

S.N.	Case	Held
1.	<b>5<sup>th</sup> GST Council Meeting-Agenda 2A</b>	<b>Para 2.2 of the Agenda stated as follows:</b> <i>Under the GST regime, it is proposed to subject supply of goods or services to GST. Goods have been defined under the Constitution to include “all materials, commodities and articles”. Likewise, services have been defined under the Constitution “as anything other than goods”. Goods and services tax have been defined in the Constitution to mean “any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption”. <b>Supply has been defined in the model GST law in the broadest possible sense and includes sale.</b></i>
2.	<b>5<sup>th</sup> GST Council Meeting-Why it was advocated to bring land and building under the GST Net</b>	<b>Para 2.4. of the Agenda stated as follows-</b> <i>Thus, supply of immovable property (land and buildings) has been kept outside the purview of GST. It is felt, that this would distort the GST particularly when there is no constitutional or legal impediment to levy GST on supply of land and building to GST due to the following reasons:</i> <i>(i) Stamp duty, which is levied under Article 268, is with reference to documents and is collected by the Centre on documents listed in Entry 91 of the Union List while by the States on documents listed in Entry 63 of the State List. Therefore, the argument that because legal conveyance of title of land and buildings attracts stamp duty, they cannot be subjected to GST is facile because stamp duty is levied on documents while GST would be levied on the supply of land and buildings, whether as goods or services (“aspect theory” upheld by the Supreme Court in a host of judgements). Renting/leasing of land and buildings are subjected to service tax presently. Documents pertaining to such renting/leasing are subjected to stamp duty.</i> <i>(ii) Entry 49 of the State List reads thus: - “Taxes on lands and buildings”</i> <i>It is felt that this entry is not an impediment to levy of GST on supply of lands and buildings because of the “aspect theory” upheld by the Supreme Court: while the stock of lands and buildings is subjected to tax by the States on the aspect of possessing land and buildings, the supply aspect can be subjected to GST.</i> <i>(iii) ..</i> <i>(iv) ..</i> <i>(v) Further, though service tax and VAT are charged generally @ 4.5% and 1% of the value of the flat (which includes the value of the undivided share of land) respectively, there are embedded taxes in the flat. The total tax incidence in respect of flats in nonmetros is more than that in metros. <b>In fact, where the value of land is less, the incidence of service tax and VAT is more (embedded taxes). GST on supply of land and building will equalize the tax incidence in respect of houses in metros and non-metros.</b></i> <i>(vi) Without levying GST on supply of land and building, it would be very difficult to complete the input tax credit chain (ITC) and allow ITC in respect of construction services and construction material used in creation of immovable property which is further used for carrying out taxable activities. This is highly distortionary. <b>While at the behest of business and industry, the ITC chain would get liberalized, the tax administration would forever be saddled with non-completion of ITC chain thereby resulting in disincentives to obtain taxable invoices for availing input tax credit. Non inclusion of land and building in GST results in cascading of taxes.</b></i> <i>(vii) ...</i> <i>(viii) <b>Land and building are not on the same footing as alcoholic liquor for human consumption as the latter is constitutionally outside the definition of goods and services tax (para 2.2 above).</b></i>
3.	<b>7<sup>th</sup> GST Council Meeting- Tax on Sale of Land and Building deferred for a year</b>	<b>GST Council in its 7<sup>th</sup> Meeting Concluded as follows-</b> <i>In view of the Discussion above for Agenda item 2A, the Council decided not to introduce GST on land and building at this stage and agreed that this issue could be revisited after a year or so the implementation of GST.</i>
3.	<b>11<sup>th</sup> GST Council Meeting-Reason behind inclusion of Land and Building in Schedule III</b>	<b>Para 6.11-</b> <i>The Deputy Chief Minister of Delhi referred to his letter dated 4 March, 2017 addressed to the Hon'ble Chairperson and copies sent to all the Hon'ble Members pointing out that designating the <b>sale of land and sale of buildings (subject to certain exceptions), neither as supply of goods nor a supply of services (in Schedule III of the draft CGST Law) would lead to a break in the input tax credit chain and it would be a very big missed opportunity to curb the flow of black money..</b></i> <b>Para 6.12-</b> <i>The Secretary observed that as per the decision in the 7th Meeting of the Council, this issue was to be reconsidered after one year of implementation of GST and if there was an agreement at that time to bring sale of land and building under GST, it would require amendment to Schedule III. He therefore suggested that presently sale of land and building could be exempted through a notification instead of incorporating it in the law. CCT, Karnataka stated that if a decision was taken to bring sale of land and building in GST, then several amendments would be required in the law such as Section 16 dealing with eligibility and conditions for taking input tax credit. He therefore suggested that the entry regarding sale of land and building should not be removed from Schedule III. The Hon'ble Chairperson stated that this issue could be taken up for decision after one year of implementation of GST. The Hon'ble Minister from Uttar Pradesh suggested to retain the decision taken in the 7th Meeting of the Council. The Hon'ble Minister from Andhra Pradesh stated that they would further study the proposal made by the Hon'ble Deputy Chief Minister of Delhi. <b>The Council decided to retain the decision taken in the in Meeting of the Council (held on 22-23 December, 2016).</b></i>