

Abstract of Ld. Attorney General's opinion on GST compensation cess short-fall

Question. 1

In case the balance in the Goods and Services Tax Compensation Fund is not adequate to meet the compensation payable under Section 7, are the States still entitled to receive the full amount of compensation calculated as per the provisions of the Goods and Services Tax (Compensation to States) Act, 2017?

Opinion- The States are entitled to receive the full amount of compensation during the “transition period”, in accordance with the provisions of the Act, irrespective of shortfall.

Question. 2

In case the balance in the Goods and Services Tax Compensation Fund is not sufficient, is there an obligation on the Centre to meet the shortfall wholly or partly?

Opinion – There is no express provision in the Compensation Act for the Government of India to bear the liability of making good the shortfall.

Question. 3

What are the options before the GST Council, Union and States to meet the said shortfall? Can the GST Council recommend extension of period during which the compensation for the transition period can be paid to the States in terms of Section 8?

Opinion – Where, on account of extraordinary circumstance carrying steep fall in GST revenues and a shortfall in the Fund, the states cannot be paid full compensation during the transition period, the shortfall in the payment can be made up even after the transition period of 5 years consequent to a recommendation by GST Council extending the levy and collection of cess beyond 5 years under section 8(1) of the Act.

Question. 4

Can the States borrow on the strength of the future receipts from the Compensation Fund to meet the compensation gap either fully or partially?

Opinion – Clause (2) of Article 292 authorizes Parliament to make loans to a State, subject to any limit which may have been fixed by law made by Parliament. The entitlement of a State to borrow is set out in Article 293(1). The limitation on such right is found in Clause (3), which prohibits a State from raising any loan, without the consent of the Government of India, “if there is still outstanding any part of a loan which has been made to the State by the Government of India..”.

Question. 5

Can the GST Council recommend or request the Centre to consider allowing States to borrow money to meet the compensation gap either fully or partially?

Opinion- The GST Council can, in the exercise of its duties under article 279A(4)(h) of the Constitution, recommend to the Central Government to permit the States to borrow money, as a measure for meeting the compensation gap. It would, however, be for the

Central Government to take final decision in the matter, in exercise of its authority under article 293(3) of the Constitution.

Question. 6

Apart from aforesaid, opinion of Learned AG on following was also obtained: (i) Whether the States would be “entitled” to any compensation beyond the transition period of five years under the Goods and Services Tax (Compensation to States) Act, 2017. (ii) Whether, in light of the fact that GST Revenue would be down by Rs.2.5 lakh crore as compared to what it would have been without COVID and in such extraordinary circumstances when the entire world is facing an economic downturn due to the impact of Covid-19 on the economy and the amounts in the GST Compensation Fund is not adequate to pay the States, can it be and said that while the entitlement of the States to receive the full amount of compensation is payable for the “transition period”, however, the levy and collection of cess and payment of the shortfall compensation can be extended beyond 5 years in accordance with Section 8(1) of the Goods and Services Tax (Compensation to States) Act, 2017 and Article 279A of the Constitution? (iii) Whether, instead of taking consent of all States for the purpose of deferring the payment of the shortfall compensation under the Goods and Services Tax (Compensation to States) Act, 2017, the recommendation of the GST Council in the form of a decision of the majority of the Council as provided in Article 279A(9) of the Constitution would be sufficient to defer the payment of shortfall compensation in the extra-ordinary circumstances such as the present?

Opinion - (i) The compensation under the Act is payable to the States during the transition period (i.e. 5 years); and

(ii) Such payment shall be made from the Fund, into which the proceeds of the cess are credited.

(iii) GST Council would recommend the continuance of the cess beyond the transition period of 5 years only in a situation of shortfall during the transition period, which would necessitate the raising of funds for paying the compensation to the States after the 5 year period is over.

On account of any extraordinary circumstances causing a steep fall in GST revenues and a shortfall in the Fund, the states cannot be paid full compensation during the transition period, the shortfall in the payment of compensation could be made up even after the transition period of 5 years.

A recommendation by the GST Council extending the levy and collection of the cess beyond 5 years under Section 8(1) of the Act, would require a decision by a threefourth majority of the weighted votes.