

**[Submitted statement of Thiru Palanivel Thiaga Rajan, Hon'ble Minister for Finance and Human Resources Management, Tamil Nadu to the 45<sup>th</sup> Goods and Services Tax Council meeting on 17.09.2021]**

**Respected Hon'ble Union Finance Minister and  
Chairperson of the GST Council,**

**Hon'ble Members of the GST Council,**

**Other distinguished invitees,**

**Vanakkam!**

**Respected Madam Chairperson,**

At the outset, I would like to thank this august Council for the invitation to attend its first physical meeting after more than a year to put forth the views on behalf of Tamil Nadu. Unfortunately, I am unable to attend in person due to unavoidable commitments in my Constituency made prior to the receipt of the invitation intimating the date of the meeting, as well as the backlog of events accrued over the many weeks preceding the recently concluded Annual Budget (Amended) Session of the Tamil Nadu Legislative Assembly. While I am disappointed to lose this opportunity to meet the illustrious members from other States in person, I hope the next occasion

will not be very far in the future. Since I cannot attend in person, we are submitting this written document to set forth the views of the Government of Hon'ble Chief Minister Thiru M. K. Stalin.

Before addressing the eighteen items in the meeting agenda, I'd like to bring a couple of long-standing issues to the Council's attention. The first issue is that the burden of GST compliance has fallen disproportionately on small taxpayers in terms of both complexity and technology. During my interaction with GST taxpayers, particularly small traders, they have consistently expressed difficulty in using their user accounts in GSTN portal because all the content is only in English. Consequently, small traders are compelled to avail of the services of "tax consultants", which increases their cost of compliance while simultaneously denying them complete control over filing of their tax returns. Tamil Nadu is a business-friendly State, which wants to provide a supportive environment for both large businesses and small businesses. In the four years since the inception of GST, no substantive efforts have been undertaken with respect to the provision of services in Tamil. Our government has given an assurance in the legislative

assembly that it will arrange to provide GST related services in Tamil. Therefore, we urge the august Council to direct GSTN to provide services in Tamil as quickly as possible. We have already offered our assistance to the GSTN in translating the forms and content of the web portal. We look forward to an immediate positive response from GSTN in this regard.

Hon'ble members of this august council are aware that States have given up substantial fiscal autonomy, both in terms of volume and control, while reluctantly acquiescing to implement the GST system. With four years of experience under the GST regime, this is an opportune time to review the costs and benefits of introducing GST from the States' perspective. The promise of higher GDP growth due to introduction of GST and consequent growth in taxation revenues have remained elusive, even factoring out the overall devastation of the COVID pandemic. The negative consequences have been mitigated to some extent through the compensation mechanism written into the law. We must remember that this mechanism was only designed to address idiosyncratic risk (one or more states suffer negative events/outcomes, independent of the country's

economy as a whole), and had no provision or feature to cope with systemic risk (of the kind the country's economy as a whole faced, due to the pandemic and the rapid and near-total lockdown which saw Q1 FY'20 GDP shrink by over 25%). It is another matter that even this legal provision for compensation has been subject to multiple "interpretations", each one at the expense of the States, and that the final "solution" has been arrived at after contentious debates about the "actual intent" of an integral component of the law. On the other hand, the structural costs to the States, in terms of loss of control and fiscal autonomy, have turned out to be larger than feared at inception, often driven by operational and executional deficiencies and flaws. Taken together, the actual costs have been much higher than the actual benefits. Therefore, I would like to reiterate that a fundamental rethinking of the entire model of Taxation, leading to a complete overhaul of both Direct & Indirect Taxes, is the need of the hour. For our part, the Government of Tamil Nadu is in the process of establish a council of eminent economists, legal luminaries, and scholars, to help refine our understanding and positions regarding the social pact

between the Union and the States in terms of distribution of fiscal powers.

