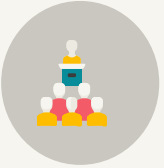


GST and Co-operative Federalism

**By Ashima Bansal (IRS)
Joint Secretary GST Council Secretariat**



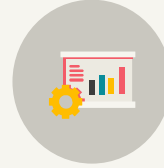
Goods & Service Tax



Consumption based tax



Federal taxation



One Nation One Tax



Non-Intrusive IT System

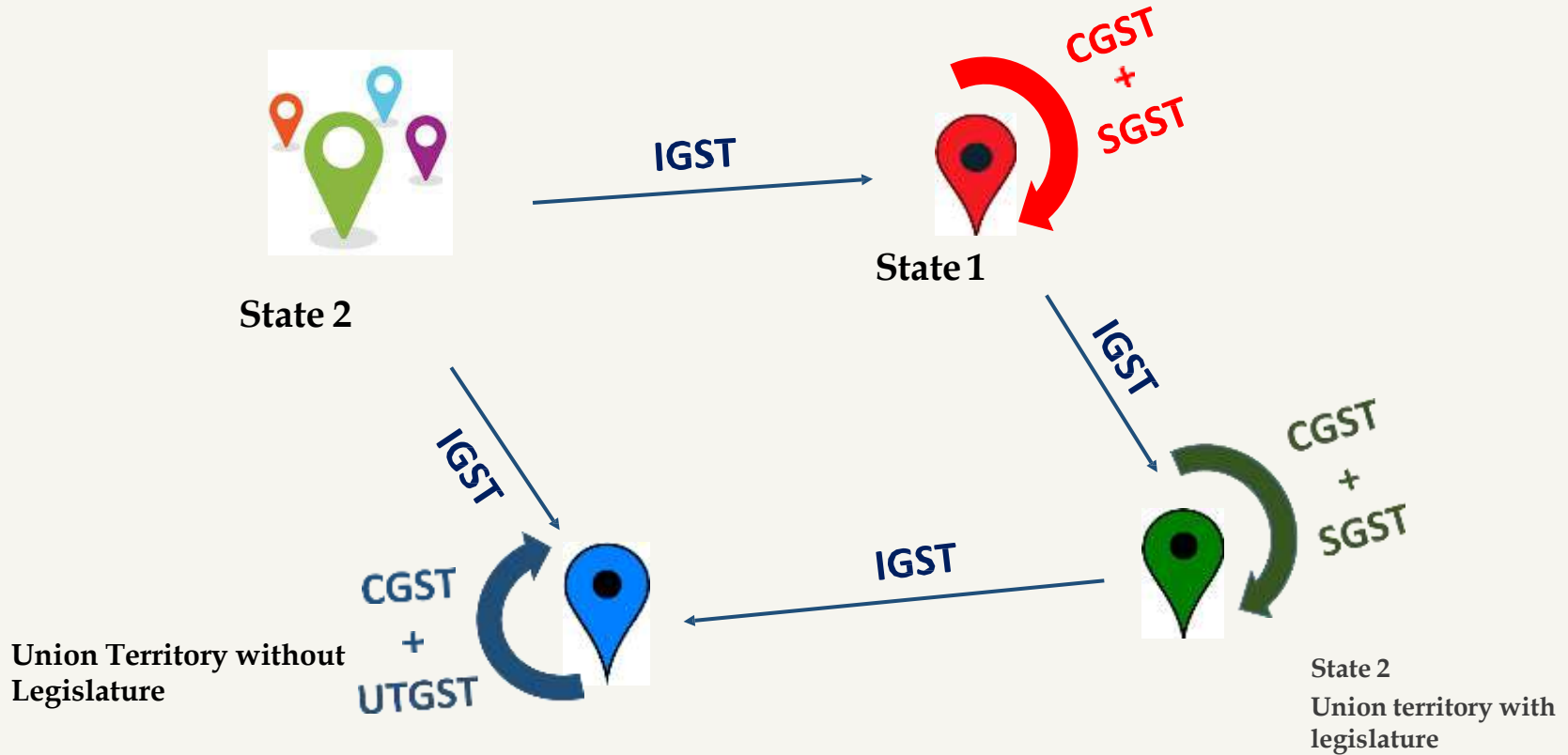


**Feedback based taxation
policy design**



Comprehensive Indirect tax

Levy of CGST, SGST, UTGST & IGST



Objectives of GST:

‘Good and Simple Tax’..

