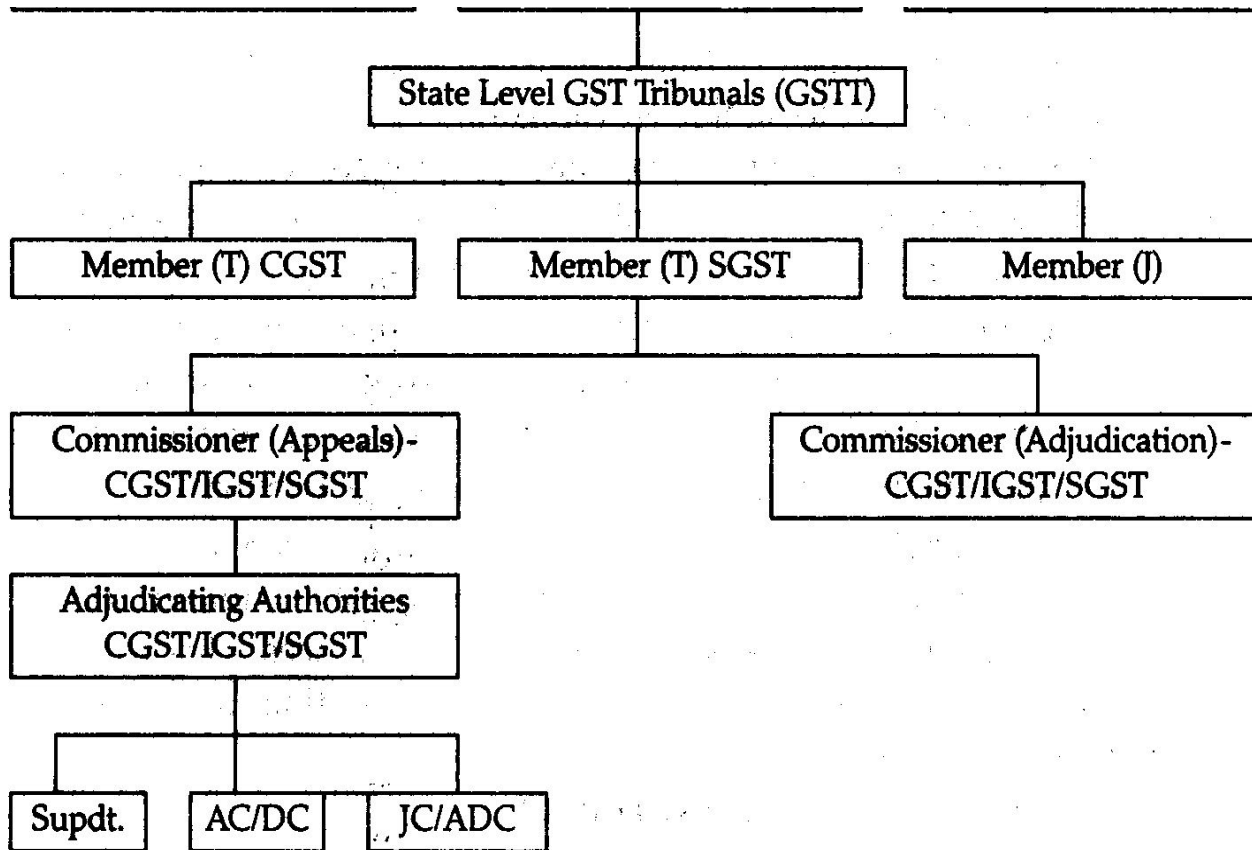
(e) Cases may be decided differently by different adjudicating authorities in different States and it will be difficult to keep track of such conflicting orders for taking timely review and consequential appeal to safeguard revenue.

(f) Orders passed in favour of the taxpayers in a particular State by the lower adjudicating authorities, unless appealed against, may be cited later to claim benefits of CGST or SGST in the same or other States.

(g) Because of the possibility of long-drawn disputes before different fora or in different States, there will be difficulty in finalising revenue figures and consequential settlement.

The concept in Model-I is explained schematically on the next page.





MODEL-II

5.5.2 Integrated Adjudication-cum-Appeal Body

The important feature of this model is the separation of adjudication and appeal function from the authority which issues the show-cause notice. The officer working as adjudicator would not be under the administrative control of CGST or SGST authorities. The adjudicator as well as the Commissioner (Appeals) would function under the control of the proposed National GST Appellate Tribunal. Officers from Central or State Government as well as judicial service officers would be eligible to opt to work on deputation for the post of adjudicator or Commissioner (Appeals). Under the proposed model, show-cause notice issued by the both CGST and SGST authorities would be answerable to one adjudicator. The adjudication for the both the show-cause notices issued by CGST and SGST authorities would be carried out by one adjudicator, and he would issue a single/common order. Against the said order, an appeal would lie to Commissioner (Appeals), who would again pass a single order. Appeals against the order of Commissioner (Appeals), would lie to State Level Tribunal, and further to National GST Appellate Tribunal.

In this model, adjudication and appeal process will be integrated under one single Tribunal, i.e., the National GST Appellate Tribunal which may be headed by a serving or retired judge of the Supreme Court. For the purpose of adjudication and appeal, eligibility criteria, as discussed in the earlier model, will be laid down and officers will be selected through

a special process, ensuring appropriate representation of the Central and the State Governments and with adequate experience in handling VAT/GST matters along with members drawn from the judicial/legal fraternity. Since these officials will be selected for a specific period, as full time Members of the Tribunal, the disposal of cases would be quicker.

There should be a proper review mechanism in place at the level of Commissioner/Chief Commissioner so that each order passed by the Tribunal could be subjected to the scrutiny of review, and appeals could be filed in appropriate cases.

Merits

Some of the merits of this model are discussed below :

- This simple, taxpayer-friendly linear model will ensure uniformity of decisions in all adjudication cases and avoid confusion and conflicting judgments.
- It will encourage specialisation and professionalism in adjudication and appeal matters.
- It will reduce multiple and multi-layered litigation.
- It will expedite finalisation of disputes, thereby helping taxpayers to plan their business properly.
- It will ensure faster resolution of disputes and finalisation of revenue figures and consequential settlement between the Centre and States.

De-merits

- Some of the State Governments may not get adequate representation in this structure, even at the lower adjudication level, because of shortage of qualified manpower.
- Setting up offices at different places to facilitate different adjudication/appeal, may be time consuming.

The concept explained in Model II is shown schematically on the next page.

MODEL-I

