



Agenda for 35th GST Council Meeting

21 June 2019



File No: 310/35th GSTCM/GSTC/2019
GST Council Secretariat

Room No.275, North Block, New Delhi
Dated: 13th June 2019

Revised Meeting Notice for the 35th Meeting of the GST Council scheduled on 21st June 2019

The undersigned is directed to refer to the subject cited above and to the earlier Meeting Notice dated 12th June 2019 and to say that due to certain exigencies, the date of the Council Meeting is being changed. Accordingly, the 35th Meeting of the GST Council will now be held on 21st June 2019 (Friday) at Hall No 2-3, Vigyan Bhawan, New Delhi. The revised schedule of the meeting is as follows:

- Friday, 21st June 2019: 3:00 PM onwards
2. In addition, an Officer's Meeting will be held on 20th June 2019 at the same venue as per following schedule:
- Thursday, 20th June 2019: 10:00 AM onwards
3. The Agenda Items for the 35th Meeting of the GST Council will be communicated in due course of time.
4. Please convey the invitation to the Hon'ble Members of the GST Council to attend the meeting.

(-Sd-)
(Dr. Ajay Bhushan Pandey)
Secretary to the Govt. of India and ex-officio Secretary to the GST Council
Tel: 011 23092653

Copy to:

1. PS to the Hon'ble Minister of Finance, Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.
2. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.
3. The Chief Secretaries of all the State Governments, Delhi and Puducherry with the request to intimate the Minister in charge of Finance/Taxation or any other Minister nominated by the State Government as a Member of the GST Council about the above said meeting.
4. Chairperson, CBIC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.
5. Chairman, GST Network

Agenda Items for the 35th Meeting of the GST Council on 21st June 2019

1. Guidelines on data sharing with CAG by the Central and the State Tax Administration in GST regime
2. Confirmation of the Minutes of the 34th GST Council Meeting held on 19th March 2019
3. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
4. Decisions of the GST Implementation Committee (GIC) for information of the Council
5. Review of Revenue Position
6. Issues recommended by the Law Committee for the consideration of the GST Council
 - i. Amendments in GST Laws
 - ii. Update on the status of the issues referred to the Law Committee by the GST Council
 - iii. Proposal for e-ticketing for cinema tickets
 - iv. Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons
 - v. Proposed timeline for introduction of New Return system
 - vi. Staggered extension of due date of filing returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C
 - vii. Proposal to extend the due date for filing of declaration in FORM GST ITC-04 for the period July 2017 to June 2019
7. Issues recommended by the Fitment Committee for the consideration of the GST Council
 - i. Recommendations of Group of Ministers on Lottery
 - ii. Changes in GST rate on electric vehicles and related supplies
 - iii. Informing GST Council regarding direction of Hon'ble High Court of Delhi to examine the valuation mechanism prescribed for Solar Power Generating System (SGPS)
 - iv. Review of GST Council recommendation for applying reduced rate of GST on sale and leasing of motor vehicles with effect from 1st July, 2017
8. Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)
9. Introduction of Electronic Invoicing System
10. Issues relating to National Anti-profiteering Authority
 - i. Quarterly Report of the NAA (National Anti-profiteering Authority) for the quarter January to March 2019 for the information of the Council
 - ii. Extension of tenure of National Anti-profiteering Authority
 - iii. Standard Operating Procedure (SOP) for the field formations regarding Anti-profiteering investigations
11. Recommendations of Committee of Officers on use of RFID data for strengthening of E-waybill system under GST
12. Waiver of Interest on delayed receipt of Advance User Charges (AUC) from few States and CBIC
13. Any other agenda item with the permission of the Chairperson
14. Date of the next meeting of the GST Council

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Discussion on Agenda Items

Agenda Item 1: Guidelines on data sharing with CAG by the Central and the State Tax Administration in GST regime

Background

References has been received from the CAG (Comptroller & Auditor General of India) before and after the roll out of GST regarding making available to the CAG the information, records and returns under the GST Act and such other information as required for conduct of Audit under the CAG's (Duties, Powers and Conditions of Services) Act, 1971.

2. Meanwhile, the DG-Systems, CBIC and the States like Bihar, Puducherry, Maharashtra and West Bengal have been receiving request from the CAG to sign a MoU (Memorandum of Understanding) for sharing of GST related data with CAG for the purpose of audit reports on GST in a standard template prepared by the office of CAG i.e. DTUSP (Data Transmission Use and Storage Protocol). The office of CAG also requested some States to arrange for "Creation of role for audit" with a facility to view the entire data/information and to collect audit evidence for the audit team during their visit in the charge offices. Accordingly, the Central Tax Administration and the State Tax Administrations have been seeking clarity on the matter regarding the mechanism/guidelines under which the GST related data could be made available to CAG in a uniform manner across the country.

3. A meeting was held on 13th August 2018, between officers of the CAG and the officers of the CBIC/GSTN/DoR, on the issue of signing MoU for sharing of GST data with CAG for the purpose of audit. In pursuance of the meeting. The then Finance Secretary clarified *vide* his letter dated 30th August 2018 that as per the existing provisions of law, CAG is empowered to seek GST related data for conduct of audit and tax departments are obliged to provide it. Therefore, it was requested to have a system in place where audit teams seek data from tax authorities and they provide the requisite data to CAG either at their own end or after seeking the data from GSTN. In this view, he requested CAG to revisit the MoU proposal *de novo*.

4. The CAG *vide* his letter dated 28th September 2018 addressed to Hon'ble Union Finance Minister clarified that purpose of entering into protocol was to ensure regular flow of data instead of present 'requisition based piecemeal' flow of data/information/records. He further emphasised that the CAG intended to carry out risk assessment on entire universe of transactional data to select specific areas of audit and that regular and structured flow of data and access to pan-India data held by GSTN is a pre-requisite for this.

5. The office of CAG has also desired to make a presentation before the GST Council Meeting on the digital audit of GST, proposed format of GST report and the modalities of laying the report, for information of the Members and solicit their views {letter dated 22 March 2018, addressed to Finance Secretary from Dy CAG and email dated 16th October 2018 from Pr. Director (GST – I), CAG to GST Council Secretariat}.

Previous discussions in the Council

6. The Draft GST Law was discussed in the 5th and the 6th GST Council where one of the discussion points related to **Powers of CAG** {Sl. No 22 relating to Audit (Section 63 to 65) of the

Agenda Item 2 of the 5th GST Council Meeting held on 2-3 December 2016}. The draft proposal contained following: “Power to CAG: GST officer, on request by the office of CAG, shall provide information, records and returns required for conduct of audit under CAG Act”. After discussion (the agenda was discussed in the 6th GST Council Meeting held on 11-12 December 2016), the Council agreed to delete the provision stated above in the GST Law and to inform the CAG that the Council was not in favour of keeping the provision. The excerpts from the Minutes of the 6th GST Council Meeting on this issue are as follows:

“xiii. **Section 65 (Power of CAG to call for information):** The Hon’ble Minister from West Bengal suggested to delete this provision, as there was no such provision empowering Comptroller and Auditor General (CAG) to call for information for audit under the VAT Law of most of the States but they nevertheless carried out audit under VAT laws. The Hon’ble Chairperson observed that if the taxation law empowered CAG in this manner, the fairness of the action of an assessing officer could be affected. He observed that this issue had cropped up in the context of various regulators as to whether CAG was entitled to audit quasi-judicial orders of the regulators. The Hon’ble Deputy Chief Minister of Delhi and Gujarat and the Hon’ble Minister from Uttar Pradesh also suggested to delete this provision. The Principal Secretary, Finance, Odisha observed that a tax audit was different from a CAG audit. The Hon’ble Minister from Bihar observed that CAG had power to audit only revenue of the Governments and not of the tax paid by the taxpayer. The Hon’ble Chairperson observed that the power of the audit should only be in the relevant CAG Act, but as the office of the CAG had also written to the GST Council on this subject, it would be separately discussed with the CAG. The Secretary to the Council stated that the CAG would be informed that the Council was not in favour of keeping this provision. The Council agreed to this suggestion.”

7. The GST Council in its 10th Meeting held on 18th February 2017 discussed the changes in the legal provisions in the Model GST Law as per the suggestions of the GST Council and vetted by the Union Ministry of Law (Agenda Item 3). One of the issues discussed in the Agenda Item 3 at Issue No. 6 related to Power of CAG under the GST Laws. It was stated that the CAG had discussed this issue with the Government of India and had strongly urged to retain this provision and also to add “and such other information as required for conduct of audit”. The proposed formulation in the GST Law was as follows:

“**Section 65.**

The proper officer shall, upon request made in this behalf, make available to the Comptroller and Auditor General of India or an officer authorised by him, information, records and returns furnished under this Act, and such other information as required for conduct of audit as required under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.”

8. After discussion, the Council decided to drop the proposed Section 65 from the GST Law. The excerpts from the Minutes of the 10th GST Council Meeting on this issue is as follows:

“8.5. **Issue No. 6 [Power of Comptroller and Auditor General of India (CAG) – Section 65]:** The Secretary to the Council stated that in the 6th Meeting of the Council (held on 11 December 2016), it was decided to delete Section 65(Power of CAG to call for information for audit) and to inform the CAG that the Council was not in favour of keeping this provision. He stated that subsequently, the Comptroller and Auditor General of India had discussed this issue

with the Hon'ble Chairperson and had explained that while CAG had power under its Act [CAG's (Duties, Powers and Conditions of Services) Act, 1971] to call for information, the officer under the GST Law were bound to give the information to CAG and where such information was not available with the tax authorities, they must have power under the GST Law to call for such information from the taxpayers. He stated that CAG's advice was to take this enabling power under the GST Law in order to enable GST officers to discharge their obligations vis-à-vis the CAG.

8.5.1. The Hon'ble Deputy Chief Minister of Delhi did not support the proposal and stated that by agreeing to this provision, CAG would be given power over GST officers. The Hon'ble Minister from Bihar stated that CAG derived its power from the Constitution and they should use the same instead of seeking additional power under the GST Law. The Hon'ble Deputy Chief Minister from Delhi also observed that CAG could take necessary powers under its own Act. The Secretary explained that CAG already had power over the GST Administration and they were suggesting that the tax department should empower itself to provide information to CAG. The Hon'ble Deputy Chief Minister of Delhi reiterated that CAG should take such powers in its own law. The Hon'ble Chairperson stated that in case of a big tax fraud, CAG might call for documents and the tax authorities should have the power to obtain such documents from the taxpayers. The Hon'ble Minister from Bihar wondered how CAG was doing audit now without such powers under the VAT Acts. He observed that documents were being given to CAG officers without such powers under the VAT Laws. The Hon'ble Minister from West Bengal supported the views of the Hon'ble Deputy Chief Minister of Delhi and the Hon'ble Minister from Bihar. He observed that CAG currently carried out audit without these powers. He stated that this issue had already been decided in the 6th Meeting of the Council (held on 11 December, 2016) and should not be reopened. The Hon'ble Minister from Kerala stated that having such a provision under GST Law could create problems. The Hon'ble Deputy Chief Minister from Gujarat stated that CAG did not go to taxpayers of any state for auditing. The Additional Chief Secretary, Uttar Pradesh stated that this provision did not give power to the GST officers to get documents from the taxpayers. He observed that this was a very open ended and sweeping provision and could potentially lead to truckloads of documents being called for which would be physically impossible to comply with. The Hon'ble Chairperson observed that it appeared that majority of the States were not in favour of this provision and that the same might have to be dropped. He stated that he would convey the views of the Council to CAG. The Council agreed to this suggestion."

9. The GST Council in its 11th Meeting, while discussing the Agenda Item 2 of the Meeting, approved the draft CGST Law with few changes. It may be noted that the Council after elaborate discussion, decided to drop the provision relating to Power of CAG in the GST Law.

The Proposed Guidelines for sharing of data with CAG

10. After the roll out of GST, as mentioned in the Background Section of this Agenda Note, office of the CAG has been seeking data from the tax administrations of the Central and the State Governments whereas States and CBIC have been requesting for evolving a uniform guideline for data sharing with the office of CAG with the approval of the GST Council. In order to evolve such a guideline, a meeting chaired by the Special Secretary, GST Council Secretariat was held on 03rd May 2019 which was attended by officers of GST Council Secretariat, CBIC, DoR, GSTN and States. The agenda for the meeting was as follows:

- i. Practice/template/protocol for sharing of Data by the Centre/States with CAG/State CAG that existed prior to GST;
 - ii. Discussion on methodology and modalities proposed by CAG for sharing of data by Centre/States with the CAG/State CAG under GST;
 - iii. To evolve guidelines/protocol/mechanism for sharing of GST Data with CAG.
11. Based on the discussion among the officers, the following broad guidelines were recommended for consideration of the Council:
 - i. GST now being a uniform tax being administered by the Central and State Tax Administrations, it is desirable to have uniform guidelines for data sharing with the office of CAG, particularly so when States have different levels of information with them, depending upon the fact whether they are Model 1 or Model 2 States. Further, data sharing guidelines need to be worked out keeping in view the fact that GST is a major tax reform and it is still in the stage of stabilisation.
 - ii. Audit being formal examination of an organization's or individual's accounts or financial situation, the role of audit kicks in only after finalisation of the records on annual basis. Thus, CAG access to data for audit should be limited to past period (at least one year old), and preferably of finalised records and data, i.e. after completion of assessment, revision, review, refund, etc. by the jurisdictional tax officer. No live/current data need to be shared with CAG officials.
 - iii. Further, data access to Audit officers should be limited to access to the System in a manner similar to that available to the GST officers of a particular jurisdiction like Range, Division, Circle, etc. who have the facility to view data and to take out reports relating to such data. Keeping in mind this principle, complete data in the form of data dump need not be provided to officers of CAG. Providing data dump also raises questions of data confidentiality and data security which are sensitive matters. The same practice is in vogue for audit of Customs and Income Tax receipts which are also fully automated and Income Tax has also launched a system of faceless assessment.
 - iv. Based on their risk parameters and their own internal guidelines, CAG officers may ask for files and other details as per their requirements while visiting a GST office of Central and State Government subject to the conditions mentioned at Sl. No. 11(i), 11(ii) and 11(iii) above.
 - v. In case of thematic audit, on receipt of request from CAG officers, CBIC and Model 1 States (States maintaining their own GST backend systems like registration approval, assessment, audit, appeal, adjudication, etc.) shall share the data of the taxpayers administered by them. In case of Model 2 States, (States for which GSTN maintains the GST backend systems), GSTN, with the approval of the concerned State Tax Administration, shall run the query and handover results to the concerned State Tax Administration which, after any required action, such as reconciliation with its backend data and comments if any, will make it available to the officers of CAG.
12. The proposed broad Guidelines on data sharing with CAG by the Central and the State Tax Administration in GST regime is placed before the Council for consideration.

Agenda Item 2: Confirmation of the Minutes of the 34th GST Council Meeting held on 19th March 2019

Draft Minutes of 34th GST Council Meeting held on 19th March, 2019

The 34th Meeting of the GST Council (hereinafter referred to as ‘the Council’) was held on 19th March, 2019 through video conference under the Chairpersonship of the Hon’ble Union Finance Minister, Shri Arun Jaitley (hereinafter referred to as the Chairperson). A list of the Hon’ble Members of the Council who attended the meeting is at **Annexure 1**. A list of officers of the Centre, the States, the GST Council and the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure 2**.

2. The following agenda items were listed for discussion in the 34th Meeting of the Council:
 1. Confirmation of the Minutes of 33rd GST Council Meeting held on 20th and 24th February 2019
 2. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
 3. Decisions of the GST Implementation Committee (GIC) for information of the Council
 4. Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council
 5. Recommendations of the Joint Committee (Fitment Committee and Law Committee) on Real Estate Sector
 6. Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal
 7. Any other agenda item with the permission of the Chairperson
 - (i): Approval of the draft Removal of Difficulty Order for giving effect to the decisions of 32nd GST Council Meeting for MSME sector (including small traders)
 8. Date of the next meeting of the GST Council

Preliminary Discussion:

3. The Hon’ble Chairperson welcomed the Members for the 34th Meeting of the Council. He stated that before taking up the Agenda items, there were some important formal items, which he wished to take up. He placed on record the appreciation of the services of late Manohar Parrikar to the GST Council. He was the Chief Minister of Goa and former Defence Minister of India and also held the portfolio of Finance Minister of Goa and attended 13th and 22nd Meetings of the Council. He stated that it was unfortunate that he passed away on 17th March, 2019 and, on behalf of the Council, he placed on record his deepest condolences towards the family and expressed that the departed soul may rest in peace.

3.1. The Hon’ble Chairperson stated that he was informed that due to redistribution of work in the State of Karnataka, Shri Krishna Byre Gowda, the erstwhile Member of the Council, had been replaced by Shri Bandeppa Kashempur, Minister for Co-operation, Karnataka. He observed that Shri Byre Gowda attended most of the meetings of the Council and made very valuable contributions and always displayed a very positive attitude because of which he earned high respect of his peers and colleagues. On behalf of the Council, the Hon’ble Chairperson placed on record the deepest appreciation for the services rendered by Shri Krishna Byre Gowda to the Council. He added that since the new Council

Member from Karnataka could not participate in this meeting, he would be formally welcomed when he came to attend the Council meetings.

3.2. The Hon'ble Chairperson further stated that it was a matter of pride and happiness that on 15th March, 2019, the Hindu BusinessLine gave to the GST Council an award of 'Changemaker of the Year'. He accepted the award on behalf of the Council from the former Prime Minister of India, Dr. Manmohan Singh. The Hon'ble Chairperson displayed the Trophy and the Certificate received and informed that he had advised the Council Secretariat to make required number of copies of the Certificate and to send copies to each State for the Hon'ble Council Member of the State and other relevant functionaries of the State dealing with GST matters. With these remarks, he invited the Secretary to take up the formal Agenda items.

Agenda Item 1: Confirmation of the Minutes of 33rd GST Council Meeting held on 20th and 24th February 2019

4. The Secretary introduced this Agenda item and stated that the Minutes of the 33rd GST Council Meeting (hereinafter referred to as 'the Minutes') were circulated in advance and two comments had been received till now.

4.1. He informed that a communication had been received from the State of Maharashtra to slightly change the version of the Hon'ble Minister from Maharashtra recorded in paragraph 25.23 of the Minutes and for the sentence (last four lines) starting with "He suggested ..." and ending with the words "...by including the cost of land", it was requested to delete the following portion "rather than by including the cost of land" as the Hon'ble Minister did not refer anything about the cost of land. The proposed change, in strike through mode, would be as follows: 'He suggested that these two models should be considered by the Council for being taxed only on the construction cost ~~rather than by including the cost of land.~~' The Council agreed to the suggestion.

4.2. The Secretary further informed that a communication had been received from the State of Rajasthan to make a change in the version recorded in paragraph 25.24 of the Minutes of the Hon'ble Minister from Rajasthan, by substituting the expression "He also suggested that criterion for affordable housing should be housing with carpet area of 100 sqm or 120 sqm and houses with a carpet area lower than this should be exempt from tax." with the following: 'He also suggested that it should be left to the State to decide what area may be allowed for affordable and non-affordable housing projects.' The Council agreed to this suggestion.

4.3. The Hon'ble Minister from West Bengal stated that during the last Meeting of the Council on 24th February, 2019, at the fag end of the discussion on Agenda item relating to real estate sector, he had suggested to consider making the new proposed taxation rates for real estate sector optional for the on-going projects. He requested that his view should be suitably incorporated in the Minutes. The Council agreed to this suggestion.

5. For **Agenda item 1**, the Council decided to adopt the Minutes of the 33rd Meeting of the GST Council with the following change:

5.1. In paragraph 25.23 of the Minutes, to modify the version of Hon'ble Minister from Maharashtra to read as follows: 'He suggested that these two models should be considered by the Council for being taxed only on the construction cost'.

5.2. In paragraph 25.24 of the Minutes, to modify the version of the Hon'ble Minister from Rajasthan by replacing the sentence "He also suggested that criterion for affordable housing should be housing with carpet area of 100 sqm or 120 sqm and houses with a carpet area lower than this should be exempt from tax." with the following: 'He also suggested that it should be left to the State to decide what area may be allowed for affordable and non-affordable housing projects.'

5.3. To suitably incorporate in the Minutes of the Council Meeting on 24th February, 2019, in the Agenda item relating to real estate sector, that the Hon'ble Minister from West Bengal suggested to consider making the new proposed taxation rates for real estate sector optional for the on-going projects.

Agenda Item 2: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government

6. The Secretary stated that Notifications, Circulars and Orders issued after 20th February, 2019 (i.e. the date of 33rd GST Council Meeting) and till 12th March, 2019 were required to be ratified by the Council. He invited Shri Upender Gupta, Principal Commissioner (GST Policy Wing), CBIC, to apprise the Council about the details. The Principal Commissioner (GST Policy Wing), CBIC, made a presentation on this issue, which is attached as **Annexure 3** of the Minutes. The Secretary proposed that the Council may ratify the Notifications, Circulars and Orders. The Council agreed to the same.

7. For **Agenda item 2**, the Council approved the deemed ratification of the following Notifications, Circulars and Orders issued by the Central Government after 20th February, 2019 (the date of 33rd Council Meeting) and till 12th March, 2019 which are available on the website, www.cbic.gov.in.

Act/Rules	Type	Notification/Circular/Order Nos.
CGST Act/CGST Rules	Central Tax	9 to 14 of 2019
	Central Tax (Rate)	2 of 2019
UTGST Act	Union territory tax	2 of 2019
	Union territory tax (Rate)	2 of 2019
Circulars	Under the CGST Act	92 to 93 of 2019
ROD Orders	Under the CGST Act	3 of 2019
	Under the UTGST Act	2 of 2019

7.1. The Notifications, Circulars and Orders issued by the States which are *pari materia* with above Notifications, Circulars and Orders were also deemed to have been ratified.

Agenda Item 3: Decisions of the GST Implementation Committee (GIC) for information of the GST Council

8. The Secretary invited the Principal Commissioner (GST Policy Wing), CBIC, to brief the Council on this Agenda item. The Principal Commissioner (GST Policy Wing), CBIC, made a presentation, which is attached as **Annexure 3** to the Minutes. He stated that after the 33rd Council Meeting, the GIC met once and took certain decisions relating to amendments to CGST Rules, issue of circulars clarifying certain issues and the deferment of e-Wallet scheme and extending exemption from IGST and Cess on the imports made under Advance Authorisation/EPCG/EOU schemes up to 31st March, 2020. He added that one decision of GIC was taken by circulation to settle an additional IGST amount of Rs.20,000 crore on *ad hoc* basis. He stated that the decisions of the GIC were placed before the Council for information.

9. For **Agenda item 3**, the Council took note of the decisions taken by the GIC between 24th February 2019 (date of conclusion of 33rd GST Council meeting) and 12th March, 2019.

Agenda Item 4: Decisions/recommendations of the IT Grievance Redressal Committee for information of the Council

10. The Secretary invited the Principal Commissioner (GST Policy Wing), CBIC, to brief the Council on this Agenda item. The Principal Commissioner (GST Policy Wing), CBIC, made a presentation relating to the decisions/recommendations of the 5th Meeting of the IT Grievance Redressal Committee (ITGRC) held on 5th March, 2019 (attached as **Annexure 3** to the Minutes). He informed that during this meeting, 224 TRAN-1 cases were deliberated and ITGRC decided to allow 80 cases. The Secretary suggested that the Council may take note of the decisions of ITGRC. The Council agreed to the same.

11. For **Agenda item 4**, the Council took note of the decisions/recommendations of the 5th Meeting of the IT Grievance Redressal Committee.

Agenda Item 5: Recommendations of the Joint Committee (Fitment Committee and Law Committee) on Real Estate Sector

12. Introducing this agenda note, the Secretary stated that a joint meeting of the Fitment Committee and the Law Committee took place on 6th March, 2019 to discuss the operational issues. The Joint Committee consisted of representatives of 9 States in the Law Committee and 11 States in the Fitment Committee. Decisions of the joint meeting were circulated to Members of both the Committees on 7th March, 2019. The draft notifications, rules and documents were also prepared as per the decisions of the joint meeting of the Committees and were circulated on 11th March, 2019 requesting comments/suggestions by 13th March, 2019. Comments received from members were examined jointly by both the co-convenors of the Fitment Committee and the amendments proposed in the draft of the Notifications, Rules and the Circulars were finalized. Thereafter, final draft notifications, rules and documents were forwarded to GST Council Secretariat on 15th March, 2019.

12.1. He further stated that that since the Model Code of Conduct due to elections was in force, a reference was made to the Election Commission on 12th March, 2019 for their permission to implement the decisions of the 33rd Council Meeting regarding the GST rates on Real Estate Sector (1% and 5%) and the issue of Removal of Difficulty Order for Composition Scheme for suppliers of service (6% tax rate). Approval from Election Commission was received on 14th March, 2019 to implement the same.

However, the Election Commission had imposed certain conditions that the decisions of today's meeting approving the procedure should be restricted to the substantive decisions already taken and no new decision could be taken. Further, it was also mentioned by them that no briefing to public or press on today's meeting should be done by any political functionary. The Hon'ble Chairperson thereafter stated that the Secretary may do the briefing.

12.2. The Secretary then requested Shri Manish Sinha, Joint Secretary, TRU II to apprise the Council on the main points relating to Draft Rules, Circulars and Notifications placed before the Council. JS TRU II made a presentation on this issue, which is attached as **Annexure 4** of the Minutes. The salient points of the presentation are summarized below: -

12.3. While making presentation, JS TRU II stated that as the Secretary had already informed the Council, the decisions of the Council had to be confined to the operationalization of the decisions of the 33rd GST Council Meeting which were as follows:

- a. GST should be levied at effective GST rate of 5% without Input Tax Credit (ITC) on residential properties other than affordable segment;
- b. GST should be levied at effective GST rate of 1% without ITC on Affordable Housing properties.
- c. The definition of 'affordable housing' was also decided to cover a residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities with value upto Rs. 45 lakh (for both metropolitan and non-metropolitan cities).
- d. Metropolitan Cities were decided to include Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).
- e. Tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for under construction residential property on which GST was payable.
- f. The new rate to become applicable from 1st of April, 2019.
- g. Details of the scheme would be worked out by an officers' committee and shall be approved by the GST Council in a meeting to be called specifically for this purpose.

12.4. JS TRU II thereafter stated that the Meeting of the joint committee, that took place on 6th March, 2019, used the credit flow data and various permutation of headline tax rates to arrive at the effective rates of 1% and 5% for the Real Estate Sector. The overview of the Drafts circulated from Document No 1 to 7 were explained in the presentation. The first document i.e. **Document 1** was not only to notify the rates for affordable residential apartments and other than affordable residential apartments by amending the Notification No. 11/2017- CT (R), but it also laid down the method of accounting for achieving the threshold limit of 80% purchases from the Registered Suppliers. It also sought to create a new rate of 18% on supply of services other than TDR, FSI (including additional FSI), Long Term Lease by an unregistered person to a promoter with conditions as mentioned therein. **Document 1A** contained illustrations to transitional provisions while **Document 2** sought to exempt supply of TDR, FSI (including additional FSI), Long Term Lease of land (against upfront payment in the form of premium, salami, development charges etc.). Similarly, **Document 3** was for notifying tax liability on promoter under sub-Section (3) of Section 9 (RCM) on receipt of services from unregistered person, namely Transfer of Development Rights or FSI (including additional FSI) and Long Term Lease of Land (against upfront payment in the form of premium etc.). **Document 4** was to notify shifting of the date on which liability to pay tax on TDR, FSI and Long-Term Lease would arise to the date of issuance of Completion Certificate for construction of Real Estate Project (REP) / Residential Real Estate Project

(RREP) under Section 148 of CGST Act. **Document 5** was for invoking Reverse Charge Mechanism (RCM) under Section (4) of Section 9 of CGST Act, to make the promoter liable to pay tax on shortfall from minimum purchase of specified goods and services from registered suppliers under RCM. **Document 6** was to notify a new rate of 18% on supply of any goods other than Capital Goods and Cement falling under chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975), by an unregistered person to a promoter by amending notification No. 1/2017- CTR, while **Document 7** was amendment to Rule 42 and 43 of CGST Rules for Real Estate Sector.

12.5. He thereafter explained about the applicable rate of tax in various situations as per the decision of the Council translated into the draft legislation and various conditionalities attached to it. He further explained that the definition of apartment, promoter, Real Estate Project (REP), carpet area etc. had been adopted from Real Estate (Regulation and Development) Act, 2016. Further, Metropolitan cities for the purpose of this scheme were Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) and he requested States to send inputs on Geographical limits to be prescribed by Centre and States for the Metropolitan Areas, in case any modification was desired.

12.6. He also explained the details regarding the TDR/ JDA, FSI, Long Term Lease etc. as occurring in the draft proposal to achieve tax parity between under construction and ready to move property in as much as supply of TDR, FSI, Long Term Lease (premium) of land by a landowner to a developer was proposed to be exempted with certain conditions like,-

- i. Constructed apartments that were to be sold before issuance of completion certificate; tax was to be paid on them (either 1% or 5%, as the case might be).
- ii. Exemption of TDR, FSI, Long Term Lease (premium) shall be withdrawn in case the flats were sold after issue of completion certificate.
- iii. Such withdrawal of exemption should be limited to 1% of value in case of Affordable Houses and 5% of value in case of other than Affordable Houses.

This would achieve a fair degree of taxation parity between under construction and ready to move property.

12.7. He further explained that the liability to pay tax on TDR, FSI, Long Term Lease (Premium) should be shifted from land owner to builder under Reverse Charge Mechanism (RCM) to address the problem of cash flow. Further, the builder shall be liable to pay tax on TDR, FSI and long-term lease (premium) to the extent these rights were used in construction of flats that were sold after issuance of Completion Certificate. The date on which builder shall be liable to pay tax under RCM in respect of flats sold after issuance of completion certificate was also being shifted to the date of issue of completion certificate.

12.8. The transitional issues were also explained to the Council in the presentation for computing ITC to be allowed or lapsed. he explained about the proposed amendments to GST Rules *vis-à-vis* (a) finalization of ITC at the end of the project as well as financial year wise and (b) apportionment of ITC based on area of commercial and residential apartments in the project.

12.9. He, thereafter, placed the drafts of Notifications, Rules and Orders as explained above for approval of the Council so that once approved, the same could be issued after vetting by the Ministry

of Law and Justice, Government of India, to be effective from 01st April, 2019. He further added that inputs / comments / suggestions received from States in relation to the draft notifications etc. shall be examined in consultation with the Ministry of Law and Justice, Government of India at the time of vetting. He also suggested that proposals received from the States of Maharashtra (on value cap, JDA/ SDA etc.) and Punjab (exempting lease of land for setting up of industrial parks), might be referred to GoM on Real Estate for examination or to the Fitment Committee in view of the operation of the Model Code of Conduct as these issues were not connected to the decision of the 33rd GST Council Meeting.

12.10. He further explained that as far as the proposition from the State of West Bengal was concerned, the case study had not been presented in the slide because it was in extreme situations where Hon'ble Minister from West Bengal had an apprehension that the price of Affordable Housing might go up. The Hon'ble Minister from West Bengal immediately corrected him and stated that his letter should not be mis-represented as he had never mentioned that it was an extreme case. In fact, he had mentioned that the calculation of price rise was based on a survey done by the officials of West Bengal Government.

12.11. The Hon'ble Chairperson invited the views of the Members of the Council on the draft Notifications, amendments to Rules, clarifications etc. The Hon'ble Minister from Maharashtra stated that he had proposed three issues for consideration of the Council in the last meeting also and which required further discussion. These were:

- a. Firstly, Mumbai was such a city where people converged from all over the country in search of jobs and hence slums such Dharavi, the biggest slum of Asia had come up which was also a concern of the country. Further, there were many buildings which were as old as 150 - 200 years and during rainy season, some of these buildings collapsed leading to loss of life and property. Maharashtra Government had decided for rehabilitation and redevelopment of these to a great extent through Slum Rehabilitation Authority (SRA) or redevelopment by developers which did not yield any significant return to the developer as he had to hand over houses under SRA to the original residents without any charge while redevelopment was entirely his responsibility. So, the rate of tax on this type of construction should be 1% and not 5%.
- b. Secondly, Mumbai was the most densely populated Metropolitan City having 21,205 persons per sq.km. When one talked of smart city, it implied that the work place should be near to the residence otherwise most of the time was lost in travelling. In view of the same, the Maharashtra Government had decided to provide affordable houses near the work places in Metropolitan area. However, it was difficult to stick to the guidelines of area upto 60 sqm and value upto Rs. 45 lakh, in view of Mumbai being the costliest city in India and ranking 13th in the world. Hence, the threshold of Rs. 45 lakh for Affordable Houses may be raised to Rs. 75 lakh in case of Mumbai MMR.
- c. Thirdly, Real Estate Sector in Mumbai was facing crisis. Only 10% to 20% flats were being sold during construction and builders were sitting with vacant constructed flats in their hands. If benefit of ITC was disallowed to the sector, it would go into further crisis affecting also the banks along with the builder/developer. Thus, in the transition period, should allow GST rate of 12% and 8%, as applicable, along with the ITC. Although revenue was a concern for the Council, but to move the country ahead, Council should also think that instead of providing subsidy under affordable housing projects, environment should be created where people were enabled to obtain good quality housing under these projects at affordable rates.

12.12. The Hon'ble Deputy Chief Minister of Gujarat congratulated the Chairperson and all the Members of the Council for receiving the award from the ex-Prime Minister of India and expressed hope that the Council would continue to work as it had been doing. He supported the views expressed

by the Hon'ble Minister from Maharashtra regarding raising the Rs. 45 lakh threshold limit to Rs. 75 lakh for affordable housing for metro cities as well as the proposal to tax slum redevelopment at 1%. He also stated that ongoing projects with partially sold flats where deposits had already been taken at old tax rates should be allowed an option to continue at the old tax rate.

12.13. The Hon'ble Chief Minister of Puducherry thanked the Hon'ble Chairperson and the Members of the Council for conducting the work of the Council in a dedicated manner. He also stated that as was observed by the Hon'ble Minister from Maharashtra in case of Mumbai, it was necessary to reclassify the cities as well as to modify the plinth area definition due to conditions varying from city to city. Keeping all areas at par among States would not give justice to contractors as well as buyers. He also stated that criteria needed to be worked out so as to differentiate between flats already constructed and sold out and those remaining unsold by taking suggestions from the Ministers in the Council since Real Estate Sector was in doldrums. Thus, before the issue of notification, further discussion was required on the issues pointed out by him.

12.14. The Hon'ble Minister from Rajasthan stated that during the Council Meeting held on 24th February 2019, most of the States were of the view that value cap should be left to the States and now the views in the meeting expressed by Ministers from the States of Maharashtra, Gujarat and Puducherry were again advocating that view. He stated that the Affordable Housing value cap in the non-metro areas should be Rs. 30 lakh and not Rs. 45 lakh as was being suggested. Even RBI lending guidelines for interest subsidy scheme for Affordable Houses confirmed this. Hence, the Council should revisit the issue and leave the decision to the States; otherwise the States would lose revenue heavily.

12.15. The Hon'ble Minister from Punjab congratulated the Law Committee and the Fitment Committee on the efforts that they had made to draft the notifications. He stated that as Council Members, either we swim together or sink and expressed his apprehension that Council was about to initiate a scheme which did not seem to be workable and perhaps which an aberration was in GST with no precedence in the world. Real Estate was a complex, evasion prone sector and the proposal would have a great impact on revenue as was evident from CPWD and NBCC figures where net of ITC, tax was 5% to 7% but actual payment in case of others in cash was not even 1/3rd of it. He observed that the difference in two was because of large amount of ITC reversal in respect of completed properties which had not been done yet. The 40-page notification before the Council with a bundle of exceptions carved out by invoking extraordinary power under various sections, like Section 9,15,16,148 would result in maintaining a new set of accounts project wise for both i.e. future as well as ongoing projects instead of registration wise maintenance of books of accounts as prevailing now. The credit was claimed and utilized through returns; and returns would have to be reopened in view of the proposed retrospective legislation. The sum and substance of invoking all these powers, and all these exceptions would result in a draconian law with no achievement except optics. Further, there was no clarity about how certain provisions would be enforced leaving them to be discussed in the officers committee meeting, since all Members would get busy in elections. In his opinion, there was even a possibility of double taxation in the proposed law. Thus, he suggested that the scheme might be kept in abeyance and recommended extensive trade consultation. Further, since some portion would be in ITC chain while the other portion would be outside the chain, there would be high chance of diversion of supplies and loading value of one portion to the other, resulting in revenue evasion. Hence, he concluded that the State of Punjab maintained its initial suggestion that this sector should not be out of the ITC chain. However, if it was inevitable to adopt the proposal, then both the residential and commercial real estate should be brought under the proposed tax scheme where higher tax rate based on data might be

prescribed for commercial construction without ITC. Thus, segregating ITC between portions of the project should be avoided. He added that the case for long term leasing needed discussion, which had been forwarded to the GoM on Real Estate.

12.16. The Hon'ble Minister from Goa congratulated the Chairperson and all the Council Members for the award. He praised the functioning of the Council under the present Chairperson, who performed a fine democratic balancing act given the fact that the Members at times advocated different views, but ultimately settled into decisions reflecting the real federal structure of the country. Hence, GST had been a resounding success and was being appreciated all over the world. Real Estate Sector was a complicated and dynamic sector. In the GoM, various issues were discussed that concerned the Council and now again on the eve of election, Council was revisiting various issues on which the decisions had already been taken. The Council had already decided the tax rates of 1% for affordable and 5% without ITC for non-affordable housing with full awareness that this might have far reaching consequences. Further, both black and white money were used extensively in this sector and the emphasis should be to generate maximum revenue without affecting the sector adversely as this sector was one of the biggest generators of employment and was in real crisis. The main reason for crisis was the perception about high rate of tax of 12% leading to many builders having stopped building while buyers had stopped purchasing. Now, after rate reduction, the builders were of the view that at least their concerns had been heard and the sector might start moving. He was of the view that it was a work in progress and the issues such as commercial construction, exclusion of land value etc. could be considered appropriately, as and when required. However, as of now, Council had to decide the issues within the guidelines of the Election Commission *vis-à-vis* the 33rd Council Meeting decisions. The GoM may continue its work on the fresh proposals and come up with its recommendations which might be considered after the election.

12.17. The Hon'ble Minister from West Bengal raised a question whether the Council could digress under the Model Code of Conduct from the decisions already taken in the 33rd GST Council Meeting i.e., raising Rs. 45 lakh threshold for Affordable Housing in view of the various proposals placed before the Council by the Hon'ble Ministers from Maharashtra and supported by Gujarat. He thereafter drew attention to page no. 134 to 138 of the agenda note where various complicated formulae had been prescribed for dealing with ITC reversal of the ongoing projects which had complicated the feedback loop in it. Thus, with all these formulae, a massive complication would be thrust on under construction projects. Unlike Mumbai, in West Bengal, 93% of the project registrations had flats which were below Rs. 45 lakh. Thus, he proposed that instead of a complicated formula for ITC reversal, an option be given to developer for ongoing projects to continue under the old tax rates with ITC or to go for the new tax rates with the suggested reversal formula. He also mentioned that a survey had been done by the officers of West Bengal which indicated that even Affordable Housing would undergo a price escalation under the proposed scheme. Further, every increased complication would lead to rent seeking behaviour due to more interpretation capacity of the system, negotiation and more so it would be prone to generation of black money. Thus, he suggested that from 1st April 2019, Council should make new rates of 1% and 5% without ITC effective on all new projects, while provide an option to the ongoing projects as on 31st March 2019 to either continue with the old rates of 8% and 12% with ITC or to adopt the new tax rates (provided it was allowed as per the Model Code of Conduct). Otherwise, it would lead to price escalation and huge complication.