Having covered these fundamental issues, I'd like to provide specific responses to the agenda items for the meeting:

- 1) Abstain. We are concerned that after 4 years of the passage of the GST law there is not 100% clarity or Unanimity on which decisions are "for information", which for "ratification", which for "approval", and which for actual discussion and decision by the Hon'ble members of the august council.
- 2) Abstain. As above.
- 3) There is a proposal recommended by the law committee in item 3(xv) to permit IGST refund route to only certain class of exporters. Presently, close to 70,000 exporters avail the IGST route for refunds. If the proposal is accepted, this will get reduced to about 10,000 exporters only. This will surely adversely affect export activity. The purported purpose for the proposed change is to reduce the possibility of refunds to bill traders. I would like to bring to the attention of this august Council that after the

recent amendments in the GST act, two significant changes have been made to tighten the noose around bill trading activity. The first change is to not to permit forward transfer of tax credit using GSTR1 unless tax is paid until two months earlier by filing GSTR3B and in the present agenda, this time is further proposed to be restricted to one month. This blocks the creation of ITC credits by originators in the bill trading chain, without payment of tax. The second significant change is that ITC cannot be utilised unless the credit is transferred by supplier by filing GSTR 1. We believe that these two interventions should be sufficient to take care of wrongfully obtaining refunds through bill trading activity, and there is no need to block I GST refund route that would affect a very large number of exporters. As regards other items recommended by Law Committee: Defer to the consensus of other Hon'ble Members.

4) No objection to the nominations proposed in continuation of existing norms.

5) Noted. No decision called for.

- 6) Noted with special thanks on behalf of Hon'ble Chief Minister of Tamil Nadu for Annexure-IV, which he wrote in support of earlier.
- 7) Express thanks to the Hon'ble Members for their efforts to arrive at their recommendations. In favour of the GoM's recommendations to largely accept Sikkim's requests. Ask that this be considered a precedent for future requests from other states in a similar vein.
- 8) Noted with thanks for the efforts of the Hon'ble Members in the GoM.
- 9) Thanks to the Hon'ble Members for their efforts, and in favour of the 3-month extension of the GoM's term.
- 10) In favour of the rapid implementation of the standardized numbering system as indicated.
- 11) Strongly opposed to the proposal to levy higher rate of 18% on job work services provided by contract manufacturers to the brand owners for the manufacture of alcoholic liquor for human consumption. Tamil Nadu has consistently opposed the levy at a higher rate. The States have a right to levy tax

on alcoholic liquor for human consumption and the proposed increase would curtail the fiscal room available to States to vary the tax on alcoholic liquor for augmentation of revenue. Further, the proposed increase in the rate of tax would add cost to the manufacturer, which would have to be passed on to the consumer. Hence, we are of the view that job work services provided by contract manufacturers to the brand owners for the manufacture of alcoholic liquor for human consumption should ideally be removed or at least continue to be taxed at 5% only, even if it is not classifiable as a food item, if necessary, by having a separate specific entry.

12) We are of the general opinion that State Taxation of Petrol and Diesel remains one of the last vestiges of any State's right to manage their own revenues, since the advent of GST stripped away most of the small range of rights originally written into the Constitution. As such we are reluctant to give up any of these few remaining rights, and so are fundamentally opposed to bringing these products into the ambit of GST. Our concerns are increased manifold by



a) The Union Government raising its Taxation on Petrol and Diesel between 500% and 1,000% between 2014 and today, and

b) The Union Government simultaneously changing the mix of this taxation from over 90% Excise (shareable to the States under Finance Commission Formulae) and less than 10% Cess & Surcharge (not shared to the States) in 2014, to only about 4% of the total Union taxation of these products remaining in the form of Excise today, while a whopping 96% of the taxation has been switched to Cess & Surcharge of which not even one paisa is shared to the States.

These developments have deprived the States of huge amounts of Revenue, while increasing the Unions revenues from the products by Trillions of Rupees (Lakhs of Crores) annually.

Under these circumstances, we feel it would be a grave, potentially fatal, injustice to shift State Taxation of Petrol & Diesel away from levels determined solely by each state, to the ambit of GST.

However, if and when the Union were to completely drop the levy of all Cess & Surcharge on such products, we would be happy to reconsider our position at such a time.

This cannot be examined in isolation, without examining the overall resource distribution between Union and States and devising the means to restore the fiscal autonomy of the States.

**13)** Though we had requested for lower/zero rates for many of the items covered, we are in favour of extending the current “consensus” rates till December 31<sup>st</sup>.

