



#GSTCASE-80-EXEMPTION FROM GST ON LIQUOR LICENSE FEES: MINUTES OF 31ST GST COUNCIL MEETING- JOINT SECRETARY TRU-II STATED “ON MERIT, NO DECISION WAS NEEDED AND ONLY IMPLEMENTATION INSTRUMENTALITY NEEDED TO BE WORKED OUT WHICH WOULD BE DONE AT THE OFFICERS' LEVEL”

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#GSTCase-80-Exemption from GST on Liquor License Fees: Minutes of 31st GST Council Meeting- Joint Secretary TRU-II stated “on merit, no decision was needed and only implementation instrumentality needed to be worked out which would be done at the officers' level”

GST On Liquor Licence Fees has been a bone of contention for long and GST Council in its 26th meeting held on 10 March, 2018 approved that GST was not leviable on license fee and application fee by whatever name it is called, for alcoholic liquor for human consumption and that this would also apply mutatis mutandis to the demand raised by Service Tax/ Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era. However, the issue was not clear since no exemption notification was issued. The agenda for issuing exemption notification was part of the GST Council Meeting held on 22nd December 2018 but subsequently withdrawn. The entire proceedings of the agenda and withdrawal and discussion in the GST Council Meeting is as follows:

1. Agenda for “Exemption notification to be issued for exempting GST on license fee charged for liquor license w.e.f. 01.07.2017” was initially part of the meeting. The reason for the same was stated as below:

However, the expression “GST was not leviable on license fee and application fee by whatever name it is called, for alcoholic liquor for human consumption” in the decision of the 26th GST Council meeting can be implemented through issue of an exemption notification and it would not be possible to issue a circular in this regard as the Central Government's position is that it is taxable and SCNs have been issued on the issue.

2. Withdrawal of the Agenda: But was subsequently withdrawn stating as follows:

Withdrawal of agenda item regarding GST on license fee charged for liquor license listed at Sl. No.4, Annexure II of agenda item 6 (Detailed Agenda Note-Volume 2)

Agenda item regarding GST on license fee charged for liquor license, listed at Sl. No.4 of Annexure II of agenda item 6 (Detailed Agenda Note-Volume 2), is being withdrawn. It was decided in the Officers' Meeting on 21st December, 2018 that on merit no new decision is needed and only implementation instrumentality needs to be worked out. This would be done at the officers' level.

3. GST Council Still discussed the issue in its 31st Council Meeting and the Minutes read as follows:

*14.4. After this preliminary discussion, the Secretary introduced the Agenda Item 6. The Hon'ble Minister from Punjab stated that the Agenda Item listed at S.No.4 of Annexure II regarding GST on licence fee charged for liquor licences stood withdrawn but he recalled that the issue regarding tax on liquor was discussed and decided during the Meeting of the Council held in Jammu & Kashmir but the implementing circular or notification was yet to be issued to clarify the matter. **Joint Secretary, TRU-II stated that it was decided in the Officers' meeting on 21 ' 1 December 2018 that on merit, no decision was needed and only implementation instrumentality needed to be worked out which would be done at the officers' level that whether it should be done by way of a Circular or by way of an exemption notification.** He stated that if liquor licence fee collected by the States was certified as the tax revenue of State excise by all the States, then it would be easy to issue the required circular. He added that issuing such a circular for the period relating to erstwhile service tax would tantamount to annulling judgements of some High Courts on this issue without any new evidence and, therefore, such a certification was needed from the States.*

*14.5. Advisor (Financial Resources), Punjab stated that the Hon'ble Supreme Court, in the case of M/s Har Shankar vs otrs, had decided the issue whether licence fee was a tax .or excise revenue and it had held that it was excise revenue. The then Finance Secretary was convinced that this was not liable to GST. **If instead of clarification, an exemption notification was to***



be issued at this stage, the levy would come into question whether it was a fee or a tax. He stated that since it was a one-time exception, a Circular could be issued. The Hon'ble Chief Minister of Puducherry stated that fee on liquor licence was not under GST and it need not come for discussion to the Council at all. He added that notices were still being issued on this issue for Service tax period and this should also be withdrawn. Joint Secretary, TRU-II stated that wording of the Law was different in different States. Further, it was not mentioned in the 26111 GST Council decision as to how the decision should be implemented. The Secretary stated that at this time, this Agenda item was being withdrawn.

Emphasis Supplied

4. Decision of Punjab and Haryana High Court that no GST is payable on fees paid for grant of license for sale of liquor for human consumption

Further it would be apt to highlight that Punjab and Haryana High Court citing the decision of GST Council also held that no GST is payable on fees paid for grant of license for sale of liquor for human consumption 97 taxmann.com 632 (Punjab & Haryana).

Section 9 of the Central Goods and Services Tax Act, 2017 - Levy and collection of tax (NR) - Petitioner filed a writ petition seeking quashing of notice dated 15-5-2017, whereby respondent asked petitioner to furnish certain information with reference to levy of service tax on fee paid for award of license for sale of liquor - Respondent submitted that he had received instructions from State that no GST/service tax was leviable on fee paid for grant of license for sale of liquor for human consumption - Whether in view of statement made by respondent, prayer made in petition had been rendered infructuous - Held, yes.

Conclusion: The issue now seems to be settling down that no GST is payable on the liquor licence fees since it is in the nature of tax and agenda for issuing exemption notification was initially decided but subsequently withdrawn citing the fact that

“no new decision is needed and only implementation instrumentality needs to be worked out. This would be done at the officers' level.”

This provides that at best what would be issued would be a circular clarifying the scenario that no GST is leviable on Liquor License fees since it is a tax.