12.18. The Hon'ble Chairperson rephrased the submissions of the Hon'ble Minister from West Bengal that he was suggesting to provide the option to the builder in case of ongoing projects in place of pro-

rata calculations suggested in the Agenda. The Hon'ble Minister from West Bengal confirmed and stated that there would be no complication then and a business man would have no interpretation issues in maintaining his books of accounts. He further stated that as Punjab had been advocating, he also agreed that long term lease and Transfer of Development Rights for Residential Real Estate Projects should be completely exempt similar to the exemption given by the Council to long term leases for Industrial plots.

12.19. The Hon'ble Deputy Chief Minister of Bihar stated that since the Model Code of Conduct was in operation, the Council had to discuss within the framework of the decisions already taken by the Council. He had also discussed the matter with various builders and stakeholders as to whether they would like to join the new proposed scheme of taxation or continue with the old tax rates with ITC. Feedback received reflected that for new projects, 1% and 5% without ITC for Affordable and non-Affordable Houses respectively seemed acceptable and Bihar agreed with Maharashtra, Gujarat, West Bengal and other States in this regard. However, for ongoing projects, reversal would be an issue creating a liquidity problem due to huge reversals that might be required as part of the proposed scheme. Thus, Council might define the term 'ongoing' with reference to a project (whether 80% complete or just started etc.) and provide the option to address the issue. Further, he drew attention on page no.135 of the agenda note wherein as per the explanation to Section 80, the Commissioner had been given power to fix the monthly installment for payment of the ITC reversal amount. In his opinion, the Commissioner should not be given any discretionary power and it should be inbuilt in the mechanism. He also suggested that since the annual returns would be filed in September 2019, any difficulties arising during the implementation of the notification might further be addressed to modify the Rules and Notifications further, after the election was over. He agreed to all other proposals in the agenda items except that the Council should consider the issue of ongoing projects.

12.20. The Hon'ble Chairperson summarized the discussion and stated that the 34th GST Council Meeting was limited to giving effect to the decisions of the last Council meeting, and Council could not take any new decision. However, Council could meet to give effect to the policy decision with respect to whatever was decided earlier so that notifications, circulars, rules, regulation etc. could be issued. He further observed that the Hon'ble Ministers from various States had expressed their views on various subjects e.g. Punjab on long term lease, Rajasthan felt that the value limit for affordable housing be left to the States, while Maharashtra felt that Rs. 45 lakh was inadequate threshold for determining Affordable Housing in Mumbai. Hence, though there were limitations of elections, he had an open mind and suggested that the Members could decide that all these new issues which were raised such as those relating to re-development, SRA, long term lease rights, raising valuation limits etc. should be referred to the GoM for further deliberation. However, the specific issue that had been raised by the Hon'ble Minister from West Bengal regarding giving option to the builders for opting to pay tax at old rates (i.e. 12% & 8% with ITC) for all ongoing projects started up to 31st March 2019 instead of adopting the complicated formula based pro rata ITC reversal as suggested in the agenda, could be taken up for consideration. However, for all new projects, the new tax rate of 1% and 5% without ITC should be applicable. He further stated that the Hon'ble Minister from West Bengal was of the view that even for Affordable Housing, there would be a price escalation while the Central Government officers felt that the rates fixed were revenue neutral. It seemed from the discussions that Bihar also supported the views of the Hon'ble Minister from West Bengal to give an option to the builders to pay tax at the old rate for the ongoing projects. Hence, he proposed that GoM could consider and recommend on the new issues raised in the meeting, which the Council Secretariat would keep track of and Council meeting could be

held immediately after elections to decide the pending issues. Thus, in the meeting, the Council might decide on the specific issue of option on pro-rata ITC reversal for ongoing projects as raised by the Hon'ble Minister from West Bengal. Thereafter he invited the members to provide their views on the issue of option for ongoing projects, so that it could be settled.

12.21. The Hon'ble Deputy Chief Minister of Delhi sought clarification as to whether the issue of option for the ongoing projects was being referred to GoM or not, to which, the Hon'ble Chairperson clarified that it was not being referred to the GoM and the Council had to take a decision on this issue. He further clarified that it was covered within the clearance of the Election Commission for the meeting since it was related to the decision on transition. The Hon'ble Minister from Punjab stated that he preferred that there should not be any option for all the ongoing projects as on 31.03.2019 to avoid complication, and from 1.04.2019, all projects should be covered in the new scheme. He stated that he was agreeing with the proposition of West Bengal only with a variation that there should not be any option for ongoing projects and after 01.04.2019, all projects should be covered by the new tax rate. The Hon'ble Chairperson asked the Hon'ble Minister from West Bengal to clarify his proposal once again. The Hon'ble Minister from West Bengal stated that, all ongoing projects should be given an option to continue with old rates of 8% and 12% with ITC till 31.03.19 or to adopt the complicated formula for ITC reversal as suggested under the new scheme of taxation @ 1% and 5% without ITC. The Hon'ble Chairperson asked Members to avoid cocktail of both the proposals, as it would lead to assessment problems. Shri V.K. Garg, Advisor (Financial Resources) to Hon'ble Chief Minister of Punjab raised a question as to when a builder sought to give option whether it was option for a project / an entity / registration; since as an entity he might have 50 projects while in GST law, the concept was only of registration. The Hon'ble Chairperson intervened and clarified that option to be given was for a building that had started. The Secretary stated that the proposal made by Punjab would lead to accounting problems. Further, in taxation it was a settled position that persons kept accounts for the transition period to avoid confusion / complexities later. Advisor, Punjab further suggested that it would have to be prescribed that new projects started on or after 01.04.19 would have to obtain a fresh registration and accounts would have to be kept separate.

12.22. The States of West Bengal, Bihar, Delhi, Odisha, Rajasthan, Uttar Pradesh, Tamil Nadu, Gujarat, Goa, Jammu & Kashmir, Andhra Pradesh, Assam, Himachal Pradesh, Haryana, Jharkhand, and Karnataka expressed their view in favor of providing an option for all ongoing projects as on 31.03.2019.

12.23. The Hon'ble Minister from Haryana mentioned regarding definition of a project, or the entity or the colony; that there might be some confusion persisting about the 'ongoing project' even in the Town Planning Department of Government of Haryana. He further added that ongoing project sometimes might be defined to include the entire colony, sometimes they might try to include the entire license of the developer and at times it might be limited to a building. Hence, some standardization exercise was required for definitions including the definition of an ongoing project. The Hon'ble Chairperson suggested that the definition should mean a building construction which had commenced prior to 31st March, 2019. However, he added that the officers would clearly draft the definition so that there was no misuse. The Hon'ble Minister from West Bengal stated that the existing draft notification already contained the definition of REP (Real Estate Project) which was already before the Council. However, he suggested that the final definition should be circulated to all the States so that before it was notified, all the States could give their views on the same. The Secretary stated that the definition of the 'Ongoing Project' in the notification would be to include the *building which had commenced*

prior to 31st March, 2019 and would have the option whether to go for a suggested formula as drafted or continue with the old formula. The Hon'ble Chairperson concluded that the GST Council Secretariat might consult with all the States before finalizing the definition, so that, there was no misuse of the transition. Thus, before finalization of the definition, the Secretariat would invite views of Punjab, West Bengal and also Haryana. He further observed that, consensus seemed to be in the favor of the proposition of the Hon'ble Minister from West Bengal.

12.24. Dr. T.V. Somanathan, ACS and Commissioner, State Taxes, Tamil Nadu suggested that a onetime opportunity be given to each dealer so that he could make his own calculations as to which option in aggregate was beneficial to him and then decide about the option to be exercised. The option to be exercised would be whether to come in the scheme or not to come in this scheme; which should be a one-time exercise.

12.25. The Hon'ble Chairperson agreed that it was a good suggestion and stated that a date should be fixed for it in the notification in addition to the clarity in the definitions. He thereafter concluded the discussion that it seemed that the suggestion of Dr. Mitra seemed to have found favor with the members of the Council to which the Hon'ble Minister from West Bengal replied that it was a collective idea which had only been articulated by him. The Hon'ble Deputy Chief Minister of Bihar expressed that instead of giving extraordinary power to the Commissioner for reversal of ITC and payment of tax in installments, the same should be inbuilt in the mechanism. The Hon'ble Chairperson in response stated that an authority had to supervise the reversals in installment; otherwise the developers might misuse the facility. JS TRU II was requested to clarify the provision, who stated that, since the Real Estate Sector was not in a good health, the recovery of payments was proposed to be done in installments (12 installment, 18 installment and likewise). As per law, now also the power to allow deposit of tax dues in installment rested with the Commissioner; and hence no new provision had been suggested. Section 80 has already given power to the Commissioner under CGST Act and the same section has been reproduced in the agenda item. The Secretary thereafter read out the relevant portion of Section 80, *"On an application filed by a taxable person, the Commissioner, may for reasons to be recorded in writing, extend the time of payment or allow payment in installment"*.

13. For **Agenda item 5**, after discussing the operational details for implementation of the recommendations made by the Council in its 33rd Meeting for lower effective GST rate on construction of houses as well as the modalities of the transition, the Council approved the following: -

13.1. **Option in respect of ongoing projects:** The promoters to be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking had both started before 01.04.2019) which could not be completed by 31.03.2019. The option to be exercised once within a prescribed time frame and where ever the option not exercised within the prescribed time limit, new rates to apply.

13.2. **Applicability of new tax rates:** The new tax rates to be applicable to new projects or ongoing projects which have exercised the option to pay tax in the new regime subject to decision at paragraph 13.1. above, as follows:

(i) New rate of 1% without input tax credit (ITC) on construction of affordable houses to be available for,

- a. all houses which meet the definition of affordable houses as decided by the Council (area 60 sqm in metros / 90 sqm in non- metros and value upto Rs. 45 lakh), and

- b. affordable houses being constructed in ongoing projects under the existing Central and State housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement).
- (ii) New rate of 5% without input tax credit to be applicable on construction of:
- a. all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on all instalments payable on or after 01.04.2019.
 - b. all houses other than affordable houses in new projects.
 - c. commercial apartments such as shops, offices etc. in a Residential Real Estate Project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.
- 13.3. Conditions for the new tax rates:** The new tax rates of 1% (on construction of affordable houses) and 5% (on other than affordable houses) to be available subject to following conditions, -
- a. Input tax credit shall not be available,
 - b. 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. If purchase from registered person is less than 80%, tax shall be paid by the builder @ 18% on RCM basis. However, tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.
- 13.4. Transition for ongoing projects opting for the new tax rate:** Ongoing projects (buildings where construction and booking both had started before 01.04.2019) which had not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.
- a. The transition formula for residential projects to be based on extrapolation of ITC to percentage completion of construction as on 01.04.2019 to arrive at ITC permissible for the entire project. Thus, transition would be based on a simple pro rata based formula such that credit would be allowed in proportion to booking of the flat and invoicing done for the booked flat subject to a few safeguards.
 - b. For a mixed project (both commercial and residential) transition would allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax would be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.
- 13.5. Treatment of TDR/ FSI and Long-Term Lease for projects commencing after 01.04.2019:** The following treatment shall apply to TDR/ FSI and Long Term lease for projects commencing after 01.04.2019:
- a. Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer to be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax was paid on them.
 - b. Exemption of TDR, FSI, long term lease (premium) to be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal to be limited to 1% of value in case of Affordable Houses and 5% of value in case of other than Affordable Houses.
 - c. The liability to pay tax on TDR, FSI, long term lease (premium) to be shifted from land owner to builder under the Reverse Charge Mechanism (RCM).

- d. The date on which builder to be liable to pay tax on TDR, FSI, Long Term Lease (premium) of land under RCM in respect of flats sold after completion certificate to be shifted to date of issue of Completion Certificate.
- e. The liability of builder to pay tax on construction of houses given to land owner in a JDA to be also shifted to the date of completion.

13.6. **Amendment to ITC rules:** ITC rules to be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in Real Estate Projects. The changes would clearly provide procedure for availing Input Tax Credit in relation to commercial units, as such units would continue to be eligible for Input Tax Credit in a mixed project.

13.7. Notifications covering the above decisions to be made effective from 01.04.2019 and the notifications to be issued after vetting by the Joint Committee of Law and Fitment and thereafter by the Union Law Ministry.

Agenda Item 6: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)

14. Introducing this agenda item, the Secretary stated that Chapter XVIII of the CGST Act, 2017 provides for the Appeal and Review Mechanism for dispute resolution under the GST Regime. Section 109 of this Chapter under CGST Act empowered the Central Government to constitute, on the recommendations of Council, by notification, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal (GSTAT) for hearing appeals against orders passed by the Appellate Authority or by the Revisional Authority. Explaining the background further, he stated that a Writ Petition No.655/2018 was filed by M/s. Torqus Pharma Pvt. Ltd before the Hon'ble High Court of Uttar Pradesh (Allahabad Bench) regarding setting up of GSTAT Bench in the State. The Taxpayers contended that in the absence of any Appellate Tribunal Bench, their right to appeal had become redundant as the officers pressurized the taxpayers to pay the tax and the taxpayers had no remedy to file an appeal against any erroneous orders. Further, during the proceedings, the Hon'ble Court had expressed their displeasure and asked Central Government Counsel to indicate the timeline about formation of GSTAT vide Order dated 8.3.2019. Accordingly, an affidavit had been filed before the Hon'ble Court that an Agenda would be placed before the GST Council in the 34th Meeting. Accordingly, the agenda was placed before the Council to take note of these developments so that setting up of the Tribunals could be expedited.

14.1. He further informed that the Department of Revenue, Government of India had also earlier written to the States to provide their opinion as to where they would want the Principal and the State Benches of the Tribunal to be located as per sub-section 6 of Section 109 of CGST Act, 2017. Accordingly, reports were received from 19 States and Puducherry. Subsequently report from one more State, viz. Andhra Pradesh (suggesting Principal Bench at Vijayawada and Area Benches at Vishakhapatnam and Tirupati) and the UT of Delhi (suggesting Principal Bench at New Delhi with no area bench) had been received. Report was awaited from the remaining 10 States.

14.2. He added that since report was pending from 10 States, these States should expedite sending the information about the number of State Benches of GSTAT required as well as the places where they were required to be set up. In the next hearing before the Hon'ble Court, a suitable reply regarding setting up of GSTAT could be filed. Shri Ashok Meena, ACS Finance, Govt of Odisha stated that for

Odisha, they would like to propose 2 Benches, one at Bhubaneswar and the other at Cuttack, and that this information would be sent in writing too.

15. For **Agenda item 6**, the Council took note of the developments regarding the formation of the GSTAT i.e. the numbers of Benches and the places where to locate them.

Agenda Item 7: Any other agenda item with the permission of the Chairperson

Agenda Item 7(i): Approval of the draft Removal of Difficulty Order for giving effect to the decisions of 32nd GST Council Meeting for MSME sector (including small traders)

16. The Principal Commissioner (GST Policy Wing), CBIC introduced this Agenda item. He explained that as per the decision of the Council in its 32nd Meeting held on 10th January, 2019, a Composition scheme for the service providers had been notified and taxpayers availing this notification would need to follow the provisions contained in Section 10 of the CGST/SGST Act. He explained that in this Agenda item, as per the recommendations of the Law Committee, it was proposed to issue a Removal of Difficulty Order to provide that the provisions of Section 10 and Section 18 of the CGST/SGST Act and the Rules made thereunder, as applicable to a person paying tax under Section 10 shall also apply to a person paying tax under Notification No. 2/2019-Central Tax (Rate) dated 7.3.2019 under which Composition scheme had been notified for service providers. He sought approval of the Council for the draft Removal of Difficulty Order annexed to the Agenda note and proposed that the same may be issued after legal vetting by the Union Law Ministry. The Hon'ble Minister from West Bengal supported the proposal. The Council approved the proposal.

17. For **Agenda item 7(i)**, the Council approved the Removal of Difficulty Order, as recommended by the Law Committee, placed as part of the Agenda notes. It further approved that the Order shall be issued after vetting by the Union Law Ministry.

Other Issues

18. The Hon'ble Deputy Chief Minister of Delhi stated that regarding settlement of IGST, he had met the Hon'ble Chairperson and discussed the issue. He stated that he had been informed that the settlement had been done till February, 2019 and suggested that before 31st March, 2019, one more *ad hoc* settlement of IGST should be done, while for the past, the matter may be resolved as per the suggestion of the Hon'ble Chairperson and the Council could be apprised about it. The Hon'ble Deputy Chief Minister of Bihar also suggested to do one more IGST settlement during March, 2019. The Hon'ble Deputy Chief Minister of Gujarat also supported the proposal to do one more *ad hoc* settlement of IGST to the States before the end of March, 2019. The Hon'ble Chairperson stated that the issue would be looked into.

18.1. The Hon'ble Chairperson stated that before the General Elections, this was possibly the last meeting of the Council unless it was required to meet for some emergent clarification. He observed that till now, 34 Meetings of the Council had been held and a very large number of man hours had been spent in these meetings. It was heartening to see that Members came to the Meetings with open mind and their political colours outside the Council did not impact economic decisions taken in the Council. He added that the decisions were always arrived at by consensus and where it was felt that it was difficult to reach a consensus, either decision was not taken or the issue was referred to a Group of

Ministers before being taken up again for consideration by the Council on the basis of the revised formulation. He observed that the same practice was observed even today where the Council agreed to an alternative formulation from the Hon'ble Minister from West Bengal regarding transition provision for taxation in the real estate sector. He stated that in view of the delicate balance of federalism where Centre and States cooperate and take various decisions by consensus, on behalf of the Council, he expressed the hope that the same precedent of taking decision by consensus shall continue in future also.

18.2. The Hon'ble Minister from Punjab stated that he wanted to record his appreciation for the Hon'ble Chairperson for conducting the meetings of the Council in a very democratic manner. The Hon'ble Minister from West Bengal echoed the sentiments of the Hon'ble Minister from Punjab and stated that full credit went to the Hon'ble Chairperson for creating an environment of seeking consensus across all political parties and ideas through his patience where many contentious issues of ticklish nature were discussed and decided through the collective effort of all the Members of the Council. The Hon'ble Deputy Chief Minister of Delhi also expressed his appreciation to the Hon'ble Chairperson for conducting the meetings in a very democratic manner, He stated that a specific reference should be recorded in the Minutes regarding the remarkable role of the Hon'ble Chairperson in conducting the meetings of the Council in a very democratic manner. The Hon'ble Chairperson observed that the sentiments expressed by the individual Ministers may be treated as the sentiment of the Council and its healthy traditions may be continued in future, irrespective of the composition of the Council post the General Elections. The Hon'ble Minister from Goa stated that after the General Elections, the first meeting of the Council could be held in Goa if not at Delhi.

Agenda Item 8: Date of the next meeting of the GST Council

19. This Agenda item was not taken up for discussion.

20. The meeting ended with a vote of thanks to the Chair.

Annexure 1

List of Hon'ble Ministers who attended the 34th GST Council Meeting on 19th March 2019			
Sl No	State/Centre	Name of Hon'ble Minister	Charge
1	Govt of India	Shri Arun Jaitley	Union Finance Minister
2	Govt of India	Shri S.P. Shukla	Minister of State (Finance)
3	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
4	Delhi	Shri Manish Sisodia	Deputy Chief Minister
5	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
6	Goa	Shri Mauvin Godinho	Minister for Panchayat
7	Haryana	Capt. Abhimanyu	Minister, Excise & Taxation
8	Jammu & Kashmir	Shri K. K. Sharma	Advisor to Governor (I/c Finance)
9	Jharkhand	Shri C.P. Singh	Minister - Department of Urban Development, Housing and Transport
10	Maharashtra	Shri Sudhir Mungantiwar	Finance Minister
11	Manipur	Shri Yumnem Joykumar Singh	Deputy Chief Minister
12	Puducherry	Shri V. Narayanasamy	Chief Minister
13	Punjab	Shri Manpreet Singh Badal	Finance Minister
14	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal affairs, Parliamentary affairs
15	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
16	Uttar Pradesh	Shri Rajesh Agarwal	Finance Minister
17	West Bengal	Dr. Amit Mitra	Finance Minister

Annexure 2

1	Govt. of India	Dr. A. B. Pandey	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Adviser
3	Govt. of India	Shri Pranab Kumar Das	Chairman, CBIC
4	Govt. of India	Ms Ameeta Suri	Member (GST), CBIC
5	Govt. of India	Dr. John Joseph	Member (Budget), CBIC
6	Govt. of India	Shri Sandeep M. Bhatnagar	Member, CBIC
7	Govt. of India	Dr. Rajeev Ranjan	Special Secretary, GST Council
8	Govt. of India	Shri Manoj Sethi	CCS, CBIC
9	Govt. of India	Shri Upender Gupta	Pr. Commissioner (GST), CBIC
10	Govt. of India	Shri G. D. Lohani	Joint Secretary, TRU I, DoR
11	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
12	Govt. of India	Shri S. K. Rehman	ADG, GST, CBIC
13	Govt. of India	Shri Rajesh Malhotra	ADG (M&C)
14	Govt. of India	Shri N. Gandhi Kumar	Deputy Secretary, DoR
15	Govt. of India	Shri Pramod Kumar	Deputy Secretary, TRU-II, DoR
16	Govt. of India	Shri Parmod Kumar	OSD, TRU-II, DoR
17	Govt. of India	Shri Ravneet Khurana	Joint Comm., GST Policy Wing, CBIC
18	Govt. of India	Shri Susanta Mishra	Technical Officer, TRU-II, DoR
19	Govt. of India	Shri Shashikant Mehta	OSD, TRU-II, DoR
20	Govt. of India	Shri Harish Y. N	OSD, TRU-II, DoR
21	Govt. of India	Shri Siddharth Jain	Dy. Comm, GST Policy Wing, CBIC
22	Govt. of India	Shri Achin Garg	Asst. Comm, GST Policy Wing, CBIC
23	Govt. of India	Shri Paras Sankhla	OSD to Union Minister
24	Govt. of India	Shri Mahesh Tiwari	PS to MoS
25	Govt. of India	Dr. Vikash Shukla	Media Advisor to RS
26	GST Council	Shri Shashank Priya	Joint Secretary
27	GST Council	Shri Dheeraj Rastogi	Joint Secretary
28	GST Council	Shri Rajesh Agarwal	Director
29	GST Council	Shri G. S. Sinha	Director
30	GST Council	Shri Jagmohan	Director
31	GST Council	Ms Ujjaini Datta	Director
32	GST Council	Shri Arjun Meena	Under Secretary
33	GST Council	Shri Rakesh Agarwal	Under Secretary
34	GST Council	Shri Rahul Raja	Under Secretary
35	GST Council	Shri Mahesh Singarapu	Under Secretary
36	GST Council	Shri Krishna Koundinya	Under Secretary
37	GST Council	Shri Sarib Sahran	Superintendent
38	GST Council	Shri Umed Singh Rawat	Superintendent
39	GST Council	Shri Sandeep Bhutani	Superintendent
40	GST Council	Shri Vipul Sharma	Superintendent

41	GST Council	Shri Amit Soni	Superintendent
42	GST Council	Shri Anis Alam	Superintendent
43	GST Council	Ms Sangeeta Dalal	Inspector
44	GSTN	Shri Prakash Kumar	CEO
45	GSTN	Ms Kajal Singh	EVP (Services)
46	Govt. of India	Shri Kishori Lal	Pr. Commissioner, Chandigarh Zone, CBIC
47	Govt of India	Shri Yogesh Agrawal	Commissioner, Meerut Zone, CBIC
48	Govt of India	Shri S K Sharma	Commissioner, Lucknow Zone, CBIC
49	Govt of India	Shri R S Maheshwari	Commissioner, Bhopal Zone, CBIC
50	Govt. of India	Shri S. Kannan	Pr. Commissioner, Chennai Zone, CBIC
51	Govt. of India	Shri Javed Akhtar Khan	Commissioner, Ahmedabad Zone, CBIC
52	Govt. of India	Shri Sanjay Mahendru	Commissioner, Mumbai Zone, CBIC
53	Govt. of India	Shri Viney Kumar Paul	Commissioner, Guwahati Zone, CBIC
54	Govt. of India	Shri A R S Kumar	Commissioner, Hyderabad Zone, CBIC
55	Govt. of India	Shri M Srihari Rao	Commissioner, Vishakhapatnam Zone, CBIC
56	Govt. of India	Shri Nitin Anand	Commissioner, Ranchi Zone, CBIC
57	Andhra Pradesh	Dr D. Sambasiva Rao	Special Chief Secretary, Revenue
58	Andhra Pradesh	Shri J. Syamala Rao	Chief Commissioner, State Tax
59	Andhra Pradesh	Shri T. Ramesh Babu	Commissioner, State Tax
60	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Spcl Chief Secretary, Revenue
61	Arunachal Pradesh	Shri Anirudh S Singh	Commissioner (Tax & Excise)
62	Arunachal Pradesh	Shri Tapas Dutta	Assistant Commissioner, State Tax
63	Arunachal Pradesh	Shri Nakut Padung	Superintendent, State Tax
64	Arunachal Pradesh	Shri Teli Ngomdir	Superintendent, State Tax
65	Assam	Shri Anurag Goel	Commissioner, State Tax
66	Bihar	Dr. Pratima	Commissioner cum Secretary, State Tax
67	Bihar	Shri Arun Kumar Mishra	Additional Secretary, State Tax
68	Bihar	Shri Sanjay Kumar Mawandia	Special Commissioner, State Tax
69	Bihar	Shri Rajesh Kumar	Additional Commissioner, State Tax
70	Bihar	Ms Sima Bharti	Joint Commissioner, State Tax
71	Chhattisgarh	Ms. Reena B. Kangale	Secretary cum Commissioner, State Tax
72	Chhattisgarh	Shri K R Jhariya	Additional Commissioner, State Tax
73	Chhattisgarh	Ms. Nimisha Jha	Joint Commissioner, State Tax
74	Chhattisgarh	Shri Deepak Giri	Dy. Commissioner, State Tax
75	Chhattisgarh	Shri Manish Mishra	Dy. Commissioner, State Tax

76	Chhattisgarh	Shri Narendra Verma	Dy. Commissioner, State Tax
77	Delhi	Ms. Renu Sharma	Pr. Secretary, Finance
78	Delhi	Shri H. Rajesh Prasad	Commissioner, State Tax
79	Delhi	Shri Rajesh Goyal	Addl. Commissioner (Policy), State Tax
80	Delhi	Shri L S Yadav	Asst. Commissioner (Policy), State Tax
81	Goa	Shri Dipak Bandekar	Commissioner, State Tax
82	Gujarat	Shri Arvind Agarwal	ACS, Finance
83	Gujarat	Dr. P.D. Vaghela	Chief Commissioner, State Tax
84	Gujarat	Shri Sanjeev Kumar	Secretary (Economic Affairs) Finance Department
85	Gujarat	Shri Ajay Kumar	Special Commissioner, State Tax
86	Haryana	Shri Sanjeev Kaushal	Addl Chief Secretary, E & T Dept
87	Haryana	Shri Amit Kumar Agarwal	Commissioner, State Tax
88	Haryana	Shri Vijay Singh	Addl Commissioner, State Tax
89	Himachal Pradesh	Shri Jagadish Chander Sharma	Principal Secretary (Excise & Taxation)
90	Himachal Pradesh	Shri Rajeev Sharma	Commissioner, State Tax & Excise
91	Himachal Pradesh	Shri Sunil Kumar	Addl. Commissioner, State Tax & Excise
92	Himachal Pradesh	Shri Rakesh Sharma	Joint Commissioner, State Tax & Excise
93	Himachal Pradesh	Shri Anupam Kumar Singh	Dy. Commissioner, State Tax & Excise
94	Jammu & Kashmir	Shri P K Bhatt	Commissioner, State Tax
95	Jharkhand	Shri Prashant Kumar	Secretary cum Commissioner, State Tax
96	Jharkhand	Shri Ajay Kumar Sinha	Addl. Commissioner, State Tax
97	Jharkhand	Shri Brajesh Kumar	State Tax officer
98	Karnataka	Shri Srikar M.S.	Commissioner, State Tax
99	Kerala	Ms. Tinku Biswal	Commissioner, State Tax
100	Madhya Pradesh	Shri Manu Shrivastava	Pr. Secretary, State Tax
101	Madhya Pradesh	Shri D. P Ahuja	Commissioner, State Tax
102	Madhya Pradesh	Shri Sudip Gupta	Jt. Commissioner, State Tax
103	Maharashtra	Shri Rajiv Jalota	Commissioner, State Tax
104	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, State Tax
105	Manipur	Ms Jaspreet Kaur	Commissioner, State Tax
106	Manipur	Shri Y. Indrakumar Singh	Asst. Commissioner, State Tax
107	Meghalaya	Shri L Khongsit	Jt. Commissioner, State Tax
108	Meghalaya	Shri G G Marbaniang	Asst. Commissioner, State Tax
109	Meghalaya	Shri K War	Asst. Commissioner, State Tax
110	Meghalaya	Shri B Wallang	Asst. Commissioner, State Tax
111	Meghalaya	Shri N L Sohliya	Superintendent, State Tax
112	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary, Taxation Department

113	Mizoram	Shri Lalthansanga	Jt. Commissioner, State Tax
114	Mizoram	Shri C. Vanlalchhuana	Dy. Commissioner, State Tax
115	Mizoram	Shri Hrangthanmawia	Assistant Commissioner, State Tax
116	Nagaland	Shri Y Mhathung Murry	Addl. Commr, State Tax
117	Nagaland	Shri Wochamo Odyuo	Addl. Commr, State Tax
118	Nagaland	Shri Lima Imsong	Deputy Commissioner, State Tax
119	Odisha	Shri K K Meena	Pr. Secretary, Finance
120	Odisha	Shri Bishnupada Sethi	Commissioner, State Tax
121	Puducherry	Shri S. Manickadeepan	Jt. Commissioner, State Tax
122	Punjab	Shri M. P Singh	ACS-cum-Financial Commissioner (Taxation)
123	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to CM
124	Punjab	Shri Vivek Pratap Singh	Excise & Taxation Commissioner
125	Punjab	Shri Pawan Garg	Dy. Excise & Taxation Commissioner
126	Rajasthan	Dr. Prithvi Raj	Secretary Finance (Revenue)
127	Rajasthan	Shri Preetam B. Yaswant	Commissioner, State Tax
128	Rajasthan	Ms Meenal Bhosle	OSD, Finance
129	Rajasthan	Shri Ketan Sharma	Addl. Commissioner, GST, State Tax Dept
130	Rajasthan	Shri Arvind Mishra	Joint Commissioner, State Tax
131	Sikkim	Smt. Dipa Basnet	Secretary-cum-Commissioner, State Tax
132	Tamil Nadu	Dr. T.V Somanathan	ACS/Commissioner, State Tax
133	Tamil Nadu	Shri Ka. Balachandran	Pr. Secretary, CT and Registration Deptt.
134	Tamil Nadu	Shri K Gnanasekaran	Additional Commissioner, State Tax
135	Tamil Nadu	Shri C. Palani	Jt. Commissioner, State Tax
136	Telangana	Shri Somesh Kumar	Principal Secretary (Finance)
137	Telangana	Shri Anil Kumar	Commissioner of State Tax
138	Telangana	Shri Laxminarayan Jannu	Addl. Commissioner, State Tax
139	Tripura	Shri Nagesh Kumar B	Chief Commissioner, State Tax
140	Tripura	Shri Ashin Barman	Superintendent, State Tax
141	Uttar Pradesh	Shri Alok Sinha	ACS, State Tax
142	Uttar Pradesh	Ms Amrita Soni	Commissioner, State Tax
143	Uttar Pradesh	Shri Vivek Kumar	Addl. Commissioner, State Tax
144	Uttar Pradesh	Shri C P Mishra	Joint Commissioner, State Tax
145	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, State Tax
146	Uttarakhand	Shri Piyush Kumar	Addl. Commissioner, State Tax
147	Uttarakhand	Shri Vipin Chand	Addl. Commissioner, State Tax
148	Uttarakhand	Shri Rakesh Verma	Jt Commissioner, State Tax
149	West Bengal	Shri H K Dwivedi	ACS, Finance
150	West Bengal	Ms. Smaraki Mahapatra	Commissioner, State Tax
151	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, State Tax

Annexure 3

34th Meeting of GST Council



Deemed ratification & GIC / IT-GRC Decisions

Agenda



- **Agenda No. 2** - Deemed Ratification of Notification / Circulars issued post 33rd Meeting of GST Council
- **Agenda No. 3** - Decisions taken by the GIC post 33rd Meeting of GST Council for information of the GST Council
- **Agenda No. 4** - Decisions / recommendations of the IT Grievance Redressal Committee post 33rd Meeting of GST Council for information of the GST Council

2

Agenda No. 2 Deemed Ratification (1/1)



- **Ratification of following notifications, circulars & orders issued post 33rd meeting (dated 20th February, 2019) of GST Council:**

Act/Rules	Type	Notification / Circular / Order Nos.
CGST Act/CGST Rules	Central tax	9 to 14 of 2019
	Central tax (Rate)	2 of 2019
UTGST Act	Union territory tax	2 of 2019
	Union territory tax (Rate)	2 of 2019
Circulars	Under the CGST Act	92 to 93 of 2019
ROD Orders	Under the CGST Act	3 of 2019
	Under the UTGST Act	2 of 2019

3

Agenda No. 3

GIC decisions post 33rd GST Council Meeting (1/4)



Decision in 25th GIC meeting (05.03.2019)

- Amend CGST Rules to allow for using FORM GST DRC-07 for orders issued under section 52, 62, 63, 64, 122, 123, 124 and 127 of the CGST, Act.
- Amend CGST Rules to allow for issuing notice using FORM GST DRC-01 under section 52, 122, 123, 124, 125, 127, 129 and 130 of the CGST, Act.
- Minor amendments in Rule 100 and 142 along with amendments in related FORMS i.e. FORM DRC-01, FORM DRC-02, FORM DRC-07, FORM DRC-08, FORM ASMT-13, FORM ASMT-15, FORM ASMT-16, FORM CPD-02

✓ Decision not implemented yet

4

Agenda No. 3

GIC decisions post 33rd GST Council Meeting (2/4)



Decision in 25th GIC meeting (05.03.2019)

- Issuing of Circular clarifying various doubts related to treatment of sales promotion schemes under GST
 - ✓ Circular No. 92/11/2019-GST dated 7th March 2019 issued
- Issuing of corrigendum to circular on levy of GST on Tax Collected at Source under Section 206 (C) of Income Tax Act, 1961.
 - ✓ Corrigendum to Circular No. 76/50/2018-GST issued on 7th March 2019
- Extension of due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period April, 2019 to June, 2019
 - ✓ Notifications No. 11/2019 – CT, 12/2019 – CT & 13/2019 – CT, all dated 7th March 2019 issued

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Agenda No. 3

GIC decisions post 33rd GST Council Meeting (3/4)



Decision in 25th GIC meeting (05.03.2019)

- Issuing of circular on the nature of supply of priority sector lending certificate i.e. intra-State or inter-State
 - ✓ Circular No. 93/12/2019-GST dated 8th March 2019 was issued
- Deferring e-Wallet scheme and extending duty exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes upto 31st March 2020
 - ✓ Decision not implemented yet

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Agenda No. 3

GIC decisions post 33rd GST Council Meeting (4/4)



Decision by Circulation (06.03.2019)

- Proposal to settle an additional IGST amount of Rs. 20,000 crore, 50% to the Centre and 50% to the States, on ad hoc basis
 - ✓ Order No. F. No. S-34011/21/2018-ST-1 DoR dated 6th March 2019 issued

7

Agenda No. 4



Decisions/recommendations of the ITGRC (1/3)

IT grievance redressal process

- Circular No. 39/13/2013 dated 03.04.18 prescribing the procedure for taxpayers for lodging their grievance due to technical glitch in the GST system was issued
- GIC to act as IT Grievance Redressal Committee (IT-GRC) for resolving problems of the taxpayers who have not been able to file their documents such as TRAN-1, GSTR-3B / GSTR-1 or Registration/ migration etc. due to technical glitches at Common Portal
- Taxpayers are required to submit their grievance application of technical glitch to the designated field nodal officer of State / Center along with evidence

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Agenda No. 4



Decisions/recommendations of the IT-GRC (2/3)

- Field nodal officers to examine the taxpayers application and the supporting evidence and if it is prima facie found to be a case of technical glitch then send the issues after collating with their remarks/ recommendation to the GSTN Nodal officer by email
- GSTN issued a SOP on 12.04.18 which is to be followed by the Nodal officers of the States / Center while referring the technical glitches to GSTN

IT Grievance Redressal Committee (IT-GRC) meetings

- Five meetings of IT-GRC have been held till now
- Four meetings were held on 22.06.18, 21.08.18, 26.10.18 & 12.02.19
- **Fifth IT-GRC** meeting was held on 05.03.2019 and after examination and deliberation on 224 TRAN-1 cases, IT-GRC decided to allow 80 cases

9

Agenda No. 4



Decisions/recommendations of the IT-GRC (3/3)

- Total 1463 TRAN-1 cases (including cases where writ petitions have been filed in various High Courts) were presented in five meetings of IT-GRC out of which a total of 650 cases have been approved
- Total 258 TRAN-2 cases have also been approved

Implementation of the Decisions of IT-GRC

- TRAN 1 filing has been enabled for the approved taxpayers in the system
- E-mails have been sent by GSTN to the taxpayers asking them to file TRAN 1
- A total of around 1850 cases of TRAN-1 have been received from the nodal officers till 28.02.18 by GSTN
- Another lot of around 400 cases of TRAN-1 are being examined by GSTN and will be presented to the IT-GRC for decision

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Annexure 4



34th GST Council Meeting 19th March, 2019

Scheme of presentation

- 33RD GST Council Decisions
- Joint Meeting of Law and Fitment Committee
- Overview of draft notification
- Transition provisions
- Amendment to GST Rules
- Proposal before GST Council

33RD GST Council Decisions

- GST rate:
 - GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;
 - GST shall be levied at effective GST of 1% without ITC on affordable housing properties.
- Definition of affordable housing:
 - Shall be a residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities.
 - Value upto Rs. 45 lacs (both for metropolitan and non-metropolitan cities).
 - Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)
- Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for residential property on which GST is payable.
- The new rate shall become applicable from 1st of April, 2019.
- Details of the scheme shall be worked out by an officers committee and shall be approved by the GST Council in a meeting to be called specifically for this purpose. The meeting took place on 6th March, 2019.

