

# **GST Council Recommendations on Rates Binding On Centre & States, Supreme Court Judgment Doesn't Alter This Position - Centre To Rajya Sabha**

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The Minister of State for Finance Pankaj Chaudhary has informed Rajya Sabha that the recommendations of the GST council regarding the rates of Goods and Services Tax are binding on the Centre and the States and that the Supreme Court' judgment in Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd does not alter this position. The written reply stated:

"The Constitution has vested upon the GST Council the responsibility to make recommendations of various aspects of GST. The recommendations pertaining to GST laws are implemented through normal legislative process and to that extent the recommendations have a persuasive value. However, the State and Central Acts provide that rates, exemptions and rules etc. would be prescribed only on the recommendations of the GST council and, therefore, the recommendations of the GST Council with respect to subordinate legislations, e.g. those pertaining to rules, notifications and rates are binding on States and Centre."

It clarified that the judgment of the Supreme Court only augments this process. For the past five years, more than a thousand decisions have been taken by the GST Council, only one of them has required voting, and all the remaining choices have been taken by consensus.

It noted that even in this case, the dissenting States had implemented the recommendation of the Council. One of the very important objectives of the GST Council is to maintain a harmonized structure of GST within the country essential for a unified national market. It added that all the decisions in the GST Council are taken after detailed deliberations and, therefore, the recommendations of the GST Council have been implemented by the Centre and States without any change.

In Mohit Minerals case, the Supreme Court held that the GST council recommendations are not binding on the Parliament and the State Legislatures. The Court also held that the Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A (4) are binding on the legislature's power to enact primary legislations.

The Court noted that express provisions have been made when the Parliament intended that the Council Recommendations should be binding as regards the rule-making power of the Governments.

For example, Section 5 of the IGST Act provides that the taxable event, taxable rate, and taxable value shall be notified by the government on the "recommendations of the Council". Likewise, the power of

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the Central Government to exempt goods or services or both from levy of tax shall be exercised on the recommendations of the GST Council under Section 6 of the IGST Act.

Section 22 provides that the Government may exercise its rule making power on the recommendations of the GST Council. The CGST Act also provides for similar provisions in Sections 9, 11 and 164.

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