Raise Tax
revenues

Broaden the tax
base

Uniformity in
Tax Rates across
the Country

Minimize the
Cascading effect
of Taxes

Transparency in
Incidence of tax

Establishment
of a Common
National Market



Unique Federal Body called GST Council –Article 279A

- 31 Independent States and Union Territories come together with the Central Government to pool their sovereign indirect tax powers. Chaired by Union FM with States FM or Minister nominated as Members. Power to recommend principles of levy of tax, exemptions, floor rates, rates, special rates



Cooperative Federalism –Dual concurrent levy

- Dual levy of taxes on the same transaction with the Central Government handholding the States in the initial years of implementation through compensation



Meaning of GST Article 366(12A)-

‘GST’ means any tax on supply of goods , or services or both except taxes on the supply of the alcoholic liquor for human consumption.

01

Law Committee

- Proposes changes in the GST laws taking into account various feedbacks about the problems being faced by various industries/ trades/ taxpayers.
- Preparing draft Rules/notifications
- Examining all representations of trade on Legal issues

03

GIC

- decision-making body at the top tier
- takes decisions to the extent possible and where necessary, on issues of urgent and procedural nature

02

Fitment Committee

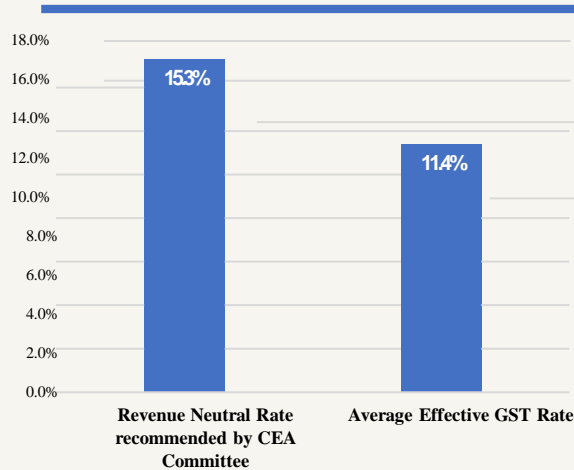
- tasked with evolving a principle and a subsequent methodology to determine rates for various supplies under GST. Recommending any other rate provided in Act or Rules
- Examining all representations of trade on rate, classification and other issue related to rates like inverted duty structure

04

ITGRC

- The IT Grievance Redressal Committee was envisaged to address the difficulties faced by a section of taxpayers owing to technical glitches on GST Portal.
- SoP to submit the issues of data fixation to the GST Council.

Estimated Benefits to the Public



The GST rate is about 3.9 % lower than the Revenue Neutral Rate

This has resulted in estimated savings of Rs. 18 lakh cr to the public

The average savings are about Rs. 28,000 crore per month

This translates to a savings of Rs. 12,000 per household per year



Free flow of goods – No Check posts - No physical barriers-E-way bill

- Moving from 31 different fractured markets to establishing one common market with no physical barriers between States for movement of goods – Reducing travel time considerably
- Electronic Way-Bills that can be generated online, SMS, Mobile App (~2Mn generated every day, ~1 Bn till date)



Feedback based taxation policy design

- Responsive to challenges faced by taxpayers and providing solutions on a real time basis



The Tax Credit System

- A truly value added tax system where cross utilization of all GST paid taxes is available