**14)** We abstain from any preference on the other sub-items in this Agenda Item with one major exception. We are vehemently opposed to the proposal in item 8 of Annexure-I of this agenda item, which I quote verbatim below (with my highlight of the most objectionable words):

***“Accordingly, the Fitment Committee recommends, keeping in mind the general consumer usage pattern of such products, that***

- i) ***Coconut oil, when packed and sold in a unit container of less than 1000 millilitre may be classified as Hair Oil (under Chapter 33), attracting a GST rate of 18% irrespective of its actual end use***
- ii) ***The edible coconut oil, when packed and sold in a unit container of 1000 millilitre or above be subject to GST at the rate of 5%***

We find this recommendation to be perverse and lacking in either logic or fairness. In fact, we will go so far as to

consider this decision to have been made with bad faith intent, against the interest of Tamil Nadu which is one of the largest producers of Coconuts and Coconut Oil, and indeed many of the Southern States such as Kerala, Andhra Pradesh and Karnataka. How can you classify something which is clearly edible as effectively non-edible (based on the size of the container) for the sake of levying GST? How do you decide on 1000 millilitre (1 whole litre) as the cut-off for even considering whether something is intended for edible use or not? It is an arbitrary cut-off point, bereft of human compassion and basic logic. How many poor families buy their cooking oil in units greater than 1 litre? The answer is very few. How many families in the southern states cook with coconut oil? The answer is very many. Why should ONLY coconut oil be singled out for this treatment compared to other edible oils with multiple uses, such as mustard oil or gingely oil? Are they not considered because their origin is not largely contained to the southern states like Tamil Nadu? What about imported oils such as Palm Oil or Olive Oil, which the Union Government in its wisdom has chosen to exempt from Import Duties? Why is a south-Indian oil being discriminated against, while oil imported from foreign countries gets the 5% rate in ANY QUANTITY? Taken altogether, we find this proposal to be Anti-poor (who buy oil in small quantities), Anti-Southern states (where the bulk of coconuts are grown), and Anti-Indian (giving preference to oils like Olive & Palm, which are

imported from other countries). We go so far as to question the thought process that led to such a decision in the fitment committee – one that seems to not have adequate application of mind, at best. Or perhaps a lot worse. We also note that such blatant discrimination (“**irrespective of its actual end use**”) against ONLY ONE of MANY edible oils is very unlikely to pass the basic constitutional litmus-test of fairness, were it to be taken to any court of law.

If, despite all these facts, logic, and considerations, the august committee feels that an Anti-poor quantity-based GST taxation rate (“**irrespective of its actual end use**”) should apply to **ANY** Edible Oil, then surely it must apply equally to **ALL** Edible Oils up to a standard size (say 100 ml, not 1000 ml). The fundamental principle of fairness demands that we **CANNOT** single out a south-Indian centric **DOMESTIC** Oil for a 360% GST rate increase, while leaving other INDIAN and **IMPORTED** Oils at 5%.

I close my remarks by saying that the lakhs of coconut farmers of Tamil Nadu and the other southern states would neither forget nor forgive this outcome, were this GST council to perpetrate such a gross injustice against them.

- 15)** Abstain. Defer to the Consensus decision of the august council.
- 16)** Abstain. Defer to the Consensus decision of the august council.
- 17)** Noted.

**18)** While we are broadly, and firmly in favour of the continuation of the compensation mechanism, we are concerned by many of the details. For example, the numbers stated in the Agenda may be challenged by some of the Hon'ble Members. In any event, the crucial issues will only become clearer after the presentation of the "scenario post June-2022 and options that can be considered to make up the shortfall" as stated in the agenda item. Therefore, we will defer our inputs till after we have received the required information. We assume that all the Hon'ble Members will requires some time to analyse and assess the features and consequences of each of the options presented during the 45<sup>th</sup> meetings, and hence expect that any decision on the way forward will be deferred to the 46<sup>th</sup> meeting at least. To be doubly sure, we formally place a request that no final decision be made on this most important issue without the benefit of the time needed to fully assess the options. We request further that the content presented to the august council with regard to this agenda item be supplied to us directly post the meeting, to enable us to assess the options and formulate our views.

**Respected Madam Chairperson,**

I apologise once again for my inability to attend the meeting of this August Council in person and thank you for accepting my written submission with due consideration as always.

**Nandri**

**Vanakkam**