Page 3

Existing tax payout in the Real Estate Sector

Calculation of GST payable as per present rate structure						
Sl. No.	Category of Housing Unit	High Rise Building			Low Rise Building	
		Low end finish	Premium Quality	Affordable	Low end finish	Affordable
1	Cost of property (per sq. ft.)	4000	10000	3000	3000	2500
2	Cost of construction	1700	3000	1500	1400	1100
3	Input tax credit	280.5	495	247	231	181
4	GST payable (cash + credit)	480	1200	240	360	200
5	Net GST payable	199.5	705	0	129	19
6	Percentage GST Payable	4.99%	7.05%	0.00%	4.30%	0.76%

Source: NBCC
Page 4

Joint meeting of Fitment and Law committee

- Joint meeting of fitment committee and law committee took place on 6th March, 2019.
- 9 states in Law committee, and 11 states in Fitment Committee are members in the respective committee.
- Decisions of the joint meeting were circulated to all members of the members of both committees on 7th March, 2019.
- The draft notifications, rules and documents prepared as per the decisions of the joint committee was circulated on 11th March, 2019. Comments/ suggestions were requested by 13th March, 2019.
- Comments received from members were examined jointly by the conveners from State and Centre of the Fitment Committee.
- Final draft notifications, rules and documents were forwarded to GST Council secretariat on 15th March, 2019.
- Reference to Election Commission was made on 12th March, 2019
 - for implementing the GST rates (1% and 5%) on real estate sector and
 - issue of removal of difficulty order for composition scheme for suppliers of service (6% tax rate)
- Approval from Election Commission was received on 14th March, 2019 to implement the same

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Overview of drafts circulated

Sl. No	Draft Document No	Purpose
1	1. -2019-CT (R)_Amnd Nf 11-2017 - CTR	A. To notify the rates for affordable apartments and non affordable apartments by amending the notification No. 11/2017- CT (R) B. Method of accounting for threshold limit of 80% C. To create a new rate of 18% on supply of services other than TDR, FSI (including additional FSI), long term lease by an unregistered person to a promoter
1A	1A. illustration	Illustration to transitional provisions
2	2. -2019-CT (R)_Amnd nf. no. 12-2017 - CTR	To exempt supply of TDR, FSI (including additional FSI), long term lease of land (against upfront payment in the form of premium, salami, development charges etc.)
3	3. -2019-CTR_Amnd to Nf no. 13-2017 - CTR	Putting tax liability on promoter under <u>sub-section (3)</u> of section 9 (RCM) on receipt of following services from unregistered person, namely transfer of development rights or FSI (including additional FSI) and long term lease of land (against upfront payment in the form of premium etc.)
4	4. -2019-CTR Sec 148 TDR	Shifting time of supply of TDR, FSI and long term lease to the date of issuance of completion certificate for construction of REP/ RREP under section 148 of CGST Act
5	5. -2019-CTR_ section 9 (4)	Invoking RCM under section (4) of section 9 of CGST Act, to tax TDR, FSI, long term lease and Cement when received by promoter from an unregistered supplier
6	6. -2019-CTR_Amnd nf 1-2017- CTR	To create a new rate of 18% on supply of any goods other than capital goods and cement falling under chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975), by an unregistered person to a promoter by amending notification No. 1/2017- CTR
7	7. Amendment to rule 42 and 43	Amendment to rule 42 and 43 of CGST rules for real estate sector.

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Rate structure as per the new draft notification

SL No.	Description of service	Rate of GST	Condition
RREP	3 (ia) Construction of affordable residential apartments by a promoter in a residential real estate project (RREP)	1 %	<ul style="list-style-type: none"> Credit of input tax charged on goods and services for construction of apartment has not been taken
	3 (ib) Construction of residential apartments other than affordable residential apartments by a promoter in a residential real estate project (RREP)	5 %	<ul style="list-style-type: none"> 80 % of value of goods and services other than capital goods and services by way of grant of development rights, long term lease or FSI for construction of apartment shall be procured from registered supplier only;
	3 (ic) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in a residential real estate project (RREP)	5 %	<ul style="list-style-type: none"> where value of goods and services procured from registered suppliers during the financial year falls short of the threshold of 80%, tax shall be paid by the promoter on such shortfall at the applicable rates of 18% on reverse charge basis. Similar treatment for capital goods purchased from unregistered suppliers.
REP	3 (id) Construction of affordable residential apartments by a promoter in a real estate project (REP) other than a residential real estate project (RREP)	1 %	
	3 (ie) Construction of residential apartments other than affordable residential apartments by a promoter in a real estate project (REP) other than a residential real estate project (RREP)	5 %	<ul style="list-style-type: none"> where cement is purchased from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis
	3 (if) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in a real estate project (REP) other than a residential real estate project (RREP)	12 %	No condition (ITC available)

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Rate notification (new definitions)

- Definition of apartment, promoter, Real Estate Project (REP), carpet area etc. adopted from Real Estate (Regulation and Development) Act, 2016.
- “affordable residential apartment” is defined as per GST Council decision (including ongoing affordable housing schemes of state and center for which at least one installment has been paid before 01. 04. 2019)
- “residential real estate project (RREP)” is defined to mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.
- Metropolitan cities for the purpose of this clause are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).
Geographical limits to be prescribed by Centre and States.

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Draft details on TDR/ JDA, FSI, Long term lease etc.

- Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted

Conditions

- Constructed apartments are to be sold before issuance of completion certificate and tax is paid on them (either 1% or 5%).
- Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate.
- Such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.
- This will achieve tax parity between under construction and ready to move property.

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Draft details on TDR/ JDA, FSI, Long term lease etc.

Liability to pay tax

- The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under RCM.
- The builder shall be liable to pay tax on TDR, FSI and long term lease (premium) to the extent these rights are used in construction of flats that are sold after issuance of completion certificate.
- The date on which builder shall be liable to pay tax under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate. Similar change is also proposed in JDA.
- This is likely to address the problem of cash flow substantially.

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Transition details: to be submitted by 30th September, 2019

$$T = T_x + T_e$$

ITC reversal (T_x) shall be calculated as under:

$$T_x = T - T_e$$

Where,

- (i) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the RREP from 1.7.2017 to 31.3.2019 including transitional credit taken on 01.07.2017;
- (ii) T_e is the eligible ITC attributable to construction of commercial portion in the REP and such construction of residential portion in the REP which has time of supply on or before 31.03.2019;
- (iii) T_x is the ITC to be taken or reversed on transition

T_x is positive, i.e. $T_e < T$, the builder shall pay the difference as part of output liability

T_x is negative, i.e. $T_e > T$, the builder shall take ITC on goods and services received on or after 01.04.2019

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Transition details to find eligible ITC (T_e)

$$T_e = T_c + T_r$$

T_c and T_r is credit attributable to commercial and residential portion in project respectively

$$T_c = T * \frac{\text{Carpet area of commercial apartments in the REP}}{\text{Total carpet area of commercial and residential apartments in the REP}}$$

$$T_r = T * F_1 * F_2 * F_3 * F_4$$

$$F_1 = \frac{\text{Carpet area of residential apartments in REP}}{\text{Total carpet area of commercial and residential apartments in the REP}}$$

$$F_2 = \frac{\text{Total carpet area of residential apartment booked on or before 31.03.2019}}{\text{Total carpet area of the residential apartment in REP}}$$

$$F_3 = \frac{\text{Such Value of supply of construction of residential apartments booked on or before 31.03.2019 which has time of supply on or before 31.03.2019}}{\text{Total value of supply of construction of residential apartments booked on or before 31.03.2019}}$$

$$F_4 = 1 / \% \text{ Completion of construction as on 31.03.2019}$$

- T_e has been capped (limits have been prescribed) to address extreme situations.
- It has to be compiled for each of the taxes separately

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Amendment to GST Rules

- Finalization of ITC at the end of the project as well as financial year wise to be done.
- Apportionment of ITC based on area of commercial and residential apartments in the project.

Impact on pricing of installments for the existing bookings due to change in input tax structure

- The value of installment (base value + GST) in no case is expected to increase.
- In some cases the base value may go down leading to fall in price.
- In some cases base value may go up but the total consideration (value + GST) to be paid for an installment shall not increase in any case. It is expected that the developer will provide necessary justification for variation in base value.

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Proposals before Council

- The draft notifications, rules, order may be approved.
- The same shall be issued after vetting by Ministry of Law and Justice, Govt. of India, to be effective from 01st April, 2019.
- Inputs/ comments/ suggestions received from states in relation to draft notifications etc. shall be examined in consultation with Ministry of Law and Justice, Govt. of India at the time of vetting.
- Proposals received from Maharashtra (on value cap, JDA/ SDA etc.) and Punjab (exempting to lease of land for setting of industrial parks), may be referred for examination to GoM or the Fitment Committee as they are not connected to the present proposal and also in view of operation of the Model Code of Conduct.

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Agenda Item 3: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government

In the 22nd meeting of the GST Council held at New Delhi on 06th October, 2017, it was decided that the notifications, Circulars and Orders which are being issued by the Central Government with the approval of the competent authority shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, in the 34th meeting held on 19th March, 2019, the GST Council had ratified all the notifications, circulars, and orders issued before 12th March, 2019.

2. In this respect, the following notifications, Circulars and Orders issued after 12th March, 2019 till 11th June, 2019, under the GST laws by the Central Government, as available on www.cbic.gov.in, are placed before the Council for information and ratification: -

Act/Rules	Type	Notification/Circular/Order Nos.
CGST Act/CGST Rules	Central Tax	15 to 24 of 2019
	Central Tax (Rate)	3 to 10 of 2019
UTGST Act	Union territory tax (Rate)	3 to 10 of 2019
IGST Act	Integrated Tax (Rate)	3 to 9 of 2019
Circulars	Under the CGST Act	94 to 101 of 2019
ROD Orders	Under the CGST Act	4 to 5 of 2019
	Under the UTGST Act	3 of 2019

3. The GST Council may grant deemed ratification to the Notifications, Circulars and Orders as listed above.

Agenda Item 4: Decisions of the GST Implementation Committee (GIC) for information of the GST Council

GST Implementation Committee (GIC) took certain decisions between 18th March 2019 (when the 34th GST Council Meeting was held) and 10th May 2019. Due to the urgency involved, some decisions were taken after obtaining approval by circulation amongst the GIC Members. The details of the decisions taken is given below:

26th GIC Meeting – 22nd March 2019

2. The 26th Meeting of the GIC was held on 22nd March 2019. The following agenda items were discussed and decided:

Agenda item 1: Notification to be issued to extend the due date for filing of declaration in FORM GST ITC-04 for the period July 2017 to March 2019

3. Shri Upender Gupta, Pr. Commissioner, GST Policy Wing, CBIC informed that as per rule 45 (3) of the Central Goods and Services Tax Rules, 2017 (CGST Rules for short), the details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be furnished in **FORM GST ITC-04** on or before the twenty-fifth day of the month succeeding the said quarter. He explained that the due date for furnishing the declaration in **FORM GST ITC-04** was extended for the period July 2017 to December 2018 till the 31st March 2019 and that the GIC may further extend it till 30th June 2019 as the functionality was still not available on the common portal.

3.1. Shri Prakash Kumar, CEO, GSTN stated that ITC-04 module in operation required changes after same was modified *vide* notification of September 2018. It would take three months to develop the required software and that the **FORM GST ITC-04** would be made available on the portal by 30th June 2019.

3.2. The GIC approved to issue the notification to extend the due date for filing of declaration in **FORM GST ITC-04** for the period July 2017 to March 2019 from 31st March 2019 to 30th June 2019. It was also decided that States were not required to issue similar notification. Accordingly, the implementing notification No. 15/2019 – Central Tax dated 28th March 2019 was issued.

Agenda item 2: Proposal to issue a Circular clarifying refund related issues under GST

4. Pr. Commissioner, GST Policy Wing, CBIC informed that a Circular was proposed to be issued clarifying few issues related to refunds based on the representations received from various trade bodies. These issues include how a merchant exporter could claim the refund on zero rated supplies made out of the supplies received on which the supplier (to merchant exporter) had already claimed certain benefits, problems faced in claiming refunds of unutilized ITC on account of accumulation due to inverted tax structure in case of textile manufacturers in those month(s) in which accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018-Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 had been reversed through return in **FORM GSTR-3B** and problems faced by registered person who had received deficiency memos against their refund applications and the corresponding amount of ITC had been re-credited to the electronic credit ledger and who want to claim refund by filing of revised refund applications after removing the deficiencies pointed out in deficiency memo issued earlier.

4.1. The GIC approved the draft circular clarifying refund related issues under GST. It was also decided that the States would issue similar Circular with *pari materia* changes. Accordingly, the implementing Circular No. 94/13/2019-GST dated 28th March 2019 was issued.

Agenda item 3: Proposal to issue a Circular regarding verification for grant of new registration

5. Pr. Commissioner, GST Policy Wing, CBIC informed that a Circular was proposed to be issued clarifying few issues related to verification of application for grant of new registration. Dr. P. D. Vaghela, Chief Commissioner State Taxes (CCST), Gujarat, stated that the words “S.No. 7. Date of Commencement of business” may also be added in paragraph 3 of the proposed Circular. GIC agreed to this suggestion.

5.1. Dr. T.V. Somanathan, Additional Chief Secretary (ACS)/Commissioner, State Tax (CST), Tamil Nadu suggested that the word “particularly” may be removed from paragraph 4 of the proposed Circular as instruction to exercise due caution for all applications could lead to officer becoming very cautious, conservative and also encourage rent-seeking behaviour. Hence this instruction should be limited to cases where a taxpayer was seeking another registration within the State though he had an existing registration or his registration was cancelled in the same State. GIC agreed to this suggestion.

5.2. CCST, Gujarat, suggested that a taxpayer should not be allowed to take new registration for his additional place of business if he had not filed returns in respect of his old registration. ACS/CST, Tamil Nadu stated that such a condition may not stand judicial scrutiny. Shri Sanjeev Kaushal, ACS, Haryana suggested that the issue raised by Gujarat may be looked into by the Law Committee. GIC agreed to this suggestion.

5.3. Shri Sandeep M. Bhatnagar, Member, CBIC stated that in paragraph 5 of the proposed Circular, a reference to sub-rule (4) of rule 9 of CGST Rules should be made along with sub-rule (2) of rule 9 of CGST Rules as it was the sub-rule dealing with the rejection of application for registration. GIC agreed to this suggestion. He further suggested that a check-item may be added in the registration form where the taxpayer would confirm if his/her registration application was cancelled at any time earlier. Pr. Commissioner, GST Policy Wing, CBIC stated that such a proposal was already considered in the Law Committee and an apprehension was expressed that any such change in registration form would require change in the whole eco-system and hence the matter was referred to the GSTN to examine.

5.4. CEO, GSTN stated that the officer processing the registration application already had the facility to view all registrations granted throughout the country on the concerned PAN, including the cancelled ones. He further stated that a functionality can be developed to highlight the last filed returns of such taxpayers. He further mentioned that IT Committee had recommended processing of another application by the same authority who had rejected his earlier application. This was to curb the tendency of applicants whose first application was rejected and he applies again hoping that the new application would be assigned to a different tax authority i.e. Centre or the State for processing. Member, CBIC stated that GSTN may develop a functionality where such applications would be assigned to the same jurisdiction which had earlier rejected the application. GIC approved these proposals.

5.5. The GIC approved the proposal to issue the Circular with the changes suggested by the GIC members above. It was also decided that the States would issue similar Circular with *pari materia* changes. Accordingly, the implementing Circular No. 95/14/2019-GST dated 28th March 2019 was issued.

Agenda item 4: Proposal to issue a Removal of difficulty order for extending the time limit for revocation of cancellation of registration

6. The GIC deferred the agenda item and the matter was referred back to the Law Committee for further examination.

Agenda item 5: Proposal to amend CGST Rules in respect of apportionment of input tax credit in case of demerger

7. Pr. Commissioner, GST Policy Wing, CBIC informed that the Law Committee recommended adding of an explanation under Rule 41(1) of the CGST Rules to clarify that in the case of de-mergers, the words ‘value of assets’ mean the value of the entire assets of the business whether or not input tax credit had been availed thereon.

7.1. ACS, Haryana stated that since the Model Code of Conduct (MCC) was in force, all the decisions taken by the GIC would need the approval of the Election Commission of India (ECI). Pr. Commissioner, GST Policy Wing, CBIC informed that a blanket approval was sought from the ECI for the decisions to be taken by the GIC while the MCC was in force.

7.2. The GIC approved the proposal to insert the following explanation under Rule 41(1) CGST/SGST Rules in respect of apportionment of input tax credit in case of demerger. It was also decided that the States would make similar changes in respective SGST Rules.

Explanation: - For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

Accordingly, the implementing notification No. 16/2019 – Central Tax dated 29th March 2019 was issued.

Agenda item 6: Proposal to issue a Circular to provide clarification in respect of transfer of input tax credit in case of death of sole proprietor

8. Pr. Commissioner, GST Policy Wing, CBIC informed that the Law Committee recommended issuance of a Circular to clarify the transfer of input tax credit in case of death of sole proprietor.

8.1. CCST, Gujarat, stated that the cases involving Probate of a Will under the Hindu Succession Act, 1956 need further examination as these cases may require the GST authorities to transfer the registration to an Administrator appointed by the Court till the probate was disposed. He stated that this issue would be referred separately by him to the Law Committee for discussion.

8.2. The GIC approved the proposal to issue the Circular. It was also decided that the States would issue similar Circular with *pari materia* changes. Accordingly, the implementing Circular No. 96/15/2019-GST dated 28th March 2019 was issued.

Agenda item 7: Proposal to insert Rule 88A for utilization of input tax credit

9. Pr. Commissioner, GST Policy Wing, CBIC informed that after the insertion of Section 49A and Section 49B in the Goods and Services Act, 2017 with effect from 01.02.2019 relating to the order of utilization of ITC of IGST/CGST/SGST, it was observed that in few scenarios, it was resulting in

accumulation of credit and requirement of discharge of liability by cash. He further stated that to counter this problem, the Law Committee recommended inserting the following sub-rule.

“Rule 88A: Order of utilization of input tax credit.- *Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in any order:*

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.”

9.1. Pr. Commissioner, GST Policy Wing, CBIC informed that the States of Tamil Nadu and West Bengal suggested to mandate utilizing the excess IGST credit in 50:50 ratio to discharge the liabilities of CGST and SGST to ensure equal discharge of CGST and SGST through input tax credit. He stated that such a condition could lead to certain unforeseen situations. He suggested that the present formulation could be agreed to and in case any difficulties were faced during its implementation, the issue could be revisited. GIC agreed to this suggestion.

9.2. The GIC agreed to amend the CGST/SGST Rules to insert Rule 88A as proposed above. Accordingly, the implementing notification No. 16/2019 – Central Tax dated 29th March 2019 was issued.

Decisions by Circulation – 04th April 2019

10. A proposal to issue a Circular for approval of the GIC was received from Pr. Commissioner, GST Policy Wing, CBIC relating to clarification regarding the manner in which a registered person opting to pay tax at the rate of 3 per cent under notification No. 02/2019-Central Tax (Rate) dated 07.03.2019 was required to intimate the tax authorities regarding the same and the manner in which he could opt out of this scheme.

10.1. It was stated that the Law Committee had recommended that the CGST Rules, 2017 as applicable to a person paying tax under Section 10 of the CGST Act, 2017 shall, *mutatis mutandis*, apply to a person paying tax under the said notification. The Law Committee also recommended the following to clarify that:

- a. a registered person who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, may do so by filing intimation in the manner specified in sub-rule 3 of rule 3 of the CGST Rules in **FORM GST CMP-02** by selecting the category of registered person as “Any other supplier eligible for composition levy” as listed at Sl. No. 5(iii) of the said form, latest by 30th April, 2019. Such person shall also furnish a statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (3) of rule 3 of the said rules.
- b. an unregistered person who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, may do so by indicating the option at serial no. 5 of **FORM GST REG-01** at the time of filing of application for registration.

- c. amendment in instruction no. 16 of **FORM GST REG-01** for the recommendation at paragraph (b) above. In this regard a separate agenda for amendment in GST Rules/Forms shall be moved subsequently.

10.2. The GIC approved the proposal to issue a Circular to clarify the manner in which a registered person opting to pay tax at the rate of 3 per cent under notification No. 02/2019-Central Tax (Rate) dated 07.03.2019 was required to intimate the tax authorities regarding the same and the manner in which he could opt out of this scheme with minor changes in paragraph 10.1.(b). Accordingly, the implementing Circular No. 97/16/2019-GST dated 05th April 2019 was issued.

Decisions by Circulation – 05th April 2019

11. A proposal for approval of the GIC was received from Pr. Commissioner, GST Policy Wing, CBIC relating to settlement of an additional IGST amount of Rs. 12, 000 crore on *ad hoc* basis.

11.1. It was stated that depending on the amount of IGST remaining unapportioned, provisional settlement was being done from time to time on an *ad hoc* basis. Accordingly, Rs. 35,000 crore was apportioned in February, 2018, Rs. 50,000 crore was apportioned in June, 2018, Rs.12000 crore in August, 2018, Rs. 30,000 crore was apportioned in October, 2018, Rs. 18,000 crore was apportioned in December, 2018 and Rs. 20,000 crore was apportioned in March, 2019. These amounts were settled in a ratio of 50:50 to Centre and States and the amount apportioned to States was divided in the ratio of subsumed / protected revenue.

11.2. Further, based on the collection of IGST during the year, net of refunds and the settlement of IGST during the period, both regular and provisional, it is proposed to do provisional settlement of another Rs. 12,000 crore, 50% to Centre and 50% to States. This will reduce the revenue gap of States and therefore, the compensation required.

11.3. The GIC approved the proposal to settle an additional IGST amount of Rs. 12, 000 crore, 50% to the Centre and 50% to the States, on *ad hoc* basis. Accordingly, the implementing Order No. F.No. S-34011/21/2018-ST-1 DoR dated 12th April 2019 was issued.

Decisions by Circulation – 10th April 2019

12. A proposal for approval of the GIC was received from Pr. Commissioner, GST Policy Wing, CBIC relating to extension of due dates for filing **FORM GSTR-1** and **FORM GSTR-7** for the month of March, 2019.

12.1. It was stated that GSTN had informed that the return systems were facing certain technical issues in the Common Portal leading to slowness in filing of **FORM GSTR-1** and **FORM GSTR-7** for the month of March, 2019. This had happened on account of shift of application from DC-2 to DC-1 in the night of 06th April, 2019. This shift caused certain defects in the application which had since been rectified but there was a shortfall of 32% for **GSTR-1** and 9% for **GSTR-7** compared to previous period and thus there were still many taxpayers / tax deductors who were yet to furnish **FORM GSTR-1** and **FORM GSTR-7** for the month of March, 2019.

12.2. GSTN had, therefore, requested that in view of the fact that the due date for filing the **FORM GSTR-1** for the month of March, 2019 was 11.04.2019, and that a large number of tax payers were yet to file the return, the due date for filing the same may be extended by two days. It was also requested that the due date for filing of **FORM GSTR-7** for the month of March, 2019 was 10.04.2019, and since

a large number of tax-deductors were yet to file the return, the due date for filing the same may be extended by two days.

12.3. In the interest of taxpayer facilitation, the GIC approved the proposal to extend the due date for filing of **FORM GSTR-1** for the month of March, 2019 for two days, i.e. till 13.04.2019 and to extend the due date for filing of **FORM GSTR-7** for the month of March, 2019 for two days, i.e. till 12.04.2019. Accordingly, the implementing notification Nos. 17/2019 – Central Tax and 18/2019 both dated 10th April 2019 were issued.

27th GIC Meeting – 15th April 2019

13. The 27th Meeting of the GIC was held on 15th April 2019. The following agenda items were discussed and decided:

Agenda item 1: Clarification in respect of utilization of input tax credit

14. Pr. Commissioner, GST Policy Wing, CBIC introduced the agenda and stated that Section 49 was amended and Section 49A and Section 49B were inserted *vide* Central Goods and Services Tax (Amendment) Act, 2018. The amended provisions came into effect from 1st February 2019. He stated that various representations were received from the trade and industry regarding challenges being faced by taxpayers due to bringing into force of the provisions contained in Section 49A of the CGST Act. Accordingly, rule 88A was inserted in the CGST Rules in exercise of the powers under Section 49B of the CGST Act *vide* notification No. 16/2019- Central Tax, dated 29.03.2019.

14.1 He informed that the insertion of rule 88A in the CGST Rules had now permitted utilization of credit of integrated tax towards the payment of Central Tax and State Tax, or as the case may be, Union Territory Tax, in any order subject to the condition that the entire credit on account of Integrated Tax is to be exhausted first before utilizing the credit on account of Central Tax or State / Union Territory Tax. He stated that the Law Committee has recommended the issuance of Circular clarifying the manner of utilization of input tax credit post insertion of the rule 88A of the CGST Rules. He requested the GIC to approve the draft circular, as recommended by the Law Committee.

14.2. Shri Sandeep M Bhatnagar, Member (GST), CBIC sought the timeline for implementing this functionality on the Common Portal. CEO, GSTN informed that a clear cut time line would be available after design is ready. Thereafter, GSTN was requested to add the functionality on the common portal latest by 10th May 2019 so that the taxpayers have enough time to file their return for the month of April, 2019 according to the new provisions within the prescribed due date i.e. 20th May, 2019.

14.3. The GIC approved the circular clarifying the manner of utilization of Input Tax Credit. It was also decided that States may issue similar Circular. Accordingly, the implementing Circular No. 98/17/2019-GST dated 23rd April 2019 was issued.

Agenda item 2: Quarterly Payment and Annual Returns for Composition Taxpayer

15. Pr. Commissioner, GST Policy Wing, CBIC informed the GIC that in the 32nd Meeting of the GST Council, it was decided that the Composition scheme will be simplified by providing for quarterly payment of tax and filing of only one return in a year with effect from 1st April 2019. It was also decided that the simplified quarterly payment of tax and single annual return shall also be made available for suppliers of services (or mixed suppliers) with a tax rate of 6% (3% CGST +3% SGST) having an annual turnover in preceding financial year upto Rs 50 lakh. Subsequently, notification No. 02/2019-Central

Tax (Rate) dated 07.03.2019 was issued to bring this new residual Composition scheme into force with effect from 1st April 2019.

15.1 However, the CGST Act explicitly provided for filing of one return for every quarter under Section 39 of the CGST Act. Further Section 148 of the CGST Act provided for special procedure for certain processes. Therefore, in order to operationalize the decision of the GST Council to introduce a simplified quarterly payment and annual return facility for such taxpayers, it was proposed that a notification may be issued under Section 148 notifying special procedure for registered persons paying tax under the provisions of Section 10 of the CGST Act or by availing the benefit of the notification No. 02/2019-Central Tax (Rate) dated 07.03.2019. Also, it may be specified in the notification that the registered persons availing the benefit of the notification No. 02/2019-Central Tax (Rate) dated 07.03.2019 were not required to furnish the statement of outward supplies in **FORM GSTR-1** or the return in **FORM GSTR-3B** in respect of the period for which he had availed the said benefit. He informed that the Law Committee had recommended issuance of notification under Section 148 of the CGST Act. He also mentioned that the notification would be issued after due legal vetting by Union Law Ministry.

15.2. Shri Vijay Singh, Additional Commissioner, State Taxes, Haryana stated that these changes would impact Section 29(2) of the CGST Act and Rule 138E of the CGST Rules. Section 29(2) refers to cancellation of registration if three consecutive 'returns' are not filed. He stated that it appears that according to these new provisions, return would be filed annually as **GSTR-4**, for non-filers of returns under Composition scheme, the department might have to wait for 3 years before cancellation of registration. Similarly, as per Rule 138E, a taxpayer would not be allowed to file **PART A of GST EWB-01** if he has not furnished 'returns' for two consecutive periods. He stated that these issues needed to be addressed. Pr. Commissioner, GST Policy Wing, CBIC clarified that amendment to Section 29(2) of the CGST Act could happen only in the next round of changes in the statute and amending Rule 138E will be looked into by the Law Committee.

15.3. The GIC approved the draft notification regarding composition taxpayers and that the same may be issued after due legal vetting by Union Law Ministry. It was also decided that States would issue similar notifications under the respective SGST Acts. Accordingly, the implementing notification No. 21/2019 – Central Tax dated 23rd April 2019 was issued.

Agenda item 3: Proposal to issue Removal of Difficulty Order for extending the time limit for revocation of cancellation of registration and to issue a related Circular

16. Pr. Commissioner, GST Policy Wing, CBIC informed the GIC that a large number of registrations had been cancelled under sub-section (2) of Section 29 of the CGST Act by the proper officer by serving notices as per clause (c) and clause (d) of sub-section (1) of Section 169 of the CGST Act and the period of thirty days provided for filing application for revocation of cancellation order in sub-section (1) of Section 30 of the CGST Act, the period for filing appeal under section (1) of Section 107 of the CGST Act and also the period of condoning the delay provided in sub-section (4) of Section 107 of the CGST Act has elapsed; the registered persons whose registration had been cancelled under sub-section (2) of Section 29 of the CGST Act were unable to get their cancellation of registration revoked despite having fulfilled all the requirements for revocation of cancellation of registration.

16.1. He informed that the issue was placed in the 26th meeting of the GIC held on 22nd March, 2019 wherein the decision was deferred and the matter was referred back to the Law Committee for further

examination. The Law Committee upon deliberation on the said issue related to cancellation of registration done by the proper officer under the provision of sub-section (2) of Section 29 of the CGST Act and subsequent provisions of revocation of the said cancellation under sub-section (1) of Section 30 of the CGST Act recommended that as a one-time measure, the registered person whose registration had been cancelled may be allowed to file application for revocation of cancellation of registration under sub-section (1) of Section 30 of the CGST Act, against such order passed up to 31.03.2019, within ninety days from the date of issue of the said order.

16.2. He stated that as per provision of the sub-section (1) of Section 30 of the CGST Act, any registered person, whose registration was cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order. Therefore, a Removal of Difficulty Order was needed to be issued for revocation of cancellation order beyond 30 days. He further informed that the Law Committee had also recommended to amend rule 23 of the CGST Rules, 2017 as well as to issue a circular on the subject. Accordingly, he requested the GIC to approve the proposal to issue the Removal of Difficulty Order and Circular.

16.3. After discussion, the GIC approved the said Removal of Difficulty Order and Circular. The Removal of Difficulty Order will be issued after due vetting by the Union Law Ministry. It was also decided that States would be required to issue similar Removal of Difficulty Order and Circular. Accordingly, the Removal of Difficulty Order i.e Order No 5/2019-GST dated 23rd April 2019 and Circular No. 99/18/2019-GST dated 23rd April 2019 were issued.

Agenda item 4: Proposal for amendment in CGST Rules, 2017

17 Pr. Commissioner, GST Policy Wing, CBIC introduced the agenda and explained the recommended changes in Rule 23 and 62 of the CGST Rules, 2017. He stated that in addition to above referred rules, insertion of **FORM GST CMP-08** and changes in **FORM GST REG-01** had been recommended by the Law Committee.

Insertion of proviso to sub-rule (1) of rule 23 of the CGST Rules

17.1. Pr. Commissioner, GST Policy Wing, CBIC stated that once the registration of a person was cancelled, there was no liability on him to file return under GST from the effective date of cancellation of registration. However, in case the cancellation was revoked subsequently by the proper officer, there would be a period between the effective date of cancellation of registration and date of revocation of cancellation of registration during which the person cannot file any return. Further, in case the registration had been cancelled with retrospective effect, taxpayer would not be able to file his returns from the effective date of cancellation of registration till such cancellation of registration was revoked. On the other hand, he could not file application for revocation of cancellation of registration unless he files all returns for the intervening period. In order to overcome these two problems, it was proposed to suitably amend sub-rule (1) of rule 23 of the CGST Rules by inserting the following two provisos:

Provided further that all returns due for the period from the date of the order of cancellation till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.

17.2. The GIC approved the amendment to sub-rule (1) of Rule 23, CGST Rules. It also decided that the *pari-materia* changes would be carried out in the respective SGST Rules and the notification carrying out the said amendments shall be issued after due vetting by the Union Law Ministry. Accordingly, the implementing notification No. 20/2019 -Central Tax dated 23rd April 2019 was issued.

Amendment to Rule 62

17.3. Pr. Commissioner, GST Policy Wing, CBIC stated that notification No. 02/2019-Central Tax (Rate) dated 07.03.2019 had been issued which prescribed rate of Central Tax of 3% on first supplies of goods or services or both up to an aggregate turnover of fifty lakh rupees made on or after the 1st day of April in any financial year, by a registered person whose aggregate annual turnover in the preceding financial year was fifty lakh rupees or below. The said notification, as amended by notification No. 09/2019-Central Tax (Rate) dated 29.03.2019, provided that CGST Rules, as applicable to a person paying tax under section 10 of the CGST Act shall, *mutatis mutandis*, apply to a person paying tax under the said notification. He informed that the GST Council, in its 32nd Meeting had decided that composition taxpayers would be required to make payment of tax on quarterly basis and file only an annual return with effect from 01.04.2019. This required change in rule 62 of the CGST Rules that prescribes furnishing of quarterly return by the composition taxpayers. Further, the said facility of quarterly payment and filing of annual return would also be available to those taxpayers who were availing the benefit of new composition scheme, as notified *vide* notification No. 02/2019 – Central Tax (Rate) dated 07.03.2019. Accordingly, the Law Committee had recommended the changes in Rule 62 of the CGST Rules for approval of the GIC.

17.4. The GIC approved the amendment to Rule 62, CGST Rules. It also decided that *pari materia* changes would be carried out in the respective SGST Rules. The notification carrying out the said amendments shall be issued after due vetting by the Union Law Ministry. Accordingly, the implementing notification No. 20/2019 – Central Tax dated 23rd April 2019 was issued.

Insertion of Instruction No. 17 in FORM GST REG-01

17.5. Pr. Commissioner, GST Policy Wing, CBIC stated that on account of the changes made to rule 62 of the CGST Rules, it was proposed to insert an instruction in **FORM GST REG-01** so that an unregistered person who wanted to obtain registration and also opted for payment of Central Tax at the rate of 3% under the notification No. 02/2019-Central Tax (Rate) dated 07.03.2019, may do so by indicating the option at serial no. 5 and 6.1(iii) of **FORM GST REG-01** at the time of filing of application for registration. Accordingly, the proposal to insert instruction no. 17 in **FORM GST REG-01** was put before GIC for approval. The same had been reproduced below:

“Taxpayers who want to pay tax by availing benefit of notification No. 2/2019 – Central Tax (Rate) dated 07.03.2019, as amended, shall indicate such option at serial no. 5 and 6.1(iii) of this Form.”

17.6. The GIC approved the proposal to insert Instruction No. 17 in **FORM GST REG-01**. It also decided that the *pari materia* changes would be carried out in the respective SGST Rules. The

notification carrying out the said amendments shall be issued after due vetting by the Union Law Ministry. Accordingly, the implementing notification No. 20/2019 – Central Tax dated 23rd April 2019 was issued.

Insertion of FORM CMP-08

17.7. Pr. Commissioner, GST Policy Wing, CBIC stated that on account of proposed changes in Rule 62 of the CGST Rules, a quarterly statement for payment of self-assessed tax was needed to be prescribed for those taxpayers who opted to pay tax under Section 10 of the CGST Act or by availing the benefit of notification No. 02/2019-Central Tax (Rate) dated 07.03.2019. Accordingly, it was proposed to insert **FORM GST CMP-08** after **FORM GST CMP-07** in CGST Rules. The draft **FORM GST CMP-08** was put before GIC for approval.

17.8. The GIC approved the proposal to insert **FORM GST CMP-08** in CGST Rules. It also decided that *pari materia* changes would be carried out in the respective SGST Rules. The notification carrying out the said amendments shall be issued after due vetting by the Union Law Ministry. Accordingly, the implementing notification No. 20/2019 – Central Tax dated 23rd April 2019 was issued.

Agenda item 5: Restriction on furnishing of information in PART A of FORM GST EWB-01 as per rule 138E of CGST Rules, 2017

18. Pr. Commissioner, GST Policy Wing, CBIC informed that *vide* notification No. 74/2018-Central Tax, dated 31st December 2018, rule 138E of the CGST Rules was inserted from a date to be notified later. The rule 138E was not notified till now. Therefore, it was proposed that non furnishing of returns for the months of April, 2019 and May, 2019 may be taken as base months for putting restriction on e-Way bill generation. The due date for furnishing the return in **FORM GSTR-3B** for the month of May, 2019 was 20th June, 2019. Accordingly, it was proposed that the 21st June 2019 may be notified as the date from which the rule 138E shall come into force. He informed that the Law Committee had recommended notifying the said rule with effect from 21st June 2019. He requested GIC to approve notifying the provisions of rule 138E of the CGST Rules with effect from 21st June, 2019.

18.1. The GIC approved the said notification notifying the provisions of Rule 138E of the CGST Rules with effect from 21st June 2019. It was also decided that States would issue similar notifications under respective SGST Rules. The said notification shall be issued after due vetting by the Union Law Ministry. Accordingly, the implementing notification No. 22/2019 – Central Tax dated 23rd April 2019 was issued.

Agenda item 6: Clarification on Seed Certification Tags and exemption of GST for those availing benefit of Sl.no. 41 of notification No. 12/2017 – Central Tax (Rate)

19.1. Pr. Commissioner, GST Policy Wing, CBIC informed the GIC that the issue raised by the State of Tamil Nadu regarding applicability of GST on supply of Seed Certification Tags was examined in the joint meeting of the Fitment Committee and the Law Committee. Further, the issue raised by Secretary cum Commissioner, State Taxes, Jharkhand, whether exemption from GST on the upfront amount payable for long term (thirty years, or more) lease of industrial plots or plots for development of financial infrastructure under notification No. 12/2017 – Central Tax (R) S. No.41 dated 28.06.2017 was available when the upfront amount is paid or payable in instalments, was examined by the Law Committee. He informed that the Law Committee recommended to issue a clarification by way of a Circular. Draft

Circulars (two) approved by the Fitment and Law Committee were placed before the GIC for consideration and approval.

19.2. After discussion, the GIC approved the said two circulars. It was also decided that States would issue similar Circulars under respective SGST Rules. Accordingly, the implementing Circular Nos. 100/19/2019-GST and 101/20/2019-GST both dated 30th April 2019 were issued.

Decisions by Circulation – 22nd April 2019

20. A proposal for approval of the GIC was received from Pr. Commissioner, GST Policy Wing, CBIC regarding extension of due dates for furnishing **FORM GSTR-3B** for the month of March, 2019 received at the GST Council Secretariat for post-facto approval of the GIC.

20.1. It was stated that GSTN had informed that the return systems were facing certain technical issues in the common portal leading to slowness and non-availability of the system on 20.04.2019 between 1300 hrs and 1600 hrs and the due date for furnishing of **FORM GSTR-3B** for the month of March, 2019 was 20.04.2019. This led to disruption of furnishing of returns and a situation where many taxpayers were yet to furnish **FORM GSTR-3B** for the month of March, 2019. It was also stated that, in this regard, calls were received from Chief Commissioner State Taxes, Gujarat; Commissioner State Taxes, West Bengal and Commissioner State Taxes, Karnataka.

20.2. GSTN had, therefore, requested that in view of the fact that the due date for furnishing the **FORM GSTR-3B** for the month of March, 2019 was 20.04.2019, and that a large number of tax payers were yet to furnish the return, the due date for furnishing the same may be extended by three days.

20.3. Since, 20.04.2019 was a Saturday and it was neither possible to obtain immediate approvals nor was it possible to issue the notifications immediately. Hence, keeping in view the urgency of the matter and in the interest of taxpayer facilitation, the due date for furnishing of **FORM GSTR-3B** for the month of March, 2019 was urgently extended on the common portal for three days, i.e. till 23.04.2019 after speaking to few members of GIC.