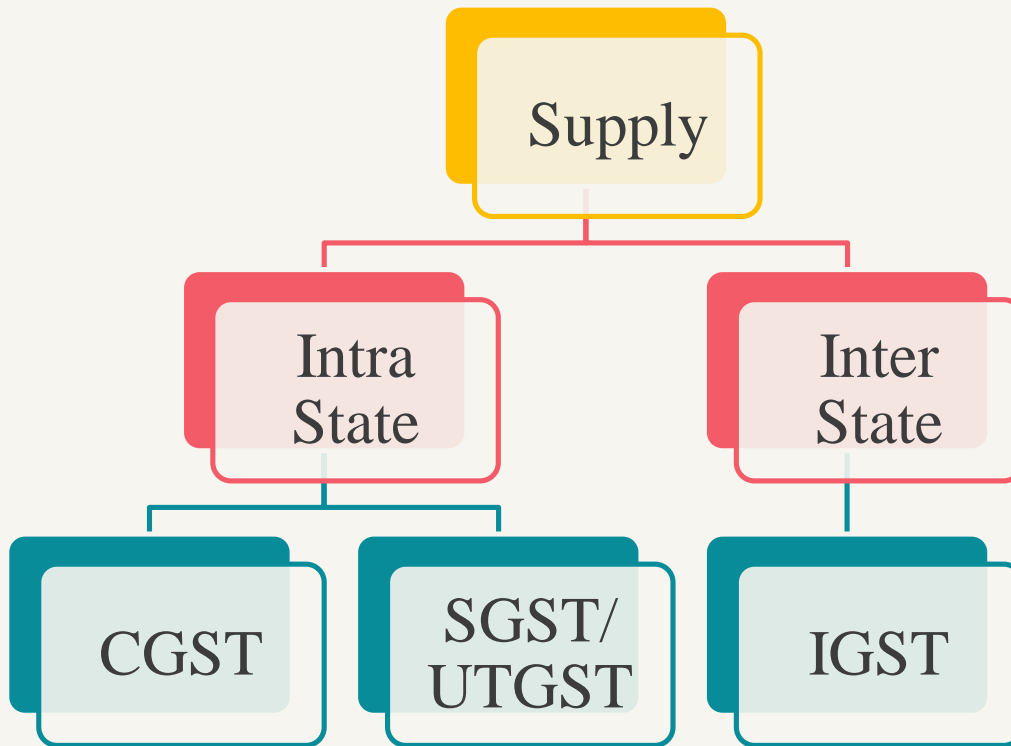
Streamlining Imports and Exports

- Easing imports and exports through easy payment systems, refund processes and tax credits



One Authority – One Administration

- All taxpayers to have a single window tax authority for all compliance purposes



When UTGST would be charged?

- List of UT –**
1. Andaman and Nicobar,
 2. Chandigarh,
 3. Dadra and Nagar Haveli and Daman and Diu,
 4. Lakshadweep,
 5. Ladakh and
- With Legislature**
1. Puducherry.
 2. National Capital Territory of Delhi,
 3. Jammu and Kashmir,

GST System Statistics

As on 28th February, 2023



1.38 Cr.

Registered Tax Payer



106.25 Cr.

Total Return Filed



344.44 Cr.

E-way Bill



1580 Cr.

Total Invoice Upload



55.32 Lakh Cr.

Payment Through the Portal
(Excluding IGST on Imports)



27.74 Cr.

Total No. of Payment
Transactions



24.85 Lakh

Highest Returns Transactions
in a day



9.55 Lakh

Highest Payment Transactions
in a day

Constitutional (122nd Amendment) Bill

In order to implement GST, Constitutional (122nd Amendment) Bill (CAB for short) was introduced in the Parliament and passed by Rajya Sabha on 03rd August, 2016 and Lok Sabha on 08th August, 2016. The CAB was passed by more than 15 states and thereafter Hon'ble President gave assent to "The Constitution (One Hundred And First Amendment) Act, 2016" on 8th of September, 2016.

Since then the GST council and been notified bringing into existence the Constitutional body to decide issues relating to GST.

On September 16, 2016, Government of India issued notifications bringing into effect all the sections of CAB setting firmly into motion the rolling out of GST. This notification sets out an outer limit of time of one year, that is till 15-9-2017 for bringing into effect GST.

Meaning of GST – Article 366(12A)

In Article 366 of the Constitution, New clause (12A) has been inserted to provide the definition of GST.

Article – 366(12A):- “Goods and Services Tax” means any tax on Supply of Goods or Services or both except taxes on the supply of the alcoholic liquor for human consumption.

Article 246A

"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.]

Article 269A

Levy and collection of GST in course of inter-State trade or commerce - Article 269A

(1) GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation — For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall **not form part of the Consolidated Fund of India**.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

As per Article 279A (1) of the amended Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A. The notification for bringing into force Article 279A with effect from 12th September, 2016 was issued on 10th September, 2016.

(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely-

- (a)** the Union Finance Minister-Chairperson;
- (b)** the Union Minister of State in charge of Revenue or Finance-Member;
- (c)** the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government-Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

- 4) The Goods and Services Tax Council shall make recommendations to the Union and the States on-
- a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be **subsumed** in the GST;
 - b) the goods and services that may be **subjected to, or exempted** from the GST;
 - c) model Goods and Services Tax Laws, principles of levy, **apportionment** of GST levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
 - d) The **threshold limit** of turnover below which goods and services may be exempted from GST;
 - e) the rates including **floor rates** with bands of GST;
 - f) any special rate or rates for a specified period, to raise additional resources during any **natural calamity** or disaster;
 - g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
 - h) any other matter relating to the GST, as the Council may decide.
- 5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

