

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

LOK SABHA UNSTARRED QUESTION NO. 58
TO BE ANSWERED ON MONDAY, THE 14TH SEPTEMBER, 2020
BHADRAPADA 23, 1942 (SAKA)

Levy of Compensation Cess

58: Shri Jayadev Galla:

Will the Minister of **FINANCE** be pleased to state:

- (a) the details of items on which Compensation cess is being levied under the Goods and Service Tax (GST) law;
- (b) the details of cess so far collected since implementation of GST and distributed to States, year-wise and State-wise;
- (c) whether the meeting of GST Council is going to be held to finalize the issue of Compensation Cess to be paid to States; and
- (d) if so, the details thereof and the details of advice given by the Attorney General sought by the Ministry in connection with payment of compensation to States?

ANSWER

**MINISTER OF STATE IN MINISTRY OF FINANCE
(Shri Anurag Singh Thakur)**

(a): Section 8(2) of the GST (Compensation to States) Act, 2017 provides for levy of compensation cess on supply of certain goods and services which are specified in the Schedule of the said Act. Such important items which attract compensation cess are Pan Masala, Tobacco and tobacco products, Coal, Aerated Waters, Motor Vehicles etc.

(b): The details of GST compensation cess collected and compensation released to States is as follows: -

(Figures in Rs. Crore)

	2017-18	2018-19	2019-20	2020-21
Compensation Cess collected	62,612	95,081	95,444	21355 (till July,20)
Compensation released *	41,146	69,275	1,20,498 (till Nov, 19)	65,546 (till Mar'20)

* State-wise details of GST compensation released in as per Annexure-I.

(c) & (d): GST compensation cess collected in current FY 2020-21 is not sufficient to release the admissible GST compensation for period April-July, 2020. Moreover, the GST compensation cess collected till July, 2020 has already been utilized for the purpose of GST compensation released to states for the period till March, 2020. Taking into account the shortage of cess collection during current FY, Central Government has sought the legal opinion of Ld. Attorney General of India on 6 points on the issue of release of GST compensation to States and the point-wise summary of opinion given by Ld Attorney General is as per Annexure-II.

Accordingly, to discuss the issue of pending GST compensation and future course of action to meet the GST compensation shortfall has been discussed in 41st GST Council meeting on 27.08.2020 wherein States were given two options to meet their GST compensation shortfall for current FY from market borrowing. Based upon the options exercised by the States, their compensation, borrowing, repayment etc. will be dealt as per their individual choice.

Details of GST Compensation

(Rs. in
crore)

		GST Compensation released in				
S.No	Name of State/UT	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Andhra Pradesh	382	0	1840.76	1187	3410
2	Arunachal Pradesh	15	0	0.00	0	15
3	Assam	886	466	878.97	488	2719
4	Bihar	3041	2571	3524.78	2265	11402
5	Chattisgarh	1483	2261	3081.44	1877	8702
6	Delhi	157	4182	7436.00	2160	13935
7	Goa	252	476	818.70	329	1876
8	Gujarat	3687	6149	10646.52	5822	26305
9	Haryana	1199	2820	5453.43	2522	11994
10	Himachal Pradesh	539	2037	1877.33	1018	5471
11	J & K	1137	1462	2279.28	1230	6108
12	Jharkhand	1265	1029	1531.82	859	4685
13	Karnataka	6246	10754	14496.90	7266	38763
14	Kerala	1772	2884	5575.04	3514	13745
15	Madhya Pradesh	2511	2866	4530.78	2600	12508
16	Maharashtra	1488	8330	15018.13	6837	31673
17	Manipur	24	0	0.00	0	24
18	Meghalaya	124	73	101.45	65	363
19	Mizoram	0	0	0.00	0	0
20	Nagaland	0	0	0.00	0	0
21	Odisha	2019	3390	3928.78	1917	11255
22	Puducherry	333	592	862.29	338	2125
23	Punjab	4037	7129	8804.54	6310	26281
24	Rajasthan	2598	2176	4439.53	2675	11889
25	Sikkim	6	0	0.00	0	6
26	Tamil Nadu	632	3151	8922.03	5442	18147
27	Telangana	169	0	2263.16	791	3223
28	Tripura	129	155	171.00	159	614
29	Uttar Pradesh	2124	308	5179.52	3943	11555
30	Uttarakhand	1283	2037	2477.38	1452	7249
31	West Bengal	1608	1977	4358.74	2479	10423
	Total	41146.00	69275.00	120498.29	65546.20	296465.49

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 – Only in a case where all the States together agree to a deferment or extension in regard to the payment of compensation to them, that one could adopt such a course of action.

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 three-fourth majority of the weighted votes.