20.4. In view of the above, it was proposed that the notification in this regard, having effect from 20.04.2019, be issued on 22.04.2019 (i.e. the first working day after 20.04.2019) with the approval of the GIC (post-facto).

20.5. The GIC approved the extension of due dates for furnishing **FORM GSTR-3B** for the month of March, 2019 by 3 days i.e. till 23.04.2019 (post-facto). Accordingly, the implementing notification No. 19/2019 – Central Tax dated 22nd April 2019 was issued.

Decisions by Circulation – 04th May 2019

21. A proposal for approval of the GIC was received from Tax Research Unit - II regarding issuance of FAQ on Real Estate sector. It was stated that number of issues had been raised regarding the new GST rate structure notified for the Real Estate sector effective from 01.04.2019 and there was an urgency in the matter as last date for the promoters to exercise option is 10th May, 2019 and there would be only 3 days left after issuance of the FAQ on 7th May 2019.

21.1. The GIC approved the draft FAQ on Real Estate Sector and referred back some of the FAQ for further examination by the Fitment Committee. Accordingly, the FAQs on Real Estate Sector were issued *vide* F.No. 354/32/2019-TRU dated 07th May 2019.

Decisions by Circulation – 09th May 2019

22. A proposal for approval of the GIC was received from Tax Research Unit - II regarding extension of the date of option by the builders. It was stated that the last date for exercising option by the promoters/builders to pay tax on construction of apartments in a real estate project at the old rates of 12%/8% with ITC was 10th May, 2019. Representations were received including from the States that the time-limit for exercising the option may be extended by another 10 days. It was stated that the request for extending the time-limit for exercising the option may be considered in light of the fact that FAQs containing 41 Questions with regard to the new rate structure on real estate sector were issued only on 7th May, 2019 and more time should be given to the tax-payers to study, understand and exercise a considered option. Meanwhile, FAQs where there was no unanimity amongst Fitment Committee members may also be taken up by the Fitment Committee. Accordingly, it was proposed that the time-limit for exercising the option may be extended by 10 days to 20th May, 2019 by suitably amending the notification No. 03/2019- Central Tax (Rate) dated 29.03.2019.

22.1. The GIC approved the proposal to extend the time-limit for exercising the option by 10 days to 20th May, 2019 by suitably amending the notification No. 03/2019- Central Tax (Rate) dated 29.03.2019. Accordingly, the implementing notification Nos. 10/2019 – Central Tax (Rate), 09/2019- Integrated Tax (Rate) and 10/2019- Union Territory Tax (Rate) all dated 10th May 2019 were issued.

Decisions by Circulation – 10th May 2019

23. A proposal for approval of the GIC was received from Pr. Commissioner, GST Policy Wing, CBIC regarding extension of due date for furnishing of **FORM GSTR-1** and **FORM GSTR-3B** in specified District/s of Odisha in the aftermath of Cyclone ‘Fani’.

23.1. The Government of Odisha had communicated about the difficulties being faced by the tax-payers in filing of statement of outward supplies in **FORM GSTR-1** and the return in **FORM GSTR-3B** due to Cyclone “Fani” in the specified districts of Odisha, namely, Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri. Further, request had been made to extend the dates for filing of the said statement by registered persons whose principal place of business is in the said Districts of Odisha, as follows:

Sl. No.	FORMS for the month of April, 2019	Due Date	Request for extension upto
1	FORM GSTR-1 (for registered persons having aggregate turnover of more than 1.5 crore rupees)	11.05.2019	10.06.2019
2	FORM GSTR-3B	20.05.2019	20.06.2019

23.2. The GIC was requested to consider the proposal from State of Odisha and approve the draft notifications regarding extension of due date for furnishing of **FORM GSTR-1** and **FORM GSTR-3B** in specified District/s of Odisha.

23.3. The GIC approved the proposal to extend due date for furnishing of **FORM GSTR-1** and **FORM GSTR-3B** for the month of April in specified Districts of Odisha up to 10th June 2019 and 20th June 2019 respectively. Accordingly, the implementing notification Nos. 23/2019 – Central Tax and 24/2019 – Central Tax both dated 11th May 2019 were issued.

Decisions by Circulation – 10th May 2019

24. A proposal for approval of the GIC was received from Tax Research Unit - II regarding issuance of FAQ (part II) on Real Estate sector.

24.1. The FAQs on real estate sector containing 41 questions were issued on 7th May, 2019 with the approval of GIC. Some of the issues which required greater deliberation were deferred for inclusion in part II of the FAQs. Such issues were discussed in the Fitment Committee meeting. Accordingly, 27 FAQs approved by the Fitment Committee were put before the GIC for approval.

24.2. The GIC approved the draft FAQs (part II) on Real Estate Sector. Accordingly, the FAQs (part II) on Real Estate Sector were issued *vide* F.No. 354/32/2019-TRU dated 14th May 2019.

25. The decisions of the GIC are placed for information of the Council.

Agenda Item 5: Review of Revenue Position

The Table 1 below gives the details of revenue collected as Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST), Integrated Goods and Services Tax (IGST) and Cess for the year 2017-18, 2018-19 and for April and May months of 2019-20.

Table 1*: GST revenue during 2017-18, 2018-19 and Apr-May, 2019
(Figures in ₹ Crore)

	2017-18	2018-19	Apr-19	May-19
CGST	1,18,876	2,02,444	21,163	17,811
SGST	1,71,803	2,78,817	28,801	24,462
IGST	3,87,356	5,98,738	54,733	49,891
Domestic	1,93,093	3,08,243	31,444	25,015
Imports	1,94,263	2,90,495	23,289	24,875
Comp Cess	62,614	97,369	9,168	8,125
Domestic	56,319	87,290	8,115	7,172
Imports	6,295	10,080	1,053	953
Total	7,40,650	11,77,369	1,13,866	1,00,289

*Figures rounded to nearest whole number

2. During the month of April 2019, *adhoc* settlement of ₹ 12,000 crore was done, which was the residual amount of unapportioned IGST of the month of March, 2019 that could not be apportioned during last financial year as the figures of actual IGST collection and refund of IGST paid on exports as well as ITC of IGST are available after completion of the financial year. From 2019-20 onwards, every year, 12 months cycle of *adhoc* settlement will be maintained.

Trends in Monthly Revenue

3. Figure 1 shows the trends in the gross total GST revenues since introduction of GST. Figure 2 shows the month-on-month growth rate for each month since August, 2018 till May, 2019. As may be seen, the monthly growth increased from August, 2018 onwards and peaked during November, 2018 at 17% and then remained at around 13% between December, 2018 to February, 2019. It again peaked to 16% during March, 2019 but has fallen to 10% and further to 7% during April, 2019 and May, 2019 respectively.

Figure 1: Trends in total gross GST Revenues (₹ crore)

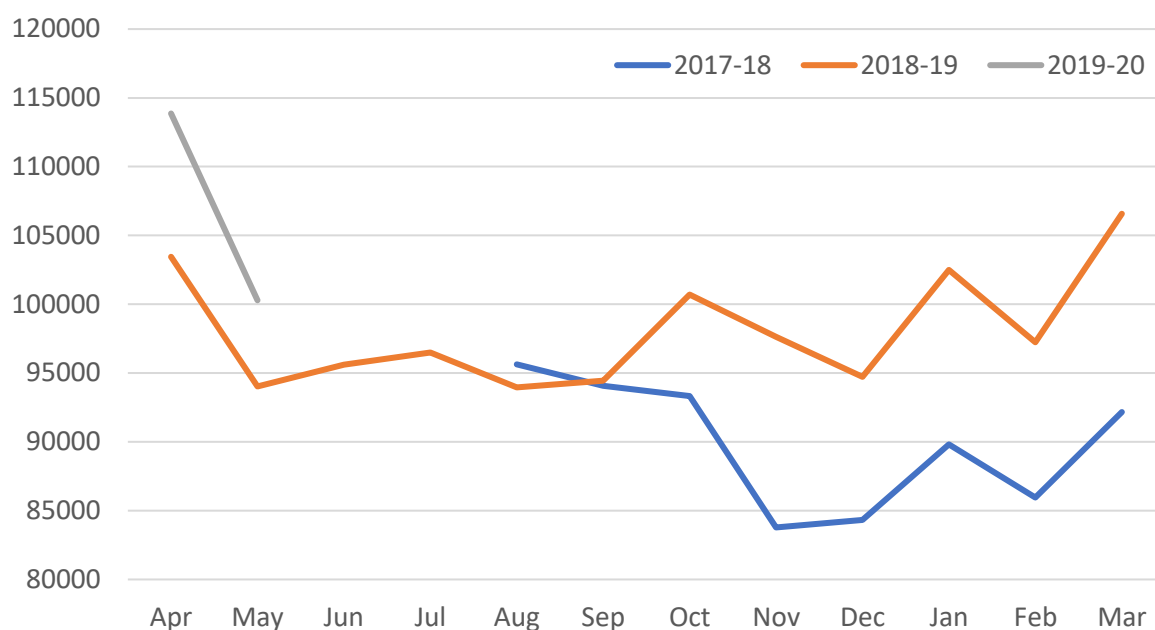
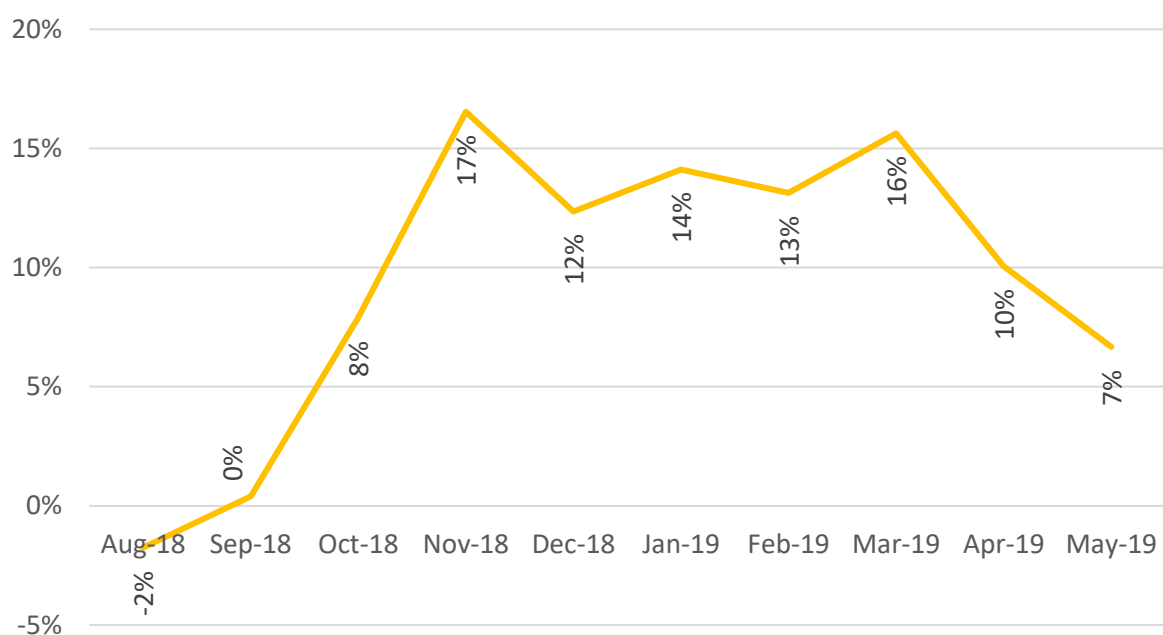


Figure 2: Month-on-Month growth in total gross GST Revenues



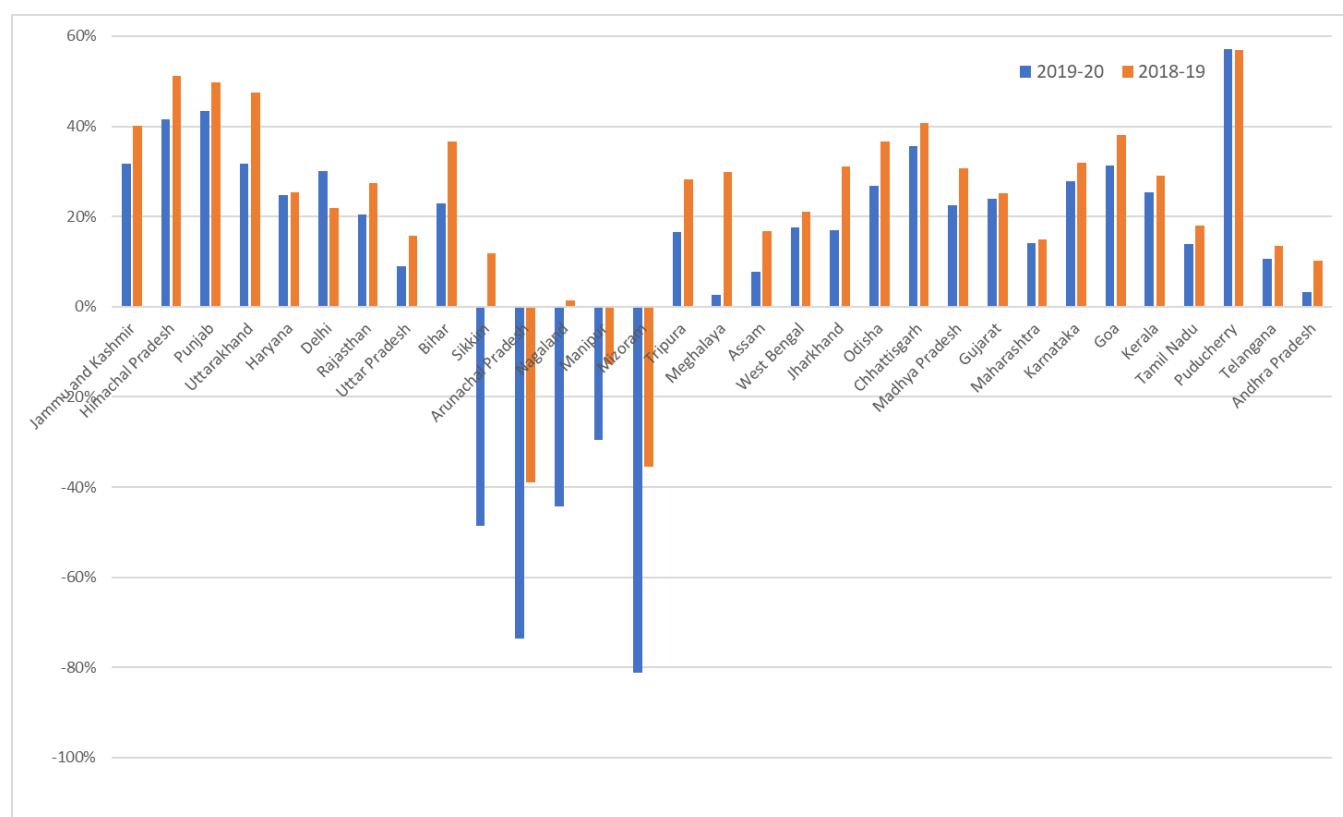
Gap with respect to base Revenue

4. The State-wise details of gap between the revenue protected and the post settlement (including *ad hoc*) gross SGST revenue for the April-May two month period in the current year as compared to the same period in the previous year may be seen in Table 2. This information is also depicted in the graph placed at Figure 3.

Table 2: Revenue Gap during the period April-May

	2019-20	2018-19
Jammu and Kashmir	32%	40%
Himachal Pradesh	41%	51%
Punjab	43%	50%
Uttarakhand	32%	47%
Haryana	25%	25%
Delhi	30%	22%
Rajasthan	21%	27%
Uttar Pradesh	9%	16%
Bihar	23%	37%
Sikkim	-49%	12%
Arunachal Pradesh	-74%	-39%
Nagaland	-44%	1%
Manipur	-30%	-13%
Mizoram	-81%	-36%
Tripura	17%	28%
Meghalaya	3%	30%
Assam	8%	17%
West Bengal	18%	21%
Jharkhand	17%	31%
Odisha	27%	37%
Chhattisgarh	36%	41%
Madhya Pradesh	22%	31%
Gujarat	24%	25%
Maharashtra	14%	15%
Karnataka	28%	32%
Goa	31%	38%
Kerala	25%	29%
Tamil Nadu	14%	18%
Puducherry	57%	57%
Telangana	11%	14%
Andhra Pradesh	3%	10%
Grand Total	20%	24%

Figure 3: Revenue Gap during the period April-May



Trends in Return filing

5. The table below shows the trend in returns in FORM GSTR-3B till due date and till date for return periods upto April, 2019.

Table 3/Figure 4: Return filing (GSTR-3B) till due date and till date

Month	Till Due Date				Till Date		
	Due Date	Eligible	Filed	%	Eligible	Filed	%
Apr-18	22-May-18	88,17,798	56,38,831	63.95%	88,17,798	78,96,601	89.55%
May-18	20-Jun-18	91,22,309	57,69,743	63.25%	91,22,309	80,41,005	88.15%
Jun-18	20-Jul-18	93,16,710	58,38,700	62.67%	93,16,710	81,45,253	87.43%
Jul-18	24-Aug-18	94,70,282	64,94,270	68.58%	94,70,282	82,38,281	86.99%
Aug-18	20-Sep-18	96,15,273	57,83,872	60.15%	96,15,273	83,30,056	86.63%
Sep-18	25-Oct-18	96,57,239	64,19,403	66.47%	96,57,239	84,00,352	86.99%
Oct-18	20-Nov-18	97,57,664	59,28,822	60.76%	97,57,664	84,39,699	86.49%
Nov-18	20-Dec-18	98,46,645	63,36,787	64.35%	98,46,645	83,36,021	84.66%
Dec-18	20-Jan-19	99,01,997	62,49,078	63.11%	99,01,997	83,69,440	84.52%
Jan-19	22-Feb-19	99,72,639	69,68,370	69.87%	99,72,639	83,47,235	83.70%
Feb-19	20-Mar-19	1,00,54,283	60,86,027	60.53%	1,00,54,283	83,11,016	82.66%
Mar-19	23-Apr-18	1,01,74,978	65,98,265	64.85%	1,01,74,978	80,72,959	79.34%
Apr-19	20-May-19	1,02,33,313	60,61,978	59.24%	1,02,33,313	75,18,411	73.47%

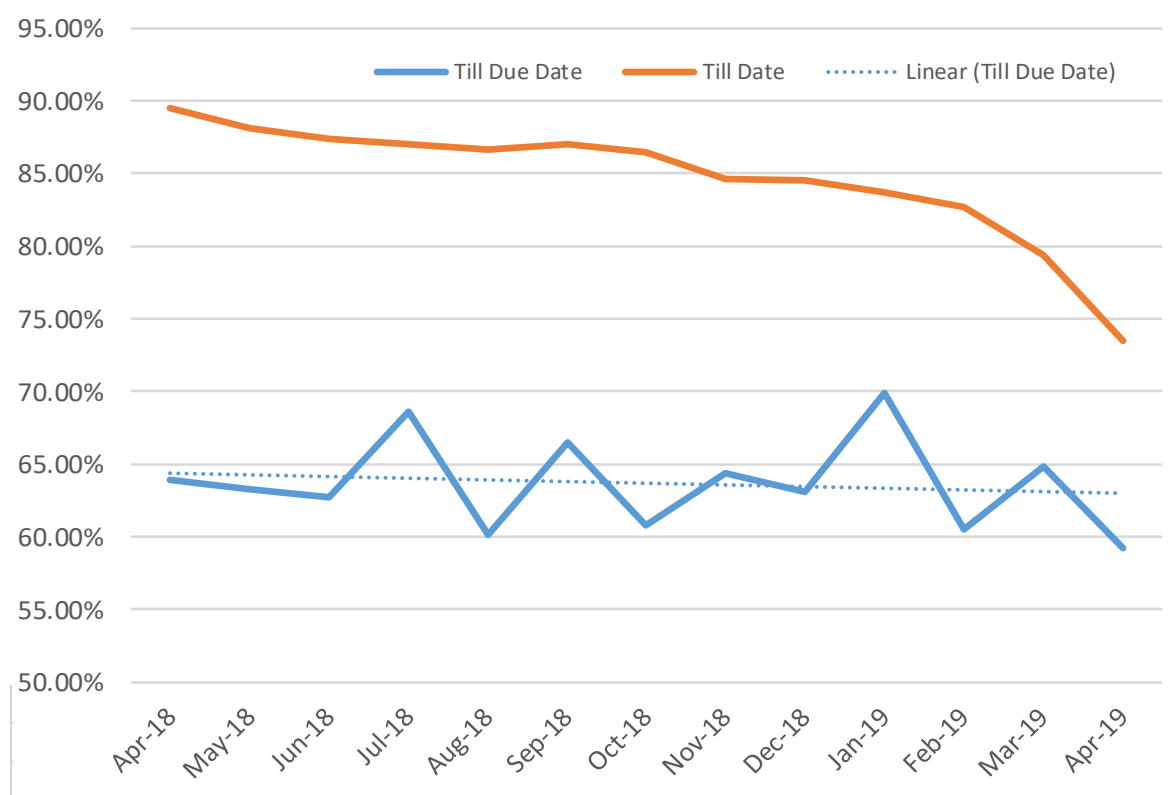


Table 4: State-wise Return filing (GSTR-3B) till due date

State/UT Name	May'18	Jun'18	Jul'18	Aug'18	Sep'18	Oct'18	Nov'18	Dec'18	Jan'19	Feb'19	Mar'19	Apr'19
Jammu and Kashmir	59.2%	59.5%	63.5%	58.9%	62.6%	58.8%	60.6%	61.8%	67.0%	49.9%	61.4%	59.9%
Himachal Pradesh	67.2%	65.4%	72.0%	63.1%	70.2%	66.1%	68.2%	66.5%	72.7%	67.1%	68.0%	63.1%
Punjab	78.1%	76.3%	81.8%	74.2%	79.3%	74.7%	76.3%	75.6%	81.5%	70.3%	78.0%	72.6%
Chandigarh	72.7%	72.6%	79.1%	69.4%	78.2%	72.6%	74.9%	73.5%	80.3%	71.6%	76.7%	71.5%
Uttarakhand	57.8%	57.1%	63.0%	56.1%	63.4%	56.8%	60.6%	60.6%	67.1%	61.3%	63.3%	58.5%
Haryana	69.1%	67.7%	73.2%	62.6%	71.0%	64.2%	66.7%	65.5%	71.8%	64.7%	68.7%	63.8%
Delhi	63.8%	62.7%	67.9%	59.0%	66.1%	59.3%	62.3%	60.9%	66.7%	48.3%	62.2%	57.0%
Rajasthan	66.9%	65.3%	71.4%	62.6%	71.0%	64.2%	68.2%	66.7%	72.4%	66.7%	67.1%	62.9%
Uttar Pradesh	69.6%	68.5%	73.4%	65.7%	72.8%	66.9%	69.6%	68.8%	74.0%	67.1%	69.9%	63.9%
Bihar	53.7%	53.4%	60.1%	53.8%	58.1%	51.6%	56.6%	57.7%	62.5%	54.3%	56.4%	51.1%
Sikkim	54.1%	54.2%	62.1%	53.9%	57.9%	52.2%	54.9%	54.6%	58.8%	52.5%	57.2%	50.4%
Arunachal Pradesh	30.0%	30.1%	35.6%	31.2%	35.4%	31.9%	34.1%	32.6%	37.2%	34.6%	30.0%	27.2%
Nagaland	33.4%	33.8%	40.7%	36.7%	40.9%	36.3%	39.1%	35.9%	43.4%	33.6%	39.3%	35.7%
Manipur	33.3%	30.9%	44.3%	37.8%	42.7%	37.5%	37.0%	34.6%	40.5%	35.4%	35.9%	33.1%
Mizoram	42.1%	42.3%	47.5%	44.0%	48.5%	43.3%	44.3%	41.5%	49.1%	39.4%	48.4%	44.7%
Tripura	55.8%	56.4%	64.0%	57.8%	61.0%	59.3%	61.3%	59.8%	65.7%	56.0%	57.0%	54.7%
Meghalaya	48.7%	50.9%	57.3%	52.8%	57.4%	53.7%	53.6%	50.4%	55.5%	53.0%	53.7%	51.5%
Assam	42.1%	42.1%	48.3%	41.2%	44.1%	41.6%	44.3%	41.8%	48.2%	40.2%	39.9%	38.2%
West Bengal	64.6%	65.3%	70.2%	62.4%	66.7%	63.9%	66.8%	65.5%	70.8%	62.3%	65.5%	61.2%
Jharkhand	58.3%	58.0%	66.1%	58.1%	63.0%	57.5%	60.9%	60.8%	65.6%	47.9%	57.7%	52.7%
Odisha	54.0%	53.9%	61.5%	51.9%	59.0%	55.5%	57.5%	57.1%	64.2%	57.0%	61.8%	29.5%
Chhattisgarh	51.0%	52.4%	61.8%	51.5%	59.4%	50.7%	57.2%	55.5%	65.3%	54.7%	53.1%	48.5%
Madhya Pradesh	61.1%	61.3%	69.4%	60.3%	67.4%	60.8%	65.7%	64.9%	71.8%	54.0%	63.1%	57.8%
Gujarat	71.9%	70.8%	76.0%	68.4%	75.0%	66.5%	72.8%	71.3%	77.8%	70.1%	72.2%	68.7%
Daman and Diu	63.2%	62.0%	69.3%	58.3%	66.7%	59.2%	62.0%	60.4%	68.4%	62.3%	62.2%	58.8%
Dadra and N Haveli	61.2%	61.0%	66.3%	56.5%	64.9%	57.3%	60.4%	59.6%	67.6%	50.0%	61.6%	57.6%
Maharashtra	61.5%	61.4%	66.5%	55.7%	64.6%	59.1%	62.7%	62.0%	68.6%	61.4%	64.1%	57.6%
Karnataka	62.5%	62.2%	67.4%	59.8%	65.4%	60.7%	63.4%	62.7%	70.3%	60.0%	67.2%	61.7%
Goa	56.1%	56.4%	61.4%	52.0%	59.9%	54.7%	55.2%	54.9%	61.1%	41.4%	56.7%	51.6%
Lakshadweep	22.1%	22.0%	21.9%	21.4%	23.8%	20.4%	24.6%	35.5%	38.1%	35.1%	33.8%	36.6%
Kerala	58.3%	57.5%	75.7%	69.8%	61.6%	51.7%	57.9%	56.3%	66.3%	57.9%	56.9%	53.9%

Tamil Nadu	59.0%	58.7%	63.3%	56.8%	62.4%	57.4%	61.6%	58.2%	68.6%	59.6%	64.4%	59.4%
Puducherry	57.3%	57.6%	62.7%	54.3%	62.9%	55.3%	58.0%	54.0%	62.9%	44.1%	59.5%	54.3%
A & N Islands	24.1%	26.7%	32.0%	25.4%	29.7%	25.3%	27.0%	28.3%	35.0%	31.6%	38.4%	33.5%
Telangana	54.8%	54.2%	60.2%	49.3%	57.4%	53.7%	57.3%	55.9%	63.9%	55.0%	58.4%	52.1%
Andhra Pradesh	61.0%	60.5%	67.2%	57.4%	62.9%	61.0%	63.4%	59.9%	68.4%	58.8%	60.5%	56.4%
Other Territory	55.4%	65.0%	71.0%	59.7%	77.4%	67.7%	67.7%	62.9%	68.8%	33.3%	68.2%	69.1%
Total	63.2%	62.7%	68.6%	60.2%	66.5%	60.8%	64.4%	63.1%	69.9%	60.5%	64.8%	59.2%

Table 5: State-wise Return filing (GSTR-3B) till date

State/UT Name	May'18	Jun'18	Jul'18	Aug'18	Sep'18	Oct'18	Nov'18	Dec'18	Jan'19	Feb'19	Mar'19	Apr'19
Jammu and Kashmir	89.8%	88.7%	88.3%	88.0%	87.8%	87.1%	84.9%	84.1%	82.9%	81.7%	78.4%	73.4%
Himachal Pradesh	90.5%	89.4%	89.0%	88.6%	88.6%	88.3%	86.1%	85.4%	84.3%	83.4%	80.4%	75.5%
Punjab	92.5%	92.2%	92.2%	92.2%	92.5%	92.4%	91.6%	91.5%	90.6%	89.9%	88.3%	84.6%
Chandigarh	90.8%	91.0%	92.0%	92.7%	93.1%	93.7%	93.1%	92.5%	91.6%	90.8%	89.3%	84.9%
Uttarakhand	85.3%	84.3%	83.9%	83.5%	84.4%	84.5%	82.5%	82.8%	82.3%	81.0%	77.9%	71.7%
Haryana	90.1%	89.2%	88.5%	88.0%	88.4%	87.5%	85.9%	85.3%	84.6%	84.1%	82.3%	78.0%
Delhi	88.1%	87.3%	86.4%	85.8%	86.5%	85.6%	83.2%	82.3%	80.6%	79.2%	76.2%	70.8%
Rajasthan	90.1%	89.2%	88.7%	88.4%	89.8%	88.3%	86.3%	85.7%	84.6%	83.5%	80.6%	75.6%
Uttar Pradesh	89.7%	88.7%	88.2%	87.7%	88.2%	88.2%	86.4%	86.3%	85.6%	84.7%	82.6%	77.5%
Bihar	85.7%	84.5%	84.0%	83.5%	83.5%	82.8%	79.9%	79.7%	78.2%	76.9%	71.6%	65.8%
Sikkim	89.4%	87.9%	87.2%	86.3%	86.0%	84.6%	82.4%	81.0%	78.7%	76.7%	72.5%	64.2%
Arunachal Pradesh	74.5%	72.6%	71.9%	70.8%	69.8%	68.1%	64.6%	62.6%	59.3%	55.2%	47.0%	38.9%
Nagaland	76.3%	74.7%	73.8%	73.0%	72.2%	71.0%	68.4%	66.9%	65.0%	62.7%	56.5%	48.7%
Manipur	72.6%	71.0%	70.0%	68.7%	67.8%	66.9%	64.4%	63.2%	61.0%	58.4%	52.6%	45.8%
Mizoram	75.2%	74.2%	73.4%	73.1%	72.7%	72.2%	71.0%	70.4%	69.5%	69.1%	65.2%	58.4%
Tripura	87.1%	86.0%	85.8%	85.3%	84.6%	83.7%	81.2%	80.1%	78.4%	76.8%	72.2%	67.0%
Meghalaya	81.2%	80.1%	79.6%	79.0%	78.3%	77.2%	74.9%	73.7%	71.9%	70.6%	67.4%	62.4%
Assam	77.3%	75.8%	75.1%	74.3%	74.0%	72.3%	68.7%	67.3%	65.1%	63.1%	57.3%	51.4%
West Bengal	90.4%	89.7%	89.3%	88.8%	88.6%	87.6%	85.4%	84.6%	83.2%	81.9%	78.6%	73.6%
Jharkhand	88.7%	87.8%	87.4%	86.9%	86.7%	86.0%	83.5%	82.6%	81.0%	79.1%	74.5%	68.4%

Odisha	84.6%	83.8%	83.3%	82.6%	82.2%	81.6%	78.9%	78.9%	79.5%	79.4%	75.6%	54.0%
Chhattisgarh	87.4%	88.4%	88.4%	88.0%	88.1%	88.1%	86.9%	86.7%	87.1%	84.7%	77.5%	68.9%
Madhya Pradesh	89.8%	90.1%	90.4%	90.6%	91.2%	91.1%	89.6%	89.5%	88.5%	87.2%	82.8%	76.5%
Gujarat	92.2%	92.0%	91.6%	91.8%	91.9%	91.8%	90.7%	90.7%	89.6%	88.7%	86.2%	81.2%
Daman and Diu	92.1%	91.8%	91.4%	91.1%	90.7%	90.2%	88.9%	88.2%	86.2%	84.7%	81.1%	73.7%
Dadra and Nagar Haveli	91.4%	90.6%	90.0%	89.3%	88.8%	87.9%	86.4%	86.4%	84.5%	83.3%	79.4%	72.5%
Maharashtra	87.9%	87.3%	87.0%	86.5%	87.0%	85.7%	83.4%	83.6%	83.0%	81.3%	77.0%	70.4%
Karnataka	86.6%	85.8%	85.3%	84.7%	84.9%	84.5%	82.9%	83.2%	83.5%	83.0%	80.3%	75.0%
Goa	86.9%	85.9%	85.4%	84.8%	84.5%	83.1%	81.0%	79.7%	77.7%	75.7%	71.2%	63.8%
Lakshadweep	44.9%	44.0%	43.4%	42.9%	42.3%	41.9%	39.1%	55.2%	53.3%	51.0%	45.7%	42.3%
Kerala	91.8%	91.1%	90.5%	90.2%	90.1%	89.1%	87.0%	86.2%	84.7%	83.3%	79.7%	73.5%
Tamil Nadu	82.6%	81.8%	81.2%	81.0%	81.4%	82.4%	81.5%	82.7%	82.5%	83.2%	79.9%	74.6%
Puducherry	84.8%	83.7%	83.6%	83.1%	83.1%	82.6%	80.7%	80.6%	79.3%	78.3%	75.5%	69.8%
A & N Islands	69.5%	68.0%	67.0%	66.5%	65.7%	64.4%	60.9%	62.5%	60.7%	61.7%	57.0%	47.2%
Telangana	86.5%	85.7%	85.3%	84.9%	84.7%	84.1%	82.4%	82.4%	81.5%	79.6%	74.9%	68.6%
Andhra Pradesh	86.3%	85.5%	85.3%	86.2%	87.3%	87.6%	85.9%	85.6%	84.3%	82.9%	79.3%	73.3%
Other Territory	83.9%	85.0%	85.5%	83.9%	82.3%	80.6%	79.0%	79.0%	79.7%	78.8%	77.3%	76.5%
Total	88.1%	87.4%	87.0%	86.6%	87.0%	86.5%	84.7%	84.5%	83.7%	82.7%	79.3%	73.5%

6. The revenue position for the year 2017-18, 2018-19 and for April and May months of 2019-20 under GST is placed for information of the Council.

Agenda Item 6: Issues recommended by the Law Committee for the consideration of the GST Council

Agenda Item 6(i): Amendments in GST Laws

Various decisions have been taken by the GST Council requiring amendments in GST Laws. In order to implement any amendment in GST law, the same would be required to be passed by the Parliament (for CGST, IGST and UTGST Acts for Union territories without legislature) and by the respective State (for the corresponding SGST Acts and UTGST Acts for Union territories with legislature).

2. Based on the recommendations of the GST Council in its earlier meetings, various decisions that require amendments in the GST laws have been examined by the Law Committee and proposed amendments to GST laws in order to implement the same, along with consequential amendments due to these amendments, have been recommended. The details of the sections which require amendments are as below:

Sl.No.	Section	Rationale for amendments in the CGST/SGST Acts
1	Section 2	Consequential amendment to proposed amendments in Chapter XVII
2	Section 10	To implement the GST Council's decision in the 32 nd meeting held on 10.01.2019, recommending the introduction of a Composition scheme for supplier of services (mixed suppliers), to be made operational from 1 st of April, 2019 (which was made operational <i>vide</i> notification No. 2/2019-Central Tax (Rate), dated 07.03.2019 and Removal of Difficulties Order (RoD) No. 1/2019-Central Tax, dated 01.02.2019).
3	Section 22	To implement the GST Council's decision in the 32 nd meeting held on 10.01.2019, recommending a <i>higher exemption threshold limit for supplier of goods</i> , to be made operational from 1 st of April, 2019 (which was made operational <i>vide</i> notification No. 10/2019-Central Tax, dated the 7 th March, 2019).
4	Section 31A	To implement the GST Council's decision in its 29 th meeting held on 04.08.2018 on agenda on "Incentivising Digital Payments in GST Regime"
5	Section 39	Consequential amendment to proposed amendments in section 10 and proposal for new return system which mandates giving option for quarterly filing of return for registered persons having turnover up to Rs. 5 crore.
6	Section 49	To implement the GST Council's decision in its 31 st Meeting held on 22.12.2018 recommending a single cash ledger for each tax head.
7	Section 50	To implement the GST Council's decision in its 31 st meeting held on 22.12.2018 recommending that interest should be charged only on the net tax liability of the taxpayer.
8	Section 53A	Consequential amendment to proposed amendments in section 54
9	Section 54	To implement the decision in the 31 st GST Council meeting held on 22.12.2018 recommending a single cash ledger for each tax head.
10	Chapter XVII	To implement the decision in the 31 st GST Council meeting held on 22.12.2018 giving in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR)
11	Section 168	Consequential amendment to proposed amendment in section 44 and 52

Sl. No.	Section	Rationale for amendments in the IGST Act
1	Section 17A	To implement the decision in the 31 st GST Council meeting held on 22.12.2018 recommending a single cash ledger for each tax head.

3. In addition to the above, certain amendments in the GST Law are required to

- a. bring into force measures to check bogus registrations;
- b. to provide for penalty on the amount profited.

Sl. No.	Section	Rationale
1	Section 25	To introduce provisions to check bogus registrations
2	Section 171	To introduce provisions for penalty on the amount profited

3. A detailed broadsheet containing the proposed amendments along with the rationale has been prepared and is placed at **Annexure A** to this Agenda Item. The Proposed amendments are highlighted in red colour and are underlined. Also, the amendments which were part of CGST Amendment Act, 2018 but yet to be notified are highlighted in blue colour and are bold, italicized and underlined.

4. Accordingly, the approval of the GST Council is sought for carrying out the said amendments in the Finance Act, 2019. The States would also be required to carry out the said amendments in their respective SGST Acts.