- 6)** While discharging the functions conferred by this article, the GST Council shall be guided by the need for a harmonised structure of GST and for the development of a harmonised national market for goods and services.
- (7)** **One-half of the total number** of Members of the GST Council shall constitute the **quorum** at its meetings.
- (8)** The GST Council shall determine the procedure in the performance of its functions.
- (9)** Every **decision** of the GST Council shall be taken at a meeting, by a majority of not less than **three-fourths** of the weighted votes of the members present and voting, in accordance with the following principles, namely-
- a) the vote of the **Central Government** shall have a weightage of **one-third of the total votes cast**, and
 - b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.
- (10)** No act or proceedings of the GST Council shall be invalid merely by reason of-
- a) any vacancy in, or any defect in, the constitution of the Council; or
 - (b) any defect in the appointment of a person as a Member of the Council; or
 - c) any procedural irregularity of the Council not affecting the merits of the case.

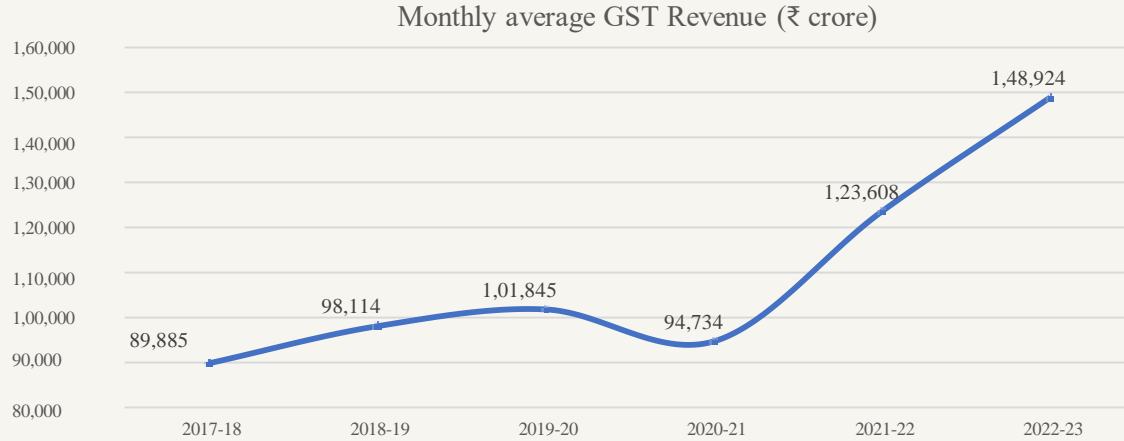
- At the time of introduction of GST, the Constitution amendment provided that the Parliament, by law shall provide compensation to States for a period of five years for loss of revenue due to introduction of GST.
- Accordingly, the GST Compensation to States , 2017 was legislated which provides for release of compensation against **14% year-on-year growth over revenues in 2015-16** from taxes subsumed in GST. Provision for levy of cess on certain luxury items and demerit goods and this cess collected is to credited into a Public Account known as **GST Compensation Fund**.
- The States were compensated for loss of revenue due to implementation of GST (w.e.f. 01.07.2017) for 5 years' period till June,2022

To safeguard that States have adequate and timely resources to combat Covid and related issues, Centre borrowed ₹ 1.1 lakh crore in 2020-21 and ₹ 1.59 lakh crore in 2021-22 and passed it on to States on a back-to-back basis. All the States agreed on this decision. Pertinently, the Government issued Notification No. 1/2022– Compensation Cess dated 24.06.2022 extending the Goods and Services Tax (GST) compensation cess until March 31, 2026 in order to meet the GST revenue shortfall as well as servicing the abovementioned loan borrowed through special window scheme

GST Revenue Performance



Trends in GST Revenue



Federalism In India

- The Founding Fathers of India drafted a 'Union Constitution' and crafted a polity which they termed as a 'federation with a strong center'.
 - Federalism, defined as the sharing of power between different levels of a government, has been a lasting identity of Indian polity.
 - Dr Ambedkar, as part of the constituent assembly debates, made quite a strong observation when asked about the nature of the Constitution. In his opinion, and rightly so, even though Article 1 of the Constitution holds India to be a Union of States, it is not a loose organization of States, nor are the States mere agents of the Centre. He further remarked that the Constitution empowers both the States and the Centre to be supreme in their spheres and are co-equal in the spirit of a federal polity.
 - A remarkable feature of the Indian administration is the presence of numerous institutions in policymaking. Three such institutions ie. **The NITI Aayog, Finance Commission, and GST-Council**, which are at the base of modern Indian federalism.
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- Equity, capacity, stability and growth are four important pillars of fiscal federalism in India. The Union is expected to create level playing fields across jurisdictions. Constitutional economics is further marked by policy overlap and fiscal interdependence. The Union is the regulator of fiscal disciplines, natural resources, expenditure austerity, debt, loan and external borrowings by the States.
 - One Hundred and First Amendment to the Constitution, which introduced Goods and Service Tax (GST) regime, is a watershed moment in the evolution of cooperative Federalism as enshrined in the Constitution of India.
 - Before implementation of GST, Indian taxation system was a medley of Central, State and Local area levies.
 - While structuring a completely new indirect tax system, first challenge was to preserve the federal nature of the Indian polity and thus, 101st Amendment Act was introduced. Article 246A confers concurrent jurisdiction of both the Union and State to levy tax on supply of goods and services, thus, preserving the federal nature of the Constitution.
-

Co-operative Federalism

- Centre and States agreeing to have concurrent power to tax goods and services
 - The Centre let go of its exclusive power to tax manufacture of goods (i.e. Excise) and provision of services (i.e. Service Tax)
 - the States gave up their exclusive power to tax sale of goods (sales tax / VAT)
 - Both the Centre and the States agreed to share their powers to achieve uniformity and remove compartmentalisation in indirect taxation
 - The spirit of co-operative federalism has thus helped remove compartmentalisation of powers to tax
 - The participation of all States and Centre in the framing of GST laws has led to the following features in the GST Laws:
 - **Harmonisation of GST laws across the country**
 - **Common Definitions**
 - **Common Proecures/Formats**
 - **Common Compliance Mechanism**
-
-

The Judicial Precedents



Union of India & Ors. Vs VKC Footsteps India Pvt Ltd.

13.09.2021

“34. Article 279A(6) indicates that in the discharge of its functions, the GST Council is to be guided by the need for a harmonised structure of goods and services tax and the development of a harmonised national market for goods and services. This emphasis on harmony is crucial to co-operative federalism. It underscores that in a federal arrangement where the States and Union are converging together for the first time to adopt the same event for taxation, both sets of partners must be guided by the over-arching need to preserve harmony. Harmony postulates balance, an acceptance of mutual co-existence.”

.....

“The principle of harmony does not postulate exact coincidence in all points of comparison or reference. Harmony is a postulate of cooperative federalism and is founded on the principle of mutual coexistence, deference and equality of the coexisting units.”

Union of India v. Mohit Minerals

19.05.2022

- The Hon'ble Supreme Court held that the IGST would not be levied on the 'service' portion in CIF contracts entered by the Indian importer with the foreign shipping lines when the IGST has already been paid on the 'composite supply' comprising of supply of goods and supply of transportation and, insurance etc. It was further held that the impugned levy on the 'service aspect' is in violation of the principle of 'Composite Supply' prescribed under Section 2(30) read with Section 8 of the CGST.
- The Honorable Apex Court in its *obiter dicta* made certain observations regarding the nature of the recommendations of the GST Council which became subject of certain adventurous reporting and varied Interpretations. However the Supreme Court has only elaborated the GST Council's collaborative institutional mechanism while making its observations.
- The Honorable Court observed that:

“The deletion of Article 279B and the inclusion of Article 279(1) by the Constitution Amendment Act 2016 indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective of the GST regime to foster cooperative federalism and harmony between the constituent units;...”

Union of India v. Mohit Minerals

Continued...

- This judgment does not in any way lay down anything new in so far as the GST institutional mechanism is concerned and also this judgment does not convey anything fundamentally different to the existing framework of GST.
- The GST Council has been the finest example of collaborative and cooperative federalism where in the States and Center indulge in dialogue and constructive discourse in order to resolve issues pertaining to the GST regime and in a way always yearn to meet on common grounds which is mutually beneficial.
- Further, depicting the true federal spirit, the Council also on various occasions have constituted Group of Ministers and Committees involving member representations from different States in order to assist the Council in addressing the said issues.
- While GST Council's decisions may be recommendatory, GST law says that the recommendation is a condition precedent, or something that must occur, for the governments to act, and once such decision is taken the States do abide by such decisions in spirit of Constitutional Morality.
- The following observations of the court are testament of the true intent of the Apex Court :

“Therefore, the argument that if the recommendations of the GST Council are not binding, then the entire structure of GST would crumble does not hold water. Such a reading of the provisions of the Constitution diminishes the role of the GST Council as a constitutional body formed to arrive at decisions by collaboration and contestation of ideas.”



Thank You