Annexure A

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Consolidated broadsheet containing Law Amendment proposals for consideration of the GST Council

A. Amendments pertaining to CGST Act

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
1.	1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue. 2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.	2(4)	2. Definitions. (4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, <u>the National Appellate Authority for Advance Ruling,</u> the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	Nil	
2.	1. The GST Council in the 32nd meeting held on 10.01.2019, recommended to introduce a Composition scheme for supplier of services (mixed suppliers), to be made operational from 1 st of April, 2019:	10	Section 10: Composition levy. - (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees,	1. Amendment would also be required in section 39 of the CGST Act in order to implement the decision of the	

Sl. No.	Rationale	Section	Proposed amendments (underlined and shown in red colour)	Consequential changes	Comments / Observations
	<ul style="list-style-type: none"> <i>The said composition scheme shall be made available for suppliers of services (or mixed suppliers) with a tax rate of 6% (3% CGST + 3% SGST) having an annual turnover in preceding financial year upto Rs 50 lakhs.</i> <i>The said scheme shall be applicable to both service providers as well as suppliers of goods and services, who are not eligible for the presently available composition scheme for goods.</i> <i>They would be liable to file one annual return with quarterly payment of taxes (along with a simple declaration)</i> <p>2. Accordingly, the Council's decision was implemented w.e.f. 1st April, 2019 vide notification No. 2/2019-Central Tax (Rate), dated 07.03.2019. Further, vide Removal of Difficulties Order (RoD) No. 1/2019-Central Tax, dated 01.02.2019, provisions were made so that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of</p>		<p>may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—</p> <p>(a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,</p> <p>(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and</p> <p>(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:</p> <p>Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council;</p> <p>Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.</p> <p><u>Explanation- For the purpose of second proviso, the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.</u></p>	<p>Council for allowing annual return for composition tax payer. .</p> <p>2. Notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 would be rescinded from the date on which the amended provisions of section 10 of the CGST Act are brought into force.</p> <p>3. Further, Notification on lines similar to notification No. 8/2017-Central Tax dated 27.06.2017 would be issued under proposed section 10(6)(d) (only in respect of notified services / goods not eligible for sub-section (6)).</p> <p>4. Consequential</p>	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
	<p>interest or discount shall not be taken into account for determining the eligibility of composition scheme and calculation of aggregate turnover.</p> <p>3. It is proposed to amend section 10 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act”) for providing composition scheme for supplier of services (or mixed suppliers) and for changes arising out of the said RoD Order.</p>		<p>(2) The registered person shall be eligible to opt under sub-section (1), if:—</p> <p>(a) save as provided in sub-section (1), he is not engaged in the supply of services;</p> <p>(b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;</p> <p>(c) he is not engaged in making any inter-State outward supplies of goods;</p> <p>(d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; <u>and</u></p> <p>(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; <u>and</u></p> <p><u>(f) he is neither a casual taxable person nor a non-resident taxable person:</u></p> <p>Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.</p> <p><u>(2A) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding</u></p>	<p>changes would also be required in CGST Rules. (For example, Rule 5(1)(a) would be deleted).</p>	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<p><u>three per cent of the turnover in State or turnover in Union territory, subject to the conditions below,–</u></p> <p><u>(a) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;</u></p> <p><u>(b) he is not engaged in making any inter-State outward supplies of goods or services;</u></p> <p><u>(c) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;</u></p> <p><u>(d) he is not a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council;</u></p> <p><u>and</u></p> <p><u>(e) he is neither a casual taxable person nor a non-resident taxable person:</u></p> <p><u>Provided that where more than one registered person are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme unless all such registered persons opt to pay tax under this sub-section.</u></p> <p>(3) The option availed of by a registered person under sub-section (1) <u>or, as the case may be, sub-section (2A)</u> shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) <u>or, as the case may be, sub-section (2A).</u></p> <p>(4) A taxable person to whom the provisions of sub-section (1) <u>or, as the case may be, sub-section (2A)</u> apply shall not collect any tax from the recipient on supplies made by him nor</p>		

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<p>shall he be entitled to any credit of input tax.</p> <p>(5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) <u>or, as the case may be, sub-section (2A)</u> despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.</p> <p><u>Explanation. -</u></p> <p><u>(1) For the purposes of determining eligibility of a person to pay tax under this section, the expression “turnover in State or turnover in Union territory” shall include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under this Act but for the purpose of determination of tax payable under this section shall not include the following supplies:</u></p> <p><u>(i) supplies from the first day of April of a financial year to the date from which he becomes liable for registration under this Act; and</u></p> <p><u>(ii) supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</u></p> <p><u>(2) For the purposes of computing aggregate turnover in order to determine eligibility of a person to pay tax under this section, the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is</u></p>		

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<u>represented by way of interest or discount shall not be included.</u>		
3.	<p>1. In order to give relief to the MSMEs, the GST Council in the 32nd meeting held on 10.01.2019, decided on higher exemption threshold limit for supplier of goods:</p> <ul style="list-style-type: none"> • <i>There would be two threshold limits for exemption from registration and payment of GST for the suppliers of goods i.e. Rs 40 lakhs and Rs 20 lakhs.</i> • <i>States would have an option to decide about one of the limits within a weeks' time. The threshold for registration for service providers would continue to be Rs 20 lakhs and in case of Special category States Rs 10 lakhs."</i> • It was also decided that the above decision shall be made operational from the 1st April, 2019. <p>2. Accordingly, the decision was implemented by granting exemption from obtaining registration, subject to certain conditions vide notification No. 10/2019-Central Tax, dated the 7th March, 2019 by exercising</p>	22	<p>Section 22: Persons liable for registration. -</p> <p>(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:</p> <p>Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees:</p> <p>Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be notified:</p> <p><u>Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged in exclusive supply of goods and subject to such conditions and limitations, as may be notified.</u></p> <p><u>Explanation- For the purpose of third proviso, a person shall be considered to be engaged in the exclusive supply of goods even if he is engaged in</u></p>	<p>1. The notification No. 10/2019-Central Tax, dated the 7th March, 2019 shall be rescinded with effect from the date on which the amended provision comes into force.</p> <p>2. Further, a notification would be issued under the third proviso to sub-section (1) of section 22 of the CGST Act to notify the limitations and conditions contained in notification No. 10/2019-Central Tax, dated the 7th March, 2019.</p>	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
	<p>powers under sub-section (2) of section 23 of the CGST Act.</p> <p>3. It is proposed to insert a third proviso and an Explanation in sub-section (1) of section 22 of the CGST Act for allowing higher exemption threshold limit for supplier of goods.</p>		<p><u>supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</u></p> <p>(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.</p> <p>(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.</p> <p>(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.</p> <p>Explanation. —For the purposes of this section, —</p> <p>(i) the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;</p> <p>(ii) the supply of goods, after completion of job work, by a</p>		

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			registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker; (iii) the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution <i>except the State of Jammu and Kashmir and State of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.</i>		
4.	A lot of instances have been noticed wherein persons have taken registration and issued fake invoices to defraud the exchequer. The process of grant of registration is through common portal and is being granted in three days from the date of application, which requires minimum human intervention. It is felt that authentication of persons applying for registration may be introduced in the system/common portal to put a check on bogus registration. 2. The matter was examined by the Law Committee and it is felt that AADHAAR, which is at present optional, may be made compulsory during the process of registration. Amendment in section 25 of CGST Act is proposed by way of insertion of sub-	25	<u>Section 25: Procedure for registration. -</u> <u>(6A) Every individual, on or from a day to be notified, shall undergo authentication, or furnish proof of possession of Aadhaar number in such manner as may be notified by the Government on the recommendations of the Council, in order to be eligible for grant of registration:</u> <u>Provided that if an Aadhaar number is not assigned to an individual, the individual shall be offered alternate and viable means of identification in such manner as may be notified by the Government on the recommendations of the Council.</u> <u>(6B) Every person other than an individual, on or after a day to be notified, on the recommendations of the Council, shall undergo authentication, or furnish proof of possession of Aadhaar number of Karta, Managing Director, whole time Director, such number of Partners, Members of Managing Committee of Association or Board of Trustees, as the case may be, authorized representative, authorised signatory</u>	Nil	

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	section (6A), (6B), (6C) and (6D).		<p><u>and such other class of persons as may be notified by the Government on the recommendations of the Council in order to be eligible for grant of registration:</u> <u>Provided that where such Karta, Managing Director, whole time Director, Partners, Members of Managing Committee of Association or Board of Trustees, authorized representative, authorised signatory and other notified persons do not possess the Aadhaar Number, they shall be offered alternate and viable means of identification in such manner as may be notified by the Government on the recommendations of the Council.</u></p> <p><u>(6C) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number in such form, manner and within such time as may be prescribed: Provided that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number, the registration allotted to the person shall be deemed to be invalid and the other provisions of this Act shall apply, as if the said person do not have a registration.</u></p> <p><u>(6D) The provisions of sub-section (6A), (6B) or (6C) shall not apply to such person or class or classes of persons or any State or part of any State, as may be notified by the Government on the recommendations of the Council.</u></p> <p><u>Explanation. — For the purposes of this section, the expressions—</u> <u>(i) "Aadhaar number" and "Enrolment" shall have the same meanings respectively assigned to</u></p>		

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			<u>them in clauses (a) and (m) of section 2 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 (18 of 2016);</u> <u>(ii) "Enrolment ID" means a 28-digit Enrolment Identification Number issued to an applicant at the time of enrolment.</u>		
5.	1. The GST Council in its 29 th meeting held on 04.08.2018 on agenda on “Incentivising Digital Payments in GST Regime” decided that a provision shall be made for incentivising digital payment under GST regime. 2. In order to implement the said decision a new section is proposed to be inserted in the CGST Act.	31A	<u>Section 31A: Facility of digital payment to the recipient. -</u> <u>Every registered person who is required to issue a tax invoice or a bill of supply for supply of goods or services or both under section 31 shall, in respect of such class of registered persons, subject to such conditions and restrictions, and in such manner as may be prescribed by the Government on the recommendations of the Council, provide an option to the recipient of the goods or services or both to make the payment in respect of such supply digitally.</u>	Nil	
6.	Consequential to proposed amendment in section 10 above (S. No. 2 above), provisions of section 39 would also require amendment. Changes in section is also proposed in view of the new return system which mandates giving option for quarterly filing of returns for registered persons having turnover upto Rs. 5 crores.	39	<i>(The portion shown in blue colour and which are bold and italicized were part of CGST Amendment Act, 2018 but yet to be notified).</i> <u>Section 39: Furnishing of returns. -</u> (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, <u>in such form, manner and within such time as may be prescribed,</u> a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed[, <u>on or before the</u>	Nil	

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			<p><u>twentieth day of the month succeeding such calendar month or part thereof</u>]:</p> <p>[, on or before the twentieth day of the month succeeding such calendar month or part thereof]</p> <p><u>Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.</u></p> <p>(2) A registered person paying tax under the provisions of section 10 shall, <u>for each financial year quarter</u> or part thereof, furnish, in such form, <u>and</u> manner <u>and within such time</u> as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, <u>and</u> tax paid <u>and such other particulars as may be prescribed. within eighteen days after the end of such quarter.</u></p> <p>(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.</p> <p>(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically,</p>		

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			<p>within thirteen days after the end of such month.</p> <p>(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section(1) of section 27, whichever is earlier.</p> <p>(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein: Provided that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory/central tax shall be deemed to be notified by the Commissioner.</p> <p>(7) Every registered person, who is required to furnish a return under sub-section (1), <u>other than the person referred to in the first proviso thereto, or sub-section (2)</u> or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:</p>		

			<p><u>Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein:</u></p> <p><u>Provided further that every registered person furnishing return under the first proviso to sub-section (1) shall pay to the Government the tax due taking into account inward and outward supplies of goods or services or both during a month, input tax credit availed, tax payable and such other particulars, in such form, manner and within such time as may be prescribed:</u></p> <p><u>Provided also that every registered person furnishing return under sub-section (2) shall pay to the Government the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form, manner and within such time as may be prescribed.</u></p> <p>(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been effected during such tax period.</p> <p>(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars</p>		
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			<p>therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars <u>in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed in such form and manner as may be prescribed</u> [in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed in such form and manner as may be prescribed], subject to payment of interest under this Act:</p> <p>Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.</p> <p>(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.</p>		
7.	1. During the first year of implementation of GST, the common portal was not ready for annual return, leading to multiple extensions of the due date for furnishing of the Annual Return (which, as per sub-section (1) of section 44 of the CGST Act, needs to be furnished for every financial year by 31 st December following	44	<p>Section 44: Annual Return. -</p> <p>(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year:</p> <p><u>Provided that the Commissioner may, on the recommendations of the</u></p>	Consequential amendment required in section 168	

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	<p>the end of such financial year).</p> <p>2. Since there is no provision for extension of due date for furnishing of the annual return, the extension till 30.06.2019 was provided vide Removal of Difficulties Order (RoD) No. 1/2018-Central Tax dated 11.12.2018 and thereafter vide RoD No. 03/2018-Central Tax dated 31.12.2018 issued in terms of provisions contained in section 172 of the CGST Act by inserting an explanation to section 44 of the CGST Act.</p> <p>3. It may be noted that provisions of section 172 of the CGST Act can be used to issue RoD if any difficulty arises in giving effect to any provisions of the Act. But such orders cannot be inconsistent with the provisions of the Act, rules or regulations. Further, the RoD can be issued only during first three years of its implementation. .</p> <p>4. It is proposed to amend section 44 of the CGST Act so as to empower the Commissioner to extend the due date for furnishing the annual return on the lines similar to the power given to Commissioner for extension of due date for</p>		<p><u>Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein: Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.</u></p> <p>Suggested formulation under the SGST Act for the said sub-section is as follows: -</p> <p>44. (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year:</p> <p><u>Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:</u></p> <p><u>Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.</u></p>		

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	other statements for outward supplies in FORM GSTR-1 , return in FORM GSTR-3B etc.				
8.	<p>1. GST Council in its 31st Meeting held on 22.12.2018 recommended for a single cash ledger for each tax head. Further, it was also decided that the modalities for implementation would be finalized in consultation with GSTN and the Accounting authorities.</p> <p>2. GSTN had submitted a detailed proposal and mechanism for implementation of the said decision of the Council, in process of which insertion of new sub-sections are required in section 49 of the CGST Act.</p>	49	<p>49. Payment of tax, interest, penalty and other amounts. - New sub-sections (10) and (11) to be inserted in section 49 as follows: <u>(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.</u> <u>(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger in accordance with the provisions of sub-section (1).</u></p>	Nil	
9.	1. The GST Council in the 31 st meeting held on 22.12.2018, at New Delhi recommended amendment of section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.	50	<p>Section 50: Interest on delayed payment of tax. - (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council: <u>Provided that interest on tax payable in respect of supplies made during any</u></p>	Nil	

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	2. In order to implement the said decision a proviso to sub-section (1) of section (50) is proposed to be inserted in the CGST Act.		<p><u>tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceeding under section 73 or 74, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.</u></p> <p>(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.</p> <p>(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.</p>		
10.	1. The due date for furnishing returns in FORM GSTR-3B, FORM GSTR-4, FORM GSTR-7 etc. can be extended by the Commissioner. But, there is no such power in case of furnishing of monthly return by electronic commerce operator in FORM GSTR-8 . Since the entire process is system generated and dependent on common portal, possibility of technical glitches cannot be ruled	52	<p><u>Section 52: Collection of tax at source.</u> -Amendment to sub-section (4) and sub-section (5) of section 52 of CGST Act: -</p> <p>(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month:</p>	Consequential amendment required in section 168	

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	<p>out. There is, however, no provision for extension of due date for furnishing the return in FORM GSTR-8.</p> <p>2. It is pertinent to mention that during the first four months of implementation of return in FORM GSTR-8, there were technical issues and hence the due dates were needed to be extended. These extensions were granted till 07.02.2019 vide Removal of Difficulties Order (RoD) No. 4/2018-Central Tax dated 31.12.2018 and thereafter vide RoD no. 2/2019-Central Tax dated 01.02.2019 in terms of the provisions contained in section 172 of the CGST Act by inserting an explanation to sub-section (4) of section 52 of the CGST Act. It is submitted that no RoD has been issued in relation to furnishing of annual statement required under sub-section (5) of section 52 of the CGST Act so far but similar power is required for this provision also.</p> <p>3. It may be noted that provisions of section 172 of the CGST Act can be used to issue RoD if any difficulty arises in giving effect to any provisions of the Act. But such orders</p>		<p><u>Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:</u></p> <p><u>Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.</u></p> <p>(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year:</p> <p><u>Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:</u></p> <p><u>Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.</u></p>		

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	<p>cannot be inconsistent with the provisions of the Act, rules or regulations. Further, the RoD can be issued only during first three years of its implementation.</p> <p>4. In view of above, it is proposed to amend section 52 of the CGST Act so as to empower the Commissioner to extend the due date for furnishing the statement under section 52 on the lines similar to the power given to Commissioner for extension of due date for other statements like for outward supplies in FORM GSTR-1, return in FORM GSTR-3B.</p>		<p>Suggested formulation under the SGST Act for the said sub-section is as follows: -</p> <p><u>Section 52: Collection of tax at source. -</u></p> <p>(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.</p> <p><u>Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:</u></p> <p><u>Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.</u></p> <p>(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in</p>		

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			<p>such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year:</p> <p><u>Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:</u></p> <p><u>Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.</u></p>		
11.	In view of the proposal at S. No. 12 below, it is proposed to insert a new section 53A in the CGST Act for transferring the CGST/SGST/UTGST equivalent to refund of state tax/ union territory tax disbursed by the Centre.	53A	<p><u>53A. Transfer of certain amounts. -</u> <u>Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger for State tax or Union territory tax, the Government shall, transfer to the State tax account or Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.</u></p> <p>Suggested formulation under the SGST Act for the said section is as follows: - <u>53A. Transfer of certain amounts. -</u> <u>53A. Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger for central tax or integrated tax or cess, the Government shall, transfer to the central tax account or integrated tax account or cess account, an amount equal to the amount transferred from the electronic cash</u></p>	Consequential changes in IGST Act are required.	

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			<u>ledger, in such manner and within such time as may be prescribed.</u>		
12.	1. GST Council in its 31 st Meeting held on 22.12.2018 recommended for a single cash ledger for each tax head. Further, it was also decided that the modalities for implementation would be finalized in consultation with GSTN and the Accounting authorities. 2. GSTN had submitted a detailed proposal and mechanism for implementation of the said decision of the Council, in process of which insertion of new sub-section is required in section 54 of the CGST Act.	54 (8A)	54. Refund of Tax. - <u>(8A) The Government may disburse the refund of State tax in such manner as may be prescribed.</u> Suggested formulation under the SGST Act for the said sub-section is as follows: - 54. Refund of Tax. - <u>(8A) Where the Central Government has disbursed the refund of State tax, the Government shall transfer an amount equal to the amount so refunded, to the Central Government.</u>	Consequential amendment in section 53 (new section 53A) and CGST Rules are required.	
13A.	1. The GST Council in the 31 st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue. 2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act.	95	95. Definitions. In this Chapter, unless the context otherwise requires, — (a) “advance ruling” means a decision provided by the Authority or the Appellate Authority <u>or the National Appellate Authority</u> to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 <u>or section 101C</u> , in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; (b) “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99; (c) “applicant” means any person registered or desirous of obtaining registration under this Act;	Consequential amendment in definition of “adjudicating authority” contained in section 2(4) of CGST Act.	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
	3. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.		<p>(d) “application” means an application made to the Authority under sub-section (1) of section 97;</p> <p>(e) “Authority” means the Authority for Advance Ruling referred to in section 96.</p> <p><u>(f) “National Appellate Authority” means the National Appellate Authority for Advance Ruling referred to in section 101A;</u></p>		
13B.	<p>1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</p> <p>2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act.</p> <p>3. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.</p>	101A	<p><u>101A. Constitution of National Appellate Authority for Advance Ruling. -</u></p> <p><u>(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals made under section 101B.</u></p> <p><u>(2) The National Appellate Authority shall consist of-</u></p> <p><u>(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;</u></p> <p><u>(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;</u></p> <p><u>(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State Goods and Services Tax with at least three years</u></p>		

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<p><u>of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.</u></p> <p><u>(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:</u></p> <p><u>Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:</u></p> <p><u>Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.</u></p> <p><u>(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.</u></p> <p><u>(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.</u></p> <p><u>(6) Before appointing any person as the President or Members of the National Appellate Authority, the</u></p>		

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<p><u>Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.</u></p> <p><u>(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:</u> <u>Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.</u></p> <p><u>(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.</u></p> <p><u>(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.</u></p> <p><u>(10) The President or any Member may, by notice in writing under his hand addressed to the Government resign from his office:</u> <u>Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon</u></p>		

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<p><u>his office or until the expiry of his term of office, whichever is the earliest.</u></p> <p><u>(11) The Government may, after consultation with the Chief Justice of India, may remove from the office such President or Member, who—</u></p> <p><u>(a) has been adjudged an insolvent; or</u></p> <p><u>(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude;</u></p> <p><u>or</u></p> <p><u>(c) has become physically or mentally incapable of acting as such President or Member; or</u></p> <p><u>(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or</u></p> <p><u>(e) has so abused his position as to render his continuance in office prejudicial to the public interest:</u></p> <p><u>Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.</u></p> <p><u>(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and of which the President or the said Member had been given an opportunity of being heard.</u></p>		

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<p><u>(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).</u></p> <p><u>(14) Subject to the provisions of article 220 of the Constitution, the President or Member of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.</u></p> <p>Suggested formulation under the SGST Act for the said section is as follows: -</p> <p><u>101A. Constitution of National Appellate Authority for Advance Ruling</u></p> <p><u>Subject to the provisions of this Chapter, for the purposes of this Act, the National Appellate Authority for Advance Ruling constituted under the Central Goods and Services Tax Act shall be deemed to be the National Appellate Authority for Advance Ruling under this Act.</u></p> <p><i>Note: Technical Member (State) will be decided on the basis of rotation between States, based on the recommendations of the GST Council. The same would be prescribed in the Rules.</i></p>		
13C.	1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for	101B	<p><u>101B. Appeal to the National Appellate Authority. -</u></p> <p><u>(1) Applicants who are distinct persons as specified in section 25 or the officer authorized by the Commissioner in this behalf, if</u></p>	Nil	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
	<p>Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</p> <p>2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act.</p> <p>3. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.</p>		<p><u>aggrieved by conflicting advance rulings pronounced on the same question as specified in sub-section (2) of section 97, by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) of section 101 or sub-section (3) of section 101 may appeal to the National Appellate Authority.</u> <u>Explanation. - For the purposes of this section, the officer referred to in this sub-section shall be from those States where the concerned appellate advance rulings have been given.</u></p> <p><u>(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:</u> <u>Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:</u> <u>Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow it to be presented within a further period not exceeding thirty days.</u> <u>Explanation. - For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last/latest</u></p>		

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<u>conflicting ruling sought to be appealed against.</u> <u>(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.</u>		
13D.	<p>1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</p> <p>2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act.</p> <p>3. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.</p>	101C	<u>101C. Orders of the National Appellate Authority. -</u> <u>(1) The National Appellate Authority may, after giving an opportunity of being heard, to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioner / Chief Commissioner of Central tax and the Chief Commissioner / Commissioner of State tax of all States and Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.</u> <u>(2) If the members of the National Appellate Authority differ in opinion on any point or points, it shall be decided according to the opinion of the majority.</u> <u>(3) The order referred to in sub-section (1) shall be passed preferably within a period of ninety days from the date of filing of the appeal under section 101B.</u> <u>(4) A copy of the advance ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner / Commissioner of State tax of all States and Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.</u>	Nil	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
13E.	<p>1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</p> <p>2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act.</p> <p>3. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.</p>	102	<p>102. Rectification of advance ruling. -</p> <p>The Authority or the Appellate Authority <u>or the National Appellate Authority</u> may amend any order passed by it under section 98 or section 101 <u>or section 101C, as the case may be</u>, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority <u>or the National Appellate Authority</u> on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant <u>or the Authority or the Appellate Authority</u> within a period of six months from the date of the order:</p> <p><i>Provided</i> that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.</p>	Nil	
13F.	<p>1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</p> <p>2. In order to implement the same various amendments are required</p>	103	<p>103. Applicability of advance ruling. -</p> <p>(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—</p> <p>(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;</p> <p>(b) on the concerned officer or the jurisdictional officer in respect of the applicant.</p> <p><u>(1A) The advance ruling pronounced by the National Appellate Authority</u></p>	Nil	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
	to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act. 3. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.		<u>under this Chapter shall be binding on—</u> <u>(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961)];</u> <u>(b) the concerned officers and the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number [issued under the Income-tax Act, 1961 (43 of 1961)].</u> (2) The advance ruling referred to in sub-section (1) <u>and sub-section (1A)</u> shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.		
13G.	1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue. 2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act. 3. Further, consequential amendment is required in the definition of	104	104. Advance ruling to be void in certain circumstances. - (1) Where the Authority or the Appellate Authority <u>or the National Appellate Authority</u> finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 <u>or under section 101C</u> has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void <i>ab-initio</i> and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made: <i>Provided</i> that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.	Nil	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
	“adjudicating authority” in section 2(4) of the CGST Act.		<p><i>Explanation.</i> —The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.</p> <p>(2) A copy of the order made under sub-section (1) shall be sent to the applicants, the concerned officer and the jurisdictional officer.</p>		
13H.	<p>1. The GST Council in the 31st meeting held on 22.12.2018 gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</p> <p>2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act.</p> <p>3. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.</p>	105	<p>105. Powers of Authority, <u>and</u> Appellate Authority <u>and the National Appellate Authority.</u> -</p> <p>(1) The Authority or the Appellate Authority <u>or the National Appellate Authority</u> shall, for the purpose of exercising its powers regarding—</p> <p>(a) discovery and inspection;</p> <p>(b) enforcing the attendance of any person and examining him on oath;</p> <p>(c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. (5 of 1908.)</p> <p>(2) The Authority or the Appellate Authority <u>or the National Appellate Authority</u> shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, (2 of 1974.) and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860.)</p>	Nil	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
13I.	<p>The GST Council in the 31st meeting held on 22nd December 2018, at New Delhi gave in principle approval for creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</p> <p>2. In order to implement the same various amendments are required to different sections and insertion of sections 101A to 101C in Chapter XVII of the CGST Act. Further, consequential amendment is required in the definition of “adjudicating authority” in section 2(4) of the CGST Act.</p>	106	<p>106. Procedure of Authority, <u>and</u> Appellate Authority <u>and the</u> <u>National Appellate Authority.</u> - The Authority or the Appellate Authority <u>or the National Appellate Authority</u> shall, subject to the provisions of this Chapter, have power to regulate its own procedure.</p>	Nil	
14.	Consequential to proposed amendment in section 44 and 52 of CGST Act above, amendment is required in section 168 of the CGST Act.	168	<p>Section 168: Power to issue instructions or directions. - (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, <u>sub-section (1) of section 44, sub-section (4) of section 52, sub-section (5) of section 52,</u> sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (1) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary</p>	Nil	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.		
15.	In relation to the National Anti-profiteering Authority (NAA) , the provisions for interest and penalty on the amount profited is not provided for in the statute. 2. Therefore amendments in certain provisions are required in section 171 of the CGST Act is proposed by inserting sub-clause (4)	171	Section 171. Anti-profiteering measure. - (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed. <u>(4) Where the Authority referred to in sub-section (2) holds that any taxable person has profited within the meaning of sub- section (1), the said taxable person shall be liable to pay penalty equivalent to ten per cent. of the amount profited:</u> <u>Provided that no penalty shall be leviable if the profited amount is deposited within 30 days of the date of passing of the order by the Authority referred to in sub-section (2).</u> <u>Explanation: “The amount profited” shall mean the amount</u>	Nil	

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
			<u>determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.</u>		

B. Amendments pertaining to IGST Act

Sl. No.	Rationale	Section	Proposed amendments (<u>underlined and shown in red colour</u>)	Consequential changes	Comments / Observations
1.	1. GST Council in its 31 st Meeting held on 22.12.2019 recommended for a single cash ledger for each tax head. Further, it was also decided that the modalities for implementation would be finalized in consultation with GSTN and the Accounting authorities. 2. GSTN had submitted a detailed proposal and mechanism for implementation of the said decision of the Council, in process of which insertion of new section is required in the IGST Act.	17A of IGST Act	<u>17A. Transfer of certain amounts.</u> <u>Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger for State tax or Union territory tax, the Government shall, transfer to the State tax account or Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.</u>	Consequential amendments in CGST / SGST Act.	

Agenda Item 6(ii): Update on the status of the issues referred to the Law Committee by the GST Council

The GST Council in its various meetings from time to time had referred various issues to the Law Committee for examination. The Law Committee had examined the issues and the proposals of the Law Committee on the issues are as follows:

Issue referred in 28th and 31st GST Council Meeting

2. The Law Committee may consider the issue of exclusion of Brick Kilns, Menthol and Sand Mining activities from the benefit of Composition scheme

2.1. In pursuance of the decision of the 28th GST Council Meeting held on 21st July 2018 and 31st GST Council Meeting held on 22nd December 2018, the GST Council Secretariat sought details/ inputs in respect of brick kilns, menthol and sand mining activities. The details/inputs received from 25 States/UTs with Legislatures as appended at Annexure 1₁ were compiled and forwarded to Law Committee for consideration by the Law Committee.

2.2. The Law Committee noted that the value addition in case of Brick Kilns, Menthol and Sand Mining activities were of a substantial degree with hardly any ITC which is similar to the practice in ice cream manufacturing. Further, benefit of similar scheme was also extended to small service providers (mixed suppliers) vide notification No. 2/2019- Central Tax-(Rate), dated 07.03.2019. Hence, it was agreed in the Law Committee to recommend denial of benefit of Composition Scheme to these categories of items.

Issue referred in the 25th GST Council Meeting:

3. The GST Council had decided that the Law Committee shall examine the introduction of e-Way bill system for movement of gold.

3.1. The GST Council while discussing the agenda item 13(ii) i.e. Proposal to reduce penalty under Section 122(1)(xiv) of CGST Act, 2017 (e-Way Bill) in exercise of powers under Section 128 of the Act during the 25th GST Council Meeting held on 18th January 2018 referred the issue of introducing e-Way bill system for movement of gold for examination to the Law Committee.

3.2. In view of the security concerns, the Law Committee recommended that e-Way bills may not be insisted upon and possibility of generating encrypted e-Way bills may be explored.

4. The recommendations of the Law Committee on the above issues are placed before the Council for consideration.

Annexure 1

Details from States regarding certain items under Composition Scheme for Brick Kilns

Sl. No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
A	B	C	D	E	F	G
1	Andhra Pradesh	336	0.7041	Out of 336 dealers, 298 dealers were in composition (TOT) during VAT regime and the remaining 38 were not in composition	As per Section 17 of APVAT Act, 2005, any dealer whose turnover is less than Rs 50 Lakhs may opt for registration as TOT (turnover Tax dealer) and liable to pay tax @1% on his taxable turnover as per section 4(2) of the Act. 298 dealers opted for TOT.	No
2	Assam	1517	12.13	Yes	Govt. Notification No. FTX-128/2005 /Pt/92 dtd 25/06/2013 (Attached) Rate of Tax: 1. 25 payas and above Rs. 1,00,000.00 per annum 2. 21 payas to 24 payas Rs. 80,000.00 per annum Upto 8 lakh bricks per round Rs. 60,000.00 per annum	
3	Bihar	4525	42.21	Yes	Notification S.O. 45 Dated 04.05.2006 As amended by S.O 37 Dated 17.02.2016	N. A
4	Chhattisgarh	128	0.20	No	NA	NA
5	Delhi	Nil	NA	NA	NA	NA

Sl. No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
6	Himachal Pradesh	126	2.2	Yes	As per sub rule (1) of 46 of HP VAT Act, 2005	NA
7	Kerala		Nil	Nil	Nil	Nil
8	Madhya Pradesh	179	0.95	0	Nil	NA
9	Manipur	0	0	No	NA	No specific special provision
10	Meghalaya	Nil	Nil	NA	NA	NA
11	Mizoram	Nil	Nil	NA	NA	NA
12	Odisha	N. A		No		No Sector specific composition scheme was made available under the OVAT Act except for Country Liquor
13	Puducherry	5	0.0015	No	NA	NA
14	Tamil Nadu	386	3.36	Yes	<ol style="list-style-type: none"> 1. Sec 6A was inserted as per Act 25 of 2009 (Tamil Nadu Legislative Assembly) under TNVAT Act 2006, which enabled payment of Tax compounded rate by Brick Manufacturers. 2. Schedule 7 was inserted under the TNVAT Act 2006, compounded rate Brick Kilns based on Brick Kiln capacity. 	No

Sl. No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
15	Telangana	1196	6.98	Yes	Sec 17 (7) Rule 4 (2) of TVAT Act, 2005	---
16	Tripura	289	9.4	No	Not applicable	The tax collection was made as provision of the TVAT Act, 2004 and the prevailing rate of tax was 5%.
17	Uttar Pradesh	16776	482.55	No	NA	Capacity based tax was leviable on Brick Kilns - In U.P. Compounding was allowed only to those dealers who were purchasing Goods from registered dealers within the State and were not allowed to purchase from unregistered dealers. Compounding dealers were neither allowed to purchase Goods from outside the State nor allowed to sale Goods outside the State. Thus, Compounding was allowed to a very limited number of dealers.
18	Uttarakhand	254	10.40	Yes	966/2016/01(A)(120)/X XVII (8)/01 Dated 25 Nov, 2016 Document Attached	-
19	West Bengal	3107	33.52	No	-	No
20	Jharkhand	379	156.77	Yes	VAT/Vividh/4/2003/836 (F) dated 31 st March 2006	

Sl. No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
21	Rajasthan	-	-	-	-	Brick Kilns was exempted in the State of Rajasthan vide notification no.F.12(52)/Tax/09-pt-109 dated 31.12.2010 w.e.f. 01.01.2011.
22	Maharashtra					There was no special composition scheme for the class of dealers of brick kiln.
23	Jammu & Kashmir	359	4.01	Yes	SRO 208 dated 03.07.2014, Sec.56 of J&K VAT Act, 2005 read with SRO 161 dated 13.04.2010.	
24	Goa	7	0.048109	NO	NA	Under the Goa VAT Act, 2005 the manufacturers of goods were not eligible for composition scheme.
25	Gujarat	8125	138.64	Yes. Under Composition scheme-2322 units. Remaining units were regular dealers.	Under Section 14, Bricks manufacturer was permitted for composition vide notification No.(GHN-24)/VAT-2006/S.14 (1&2) (1)-TH Dated 31.03.2006. Composition rate was 2%.	The dealer not opting for composition was to pay tax at the rate specified in the schedule. Bricks were taxable at the rate of 4%+1% Additional Tax.

Details from States regarding certain items under Composition Scheme for Menthol

Sl. No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
A	B	C	D	E	F	G
1	Andhra Pradesh	0	0	No	Nil	No
2	Assam	Nil	Nil	No	N.A.	No
3	Bihar	Nil	Nil	No	NA	Note- Mentha Oil was Tax Free Item under Bihar VAT
4	Chhattisgarh	0	0	No	NA	NA
5	Delhi	Nil	NA	NA	NA	NA
6	Himachal Pradesh	0	0	No	NA	NA
7	Kerala		Nil	Nil	Nil	Nil
8	Madhya Pradesh	18	0.65	0	Nil	-
9	Manipur	0	0	No	NA	No specific special provision
10	Meghalaya	Nil	Nil	Does not arise	Does not arise	Does not arise
11	Mizoram	Nil	Nil	NA	NA	NA
12	Odisha	NA		No		No Sector specific composition scheme was made available under the OVAT Act except for Country Liquor
13	Puducherry	Nil	NA	NA	NA	NA

Sl. No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
14	Tamil Nadu	-	-	No	-	No
15	Telangana	13	3.15	Yes	Sec 17 (7) Rule 4 (2) of TVAT Act, 2005	----
16	Tripura	Nil	-	-	-	-
17	Uttar Pradesh	139	32.04	No	N.A.	No
18	Uttarakhand	8	1.47	No	-	NA
19	West Bengal	*	-	No	-	<p>No</p> <p>*Note: <i>During the VAT regime, the commodities were not captured according to their HSN codes. Mentioning of commodity codes was not mandatory in the returns. The data furnished above has been populated from the part of the return where the taxpayers voluntarily mentioned the three main commodities in which they dealt during the period. Since it was an optional text field, many taxpayers submitted their returns mentioning "Miscellaneous Taxable Commodity" instead of the particular name of commodity. In some cases, commodities were not mentioned at all. Therefore,</i></p>

Sl. No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
						<i>the data given above is indicative and not accurate.</i>
20	Jharkhand	2	0.00058	No	-	-
21	Rajasthan	-	-	-	-	Only revenue for menthol can't be provided, as information is not compiled commodity wise by the department. Though, it was taxable @14.5% in VAT.
22	Maharashtra					There was no special composition scheme for the class of dealers of menthol. Resellers of menthol could opt for composition scheme as a reseller (if retailer) as any other normal dealer reselling any other goods.
23	Jammu & Kashmir	4	0.09	Nil	Nil	One unit was trader and others were the manufacturing units availing CST exemption.
24	Goa	0	0	No	N.A.	Under the Goa VAT Act, 2005 the manufacturers of goods were not eligible for composition scheme.
25	Gujarat	23	0.29	No		Menthol was taxable at the rate of 4%+1% Additional Tax.

Details from States regarding certain items under Composition Scheme for Sand Mining Activities

SLNo	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
A	B	C	D	E	F	G
1	Andhra Pradesh	4	0.34	No	Nil	No
2	Assam	Nil	Not Available	No	N.A.	VAT @ 6% was collected and paid by the Department of Forest, Govt. of Assam
3	Bihar	20	67.30	No	N.A	N.A
4	Chhattisgarh	20	0.13	No	NA	NA
5	Delhi	Nil	NA	NA	NA	NA
6	Himachal Pradesh	104	2.2	No	NA	NA
7	Kerala		Nil	Nil	Nil	Nil
8	Madhya Pradesh	155	32.78	0	Nil	San Mining is first point taxable and ineligible for composition
9	Manipur	0	0	No	NA	No specific special provision
10	Meghalaya	Nil	Nil	Does not arise	Does not arise	Does not arise
11	Mizoram	Nil	Nil	NA	NA	NA
12	Odisha	NA		No		No Sector specific composition scheme was made available under the OVAT Act except for Country Liquor

Sl.No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
13	Puducherry	Nil	NA	NA	NA	NA
14	Tamil Nadu	-	-	No	-	No
15	Telangana	607	21.08	Yes	Sec 17 (7) Rule 4 (2) of TVAT Act, 2005	----
16	Tripura	Nil				
17	Uttar Pradesh	812	129.85	No	N.A.	No
18	Uttarakhand	103	25.35	No	-	N.A.
19	West Bengal	267	3.13	No	-	No
20	Jharkhand	132	94.81	No		
21	Rajasthan	-	-	-	-	Sand mining activities was exempted in the State of Rajasthan vide notification no F.12(52) FD/Tax/09-pt-109 dated 31.12.2010 w.e.f. 01.01.2011.
22	Maharashtra					In Maharashtra, there was no special composition scheme or the class of dealers involved in sand mining activities. However, for sand mining and mining of minor minerals, MVAT contained provision of tax collection at source (TCS) at 10% by the Collector from the

Sl.No	States	No. of registered units	Revenue collected from activities listed at Column B during 2016-17 from such activities (Rs. in crore)	Whether it was under Composition Scheme during the VAT regime: Yes / No	If Answer to Column E is yes, the details thereof along with relevant law/notification	If answer to Column E is no, whether any special provision governed the taxation of such item, and if so, details thereof
						dealer, who did the mining activity.
23	Jammu & Kashmir	Nil	Nil	Nil	Nil	Nil
24	Goa	3	0.009000	No	N.A.	Under the Goa VAT Act, 2005 the manufacturers of goods were not eligible for composition scheme.
25	Gujarat	102	0.81	No	—	Sand was taxable at the rate of 4%+1% Additional Tax.

Agenda Item 6(iii): Proposal for e-ticketing for cinema tickets

One of the approved agenda items in the 31st GST Council Meeting held on 22nd December 2018, was reduction of tax rates on Cinema tickets. In the said meeting, the Hon'ble Minister from Kerala suggested that a corollary decision must be taken that all cinema tickets should be electronic tickets. The Council agreed to the suggestion that States are entitled to issue electronic tickets and that the Law Committee to formulate rules in this regard (paragraph 14.49 of the Minutes of the 31st GST Council Meeting held on 22nd December 2018).

2. The relevant provisions of the GST Laws were examined by the Law Committee. It was noted that proviso of sub-section (1) of section 31 of the Central Goods and services Tax Act, 2017 (hereinafter referred to as the CGST Act) empowers the Government, on the recommendations of the Council, to specify the categories of goods or services in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed. Accordingly, rule 54 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) was framed to specify the procedure relating to tax invoice in special cases.

3. The issue was deliberated by the Law Committee in its meeting held on 22nd January, 2019.

3.1 To make provisions for cinema tickets to be electronic tickets, it appears that a new sub-rule is required so as to specify services by way of admission to exhibition of cinematograph films in multiplex screens as categories of services who shall issue electronic tickets mandatorily to the customers. Accordingly, the Law Committee recommended insertion of sub-rule (4A) of rule 54 and changes in the fourth proviso to rule 46 of the CGST Rules which are underlined and italicized and shown in red colour below: -

Rule 54: Tax invoice in special cases

...
...

“(4A) A registered person supplying services by way of admission to exhibition of cinematograph films, shall be required to issue a tax invoice electronically and for this purpose the electronic ticket issued by him shall be deemed to be a tax invoice for all purposes of the Act, even if such a ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46:

Provided that supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.”

Rule 46: Tax invoice

...
...

Provided also that a registered person may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely, -

(a) the recipient is not a registered person; *and*

(b) the recipient does not require such invoice, *and*

(c) the supplier is not engaged in supply of services by way of admission to exhibition of cinematograph films

3.2 The Law Committee has noted the provisions contained in clause (b) of sub-section (3) of section 31 of the CGST Act which provided that “*a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed*”. The Law Committee has recommended that e-ticketing may not be mandatory for suppliers other than multiplexes.

4. The proposal to insert Rule 54(4A) and to insert clause (c) in the fourth proviso to Rule 46 of the CGST Rules is placed for consideration of the GST Council. *Pari-materia* changes would also be required in the respective SGST Rules. The Council may also decide that whether this requirement of issuing e-tickets would be compulsory in all States.

Agenda Item 6(iv): Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organization in one State to the office of that organization in another State, which are regarded as distinct persons under section 25 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') and of the supply of services between such distinct persons.

2. The Law Committee has proposed to clarify the issues regarding distribution of input tax credit in respect of input services procured by the Head Office but attributable to the Head Office and /or various Branch Offices, treatment of expenses incurred by the Head Office on the procurement, distribution and management of common input services, treatment of services provided by the Head Office such as common administration or common IT maintenance to its Branch Offices and its valuation thereof, etc.
3. A draft Circular is annexed to this Agenda Note (Annexure-A) clarifying the doubts on the above subject. Similar Circular would be issued by all the States also.
4. Accordingly, the approval of the GST Council is sought for the issuance of the proposed Circular.

**F.No.
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

North Block, New Delhi
Dated June, 2019

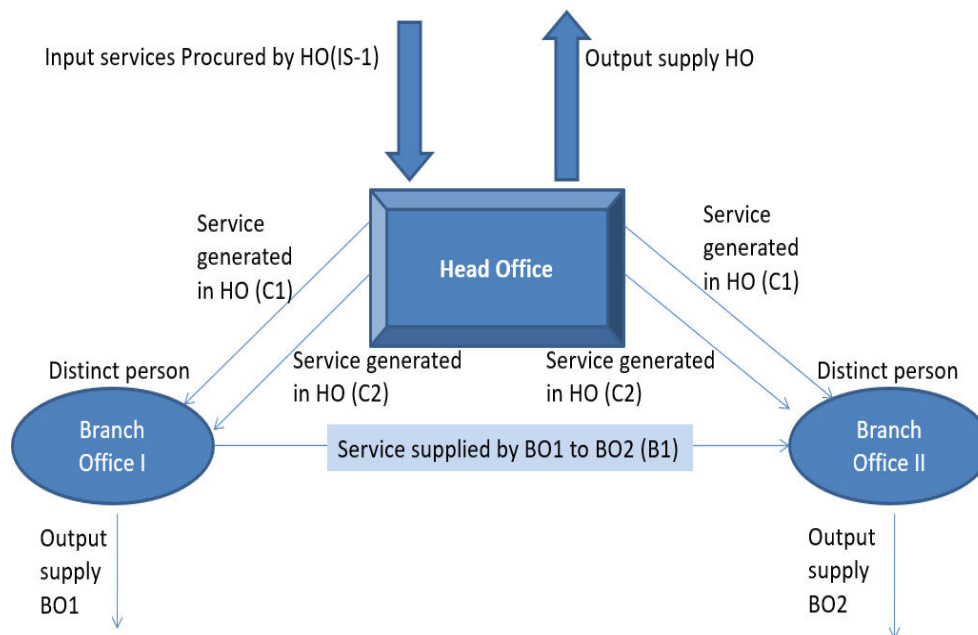
To,
The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All) / The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons– reg.

Various representation have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the CGST Act’) and of the supply of services between such distinct persons. The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue in succeeding paras.

2. For better understanding the issues involved, let us take the following example: -



2.1. Let us assume that there is a business entity which has Head Office (HO) at Mumbai (HO) and two branch offices at Kolkata (BO-1) and Chennai (BO-2), as shown in the matrix above. The HO procures security service (IS – 1) for the entire organisation from a security agency located in Delhi, which deploys 10 security guards at HO and 5 each at BO-1 and BO-2.

2.2. The HO has a Personnel Department which looks after the personnel administration such as maintenance of leave record, performance evaluation, and promotion of all the employees posted at HO, BO-1 and BO-2. The activity performed by the personnel department of HO is marked as C-1. The Technical Maintenance Department of the HO does the maintenance of all the machines installed at HO, BO-1 and BO-2. The activity performed by the Technical Maintenance Department of the HO is marked as C-2.

2.3. Head Office as well as branch offices undertake software development projects for their clients. In a software development project undertaken for a client by BO-2, two engineers posted at BO-1 assisted BO-2. The activity performed by the two engineers of BO-1 for the software development project undertaken by BO-2 is marked as B-1 in the matrix above, depicting the flow of the above services within the three distinct persons of the same organisation.

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act as shown in the above matrix are being clarified in the form of questions and answers as detailed below: -

3.1. **Question**– Is it mandatory to distribute input tax credit (hereinafter referred to as ‘ITC’) in respect of input services (IS-1), procured by HO but attributable to both HO and BOs, following the Input Service Distributor (ISD) procedure?

Answer -Yes, it is mandatory to follow ISD procedure laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as ‘the CGST Rules’) for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BO or exclusively to one or more BOs.

3.2. **Question**–Will the input service (IS-1) procured by HO from a third party for use by the BOs, the ITC of which is distributed in accordance with the ISD procedure, be treated as a supply by HO to the BOs and will it be taxable in the hands of HO.

Answer – No, the services procured by HO from a third party for use at HO and BOs, or exclusively for use by BOs, the ITC of which is distributed in accordance with the ISD procedure laid down in Section 20 of the CGST Act read with rule 39 of the CGST Rules, would not be separately treated as supply by the HO to the BOs.

3.3. **Question**– If HO considers that procurement, distribution and management of common input services for use by HO and BOs as per ISD provisions leads to an expense, how can it apportion these expenses to the BOs?

Answer–HO may incur certain expenses on procurement, distribution and management of common input services. The HO may or may not apportion and recover such expenses from BOs. Nevertheless, such procurement, distribution and management of services by the HO for the BOs is a separate service provided by the HO to the BOs. It should be invoiced by the HO to the BOs to the extent of expense incurred by the HO. It is a service distinct from those services the ITC in respect of which has been distributed through the ISD procedure. It is for the HO to value the service as per the principles laid down in para 3.6 below.

3.4. **Question**– If the HO generates some services internally such as common administration by maintaining common administration team for BOs and HO (C1 in the matrix above), or common IT maintenance through a maintenance team at HO (C2 in the matrix above), where the team members are the employee of the HO, are these employees providing any service to the BOs?

Answer –

3.4.1. The offices or establishments of an organisation in different States are establishments of distinct persons under sub-section (4) of section 25 of the CGST Act and Explanation 1 of section 8 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the IGST Act’). GST law envisages these distinct registered persons to be independent entities, though part of one legal entity, and they can be providing services to each other.

3.4.2. Whether employees posted in HO, who look after administration of HO and BOs or maintenance of machines installed in the HO and BOs or perform similar other functions for the organization as a whole or for a particular BO which is a distinct person, are providing service to BOs is not the correct perspective to be determined here. The correct perspective for examining the issue at hand would be to determine whether the HO and BOs are providing services to each other and not whether the employee of HO is providing services to the BOs. In this case, it is the HO which is providing services to BOs.

3.5. **Question**– What is the legal basis for concluding that HO is providing services to the BOs in the above example?

Answer –HO and BOs are distinct persons in terms of sub-section (4) of section 25 of the CGST Act. They are also related persons as defined in Explanation (a) to section 15 of the CGST Act. It may be noted that the supply of goods or services or both between related persons or between distinct persons, when made in the course or furtherance of business is a supply even if it is made without consideration in terms of para 2 of Schedule I to the CGST Act. Thus, services produced or generated in HO by its employees and used by or supplied to BOs, with or without consideration, are supplies liable to GST. The HO should invoice such supplies to the BOs, whether HO charges any consideration for such supplies from BOs or not is immaterial. The same principle would apply for supply of services by a BO to another BO (B1 in the above matrix) or by a BO to the HO.

3.6. **Question**– How would these services provided by one entity to another of a body corporate, registered as distinct entities (C1 and C2 in the above matrix) be valued?

Answer-

3.6.1. As regards valuation of such supplies, since HO and BOs located in different States are related persons, value of such supplies cannot be determined under sub- section (1) of section 15 of CGST Act. The same has to be determined under sub- section (4) of Section 15 of CGST Act read with the rules made thereunder. According to rule 28 of the CGST Rules, the value of supply of goods or services between distinct persons or related persons shall,

- a) be the open market value of such supply;
- b) if the open market value is not available, be the value of supply of goods or service of like kind and quality;
- c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31 of the CGST Rules, in that order.

3.6.2. The rule further provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

3.6.3. Illustration -HO has sent an annual expense budget of Rs 10 lakh for the administrative division looking after the personnel administration of the employees in HO as well as two BOs located in two different States. The value of services supplied by the HO to BO-I may be determined under rule 31 of the CGST Rules using any reasonable means consistent with the principles of valuation contained in the CGST ACT. For example, value “V” of service provided by HO to BO-1 for managing administration of staff can be determined as follows:

Value “V” = $(Y/N) \times \text{Rs.}10,00,000/-$

Where, Y is the number of employees in BO-1;

And N is the total number of employees posted in the HO and two BOs.

3.7. **Question**– If there is an input service, clearly attributable to a BO, can it be contracted by the HO and paid for by the HO. How would this credit be transferred to the BO?

Answer – HO can distribute ITC in respect of input services procured on behalf of BO following the ISD procedure laid down in section 20 of CGST Act read with rule 39 of the CGST Rules. There is no restriction on HO acting as common procurement centre for all the services required by a business. If a service is specifically attributable to a BO, it shall be distributed to that BO only in terms of clause (c) of sub-section (2) of section 20 of the CGST Act.

3.8. **Question**– There are some services internally generated which are clearly identifiable as those pertaining to another distinct person, how would these be taxed? For example, if two persons in BO1 do work related to IT development for a project contracted by BO-2 (service B1 in the above matrix), how would it be taxed?

Answer-

3.8.1. In this case, BO-1 is providing service to BO-2 by way of assistance in the IT development work undertaken by BO-2. BO-1 should invoice this service to BO-2 and pay GST on it. Value of the service may be determined by using any reasonable means as illustrated below:

3.8.2. Illustration - Assuming that each of the two engineers of BO-1, who assisted in the software development project undertaken by BO-2 as shown in the above matrix, draws salary and emoluments on cost to the company (CTC) basis of Rs. 1.00 lakh per month and puts in, on an average, 200 hours of work per month, and devoted 50 hours each for the project undertaken by BO-2, the value of service (B1) supplied by BO-1 to BO-2, by way of assistance in a project belonging to BO-2, may be determined using reasonable means under rule 31 of the CGST Rules as under:

Value of service B1= Employee cost + Establishment cost of supplying 100 man-hours.

Employee cost of 100 man-hours supplied by BO-1 to BO-2 may be calculated in this example as under:

$$= (100000/200)*50*2$$

To this may be added the establishment cost of supplying 100 man-hours following any reasonable method consistent with the generally accepted accounting principles as illustrated in para 3.6.3 above.

3.8.3. It may be noted that the question pertains to clearly identifiable service for which BO maintains record. This does not warrant that activities and services of individual employees are required to be monitored in terms of its usage by various BOs and HO. Where such accounting is not done in the normal course of business, answer as given for question 3.6 shall apply.

4. Accordingly, it is reiterated that where a taxpayer, registrant in different States, is a distinct person, then –

(i) An employee of a HO (registered as a separate entity) does not provide any services to a BO, rather it is the HO which provides service to the BO.

(ii) There is a need to apportion expenses incurred by one office for provision of output services to another office by any reasonable means consistent with the principles of valuation in the GST law and the generally accepted accounting principles.

(iii) Such apportionment/valuation of supply shall be done on the basis of information maintained by a company in its normal course of working. There is no need to maintain additional records of activities undertaken by individual employees.

(iv) The only exception to this principle would be distribution of ITC in respect of input services procured by one office and distributed to the others for which ISD provisions apply as the taxpayer is expected to mandatorily obtain ISD registration if he has to distribute ITC on input services.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version would follow.

Principal Commissioner (GST)

Agenda Item 6(v): Proposed timeline for introduction of New Return system

Reference is invited to the decision of the GST Council in its 31st Meeting held on 22.12.2018 wherein it was decided that the new return filing system shall be introduced on a trial basis from 01.04.2019 and on mandatory basis from 01.07.2019. As the new return module could not be introduced from 01.04.2019, a meeting was held with the officials of GSTN wherein it was informed that the software was in development phase. It was also proposed that the new system may be introduced in a phased manner to give ample opportunity to taxpayers as well the system to adapt.

2. The transition plan, as drafted in consultation with GSTN, was discussed in the meeting of Law Committee held on 06th May, 2019. The Law Committee recommended that the roadmap may be placed before the GIC / GST Council. The Law Committee also recommended that wide publicity may be given to the said transition plan and taxpayers may be given to understand very clearly that GSTR-1 will be replaced by ANX-1. GST Portal shall also provide for feedback and such feedback may be taken at local level too.

3. The GST Implementation Committee in its 28th Meeting held on 27th May 2019, approved the suggested roadmap for introduction of New Return System. The GIC further decided that the issue may be revisited based on the experience at the field level and that the issue would be put up for the consideration of the GST Council in the subsequent meeting to consider the October 2019 timeline. It was also decided that the suggested roadmap would be shared with trade and industry through a press release and also with all the field formations.

4. As per the decision of the GIC, the roadmap / transition plan was issued through a press release dated 11th June 2019. The said press release is placed as **Annexure A**.

5. The final roadmap for transitioning to the new return system is placed before the GST Council.

Annexure A

Press Release dated 11th June 2019

Transition plan to the new GST Return

The GST Council in its 31st meeting decided that a new GST return system will be introduced to facilitate taxpayers. In order to ease transition to the new return system, a transition plan has been worked out. The details of the indicative transition plan are as follows: -

i. In May, 2019 a prototype of the offline tool has already been shared on the common portal to give the look and feel of the tool to the users. The look and feel of the offline tool would be same as that of the online portal. Taxpayers may be aware that there are three main components to the new return – one main return (**FORM GST RET-1**) and two annexures (**FORM GST ANX-1** and **FORM GST ANX-2**).

ii. From July, 2019, users would be able to upload invoices using the **FORM GST ANX-1** offline tool on trial basis for familiarisation. Further, users would also be able to view and download, the inward supply of invoices using the **FORM GST ANX-2** offline tool under the trial program. The summary of inward supply invoices would also be available for view on the common portal online. They would also be able to import their purchase register in the Offline Tool and match it with the downloaded inward supply invoices to find mismatches from August 2019.

iii. Between July to September, 2019 (for three months), the new return system (ANX-1 & ANX-2 only) would be available for trial for taxpayers to make themselves familiar. This trial would have no impact at the back end on the tax liability or input tax credit of the taxpayer. In this period, taxpayers shall continue to fulfil their compliances by filing **FORM GSTR-1** and **FORM GSTR-3B** i.e. taxpayers would continue to file their outward supply details in **FORM GSTR-1** on monthly / quarterly basis and return in **FORM GSTR-3B** on monthly basis. Non-filing of these returns shall attract penal provisions under the GST Act.

iv. From October, 2019 onwards, **FORM GST ANX-1** shall be made compulsory and **FORM GSTR-1** would be replaced by **FORM GST ANX-1**. The large taxpayers (i.e. those taxpayers whose aggregate annual turnover in the previous financial year was more than Rs. 5 Crore) would upload their monthly **FORM GST ANX-1** from October, 2019 onwards. However, the first compulsory quarterly **FORM GST ANX-1** to be uploaded by small taxpayers (with aggregate annual turnover in the previous financial year upto Rs. 5 Crore) would be due only in January, 2020 for the quarter October to December, 2019. It may be noted that invoices etc. can be uploaded in **FORM GST ANX-1** on a continuous basis both by large and small taxpayers from October, 2019 onwards. **FORM GST ANX-2** may be viewed simultaneously during this period but no action shall be allowed on such **FORM GST ANX-2**.

v. For October and November, 2019, large taxpayers would continue to file **FORM GSTR-3B** on monthly basis. They would file their first **FORM GST RET-01** for the month of December, 2019 by 20th January, 2020.

vi. The small taxpayers would stop filing **FORM GSTR-3B** and would start filing **FORM GST PMT-08** from October, 2019 onwards. They would file their first **FORM GST-RET-01** for the quarter October, 2019 to December, 2019 from 20th January, 2020.

- vii. From January, 2020 onwards, all taxpayers shall be filing **FORM GST RET-01** and **FORM GSTR-3B** shall be completely phased out.
2. Separate instructions shall be issued for filing and processing of refund applications between October to December, 2019.

Agenda Item 6(vi): Staggered extension of due date of filing returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C

FORM GSTR-9 (annual return for normal taxpayers) and **FORM GSTR-9A** (annual return for Composition taxpayers) were notified *vide* notification No. 39/2018-Central tax dated 04.09.2018 and the said forms were subsequently amended *vide* notification No. 74/2018-Central tax dated 31.12.2018. **FORM GSTR-9C** (reconciliation statement) was notified *vide* notification No. 49/2018-Central tax dated 13.09.2018 and was subsequently amended *vide* notification No. 74/2018-Central tax dated 31.12.2018. The last date for filing these returns/reconciliation statement, under Section 44 of the CGST Act, was 31.12.2018. This was first extended to 31.03.2019, and then again extended to 30.06.2019 *vide* issuance of Removal of Difficulty (RoD) orders under Section 172 of the CGST Act since there was no provision to extend the said date in law.

2. Representations have been received regarding certain difficulties being faced by taxpayers in filing these returns/reconciliation statement. Some of these difficulties are listed below:

- a) The auto-populated **FORM GSTR-2A** which was initially planned to be made available in the first week of May, 2019 could be made available only in the first week of June, 2019;
- b) The auto-populated figures in **FORM GSTR-2A** are still getting updated on account of filing of details of outward supplies in **FORM GSTR-1** by the corresponding suppliers;
- c) In some cases, differences have been observed between auto-populated figures in **FORM GSTR-9** vis-à-vis figures declared by the taxpayers in **FORM GSTR-1/FORM GSTR-3B**;
- d) In certain cases, the common portal is requiring the taxpayers to enter HSN code at eight-digit level whereas as per the instructions in the Forms the said information is required at 2/4-digit level;
- e) There are certain difficulties being faced by some taxpayers in saving **FORM GSTR-9/GSTR-9A** on the portal thereby, extra time is being taken in filing these returns.

3. The current status of filing of annual returns in **FORM GSTR-9/9A**, as on 11.06.2019, as extracted from the reports provided by GSTN, is as follows:

Sl. No.	Description	Count (in lakhs)
1	Number of taxpayers required to file return in FORM GSTR-9	87.08
2	Number of taxpayers who have actually filed return in FORM GSTR-9	6.37
3	Number of taxpayers required to file return in FORM GSTR-9A	19.31
4	Number of taxpayers who have actually filed return in FORM GSTR-9A	2.03

4. In view of the above, it is proposed that the due date for filing returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C may be extended, in a staggered manner, as follows:

Sl. No.	Return/Reconciliation Statement	Proposed Extended Due Date
1	FORM GSTR-9/9C for normal taxpayers having aggregate turnover greater than Rs. 5 crore	31.07.2019
2	FORM GSTR-9/9C for normal taxpayers having aggregate turnover greater than Rs. 2 crore but not exceeding Rs. 5 crore	31.08.2019
3	FORM GSTR-9 for normal taxpayers having aggregate turnover not exceeding Rs. 2 crore	30.09.2019
4	FORM GSTR-9A for composition taxpayers	30.09.2019

The same may be implemented by issuance of Removal of Difficulties (RoD) order(s) under Section 172 of the CGST Act. Similar orders would also be required to be issued by the States. RoDs would be issued after legal vetting by the Union Law Ministry

5. The proposal in paragraph 4 above is placed for the consideration and approval of the GST Council.

Agenda Item 6(vii): Proposal to extend the due date for filing of declaration in FORM GST ITC-04 for the period July 2017 to June 2019

As per sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017 (CGST Rules for short), the details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be furnished in **FORM GST ITC-04** on or before the twenty-fifth day of the month succeeding the said quarter, or within such further period as may be extended by the Commissioner by a notification in this behalf.

2. The revised format of the **FORM GST ITC-04** was notified vide notification No. 39/2018- Central Tax dated 04.09.2018. The last date of furnishing of the said FORM for the month of July, 2017 to June, 2018 was specified as 30.09.2018 vide notification No. 40/2018-Central Tax dated 04.09.2018. Further, vide notification No. 59/2018-Central Tax, dated 26.10.2018, the last date for furnishing declaration in **FORM GST ITC-04** for the period from July, 2017 to September, 2018 was extended till 31.12.2018. The due date for furnishing declaration in **FORM GST ITC-04** was further extended for the period July, 2017 to December, 2018 till the 31.03.2019 vide notification No.78/2018- Central Tax dated 31.12.2018. The due date for furnishing declaration in **FORM GST ITC-04** was again extended for the period July, 2017 to March, 2019 till 30.06.2019 vide notification No.15/2019- Central Tax dated 28.03.2019.

3. It was informed by the GSTN vide their mail dated 15.06.2019 that **FORM GST ITC-04** has not been deployed yet on the common portal and the same would be deployed only around 22.06.2019. The last date for furnishing declaration in **FORM GST ITC-04** for July, 2017 to March, 2019 is 30.06.2019 and for April, 2019 to June, 2019 is 25.07.2019. Since the said form would be available on the common portal only around 22.06.2019, it is proposed that due date for furnishing declaration in **FORM GST ITC-04** for the period July, 2017 to June, 2019 be extended till 31.08.2019 so as to provide sufficient time to the trade and industry to furnish the said declaration.

4. In view of the above, approval of GST Council is sought for extension of due date for furnishing of declaration in **FORM GST ITC-04** for the period July, 2017 to June, 2019 till 31.08.2019. States will not be required to issue the said notification. Notification would be issued after due vetting by the Union Law Ministry. The notification in this regard is placed before the Council for its consideration and approval (**Annexure A**).

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. XX /2018 – Central Tax

New Delhi, the _____, 2019

G.S.R... (E). - In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 15/2019- Central Tax, dated the 28th March 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.242(E), dated the 28th March 2019, except as respects things done or omitted to be done before such supersession, the Commissioner, hereby extends the time limit for furnishing the declaration in **FORM GST ITC-04** of the said rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to June, 2019 till the 31st day of August, 2019.

(_____)

Under Secretary to the Government of India

Agenda Item 7: Issues recommended by the Fitment Committee for the consideration of the GST Council

Agenda Item 7(i) – Recommendations of Group of Ministers (GoM) on Lottery

In 32nd GST Council meeting held on 10.01.2019 at New Delhi, a proposal on rationalization of GST on Lottery was moved and GST Council decided to constitute a Group of Ministers (GoM) to look into various issues relating to GST on Lottery. The composition and terms of reference of the GoM are as per **Annexure ‘1’**.

2. The first meeting of the GoM was held on 18.02.2019. The decision of the first meeting of the GoM was placed before the GST Council in its 33rd Meeting held on 24.02.2019. These are enclosed as **Annexure ‘2’**. The Council directed for further discussion on issues in a second Meeting of the GoM.

3. In the interregnum, M/s. Skill Lotto Solutions Pvt. Ltd., a lottery distributor filed Writ Petition (WP) (C) No. 961/2018 in the Hon’ble Supreme Court questioning the constitutional validity of levy of GST on lottery as goods, its valuation and violation of fundamental rights under Article 14, 19(1)(g), 301 and 304 of Constitution in levy of two differential rates of GST on Lottery. The petitioner also pleaded to levy single rate on lottery at 12% after adjusting the prize component from the face value of lottery ticket. The Hon’ble Apex Court in its interim order dated 30th April 2019 has taken on record the statement of learned ASG that all issues raised in the WP shall be considered by GoM on Lottery. Accordingly, issues agitated in the WP were also included in the second meeting of the GoM for consideration. The case will be listed in the last week of July 2019.

4. The second meeting was held on 11.06.2019 after conclusion of general election to 17th Lok Sabha. The report of the GoM is enclosed as **Annexure ‘3’**. The various issues considered by the GoM in its two meetings and summary of recommendations on the same is as under:

Sl.No	Issue	Recommendation of the GoM
1	GST Rate on Supply of Lottery	(i) There was no consensus on the need for a new rate of GST on lottery. Assam, Arunachal Pradesh, Goa, Maharashtra supported single rate of GST. However, Kerala, Punjab, West Bengal and Karnataka supported the existing two rates of GST on lottery. Punjab was willing to consider lower uniform rate, if there were legal difficulties with rate differential. Therefore, the Convenor of the GoM directed that the matter be placed before the GST Council and the Council to decide appropriate rate structure on the supply of lottery. Given that this is a sin good, rate of tax should be high i.e. 28% or 18%. (ii) The Constitutional challenge to the dual rate structure (ref. paragraph 5.4 of the report of the GoM) may be defended forcefully.
2	Ensure Destination Principle for Supply so that GST Revenue accrues to Consuming State	(i) A decision has already been taken in 28 th GST Council Meeting held on 21.07.2018 [Agenda Item 8(i)] that a Circular be issued after lottery organising States have framed the requisite rules. In order to implement this decision, GoM decided that:

		<p>(a) the States should frame rules expeditiously as approved by the GST Council and</p> <p>(b) a Circular on the operational details would be issued once the necessary changes in the lottery rules have been made by the lottery organising States.</p> <p>(ii) The existing exemption on inter-State supply by a distributor/selling agent in supplying State to the other agents in consuming State may be examined for removal by the Fitment Committee, if this is leading to loss of revenue to the consuming State.</p>
3	Valuation to be adopted for Charging GST	GST should continue to be levied on the face value of lottery which includes prize money as per the existing provisions i.e Rule 31A of CGST Rules. Court cases may be defended forcefully.
4	Address Constitutional Challenge to levy of GST on Lottery as 'Goods'	Supply of lottery should continue to be treated as actionable claims and good, thus, leviable to GST as per the existing provisions of GST law. Court cases may be defended forcefully.
5	Regulation of Online Lottery	The State Governments are empowered by existing lottery laws to ban online lottery. Experience shows that banning online lottery leads to good growth of revenue on paper Lottery. Maharashtra volunteered to submit a draft on online lottery regulation.
6	Miscellaneous representations similar to Lottery	The rate and valuation issues of Casinos, Horse Racing, Online Gaming, Betting may be referred to Fitment/Law Committee and then taken to GST Council either directly or through GoM as approved by the Union Finance Minister.

5. The report of GoM on Lottery is placed before the GST Council for taking decision on:

- (i) Rate of GST to be levied on supply of lottery run by State Governments and lottery authorized by the State Governments
- (ii) Acceptance of recommendations of the GoM on other issues on which there was consensus among the members and have been unanimously recommended (Sl. No. 2 to 6 in paragraph 4 above).

ANNEXURE '1'

Composition of the GoM on Lottery

Sl. No.	Name	Designation and State	Details
1	Shri Sudhir Mungantiwar	Hon'ble Finance Minister, Govt. of Maharashtra	Convenor
2	Dr. T. M. Thomas Isaac	Hon'ble Finance Minister, Govt. of Kerala	Member
3	Dr. Amit Mitra	Hon'ble Finance Minister, Govt. of West Bengal	Member
4	Dr. Himanta Biswas Sarma	Hon'ble Finance Minister, Govt. of Assam	Member
5	Shri Mauvin Godinho	Hon'ble Minister for Panchayats, Govt. of Goa	Member
6	Shri Manpreet Singh Badal	Hon'ble Finance Minister, Govt. of Punjab	Member
7	Shri Krishna Byre Gowda	Hon'ble Minister of Rural Development, Law and Parliamentary Affairs, Govt. of Karnataka	Member
8	Shri Jarkar Gamlin	Hon'ble Minister, Taxes and Excise, Govt. of Arunachal Pradesh	Member

2. The Terms of Reference of GoM on Lottery included the following:

- I. Whether the disparity in the tax structure on the same product/commodity be continued or a uniform rate be prescribed for both
- II. Whether private persons authorized by States are misusing the lower rate and getting enriched themselves at the cost of the State and suggest measures to curb it.
- III. Examine any other legal issue related to enforcement including the legal framework, so as to prevent evasion of tax on lottery and suggest appropriate tax rate to address the problem.

ANNEXURE '2'

Summary of Interim Report of GoM on Lottery

[after 1st meeting held on 18th February, 2019]

1. Issue No. 1: What should be rate of GST on lottery and is uniform rate desirable.

1.1. Observation of the GoM in interim Report:

- (1) A single rate of GST should be levied on lottery instead of existing two rates. (Present rate is GST @ 12% for lottery run by State Government and @ 28% for lottery authorised by State Government). A uniform rate would be in conformity with GST principles.
- (2) Lottery is a sin/demerit good and should be taxed at a high rate of GST. GST Council may take a final decision on the appropriate single rate of tax on lottery at either 28% or 18%.

2. Issue No. 2: What are the measures to check illegal lottery and non-compliance?

2.1. Observation of the GoM in interim Report: A Group of Officers may be constituted to study issues related to online lottery and illegal lottery trade and submit report on -

- (i) Best practices about enforcement and compliance verification methods.
- (ii) Legal framework to check illegal lottery and regulate online lottery including international online lottery sold in India and suggest improvement in legal framework and IT methods for better compliance and checking evasion.

ANNEXURE '3'

Report of GoM on Lottery

1. Introduction

1.1. In 17th GST Council Meeting held on 18th June 2017, GST rate of 12% on face value of lottery ticket for Lottery run by the State Government and 28% on face value of lottery ticket for lottery authorized by the State Government were approved. After issue of rate notification, representations were received requesting levy of single rate of GST on face value after deduction of prize payout money as incidence of tax on lottery in pre-GST era was much lower. The dual tax was also acting as trade barrier to lottery of North eastern States. Many writ petitions were also filed before different High Courts and the Apex Court challenging the constitutional validity of the levy, adoption of dual rates and manner of valuation of supply.

1.2. In 32nd GST Council Meeting held on 10.01.2019 at New Delhi, a Group of Ministers (GoM) on Lottery was constituted. GST Council Secretariat vide its order dated 15.01.2019, constituted an eight member GoM consisting of following members:

Sl. No.	Name	Designation and State	Details
1	Shri Sudhir Mungantiwar	Hon'ble Finance Minister, Govt. of Maharashtra	Convenor
2	Dr. T. M. Thomas Isaac	Hon'ble Finance Minister, Govt. of Kerala	Member
3	Dr. Amit Mitra	Hon'ble Finance Minister, Govt. of West Bengal	Member
4	Dr. Himanta Biswa Sarma	Hon'ble Finance Minister, Govt. of Assam	Member
5	Shri Mauvin Godinho	Hon'ble Minister for Panchayats, Govt. of Goa	Member
6	Shri Manpreet Singh Badal	Hon'ble Finance Minister, Govt. of Punjab	Member
7	Shri Krishna Byre Gowda	Hon'ble Minister of Rural Development, Law and Parliamentary Affairs, Govt. of Karnataka	Member
8	Shri Jarkar Gamlin	Hon'ble Minister, Taxes and Excise, Govt. of Arunachal Pradesh	Member

1.3. The Terms of Reference of GoM on Lottery included the following:

- I. Whether the disparity in the tax structure on the same product/commodity be continued or a uniform rate be prescribed for both
- II. Whether private persons authorized by States are misusing the lower rate and getting enriched at the cost of the State and suggest measures to curb it.
- III. Examine any other legal issue related to enforcement including the legal framework, so as to prevent evasion of tax on lottery and suggest appropriate tax rate to address the problem.

2. Decisions Taken in First Meeting of GoM on Issues Relating To Lottery

The first meeting of the GoM was held on 18.02.2019. The GoM submitted interim report to the GST Council which was placed before GSTC in its 33rd Meeting held on 24th February, 2019. The Council directed the GoM to meet again. The summary of issues discussed and observations of the GoM in its interim report are enclosed in **Annexure A**.

3. Interim Development

3.1. M/s. Skill Lotto Solutions Pvt. Ltd. has filed writ petition in the Supreme Court questioning the leviability of GST on lottery, valuation and two rates of GST. In said case, the Hon'ble Apex Court in order dated 30th April 2019 has taken on record statement of learned ASG that all issues raised in the Writ Petition (WP) shall be considered by GoM on Lottery. The prayers / challenges made by the Petitioner in the WP are: -

- i. Validity of levying GST on 'lottery'[Schedule III (Entry 6) of CGST Act, 2017]
 - ii. Need for exclusion of prize money from the taxable value of lottery
 - iii. Imposition of single GST rate of 12% on the face value which should exclude prize money.
- 3.2. The Court has adjourned the hearing of the instant writ petition to the last week of July 2019.

4. Agenda Before GoM on Lottery in 2nd Meeting held on 11th June 2019, Mumbai

4.1. Based on the issues referred by the GST Council and the WPs filed before various fora, the agenda for consideration and decision before the GoM were as follows:

- i. GST rate on supply of lottery
 - ii. Ensure destination principle for supply so that GST revenue accrues to the consuming State
 - iii. Valuation to be adopted for charging GST
 - iv. Address the Constitutional challenge to levy of GST on Lottery as 'Goods'
 - v. Regulation of online lottery.
 - vi. Miscellaneous Representations similar to Lottery
- 4.2. The Second meeting of GoM was held on 11.6.2019 at Mumbai. The Convenor of GoM Shri Mungantiwar, Hon'ble Finance Minister, Govt. of Maharashtra chaired the meeting and Shri Mauvin Godinho, Hon'ble Minister for Panchayats, Govt. of Goa attended the meeting in person. Hon'ble Ministers from Kerala, Dr. T. M. Thomas Isaac, West Bengal, Dr. Amit Mitra and Punjab, Sh. Manpreet Singh Badal attended the meeting through Video Conference and Assam and Karnataka were represented by the officers who also attended the meeting through Video Conference. The views of Arunachal Pradesh were received telephonically. Summary of Recommendations by GoM on Lottery is as under: -

S.No	Agenda Item	Recommendation of GoM
1	GST Rate on Supply of Lottery	(i) There was no consensus on the need for a new rate of GST on lottery. Assam, Arunachal Pradesh, Goa, Maharashtra supported single rate of GST. However, Kerala, Punjab, West Bengal and Karnataka supported the existing two rates of GST on lottery. Punjab was willing to consider lower uniform rate, if there were legal difficulties with rate differential. Therefore, the Convenor of the GoM directed that the matter be placed before the GST Council and the Council decide appropriate rate structure on the supply of lottery. Given that this is a sin good, rate of tax should be high i.e. 28% or 18%. (ii) The Constitutional challenge to the dual rate structure (ref. paragraph 5.4) may be defended forcefully
2	Ensure Destination Principle for Supply so that GST Revenue	(i) The decision has already been taken in 28 th GST Council in meeting held on 21.07.2018 [Agenda Item 8(i)] that a Circular be issued after lottery organising States have framed the requisite rules. In order to implement this decision, GoM decided that:

	accrues to Consuming State	<p>(a) the States should frame rules expeditiously as approved by the GST Council and</p> <p>(b) a Circular on the operational details would be issued once the necessary changes in the lottery rules have been made by the lottery organising States.</p> <p>(ii) The existing exemption on inter-State supply by a distributor/selling agent in supplying State to the other agents in consuming may be examined in the Fitment Committee for removal, if this is leading to loss of revenue to the consuming State</p>
3	Valuation to be adopted for charging GST	GST should continue to be levied on face value of lottery which includes prize money as per the existing provisions i.e Rule 31A of CGST Rules. Court cases may be defended forcefully.
4	Address Constitutional Challenge to Levy of GST on Lottery as 'Goods'	Supply of lottery should continue to be treated as actionable claims and good, thus, leviable to GST as per the existing provisions of GST law. Court cases may be defended forcefully.
5	Regulation of Online Lottery	The State Governments are empowered by existing lottery laws to ban online lottery. Experience shows that banning online lottery leads to good growth of revenue on paper Lottery. Maharashtra volunteered to submit a draft on online lottery regulation.
6	Miscellaneous Representations similar to Lottery	The rate and valuation issues of Casinos, Horse Racing, Online Gaming, Betting may be referred to Fitment/Law Committee and then taken to GST Council either directly or through GoM as approved by the Union Finance Minister.

5. Agenda Item No 1: GST Rate on Supply of Lottery

5.1. In so far as GST rates are concerned, at present, two rates of GST apply on supply of lottery as detailed below: -

Nature of Lottery	GST Rate	Reference
Lottery run by State government [sold within the State, not outside]	12%	Sl. No. 242 of Notification No. 1/2017
Lottery authorised by State government [sold within the State, and outside the State also]	28%	Sl. No. 228 of Notification No. 1/2017

5.2. Such dual rates of GST on supply of lottery has created following problems: -

(i) Lower rate of 12% on the lottery run by a State government acts as a market barrier to lottery of other States sold within a State as high rate of GST i.e 28% is levied on the lottery of a State sold outside the State. This affects the market of smaller States like Sikkim, Nagaland, Goa etc. as several representations have been received by these States. Such smaller States have demanded a uniform rate of GST on lottery as post-GST, India has become integrated market with uniform tax rate and uniform market access.

(ii) Section 2(b) of the Lotteries (Regulation) Act, 1998 [LRA Act] defines single type of lottery i.e “lottery” means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets. As seen from the definition, lottery Act does not create various class of lotteries and therefore, creation of State run and state authorized lottery for purpose of GST has no legal basis (Though in the recent Kolkata High Court Judgement dated 10.10.2018 in case of Teesta Distributors Vs UoI on Lottery, the existing differential levy of GST on Lottery was upheld based on the fact that the decision was taken by the GST Council after detailed deliberation).

(iii) Lack of clarity among the trade leading to compliance issues like levying GST@12% where GST@28% is applicable and increase in the litigation from the trade due to such high difference in tax between two types of lottery.

5.3. The possible option for a uniform tax rate on supply of lottery in GST is as follows:

GST @18%/28% on lottery upfront at the face value of the lottery ticket and exempting the lottery distribution chain rather than the present two rates of 12% and 28%.	
18% (one rate)	28% (one rate)
<ol style="list-style-type: none"> 1. Lottery is a sin/demerit good and merits a high rate of tax. 2. Full GST will be collected upfront from the State appointed Lottery Distribution / Selling Agent (Under reverse charge mechanism). 3. There will be no GST compliance requirement for the Lottery distribution chain as at present 	<ol style="list-style-type: none"> 1. Illegal lottery trade due to high tax rate of 28% on the face value of lottery ticket. Such illegal trade creates social and Law & Order problems. 2. Loss of GST revenue due to lower compliance and growth of grey market. Therefore, 18% seems to be a more appropriate rate. 3. The other points remain identical to 18%

5.4. **CONSTITUTIONAL CHALLENGE TO ADOPTION OF TWO DIFFERENT RATES FOR SAME SUPPLY:** GST Council in its 17th Meeting has considered the problem of illegal lottery and has accordingly prescribed separate rates for State run and State authorized lottery, recognizing two as separate class of supplies. Such differential rates for supply of same good and service have been prescribed by GST Council for many other goods and services such as hotel accommodation, supply of food and drinks, travel by air etc. mainly based on spending capacity, geography, level of consumption etc.

5.5. The categorization of sale of lotteries as lotteries organized by States and the lotteries authorised by the State has been approved by the Hon'ble Supreme Court (SC) in case of J.K. Bharati v. State of Maharashtra, 1984.

5.6. As per Hon'ble Supreme Court's (SC) judgements in the case of Federation of Hotel and Restaurants Association Vs UoI, 1989 and Nitip Textile Processor Vs UoI, 2012, the legislature enjoys a very wide latitude in classification for taxation. Further as per SC decision, the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably.

5.7. Lower rate of 12% on the lottery run by a State government acts as market barrier to lottery of other States sold within a State as high rate of GST i.e. 28% is levied on the lottery of a State sold outside the State. This differentiation also exists when lottery authorized by the State is sold within the organising state itself. This affects the market of smaller States like Sikkim, Nagaland, Goa etc as several representations have been received by these States. Such smaller States have demanded a uniform rate of GST on lottery as post-GST, India has become integrated market with uniform tax rate and uniform market access.

5.8. The Kolkata High Court in case of Teesta Distributors & Ors Vs UOI has upheld the differential levy of tax on State-run and State Authorized Lottery. The Hon'ble Court has observed that it was after extensive deliberations that the GST Council had approved the rates as presently obtaining in respect of lottery. It is within the domain of such Council to decide the rate of tax. In such circumstances, the third issue is answered by holding that differential levy of tax is permissible. Though levy of two rates on supply of lottery is legally defensible, it would be desirable to have a uniform rate of tax on lottery in view of arguments advanced in paragraph 5.7

5.9. **Record of Discussions of GoM on Agenda Item No 1**

5.9.1. In his opening remarks, the Convenor of the GoM, Shri Sudhir Mungantiwar, Hon'ble Finance Minister, Govt. of Maharashtra welcomed all the members and briefly explained the agenda before the GoM for discussion and decision. He asked the JS(TRU-II), CBIC Shri Manish Kumar Sinha to make the presentation. The Joint Secretary made the presentation and the Convenor requested the members to give their views on the agenda items.

5.9.2. **Punjab:** The Hon'ble Finance Minister of Punjab, Shri Manpreet Singh Badal stated that current differential rate of 12% and 28% on lottery should continue. However, State of Punjab is willing to consider single rate of GST on lottery, if the current differential levy is legally not tenable. Also, Hon'ble FM of Punjab opined that a high rate of 28% on lottery would increase the illegal lottery and decrease the revenue due to the government. Therefore, there is a case for reduction of GST on lottery and bringing it to 18%.

5.9.3 West Bengal: The Hon'ble Finance Minister of West Bengal, Dr. Amit Mitra stated that the current rate structure should continue as the State is having good experience with current differential levy of GST on lottery. It is legally tenable and the State would like to continue with the current two rates on lottery. Hon'ble FM referred to recent judgement of Kolkata High Court in case of Teesta Distributors Vs UoI, where the Court has upheld the existing differential levy of GST on lottery and said that as of now, two rates are legally permissible unless Apex Court decides otherwise. Also, high rate of 28% on lottery authorised by State government should not be decreased at any cost as it is a sin good. If decreased, it will lead to a domino effect with similar demands of reduction for other sin goods/services such as gambling, Betting, Casinos, Horse Racing etc. The rate of 12% on lottery run by State government should continue as it has resulted in high GST revenue to State of West Bengal. Finally, Hon'ble Minister concluded that high rate of 28% on lottery authorised by state government should not be decreased and GST at the rate of 12% on lottery run by state government should also continue. Thus, there was clear justification for the present tax structure to continue.

5.9.4 Assam: The Hon'ble FM of Assam, Dr. Himanta Biswa Sarma could not attend the meeting. However, the view of the Hon'ble Minister was communicated through the representative officer from Assam. The State of Assam submitted that there should be high tax rate of 28% on lottery as it is a sin good. Reducing the GST rate from 28% will send wrong signal to people that GST Council is supporting the supply of a sin good like lottery. Assam opined that there is no equity in the existing GST rates on lottery even if the rate structure is legally tenable. Assam strongly opposed the discriminatory rates of GST on lottery and stated that differential levy of GST on lottery has reduced the market of smaller North-Eastern States by acting as market entry barrier, thereby, decreasing the revenue. The differential rate is acting as an entry tax for the lotteries of the smaller States and therefore should not have a place in the GST structure.

5.9.5 Karnataka: Hon'ble Minister of Karnataka could not attend the meeting. The view of the Hon'ble Minister was communicated through the representative officer from Karnataka. Karnataka supported the existing two rates of GST on lottery supply. Karnataka also stated that levy of differential rates is legally tenable. Also, there is no difference between State run and State authorised lottery when supplied outside the State. The difference exists only when it is supplied within State. Thus, the tax rate differential is quite nuanced.

5.9.6 Kerala: The Hon'ble Finance Minister of Kerala, Dr. T.M. Thomas Isaac supported the view taken by West Bengal and Punjab. The Hon'ble Finance Minister stated that two rates of GST on lottery have already stood the legal scrutiny (Kolkata High Court judgement in case of Teesta Distributors Vs UoI). Therefore, status quo should be maintained on the rates of GST on lottery. Kerala also offered to be the distributor/selling agent for the lottery of smaller states and in return give more revenue to the smaller States. Taking note of the concerns in rise of illegal lottery as a reason to reduce the GST rate from 28% on lottery authorised by State Government, Kerala opined that, such illegal lottery existed in pre-GST era also and also that such problems should be dealt with enforcement measures. There would be loss of revenue to both Centre and States if rate is reduced from 28%. Illegal lottery can be controlled by better enforcement methods by the State governments. By reducing the rate from 28%, neither government nor customers benefit. It is not clear as to who benefits from such rate reduction. Therefore, existing two rates of GST on lottery should continue. Kerala also stated that the position represented in their letter dated 10.03.2019 addressed to Union Finance Minister may be taken as their stand on various issues associated with lottery. Hon'ble Minister also brought to the notice of the GoM his views

expressed in the letter dated 11.06.2019 (Letter dated 10.03.2019 and 11.06.2019 are enclosed as Annexure '4')

5.9.7. **Goa:** The Hon'ble Minister from of Goa, Shri Mauvin Godinho stated that a single rate of GST @ 18% should be levied on all forms of lottery. The existing rate structure is highly discriminatory as such two rates decrease the market access to the smaller States. The smaller States are voiceless due to protectionist measures of the bigger States. The high rate of 28% on lottery would give fillip to illegal forms of lottery, which not only decreases the government revenue but also leads to law and order and other associated problems in the society. Hon'ble Minister stated that when there is a demand for lower GST slabs from people in general and multiple rates on same good should not be continued. GST should move towards one rate, one market tax regime in India as convergence of tax rates is an accepted goal of GST in India. Therefore, lottery should be taxed at a uniform rate of 28%.

5.9.8. **Arunachal Pradesh:** The representative official from Arunachal Pradesh conveyed telephonically that a single rate of 18% should be applied on lottery for the reasons already elaborated. The same may be taken on record.

5.9.9. **Maharashtra:** Hon'ble FM of Maharashtra stated that GST has integrated the country in one market with uniform rate of taxes. In the federal spirit, it would be desirable to understand the necessities of smaller States too. Therefore, there should be single a rate of GST at 18% or 28% on lottery. As no consensus has emerged on the issue of rate of duty, it is recommended that GST Council decide the rate of tax which should apply on lottery, though his view was that it should be a single rate of either 28% or 18%.

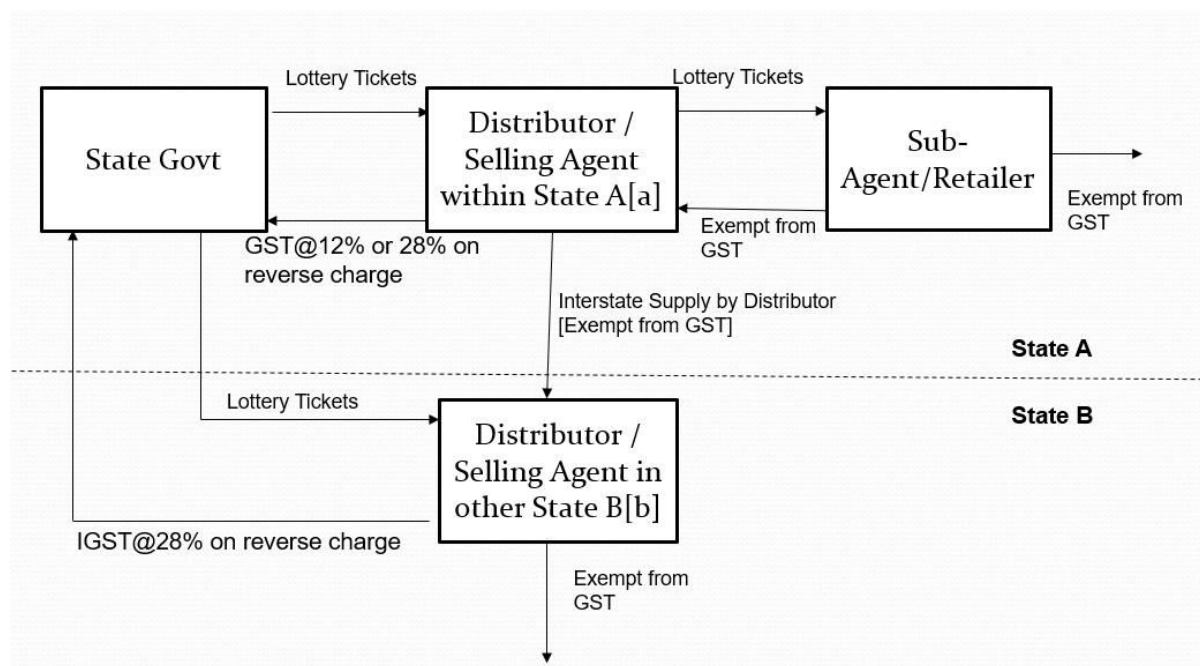
5.10. **Recommendation of GoM on Agenda Item No 1**

(i) There was no consensus on the need for a new rate of GST on lottery. Assam, Arunachal Pradesh, Goa, Maharashtra supported single rate of GST. However, Kerala, Punjab, West Bengal and Karnataka supported the existing two rates of GST on lottery. Punjab was willing to consider lower uniform rate, if there were legal difficulties with rate differential. Therefore, the Convenor of the GoM directed that the matter be placed before the GST Council and the Council to decide appropriate rate structure on the supply of lottery. Given that this is a sin goods, rate of tax should be high i.e. 28% or 18%.

(ii) The Constitutional challenge to the dual rate structure (ref. paragraph 5.4) may be defended forcefully.

6. Agenda Item No 2: Ensure Destination Principle for Supply so that GST Revenue accrues to Consuming State

6.1. The supply of lottery by a State Govt to a distributor / selling agent is charged to GST on reverse charge basis [Sl. No. 5 of Notification No.4/2017-Central Tax (Rate) dated 28.06.2017]. GST is exempt on supply of lottery by distributor/selling agents to sub-agents/retailers/customers [Sl. No. 149 of Notification No. 1/2017-CT(Rate) dated 28.06.2017].



6.2. In case of intra-State supply of lottery for consumption within the organizing State, the distributor / selling agent receiving the lottery tickets from the organizing State pays GST on RCM basis and supply to and by sub-agents / retailer down the supply chain to ultimate lottery ticket buyer is exempt. This is working well and there is no need for any change.

6.3.1. In case of inter-State supply of lottery by distributor / selling agent of organizing state to the distributor / selling agent in the consuming State, GST does not accrue to the consuming State as such supplies are exempt from GST. This is because the present GST notification exempts supply from distributor / selling agent (a) in State A to distributor / Selling agent (b) in State B, thereby holding the tax in State A only. In order to ensure that the tax on lottery accrues to the consuming State in line with the destination principle of GST, the following possible change were examined.

6.3.2. The first option is as follows. In case of sale of lottery for consumption outside the organizing State, it was discussed whether the present IGST exemption on inter-State supply needs to be withdrawn (i.e supply from (a) to (b)). Such inter-state supply shall be taxed on RCM basis in the hand of the first distributor / selling agent in the consuming State, who receives the supply from the distributor located in the originating State as there appears no bar in law to do so. Further, for such supply, the preceding supply within the organizing State may be exempt subject to payment of IGST by the distributor / selling agent in the consuming State. Subsequent sale by first distributor / selling agent to sub-agent / retailer to ultimate lottery buyer within the consuming state shall also be exempt. Appropriate safeguard mechanism would be built in the notification so that both (a) and (b) clearly identify themselves to the revenue authorities in the respective States.

6.3.3. In case of supply of lottery by the organising State to a distributor in the consuming State directly, tax shall be paid by the distributor in the consuming State on reverse charge basis. This arrangement is at present also working and shall continue.

6.4.1. The second option on the issue is as follows. The issue of sale of lottery ticket by distributor / selling agent in the organizing State to distributor / selling agent in the consuming State instead of by organizing State directly and non-payment of IGST and non-accrual of tax to the consuming State was also discussed by the Committee of Officers earlier and the following changes in the lottery rules were suggested:

- i. An organising State shall sell lottery tickets meant for another State to a distributor located in such other State only.
- ii. A distributor located in a State selling tickets of another organising State shall buy such tickets directly from the organising State Government.

6.4.2. This change was approved by the GST Council in its 28th meeting held on 21st July, 2018. It would appear that the State of Kerala has amended its rules / regulation on the above lines. Status of amendment by other States would be ascertained through GST Council. Changes proposed at paragraph 6.4.1 above will address this problem of non-accrual of GST revenue to lottery consuming States and is an alternative which already has the approval of the GST Council.

6.5. Record of Discussions of GoM on Agenda Item No 2

6.5.1. The Hon'ble Minister from Punjab directed the officials to explain as to how the revenue on inter-State sale of lottery was not accruing to the consuming State. The officials expressed the concern about the loss of revenue to the consuming State and suggested that only inter-State supply by a distributor/selling agent in organising state to a distributor /selling agent in other State should be levied under forward charge in order to allow utilisation of input tax credit. However, Punjab was also comfortable with the existing provisions of reverse charge on the supply of lottery.

6.5.2. The Officials from West Bengal pointed out that even presently, on all sale of lottery organized by other States, CGST and SGST is being paid to West Bengal as either these Government or their fixed establishments are registered in their State. The IGST exemption is not available on such sale as no IGST has been paid by the distributors of the organizing State and hence they are liable to pay IGST on RCM basis on such inter-State supply. West Bengal also suggested that the existing exemption entry in case of inter-State supply by a distributor/selling agent may be omitted from the existing notification and that reverse charge mechanism on the supply of lottery by State government to a distributor/selling agent should continue as it is working quite well.

6.5.3. The State of Kerala opined that other option of levying IGST on supply of lottery by a distributor/selling agent from organising State, when supplied to other distributor/selling agent is against the provisions of Lottery Regulation Act and Rules. Hon'ble Minister from Kerala also alluded to the need for privity of contract between the State and the main distributor of the lottery and many irregularities which were pointed out by C&AG when the lottery was supplied through the chain of dealers. State of Kerala stated that the decision taken by the 28th GST Council in meeting held on 21.07.2018 [Agenda Item 8(i)] that a circular be issued after lottery organising States have framed the requisite rules may be implemented to protect the revenue interests of the consuming States.

6.6. Recommendation of GoM on Agenda Item No 2

(i) The decision has already been taken in 28th GST Council meeting held on 21.07.2018 [Agenda Item 8(i)] that a Circular be issued after lottery organising States have framed the requisite rules. In order to implement this decision, GoM decided that:

(a) the States should frame rules expeditiously as approved by the GST Council and

(b) a Circular on the operational details would be issued once the necessary changes in the lottery rules have been made by the lottery organising States.

(ii) The existing exemption on inter-State supply by a distributor/selling agent in supplying State to the other agents in consuming State may be examined for removal in the Fitment Committee, if this is leading to loss of revenue to the consuming State.

7. Agenda Item No 3: Valuation to be adopted for charging GST

7.1. This issue arises out of the Writ Petition filed in the Hon'ble Supreme Court by M/s Skill Lotto Solutions Pvt. Ltd. wherein in the interim order passed on 30.4.2018, the Hon'ble Apex Court has taken on record the statement of ASG that all issues raised in the Writ Petition shall be considered by the Group of Ministers and they are under active consideration as on date.

7.2. At present, value of supply of lottery is determined under Rule 31A of the CGST Rules, which is 100/112 of the face value of the ticket or the price notified in the official gazette, whichever is higher, in case of State-run lottery and 100/128 of the face value of the ticket or the price notified in the official gazette, in case of State-authorized lottery.

7.3. Request to revise method of valuation by providing for deduction towards prize money is not consistent with the provisions of Section 15 of the CGST Act. As per Section 15, the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. As per Section 2(31) "consideration" in relation to the supply of goods or services or both includes—(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. Since face value of the lottery ticket is the amount paid by the lottery player to the organisers, such gross value is the consideration for the supply and has been treated as cum-tax value for the supply in Rule 31A of CGST Rules.

7.3.1. Value for paying GST on lottery specified under Rule 31A of CGST Rules is as per power vested under Section 15(4) of the CGST Act. It broadly provides for payment of GST on the gross amount paid by the lottery participant and includes the prize money payable to the lottery winners. Prize payout is not a permissible deduction under section 15(3) of the Act and is also not a pure supply as per the provisions of rule 33 of the CGST Rules. This is also valid from the perspective that a consumption tax is a tax on full consideration for the consumption and not only on the income arising out of the transaction.

7.3.2. The Hon'ble Supreme Court has laid the foundation for valuation of lottery in case of Sunrise Associates limited while overruling the case of H.Anraj vs Govt of TN. In H. Anraj case, Hon'ble Supreme Court had held that sale of lottery involved right to participate in lottery and right to win lottery. The two are separate rights. This implicitly acknowledged that value in case of supply of lottery can be split towards supply of right to participate and right to win prize. However, this distinction was not concurred with by the Constitutional Bench of Hon'ble Supreme Court in case of Sunrise Associates Vs Govt. of NCT of Delhi & Ors wherein it held that right to participate and right to win prize are inseparable rights conferred on the lottery buyers and entire consideration is paid for the chance to win.

7.3.3. Accordingly, in the GST Act and rules, the two rights in relation to lottery which are inseparable are collectively valued at the face value. There is no case for taking out the prize pay-out money from the value to be taxed. The valuation thus provided under Rule 31A is in line with the Hon'ble Apex Court decision in case of Sunrise Associates. The request for deduction from value is thus, legally untenable and may not be accepted. (Though it may also be noted that valuation of lottery was not the subject matter of litigation in these judgments).

7.4. **Record of Discussions of GoM on Agenda Item No 3:** The GoM unanimously agreed to levy GST on face value of lottery which includes prize money as per the existing provisions of GST (Rule 31A of CGST Rules). GoM also authorised the Union of India to defend in case of litigation forcefully.

7.5. **Recommendation of GoM on Agenda Item No 3**

GST should continue to be levied on face value of lottery which includes prize money as per the existing provisions i.e. Rule 31A of CGST Rules. Court cases may be defended forcefully.

8. Agenda Item No 4: Address Constitutional Challenge to Levy of GST on Lottery as ‘Goods’

8.1. The Writ Petition filed in case of Skill Lotto Solutions Pvt. Ltd. has challenged the Constitutional validity of levying GST on actionable claims and their inclusion in the definition of goods in GST.

8.2. The definition of ‘goods’ under Article 366(12) of the Constitution of India is an inclusive one. As per decision of the Hon’ble Apex Court in case of Sunrise Associates v. Government of NCT of Delhi, lottery is an ‘actionable claim’ and generally speaking ‘goods’ or ‘moveable property’[decision of Calcutta HC in case of Teesta Distributors & Ors Vs UOI].

8.3. The inclusion of ‘actionable claim’ in the definition of ‘goods’ is legislative recognition of the judicial pronouncement. Therefore, it cannot be argued that, the Union Parliament or the State Legislature did not have competence to include ‘actionable claim’ in the definition of ‘goods’.

8.4. Hon’be Supreme Court in case of East India Tobacco Co. v. State of Andhra Pradesh has held that in tax matters, "the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. In case of Raja Jagannath Baksh Singh v. The State of U.P., the Apex Court has held that the legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate.

8.4. **Record of Discussions of GoM on Agenda Item No 4:** The GoM unanimously agreed to continue current provisions of GST law on classifying ‘lottery’ as goods and authorised the Union of India to defend in case of litigation forcefully.

8.5. Recommendation of GoM on Agenda Item No 4

Supply of lottery should continue to be treated as goods leviable to GST as per the existing provisions of GST law. Court cases may be defended forcefully.

9. Agenda Item No 5: Regulation of Online Lottery

9.1. In past GST Council meetings, North-Eastern States have represented that a lot of misreporting was happening in inter-State operations of lottery and was more pronounced in case of online lotteries. The rampant misrepresentation and misreporting especially in online lottery was leading to revenue leakage and a need has been expressed for regulating the same.

9.2. The Constitutional and legal provisions governing the regulation and control of Lotteries in India are enclosed as **Annexure B**. The provisions exist in Lotteries Regulation and rules to organize, regulate and prohibit lotteries of any kind. Rule 3 of the Lotteries (Regulation) Rules, 2010 provides that a State Government may organise a paper lottery or online lottery or both subject to the conditions specified in the Act and these rules. As per Rule 2(e) of the lottery rules, "online lottery" means *a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player's choice of any particular number or combination of numbers is simultaneously registered with the central computer server. of Lottery.*

9.3. The State governments are also empowered to ban online lottery as per Section 5 of the Lotteries (Regulation) Act, 1998 provided the ban is both for the online lottery conducted by the State and the online lottery authorised by other States. In 2005, Kerala State banned online lottery within the State. The decision of Kerala was upheld by the Hon'ble Supreme Court of India [All Kerala Online Lottery Dealers Association Vs State of Kerala, 2007 refers]. West Bengal also banned online lottery in 2013.

The revenue from paper and online lottery received by lottery organizing and selling States during 2017-18 and 2018-19 (upto December, 2018) is as under:

A. Revenue from Paper Lottery

Rs. in crore

S. No	State	2017-18 (GST Period)			2018-19 (Upto Dec'18)		
		12%	28%	Total	12%	28%	Total
1	West Bengal	5.51	1820.1	1825.61	124.51	2112.8	2237.31
2	Kerala	841	Nil	841	725.34	Nil	725.34
3	Maharashtra	7.15	27.94	35.09	8.11	32.84	40.95
4	Goa	Nil	269.69	269.69	Nil	140.71	140.71
5	Punjab	2.71	3.83	6.54	5.17	3.9	9.07
6	Sikkim	Nil	Nil	Nil	Nil	Nil	Nil
7	Arunachal	Nil	2.66	2.66	Nil	10.64	10.64
8	Assam (Bodoland)	Nil	12.56	12.56	Nil	0.51	0.51
9	Nagaland	Nil	Nil	Nil	Nil	Nil	Nil
	Total	856.37	2136.78	2993.15	863.13	2301.4	3164.53

B. Revenue from Online Lottery**Rs in crore**

S. No	State	2017-18 (GST Period)			2018-19 (Upto Dec'18)		
		12%	28%	Total	12%	28%	Total
1	West Bengal	Nil	Nil	Nil	Nil	Nil	Nil
2	Kerala	Nil	Nil	Nil	Nil	Nil	Nil
3	Maharashtra	Nil	719.93	719.93	Nil	304.41	304.41
4	Goa	Nil	40.53	40.53	Nil	21.14	21.14
5	Punjab	Nil	54.97	54.97	Nil	25.53	25.53
6	Sikkim	0.03	0.36	0.39	0.12	1.21	1.33
7	Arunachal	-	-	-	Nil	162.28	162.28
8	Assam (Bodoland)	Nil	94.49	94.49	Nil	46.1	46.1
9	Nagaland	Nil	Nil	Nil	Nil	0.01	0.01
	Total	0.03	910.28	910.31	0.12	560.67	560.8

9.4. Experience suggests both in West Bengal and Kerala, banning of online lottery has led to higher growth in revenue from paper lottery. Therefore, GoM may consider appropriateness of following possible steps -

- (i) Banning online lottery and leaving it to the State Governments to take individual decision on banning of online lottery.
- (ii) Seeking GSTC's in-principle approval for authorizing Central / State Governments to prescribe adequate safeguards and conditions in rate / exemption notifications resulting in effective regulation of online lotteries.
- (iii) Writing through GSTC to the Ministry of Home Affairs and State Governments for carrying out necessary amendments in Lotteries (Regulations) Act, 1998 and Lotteries (Regulation) Rules, 2010, as the case may be, to give effect to conditions and safeguards at (ii) above to avoid any challenge to the legality of the same.

9.5. **Record of Discussions of GoM on Agenda Item No 5:** The GoM after discussion concluded that State governments are empowered by existing lottery laws to ban online lottery if needed as per Section 5 of the Lotteries (Regulation) Act, 1998. Individual States may decide the need for banning the online lottery. The Hon'ble FM from Maharashtra volunteered to submit a draft through Home Minister of the State which if approved by the GST Council, may be sent to the Ministry of Home of the Union Government for suitable implementation.

9.6. Recommendation of GoM on Agenda Item No 5

The State governments are empowered by existing lottery laws to ban online lottery. Experience shows that banning online lottery leads to good growth of revenue on paper Lottery. Maharashtra volunteered to submit a draft on regulation of online lottery.

10. Miscellaneous Representations Similar To Lottery

10.1 There are a series of representations which have been received for various activities such as casinos, horse racing, online gaming, betting and online gambling for which trade has requested that value for the purpose of taxation be defined.

10.2. These are summarised as below: -

Supply	Possible GST Rates in case of uniform rate	Request regarding Value for levy of GST (by industry)
Casinos	28% or 18%	Value retained by Casino after winnings
Horse Racing	28% or 18%	Value retained by club after giving prize money
Online Gaming	28% or 18%	Value retained by platform after giving prize money
Betting	28% or 18%	Value retained after prize pay out.

10.3. It is proposed that methodology and procedure for deciding face value and bet amount for determining tax may be referred to the Law Committee. The issues of GST rate may be referred to Fitment Committee. GoM may decide on these associated issues in the subsequent meetings after due inputs have been received from the Law and the Fitment Committee. These Committees may hold a joint meeting, if needed, on the above issues.

10.4. **Record of Discussions of GoM on Agenda Item No 5:** Hon'ble Minister from Punjab Shri Manpreet Singh Badal noted that these issues are not part of the original terms of reference of the GoM. However, Hon'ble Minister from Goa, Shri Mauvin Godinho opined that from the perspective of tourism and revenue, Casino is important and problems in its taxation needs to be addressed. The GoM unanimously agreed that the issues listed in paragraph 10.2 may be referred to Fitment/Law Committee and then taken to GST Council after the approval of Union Finance Minister.

10.5. Recommendation of GoM

The rate and valuation issues of Casinos, Horse Racing, Online Gaming, Betting may be referred to the Fitment/Law Committee and then taken to GST Council either directly or through GoM as approved by the Union Finance Minister.

ANNEXURE A

SUMMARY OF INTERIM REPORT OF GOM ON LOTTERY

[after 1st meeting held on 18th February, 2019]

1. Issue No. 1: What should be rate of GST on lottery and is uniform rate desirable.

1.1 Observation of the GoM in interim Report:

- (1) A single rate of GST should be levied on lottery instead of existing two rates. (Present rate is GST @ 12% for lottery run by state government and @ 28% for lottery authorised by state government). A uniform rate would be in conformity with GST principles.
- (2) Lottery is a sin/demerit good and should be taxed at high rate of GST. GST Council may take final decision on the appropriate single rate of tax on lottery at either 28% or 18%.

2. Issue No. 2: What are the measures to check illegal lottery and non-compliance?

2.1. Observation of the GoM in interim Report: A Group of Officers may be constituted to study issues related to online lottery and illegal lottery trade and submit report on -

- (i) Best practices about enforcement and compliance verification methods.
- (ii) Legal framework to check illegal lottery and regulate online lottery including international online lottery sold in India and suggest improvement in legal framework and IT methods for better compliance and checking evasion.

ANNEXURE B

CONTROL AND REGULATION OF LOTTERY OF OTHER STATES

In the Constitution of India, the subject “Lotteries organised by the Government of India or the Government of a State” is covered under Entry No 40 of List I of the 7th Schedule (Union List) and “Betting and gambling” subject is covered under Entry 34 of List II (State List). Both these entries have remained unchanged after 101st Constitutional Amendment Act bringing GST in the country. Whereas, entry No. 62 in List II dealing with “Taxes on luxuries, including taxes on entertainments, betting and gambling” has undergone change and has been replaced with “Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.” Thus, betting and gambling which also included lottery, were earlier taxed by States and now in GST are taxable both by Centre and States. There is no change in the regulations governing betting and gambling including lottery due to subsuming of Central Excise, VAT and other Central and State taxes into GST.

2. The Apex Court in case of State of Haryana vs. M/s. Suman Enterprises has laid down that the State Government or State legislation cannot ban lotteries organised by the State, but it can only ban lotteries authorised by the State. The Hon’ble Allahabad High Court in case of Maa Vaishnav Lotteries Agency v. State of U.P. has held that the ratio of the decision of the Supreme Court in case of Suman Enterprises is that lotteries organised by the Government of India or the State Governments are dealt with in Entry 40 of List I of Schedule VII to the Constitution and hence only Parliament can legislate on lotteries organised by the State Government.

3. The decision of the Apex Court in case of State of Haryana v. Suman Enterprises has laid down certain conditions for organizing State lotteries. By the Lotteries (Regulation) Ordinance, 1997 (Ordinance 20 of 1997), the Central Government for the first time made provisions for State-organized lotteries incorporating therein the conditions laid down by the Supreme Court. Eventually, Parliament enacted the Lotteries (Regulation) Act, 1998 (hereinafter referred to as the Act) with the object of regulating the lotteries and to provide for matters connected therewith and incidental thereto. The Act empowered the Central Government as well as the State Governments to make Rules to carry out the provisions of the Lotteries (Regulation) Act. While the Central Government has enacted the Lotteries (Regulation) Rules, 2010 (hereinafter referred to as the Rules), State Governments have simultaneously enacted their own Rules. With the promulgation of Lottery (Regulation) Act, 1998, the distinction between lottery organized and authorized by State stands removed.

4. As per Section 2(b) of the Act, “lottery” means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets; Section 3 of the Act prohibits a State to organise, conduct or promote any lottery except the lottery organised as per the conditions prescribed in the Section 4 of the Act, which is reproduced as below: -

A State Government may organize, conduct or promote a lottery, subject to the following conditions namely: -

(a) prizes shall not be offered on any pre-announced number or on the basis of a organized, etc. single digit;

- (b) the State Government shall print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured;*
- (c) the State Government shall sell the tickets either itself or through distributors or selling agents;*
- (d) the proceeds of the sale of lottery tickets shall be credited into the public account of the State;*
- (e) the State Government itself shall conduct the draws of all the lotteries;*
- (f) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government;*
- (g) the place of draw shall be located within the State concerned;*
- (h) no lottery shall have more than one draw in a week;*
- (i) the draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government;*
- (j) the number of bumper draws of a lottery shall not be more than six in a calendar year;*
- (k) such other conditions as may be prescribed by the Central Government.*

5. Section 6 empowers the Central Government to prohibit the conduct of lotteries, which are in violation of the provisions of Section 4 or which are sold in contravention of the prohibition imposed by the State Government under Section 5. Section 7 provides the penalty for running a lottery in violation of the provisions of the Act.

6. Also, the Central government may ban sale of lottery of a State in other State as per Rule 5 of lottery Rules which is as follows: -

5. Procedure to prohibit the sale of lottery tickets by the Central Government. The Organising State may specify qualifications, experience and other terms and conditions for the appointment of distributors or selling agents.

(1) If a State Government is of the opinion that the Organising State or their distributors or selling agents are organising lotteries in violation of the provisions of the Act and these rules, it shall immediately bring the violations to the notice of the Organising State concerned along with the details of such violations or irregularities noticed and the Central Government shall also be apprised of such violations or irregularities simultaneously.

(2) The Organising State shall send a suitable response on the issues raised by the State Government under sub rule (1), within a period of thirty days of the receipt of such communication.

(3) In case where the State Government concerned is not satisfied with the response sent by the Organising State under sub rule (2) or the Organising State does not respond or does not take action to discontinue the organization of the said lottery scheme, the State Government concerned, under whose jurisdiction the lottery tickets are being sold, may bring to the notice of the Central Government all relevant details of violations or irregularities and the

communications made with the Organising State, along with its recommendations on the action to be taken including banning of such lottery scheme of the Organising State in the geographical limits of its State.

(4) The Central Government shall, after giving reasonable opportunity to the Organising State of being heard either in writing or in person, take the final decision whether action is required to be taken against the lottery scheme of the Organising State under section 6 of the Act.

(5) In case the Central Government decides to prohibit any such lottery scheme, it shall issue an order under section 6 of the Act prohibiting such lottery and direct the State Government concerned to give wide publicity through daily newspapers or electronic media or both about the decision of the Central Government.

ANNEXURE '4'

Letter dated 10.03.2019 from Hon'ble Finance Minister of Kerala



Dr. T. M. THOMAS ISAAC
MINISTER FOR FINANCE & COIR

Government of Kerala
Secretariat, Thiruvananthapuram
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Date: 10-03-2019

Dear Shri. Sudhir Sachchidanand Mungantiwar,

The GST rate on lottery have been deliberated in detail in the 17th GST council meeting held on 18th June 2017. The Council while deliberating GST rate on lottery considered the social and ethical issues related to lottery rather than the revenue angle of item. And finally, the Hon'ble Chairman concluded to implement differential rate of GST considering all the issues raised and the voices of all state Governments. The Chairman observed "*there were clear conditions between the State-run lotteries and the State- authorized lotteries and this could be the principle used to distinguish the lotteries and tax them differently....*" The council unanimously accepted the proposal of the Hon'ble Chairman and decided to levy GST @ 12% of the face value for Lottery run by the state Government and 28% of the face value on the Lottery authorized by the state Government. No new things surfaced that warrants the reconsideration of what has been deliberated and concluded in the 17th GST council meeting.

The issue of differential rate of taxation has been subjected to legal scrutiny in W.P No. 18424/ (W) of 2017 in the High Court of Calcutta. The court held that "*.... The rationale for imposing differential rates appears from the minutes of the 17th meeting of the GST Council. The rationale for the differential rate or the rates by themselves have not been substantiated to be breach of any provision of the Constitution*" The rationale applied by the GST council for differential rate of GST for Lottery run by the state Government and Lottery authorized by the state Government has been held Constitutional by the High court. The Writ petition challenging the constitutionality of differential rate of GST on Lotteries have been filed by Teesta

Distributors etc who are the members of All India Federation of Lottery Trade and Allied Industries who have represented for the removal of the differential rate of GST.

The higher rate of GST on the Lotteries authorized by State Governments in no way affects the revenue of the Small State Governments. The states that conduct their lottery through the agencies (Distributors) get the Minimum Guaranteed Revenue (MGR) and not the net sales proceeds. The MGR as per the agreement with the agencies is so paltry and this has been pointed out by C& AG. The C& AG also pointed out several grave issues wrt the conduct of Lottery through Distributors. The most embarrassing revelation was that while only paltry amount reaches the state treasury, the distributors/ agents amassed huge money by exploiting the poor people by resorting to all kind of illegal means. State of Kerala conducts its Lottery through the Lottery Department of the State Government. The entire sales proceeds are remitted to the consolidated fund of the state Government and the expenses including the prize money is met from the consolidated fund by debiting it from concerned Head of Account.

Relevant extract from the "Audit Report (Revenue Sector) for the year ended 31 March 2017- 6.3 Compliance Audit on Conduct of Lotteries in the State of Kerala" of C & AG is reproduced below:

"6.3.1 Introduction The administration of the conduct of lotteries in Kerala is governed by the Kerala Paper Lotteries (Regulation) Rules, 2005. The Secretary to Government, Taxes Department has administrative control over the Lottery Department. At the Directorate level, the Lottery Department is headed by the Director of State Lotteries (DSL) who is empowered to organize lotteries in the State. All important functions in the conduct of lotteries, including fixing the number and face value of a lottery, its prize structure, designing and printing of lottery tickets, sale of lottery tickets to distributors, draw of lotteries, etc., are vested with the DSL, who is assisted by Additional/Joint/Deputy Directors at State level and District Lottery Officers (DLOs) at district level. The State is conducting three type of lotteries; normal, specific purpose and bumper lotteries. The specific purpose lotteries inter alia include 'Karunya' and 'Karunya Plus' lotteries, from the net proceeds of which Government constituted the Karunya Benevolent Fund (KBF) organised by the State for providing financial assistance to the poor for the treatment of cancer, kidney and heart diseases, palliative care patients and haemophilia. During the audit period, the Department

conducted 2011 normal draws and 36 bumper draws and distributed Rs.10.97 crore prizes amounting to Rs.10,845.82 crore.”

The audit report reveals that the State run lottery strictly adheres to the Act Rules and Regulations where as the state authorised Lotteries conducted through the agents travel to any extent to flout all Rules and regulations. Attention is solicited to the audit and enquiry reports on the such Lotteries. Let me bring some such reports to the notice of the GOM.

Gist of the violations noticed with respect to other State lotteries.

The Kerala Government had referred the violations for CBI enquiry. Consequently, as per request of MHA, special performance audits were conducted by C & AG.

A glance of the general violations can be noticed from the executive summaries of the audit reports reproduced below: Audit Reports are attached herewith;

(a) Report of the Comptroller and Auditor General of India for the year ended March 2016 – “Performance Audit on Sikkim State Lotteries” (Report No. 1 of 2017)..

In India, the States can organise lotteries subject to observance of provision of the Lotteries (Regulations) Act, 1998 and Lotteries (Regulations) Rules, 2010. The Lotteries

(Regulation) Act, 1998 regulates the Lotteries and provides for matters connected therewith throughout the country. The Act empowered the Central Government as well as the State Governments to make Rules to implement the provisions of the Lotteries (Regulation) Act. The first Scheme for conduct of Sikkim Government Lotteries was notified in March 1972 more than 45 years ago when Sikkim was not a State of India. After merger with India, the first Lottery schemes by the State Government were introduced in 1978 and various schemes of Lotteries have been organised by the Government of Sikkim.

(Paragraph 1.1 & 1.2)

During 2010-16, the State of Sikkim organised 44,834 draws of various lottery schemes. Audit observed many lapses in the lottery operations of the State relating to monitoring, maintenance of records, deposit of revenues, failure to authenticate

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and ascertain prize payments by Marketing Agents (MAs), the draw process, failure to obtain details of prize winning tickets and unsold tickets from MAs and absence of checks and controls on operation of lottery schemes.

(Paragraph 2.1)

The MAs were appointed for marketing the State Lotteries. The appointment of MAs lacked transparency and consistency. The MAs were selected sometimes through the tender process, sometimes through negotiation after calling for offers individually and sometimes by extension of terms of contract with existing MAs without tendering which deprived the State to get the highest bid and optimum revenue.

(Paragraph 2.2)

Rule 3(2) of Rules, 2010 envisaged¹ that the State Government should organise a lottery or lotteries only after issuing notification in the Official Gazette, outlining the purpose, scope, limitation and methods thereof. Failure to issue mandatory notification under Rule 3(2) of Rules, 2010 in time resulted in repeated litigations, delay in award of marketing contract and consequent financial loss of Rs.13.52 crore.

(Paragraph 2.2.3)

Despite disqualification of the tender and contrary to recommendation of the tender selection committee, M/s Pan India Network Pvt Ltd. was awarded marketing contract of Online Lotteries in November 2012 for five years.

(Paragraph 2.2.5)

Rule 18 of the Sikkim Online Network Lottery Rules, 2001 inter alia envisaged that the State Government may after opening of tenders and on the recommendation of Tender Security Committee or any organisation authorised by the State Government appoint MA for selling computerised network lottery tickets. There was no provision in the Rules for appointment/re-appointment by extension of contract without calling for tenders. M/s Summit Online Trade Solutions Pvt. Ltd. was appointed MA for marketing eight on-line lottery schemes of transparent to the viewers, the State, for Online Lotteries, used electronic devices called Random Number Generators

Letter dated 11.06.2019 from Hon'ble Finance Minister of Kerala



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Sub:- Second meeting of group of Ministers (GoM) on Lotteries to be held on 11th June, 2019.

- Ref:- 1) Letter No. F. No. 354/18/2019-TRU, dtd. 04-6-2019 of Joint Secretary (TRU-II), Ministry of Finance, Department of Revenue, Government of India.
- 2) Note on Lottery No. F. No. 354/18/2019-TRU, appended to reference cited (1) for second meeting of GoM.

Dear Shri. Sudhir Schchidanand Mungantiwar,

This is with reference to the GoM meeting on taxation issues of lotteries. I had informed the stand of Government of Kerala on the issues considered by the GoM Vide letter dated 10-03-2019. Basically the Government of Kerala reiterate the positions taken in that letter. For ease of reference, the copy is enclosed herewith.

But in the notes circulated for the second meeting of GoM (Ref. cited (2)). There are certain further issues which are being considered for the first time by the GoM. The position of the Government of Kerala on the same is informed as follows.

The Government of Kerala have strong objections to the agenda item 5.2.2.2 *"ensure destination principle for supply so that GST revenue accrues to the consuming state"* since this is a place of supply issue and is not included in the terms of reference of the GoM as approved by GST Council. On this point it is pertinent to note that the 28th GST Council had approved the clarification as under.

" a. If the organizing State is registered in the State in which the organizing State's lottery is being sold or has a fixed establishment there, then the supply

of lottery by organizing State to the lottery distributor or selling agent is an intra-State supply on which CGST and SGST of the consuming State is to be paid under reverse charge by the Lottery Distributor;

b. If the organizing State is not registered in the State in which the organizing State's lottery is being sold or does not have a fixed establishment there, then since the distributor/ selling agent will necessarily be registered in the consuming State (requirement in terms of section 25 of GST Act and the [proposed] rules framed by State Governments under Section 12 of the Lotteries (Regulation) Act, 1998), the transaction at first point of distribution chain between the organizing State Government and the lottery distributor/ selling agent, shall be an inter-State supply on which IGST is to be paid under reverse charge by the lottery distributor/ selling agent."

It has also mandated that the lottery organizing States and consuming States may frame the following rules under Lottery (Regulation) Act.

- a. An organizing State shall sell lottery tickets meant for a particular to a distributor located and registered in that only.*
- b. A distributor located and registered in a selling tickets of another organizing State shall buy such tickets directly from the organizing State Government.*
- c. It shall be compulsory for to print "FOR SALE IN ONLY" on each paper lottery ticket.*

Accordingly, the Kerala has framed the rules. The above clarification was in conformity with the Lotteries Regulation Act and rules.

The agenda note upholds this position but has added another scenario where a distributor in the organizing State buys tickets from organizing States and sells it to another distributor in the consuming States. In such cases, the agenda note states that the first supply between the organizing State and the

main distributor should be exempt. It also states that the sub distributor in the consuming state should pay IGST on reverse charge basis for the supply made by the main distributor.

Unlike other businesses, the supply chain and accounts of lotteries is specifically determined by the Lotteries Regulation Act and Rules. Recognizing this type of subcontracting in GST law would be ultra vires to the Lottery Regulation Act and Rules. So the above agenda item would amount to recognizing a supply chain in lotteries which is illegal under the Lotteries Regulation Act. The statutory audit reports of C & AG conducted under the Lotteries Regulation Act, the report of CBI in the Sikkim Lotteries case all point to the fact that the main distributor and sub-distributor in these cases collude to print more tickets than that is authorized by the organizing state and sell them in jurisdictions which the organizing state has no control. This has also resulted in inefficient control mechanisms by the organizing states and they get only a paltry amount to their exchequer. This type of malpractices only occurred due to this sub contracting business, which was against the scheme of things envisaged under the Lotteries Regulation Act, which assigns the role of lottery distributor only that of a commission agent who will receive the commissions from the public account of the state.

So recognizing lotteries sub-contracting in GST Law is against the Lotteries Regulation Act and there is no circumstance to deviate from the clarification issued by the 28th GST Council Meeting. Such recognition will give rise to illegal and unlawful trade in lotteries at the main distributor/sub-distributor level. Hence this should not be approved by the GOM.

The position on the issues coming up for consideration in today's GoM is summarised as below.

- 1) The differential rate of GST for state organised lotteries and state authorised lotteries (12% & 28% respectively) should continue.

Agenda Item 7(ii): Changes in GST rate on electric vehicles and related supplies

(I) GST rate reduction on electric vehicles and electric vehicle chargers:

Electric vehicles are environment friendly. Their extensive use would reduce dependence on fossil fuels. This would reduce import dependability. Domestic manufacturing and consumption of electric vehicle needs to be incentivised in larger public interest. On the recommendation of the Council, a concessional rate of 12% has been prescribed on the electric vehicle. Non-electric vehicles attract GST at the rate of 28%. In addition, non-electric cars also attract compensation cess ranging from 1% to 22%. Thus, it has been a conscious policy to encourage the usage of electric vehicles. Concessions, by way of reduced BCD (Basic Customs Duty), have been extended on imports of parts of electric vehicles, to encourage their domestic production. However, as electric vehicles production in India is at a nascent stage, their cost remains high. Production and consumption volume remain insignificant. Therefore, it is felt that to facilitate production and consumption of electric vehicles, further reduction of GST rate on such vehicles is merited.

2. Parts of motor vehicle attract duty at the rate of 18% or 28%. Electric Vehicle (EV) charger also attracts GST at the rate of 18%. Parts of charger are also at 18%. However, electric charger is an essential item for operation of electric vehicles. It would be necessary to incentivise the chargers of electric vehicles to encourage the usage of electric buses. Therefore, reduction of GST rate on EV charger is merited.

3. Proposals for consideration of the GST Council:

(1) To reduce GST rate on all electric vehicles from 12% to 5%.

(2) To reduce GST rate on EV charger from 18% to 12%

(II) Exemption from levy of GST on hiring of electric buses by local authorities:

4. Services by way of giving on hire, buses (of carrying capacity of more than 12 passengers), to State Transport Undertakings is exempt from GST. Services by way of transport of students, faculty and staff supplied to schools and pre-schools as well as giving on hire, buses for transport of students, faculty and staff to a person providing transport services to a school or pre-school are also exempt. Therefore, hiring of all types of buses including electric buses in these segments is already exempt.

5. To incentivise use of electric buses, GST may be exempted on services by way of giving on hire buses (of carrying capacity of more than 12 passengers) falling under heading 9966 or 9973 of scheme of classification of services to local authorities. [Heading 9966 covers “rental services of transport vehicles” and Heading 9973 covers “leasing or rental services with or without operator”.]

6. Proposal for consideration of the GST Council:

To exempt levy of GST on hiring of electric buses by the local authorities.

7. Proposals at paragraph 3 and 6 above are placed for consideration of the GST Council.

Agenda Item 7(iii): Informing GST Council regarding direction of Hon'ble High Court of Delhi to examine the valuation mechanism prescribed for Solar Power Generating System (SGPS)

GST rate of 5% was prescribed for Solar Power Generating System (SPGS) and parts for its manufacturing falling under Chapter 84, 85 and 94. Goods falling under other chapters of Tariff attracted GST at the applicable rate. Further, services used in setting up of a solar power plant attract GST at the applicable rate (generally 18%). In the absence of a definition of solar power generating system, there was ambiguity in the industry regarding taxability of SGPS and as to what specific goods supplied for SGPS would attract concessional rate of GST of 5%. The ambiguity in the industry has arisen due to the difference in the opinion of the Authority of Advance Rulings (AAR) of various States.

1.1. The AAR, Maharashtra in its ruling No. GST-ARA-03/2017/B-03 dated 03.03.2018 in the case of Fermi Solar Farms Private Ltd. has ruled that the transaction of supply of solar plant is a works contract in terms of clause (119) of section 2 of the CGST Act and it attracts 18% GST. Similar ruling was also passed by the AAR, Rajasthan in its ruling No. RAJ/AAR/2018-19/08 dated 01.07.2018.

1.2. However, the AAR, Uttarakhand in its ruling application No. 5/2018-19 dated 28.08.2018 in the case of M/s Eapro Global Limited has ruled that supply of solar inverter, controller, battery and panels would be covered under Solar Power Generating System as a whole in terms of Sl. No. 234 of Schedule I of the notification No. 01/2017- CTR and applicable GST rate would be 5% as such supply is treated as a "composite supply" and the rate applicable to the dominant nature of the supply will prevail. Similar ruling was also passed by the Appellate Authority for Advance Ruling (AAAR), Karnataka in its order No. KAR/AAAR/02/2018-19 dated 05.09.2018 in the case of M/s Giriraj Renewables Private Ltd.

2. Subsequently the Fitment Committee examined the matter after taking into consideration the pre-GST rate and tax incidence on various input and input services (specific inputs falling under Chapter 84, 85 and 94 being at 5% and rest of the goods and services mostly being at 18%). In the Fitment Committee meeting, it was felt that this issue could be resolved by assigning value to the supplies falling under said entry 234 when supplied along with other supplies, i.e. services under EPC and goods not covered by entry at sl. No 234. In the meeting, based on fair estimation from cost breakup, it was proposed that value of supply of goods be taken as 70% and remaining value of supply of services and goods not falling under said entry No. 234 as 30%. It was also decided that the proposed valuation methodology would also apply to other renewable energy system of Sl. No 234 of notification No. 1/2017-Central Tax (Rate).

2.1 The valuation mechanism prescribed by the Fitment Committee was approved by GST Council in its 31st Meeting held at New Delhi on 22nd December, 2018. Decision of the GST Council was implemented by issuance of notification No. 24/2018- Central Tax (Rate) dated 31.012.2018 and inserting an explanation vide notification No. 27/2018- Central Tax (Rate) dated 31.012.2018.

3. Thereafter, a writ petition WP (C) No. 4714/2019 was filed by Solar Power Developers Association (SPDA) challenging the presumptive valuation mechanism prescribed by the notification alleging that 70:30 ratio of splitting of value of goods and services differs from the actual splitting and the deeming provision leaves no avenue for the petitioner to pay tax on the actual splitting of value of goods and services.

4. The Hon'ble High Court of Delhi vide its order dated 03.05.2019 has directed the Union of India to look into the matter and place the petition of SPDA before the GST Council at its next meeting. The order reads as under-

5. *In the meanwhile, considering the ramifications of the prayer of the Petitioner, it is directed that the present petition of the Solar Power Developers Association be placed before the GST Council at its next meeting.*

6. *Preparatory, to the above step the petitioner will be called before the Central Board of Indirect Taxes and Customs through their authorized representatives for a consultative meeting within the next 4 weeks. If necessary, the concerned Ministry which is Ministry of Renewable Energy, Government of India will also be invited to the such consultative meeting and the deliberations of that meeting also be placed before the GST Council.*

5. Pursuant to the Order of the Hon'ble High Court a meeting in this regard was held under the Chairmanship of Member (Tax Policy), CBIC on 27th May, 2019. Representatives of Solar Power Developers Association and Ministry of New and Renewable Energy were present in the meeting. SDPA was asked to provide all relevant information, data and copies of contract etc. in the matter so that it could be placed before the Council after due examination of submissions made by SPDA. The data from SDPA is still awaited.

5.1. In the meanwhile, another Writ Petition WP(C) No 6289/2019 has been filed before the High Court of Delhi by Indian Turbine Manufactures Association (ITMA) on similar grounds. The Hon'ble High Court vide its order dated 29.05.2019 directed that this petition may also be placed before the GST Council for its consideration on the same date as that of SPDA. The Hon'ble Court has also directed to call a consultative meeting within 4 weeks of passing of its order with the petitioner and Ministry of New and Renewable Energy. Accordingly, consultation with petitioner ITMA would be held.

6. Now, therefore as per the order of the High Court Delhi, both the matters are placed before the GST Council for information and apprising the developments so far. Approval of the GST Council is requested to allow the matter to be placed before the next Fitment Committee for detailed examination and making recommendation. The recommendation of the Fitment Committee would be placed before the GST Council.

Agenda Item 7(iv): Review of GST Council recommendation for applying reduced rate of GST on sale and leasing of motor vehicles with effect from 1st July, 2017

Under GST, supply of motor vehicles by way of sale or leasing attracts GST @ 28%. The said supply also attracts Compensation Cess at the rates ranging from 1% to 22% depending on the type of vehicle. Immediately upon notification of these rates, effective from 01.07.2017, references were received from the car leasing industry and car dealers seeking relief from double taxation on vehicles purchased prior to 01.07.2017 stating that these vehicles had suffered Central Excise duty and VAT on the input side but no credit of Central excise duty is available with them for discharge of GST and Compensation Cess on such vehicles.

2. GST Council in its 22nd meeting held on 6th October, 2017 considered the representations and decided to grant relief. GST Council recommended that following supplies shall be taxed at *65% of the applicable GST + Compensation Cess rate*, for a period of 3 years with effect from 1st July 2017, -

- i. Leasing of vehicles purchased and leased prior to 1.7.2017;
- ii. Sale of the vehicles covered by the above leases;
- iii. Sale/supply of vehicles by a registered person, who had procured the vehicle prior to 1st July 2017 and has not availed input tax credit of Central Excise duty, VAT or any other taxes paid on such vehicles.

3. The notifications giving effect to the recommendation were issued by the Central and State Governments on 13th October, 2017, which were effective prospectively, i.e., from 13.10.2017. Retrospective exemptions can only be given by an Act of Parliament or State Legislature. Consequent to issue of the said notifications, representations were received from the trade and industry and individual customers for giving effect to reduced rates from 01.07.2017 as decided by GST Council.

4. Implementing the GST Council recommendation to apply the reduced rates for the retrospective period from 01st July, 2017 to 12th October, 2017 would be a legal process requiring enactment of suitable provisions through the Finance Bills of the Union Government and all the State Governments. On a similar issue of granting retrospective exemption from GST on Government's share of Profit Petroleum for the period from 1.7.2017 to 24.01.2018, GST Council in its 31st Meeting approved the recommendation of the Fitment Committee that *as a matter of principle, retrospective exemption should be avoided as they are required to be given effect through Finance Bills of the Centre and all the States.*

5. Further, Indian Vehicle Operating Lease Organization (IVOLO), which is the major association of vehicle operating lease companies, has stated that they have collected tax from their customers for the said period (1.7.17-12.10.17) at the full rate and have paid the same to the Government. It will not be possible for them to take refund of tax so paid and pass on the benefit to their customers if the reduced rate for the said period is given effect to now, unless a special mechanism/provision is made in the law enabling them to claim such refund. Section 54(8) of the CGST Act allows refund of tax to the applicant only if he has not passed on the incidence of such tax to any other person. If incidence of tax has been passed on to the recipient of supply, the amount due as refund is credited into the Consumer Welfare Fund as refund to supplier would lead to unjust enrichment.

5.1. According to information submitted by IVOLO, the impact of non-implementation of the reduced rate of GST during the period from 1.7.17 to 12.10.17 on the industry and customers was about Rs. 60-70 crore and has already been absorbed by the consumers.

6. In view of the above, it is recommended that the GST Council may revise its recommendation to the effect that the same would be applicable from the date of issuance of notifications, that is, 13th October, 2017 and for the past period (1.7.17-12.10.17), no retrospective exemption shall be given. The matter is placed before GST Council for consideration.

Agenda Item 8: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)

In terms of Section 109 of the CGST Act, 2017, Goods and Service Tax Appellate Tribunal are being constituted by the Government on the recommendation of the GST Council. The Appellate Tribunal having National/Regional Benches at national level and the State /Area Benches at State level, hear appeals against orders passed by the Appellate Authority or by the Revisional Authority.

2. In the 28th meeting held on 21.07.2018, the GST Council approved the following:
- (i) Constitution of Goods and Services Tax Appellate Tribunal (GSTAT); and
 - (ii) Creation of National Bench of GST Appellate Tribunal at New Delhi and three Regional Benches at Mumbai, Chennai and Kolkata.

2.1. Consequent upon aforesaid recommendations of GST Council, the Union Cabinet approved creation of National Bench of the GST Appellate Tribunal at New Delhi and said National Bench was notified vide Notification No. **S.O. 1359(E)**—[No. 1/2019, [F.No. A.50050/99/2018-Ad.1C(CESTAT)] dated 13-03-2019 issued by Department of Revenue.

3. In the 34th meeting held on 19.03.2019, the GST Council took note of the developments regarding the formation of the GSTAT i.e. the number of Benches and the places where to locate them which are furnished below for ready reference at Table 1:

Table 1

Sl. No.	Name of States/Union Territory	Location for State Bench	Location for Area Bench
1.	Assam	Guwahati	NIL
2.	Bihar	Patna	NIL
3.	Chhattisgarh	Atal Nagar Raipur	NIL
4.	Goa	Panaji	NIL
5.	Gujarat	Ahmedabad	NIL
6.	Haryana	Hisar	NIL
7.	Himachal Pradesh	Shimla	NIL
8.	Jharkhand	Ranchi	NIL
9.	Karnataka	Bengaluru	NIL
10.	Maharashtra	Mumbai	Pune and Nagpur
11.	Puducherry	Pondicherry	NIL
12.	Punjab	Chandigarh	NIL
13.	Tamil Nadu	Chennai	NIL
14.	Tripura	(Place not indicated)	NIL
15.	Uttar Pradesh	Allahabad	4 Area Bench at Ghaziabad, Lucknow, Varanasi and Agra
16.	Uttarakhand	Dehradun	NIL

Sl. No.	Name of States/Union Territory	Location for State Bench	Location for Area Bench
17.	West Bengal	Kolkata	Two Area Benches at Kolkata
18.	Sikkim	No bench of GSTAT in the State.	
19.	Nagaland	To club the State bench of GSTAT with the State bench of GSTAT of neighbouring State	

4. For the remaining States, proposal for setting up State/Area benches was sought for each State/UT, which were received as follows:

- (i) State Bench of the GST Appellate Tribunal has been constituted vide Notification No.SRO 447 dated 23.10.2017 for the State of Jammu and Kashmir under Section 109 of the Jammu and Kashmir Goods and Services Tax Act, 2017.
- (ii) Other requests from States/UT (with legislature) are summarized in Table 2 below:

Table 2

Sl. No.	Name of States/Union Territory	Location for State Bench	Location for Area Bench
1.	Andhra Pradesh	Vijayawada	Vishakhapatnam and Tirupati
2.	Kerala	Thiruvananthapuram	NIL
3.	Delhi	New Delhi	NIL
4.	Odisha	Cuttack	NIL
5.	Telangana	Hyderabad	NIL
6.	Arunachal Pradesh	No bench of GSTAT in the State	
7.	Manipur	To club the State bench of GSTAT with the State bench of GSTAT of neighbouring State	

5. Accordingly, following proposal is submitted before GST Council for setting up of State/Area bench of State GSTAT:

- (i) to ratify constitution of Jammu and Kashmir GST Appellate Tribunal in terms of proviso to Section 109(6) of the CGST Act, 2017;
- (ii) to recommend constitution of State/Area Benches of the States/UT (with legislature) as mentioned above in Table 1 and 2 at paragraph 3 and 4(ii) respectively;
- (iii) to recommend a common State Bench for the States, namely, Sikkim, Nagaland, Manipur and Arunachal Pradesh at a suitable location; and
- (iv) to recommend a common UT bench for the UTs (without legislature), namely, Andaman & Nicobar, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, and Chandigarh at a suitable location.

6. The proposal at paragraph 5 above is accordingly placed before the GST Council for consideration.

Agenda Item 9: Introduction of Electronic Invoicing System

E-invoicing is a rapidly expanding technology and today's business models are evolving gradually from conventional paper-based systems to digital processing. Such steps can accelerate the business process automation, reduce compliance burden and improve ease of doing business. Electronic Invoicing is a best practice followed internationally by various tax administrations and several countries have adopted Electronic Invoicing as part of their national digitalization programs.

2. An ideal tax administration system captures a transaction as soon as it is made. This immediate capture of the details of transaction helps in easing compliance burden, by facilitating auto drafting of returns. However, under the current system, there is a gap between time of generation of invoices and time of filing of Returns (GSTR-1, GSTR-3B, GSTR-4 etc.), which leaves scope for misdeclaration or errors in submitting returns.

3. E-invoicing is a rapidly expanding technology and today's business models are evolving gradually from conventional paper-based system to digital processing. International studies show that issuance of e-invoices reduces compliance cost significantly and also frees the resources in the business to concentrate on other economic activities. Considering the cost savings, efficiency gains, the private businesses themselves are turning to E-Invoice. Thus, digital transformation is no longer just an option, but an eventuality. Tax administrations are also looking to align the compliance process with private business practices with this transformation requiring organisations to exchange and share copies of invoices electronically.

4. In order to crystalize the ideas towards generation of e-invoice, a Committee of Officers (CoO) on generation of electronic invoice on GST portal was constituted under the Convenorship of Dr. Rajeev Ranjan, Special Secretary, GST Council Secretariat with officers from CBIC, States, GST Policy Wing, TRU-I & TRU- II, Department of Revenue and GSTN as members. Two meetings of the Committee of officers were held subsequently. Further discussions on this matter were also held in two GST Core Group meetings under the chairmanship of the Revenue Secretary. During deliberations in all these meetings, it was observed that the idea of e-invoice on voluntary basis for large taxpayers in B2B segment was worth considering and it needed to be explored positively.

5. Models of keeping track of invoices generally prevalent worldwide are:

- i. E-invoices numbers generated (commonly also referred to as Invoice reference number) to be used on invoice without which the invoice issued from Accounting application of the taxpayer would be invalid.
- ii. Complete e-invoices generation from the portal similar to e-Way Bill
- iii. Only generation of e-numbers for the invoice using which the Taxpayer generates his invoices using his system and reports them periodically to Govt.

6. Advantages of e-invoicing to the Tax Payers: Backward integration and automation of tax relevant processes replaces manual and periodic reporting of forms, separate GST declarations, separate tax accounting etc., Thus, tax collection and refund can be done seamlessly. Further businesses are relieved from carrying hard copies of invoice during transit of goods and it also results in early settlement of payable and receivables. The proposed electronic invoice system also reduces the need for post audit systems of invoice matching drastically, as it ensures in real-time that fiscal documents are tax compliant. Electronic invoicing also helps digitalizing the supply chain which in future may result in emergence of more innovative trade finance schemes.

7. Advantages to Tax Authorities: e-invoice leads to significant reduction of the tax evasion, which paves the way to better management of taxes and freeing human resources for other important work. Various types of fraud like carousel fraud, fraud of invoicing between phantom partners who disappear before tax audit, no invoicing or invoicing with no goods supplied, fraudulent export ITC refunds, suppression of turnover etc., can be addressed through increasing use of e-invoices.

8. Model envisaged by NIC: NIC has demonstrated a prototype for generation of e-invoice as it would be backward integration with e-way bill.

- i. The model presented by them before the Committee could cover all type of transactions and with various drop down facilities for B to B supplies (regular or reverse charge or e commerce) and several other types of supplies, credit and Debit notes with GSTIN no., address details, HSN code, tax rate, unit description, price, total amount, tax payable etc as other required relevant information.
- ii. Invoice with alpha numeric number could be generated immediately from the portal printed with bar code for authentication.
- iii. Various modes of preparation of e-invoice could also be provided like web and mobile App based with facility of offline, MS and API integration. Even cancellation facility can be provided and could be done after giving predefined reasons. The facility for acceptance to both buyer and seller might also be provided for freezing ITC claim.

9. Discussions in the CoO: The Committee discussed and deliberated various issues and agreed to recommend the proposal of introducing e- invoices on a voluntary and optional basis for business to business (B2B) supplies. However, Commissioner, State Tax (CST), Punjab was of the view that it should be introduced based on type of transaction. CST, Tamil Nadu submitted that apart from e-invoices for B2B supplies on optional basis, e- numbers should also be generated for B to C supplies in some evasion prone sectors like food and restaurant, outdoor caterers, construction materials, drugs & medicines including implants, Jewellery, Cinema theatres etc. CST, Karnataka submitted that electronic invoicing being a trade facilitation mechanism and an extension of e-waybill system, it shall be projected as such. CST, West Bengal submitted that it should be based on Turnover threshold and not on invoice value so that dealers do not have to maintain two systems. Further, CST, Gujarat submitted that although the proposal is very good, it should be carefully implemented avoiding the possibility of reinforcing the carousel fraud and fake ITC claims. However, common thread connecting all these opinions was that, it being a beneficial suggestion, should be introduced at the earliest.

10. Recommendations of the CoO: The Committee recommended that the e-invoicing proposal should be implemented and requisite technical, policy and legal parameters should be worked upon expeditiously so as to realise the goal in near future. The Committee also recommended that all legal and technical work on this issue should continue in parallel and implement the proposal by August, 2019 for trial. It could be made live on optional basis after two months of trial.

- i. The length of the e-invoices reference number (IRN) should be 15 digits with financial year embedded in it so as to make it unique. It would be generated on the portal after the invoice is uploaded and each invoice must have a unique IRN associated with it.
- ii. A sub-committee of officers is formed to work on technical design. The broad features of the proposed system are as follows:
 - a. Seller should be able to create invoice "offline" using various tools such as Excel, offline tools, their accounting system, ERP, etc.

- b. NIC to provide offline tool and MS Office macros for making offline creation easier and easier to adopt for existing users.
 - c. NIC will publish the schema and validation rules as part of developer portal so that developers can build more offline tools.
 - d. Seller will also have the facility to upload (via portal or API) e-Invoice created offline.
 - e. Initially only sellers who are above certain threshold limit for annual turnover will be asked to register their invoices.
 - f. Once seller registers invoice on the central system, a digitally signed, machine readable (JSON or XML) invoice will be made available to seller, buyer for download.
 - g. GSTN system will obtain only digitally signed invoices (both "seller certified" and "buyer accepted") from e-Invoicing system to ensure there are no possibility of any unintentional or intentional modification of invoice data.
 - h. GSTN system will automatically use the digitally signed e-Invoices to automatically make tax filing easier and compliant.
 - i. System will be designed for full scale operation for all types of tax payers who may opt for the facility. NIC was required to address architectural items such as shared databases, API gateway for license control, automated monitoring, automated scale/management, full data security (encryption for confidentiality and signing for non-tampering), etc.
 - j. All APIs should be designed to be sub-second response even for large invoices at peak scale. NIC should benchmark the system to ensure APIs are handling sub-second response at peak load.
 - k. It should be possible to integrate e-invoice system with e-Way Bill system and ERP system of the tax payer in a seamless manner.
- iii. A sub-committee of officers on business process/policy issues is formed for the purposes of discussion with stakeholders and to resolve any legal/policy issues. Some points for consideration by the subgroup are:
- a. Minimum information required for the generation of invoice should be same as that required statutorily.
 - b. Exception handling such as in case of hardware/software/network failure i.e. Disaster Recovery specifications and line of action such as minimum information requirement for invoices and their subsequent upload for merging with the database
 - c. Modification and cancellation of invoice *vis-à-vis* e-Way Bill after issue
 - d. Optional facility for some sectors which issues bulk invoices such as banking, telecom etc.
 - e. Turnover above which optional invoice generation from the portal would be required
 - f. Immediate steps required for B2B supplies with threshold turnover implementation;
 - g. Consultation with other Stake holders
 - h. Phase wise implementation plan i.e. extending coverage of e invoices for different categories of tax payers.
11. In view of the overall aim to continue simplifying the GST regime, the idea of e-invoice on voluntary basis for large taxpayers in B2B segment is worth considering.
12. Accordingly, the proposal of generation of e-invoicing as contained in paragraph 10 above is placed before the Council for consideration.

Agenda Item 10: Issues relating to National Anti-profiteering Authority

Agenda Item 10(i): Quarterly Report of the NAA (National Anti-profiteering Authority) for the quarter January to March 2019 for the information of the Council

In terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017, National Anti-Profiteering Authority (NAA) is required to furnish a performance report to the GST Council by 10th of the closing of each quarter. Anti-profiteering provisions are contained under Section 171 of the CGST Act, 2017 which empowers NAA to determine as to whether benefit of reduced rate of tax or the Input Tax Credit (ITC) has been passed on to the recipient by way of commensurate reduction in the prices and in case of failure, NAA may order reduction in prices, commensurate benefit to recipient, impose penalty and cancel registration, in suitable cases.

2. Anti-profiteering mechanism under GST is a multi-tier mechanism. The methodology of examination of the complaints to determine profiteering is as under:

- i. State Level Screening Committee (SLSC) examines State level complaint and recommends to the Standing Committee (SC);
- ii. SC, in addition to complaints recommended by SLSC, also receives complaint directly in respect of suppliers having pan India or presence in more than one State/UT;
- iii. SC examines and sends recommendation to the DG, Anti-profiteering (DGAP).
- iv. DGAP then completes investigation, within a period of 3 months, and furnishes a report of its findings to NAA.
- v. Based on the report from DGAP, NAA determines all aspects relating to profiteering, passes its order regarding reduction in prices; return of amount to recipient; imposition of penalty; and cancellation of registration.

3. Accordingly, the **performance report of anti-profiteering authority in the last quarter** (January, 2019 to March, 2019) of financial year 2018-19 at various levels, as stated above, is as under:

3.1. Performance of **National Anti-Profiteering Authority**:

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
37	29	22	8	14	3	41

3.2 Performance of **DG (Anti-profiteering)**:

Opening Balance (No. of cases)	Receipt	Category of cases received				Disposal	Mode of disposal of cases		Closing Balance (No. of cases)
		Construction Services	FMCG	Restaurant Services	Others		Report to NAA confirming profiteering	Report to NAA for closure action	
41	58	33	25	-	-	24	17	7	75

3.3 Performance report of the **Standing Committee** on Anti-profiteering:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
143	424	334	233

3.4 Performance report from the **State Level Screening Committee**:

Opening Balance (No. of cases)	Receipt	Disposal		Closing Balance (No. of cases)
		Cases referred to Standing Committee	Cases Rejected	
66	68	57	6	71

Note: State Level Screening Committee exists in each State/UT. Therefore, performance of State-wise State Level Screening Committee is enclosed at Annexure A. It may be seen that out of the 31 State Level Screening Committees, 16 Committees (Arunachal Pradesh, Bihar, Chhattisgarh, Goa, Himachal Pradesh, Jammu & Kashmir, Kerala, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Punjab, Sikkim and Tripura) have neither received nor disposed of any application during the quarter ending 31.03.2019.

4. Details of 22 cases disposed by NAA in this quarter are as under:

Sl.No.	Respondent	Date of Order	Amount of Profiteering (Rs. in Lakh)
1	Jubilant Foodworks	31.01.2019	4142.97
2	S3 Infra Reality	27.02.2019	148.60
3	M/s Abbott Healthcare Pvt. Ltd.	05.03.2019	96.5
4	Gurukripa Developers and Infrastructure Pvt Ltd.	28.03.2019	38.29
5	Cloudtail India Pvt. Ltd.	07.03.2019	10.79
6	Satya Enterprises	21.01.2019	6.06
7	Excel Rasayan	16.01.2019	4.64
8	Maruti Suzuki	02.01.2019	Nil
9	Win Win Appliances	22.03.2019	0.32
10	M/s Sudarsans, Kunnakulam (Shorts)	31.01.2019	Nil
11	M/s S. J. Spices Ltd.	31.01.2019	Nil
12	M/s Sudarsans, Kunnakulam (Brief)	04.02.2019	Nil
13	M/s Pulimootill Silks, Thissur	04.02.2019	Nil
14	Emke Silk & Garments	11.02.2019	Nil

15	Emke Silk & Garments	11.02.2019	Nil
16	Sudarshans Kunnakulam	11.02.2019	Nil
17	Velbon Vitrified Tiles	01.03.2019	Nil
18	Kajaria Ceramics	01.03.2019	Nil
19	Ramraj Handloom	13.03.2019	Nil
20	Asian Paints	13.03.2019	Nil
21	Somany Ceramics	13.03.2019	Nil
22	Peps Industries	28.03.2019	Nil

5. Out of the final orders passed by the NAA, writs have been filed in eight of them in various High Courts as detailed below:

S. No.	Name of Supplier (M/s)	High Court
1	Sharma Trading Co. (Rs.5.18 lakhs)	Delhi High Court
2	Lifestyle International Pvt. Ltd. (Rs.15861/-)	Delhi High Court
3	Pyramid Infratech Pvt. Ltd. (Rs.8.23 crore)	Delhi High Court
4	Hardcastle Restaurants Pvt. Ltd. (Rs.7.5 crore)	Bombay High Court
5	Hindustan Lever Ltd. (Rs. 545 crores)	Delhi High Court
6	JP & Sons (Rs.5.01 lakhs)	Delhi High Court
7	Excel Rasayan (Rs.4.64 lakhs)	Delhi High Court
8	Jubilant Ltd. (Rs. 41.42 crore)	Delhi High Court

6. NAA has been conducting outreach program across the country to sensitize the jurisdictional Officers about their role and responsibility towards check of profiteering. During the tenure of this report, the following outreach programmes and zonal review meetings on Anti-Profiteering efforts were held:

- i. Ahmedabad on 1st February, 2019.
- ii. Jaipur on 19th February, 2019.
- iii. Delhi on 26th February, 2019.
- iv. Bengaluru on 12th March, 2019.
- v. Kolkata on 15th March, 2019.

7. Accordingly, the quarterly report of the National Anti-profiteering Authority for the quarter January to March 2019 is placed before the GST Council for information.

Agenda Item 10(ii) – Extension of tenure of National Anti-profiteering Authority

The anti-profiteering provisions were introduced for the first time in the indirect tax regime of the country and Section 171 of the CGST Act, 2017, deals with anti-profiteering. Accordingly, the National Anti-profiteering Authority (NAA) was constituted *vide* Office Order No.343/2017 (F.No.13/1/2017-Ad.I) dated 28.11.2017 issued by Department of Revenue, Ministry of Finance, Government of India. NAA determines whether benefit of reduced rate of tax or the input tax credit (ITC) has been passed to the recipient by way of commensurate reduction in the prices, failing which NAA may order reduction in prices, commensurate benefit to recipient, impose penalty and cancel registration.

2. In terms of Rule 137 of CGST Rules, 2017, the tenure of NAA is only for two years, from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

3. The Chairman of NAA had joined the Authority on 1st December, 2017 and thus the tenure of NAA will expire on 30th November, 2019.

4 (i). The performance of National Anti-profiteering Authority during the intervening period is as under (Table 1):

Table 1: Performance of NAA (as on 1st May, 2019)

1	Investigation Reports received by the Authority, under Rule 129(6), from the Director General of Anti-Profiteering (DGAP)	119
2	Orders passed by the Authority	65
3	Total profiteering established in Authority's orders	Rs. 606 crore
4	Amount already deposited in the Consumer Welfare Funds (CWFs) of Centre and States, or returned back to the Customers	Rs. 278.43 crore
5	Amount suo moto deposited in the Consumer Welfare Funds (CWFs) of Centre and States, or returned back to the Customers (in addition to the amount in Sl. No.4 above)	Rs. 224.94 crore

(ii) The current pendency position as on 1st May, 2019 at various levels of anti-profiteering mechanism is as follows (Table II):

Table II: Performance of DGAP, Standing Committee & Screening Committee

1	National Anti-profiteering Authority (Investigation Reports submitted by DGAP to NAA, Hearing under process)	54
2	DGAP (pending investigation)	170
3	Standing Committee (pending examination)	130
4	Before various State Screening Committees for their consideration	In Hundreds
5	Complaints received by NAA (through post, email or online portal) and forwarded to the Standing / Screening Committee	876

5. GST being biggest tax reform and continuously evolving with likely expansion of coverage under GST and further rate reduction, there is a need for continued anti-profiteering redressal mechanism. Further no sunset clause exists under Section 171 of the CGST Act, 2017.

6. Considering the current pace of disposal of the profiteering cases by the NAA @ 4 cases per month approximately, existing pendency of cases at the level of NAA and ongoing cases pending investigation at DGAP, Standing Committee and Screening Committee, it would take substantial time for NAA for liquidation of pendency. Thus, it is proposed to extend the tenure of National Anti-profiteering Authority for a further period beyond 30th November 2019, as may be deemed fit.

7. Accordingly, proposal at paragraph 6 above is placed before the Council for consideration.

Agenda Item 10(iii): Standard Operating Procedure (SOP) for the field formations regarding Anti-profiteering investigations

The National Anti-Profiteering Authority has proposed to issue a Standing Operating Procedure (SOP) for Central GST and State GST officers to strengthen mechanism of verification of profiteering as soon as any GST rate reduction /additional ITC benefits. The salient features of the SOP are as below:

- i. **Role to be played by officers posted in CGST & SGST Field Formation**— Executive Commissioner may undertake preliminary examination *vis-à-vis* profiteering consequent upon any GST-rate reduction / additional ITC benefit by way of action such as from Record of taxpayer; Identification of Suppliers; Data Collection such as Mock Purchases; Verification of first B2B invoice after rate reduction etc. They should do proper documentation for Identification of Potential cases of ‘Profiteering’; Premise visits by field officers and Checking the fixation of stickers with revised MRPs; and keeping track of complaints received at all channels.
 - ii. **Role of Investigative Agencies/ Verification Teams and Audit**— GST officer conducting anti-evasion verifications, audits and similar checks, including inspections and search operations, in respect of taxpayer may also include checks from the perspective of identification of cases of profiteering within the scope of Section 171 of the CGST Act, 2017 for which necessary instructions may be issued by the CBIC and State Governments to the field functionaries.
 - iii. **Role of field functionaries at the local/Range/ Circle Level**— Local field officer shall also identify possible cases of profiteering through study of the periodic returns, specifically price data, Input Tax Credit etc. filed by the GST registrants and through interaction with trade and industry.
 - iv. **Complaint Filing by Jurisdictional Officers as per Rule 128 of CGST Rules**— In case of a prima-facie detection of a case of profiteering by any taxpayer by the concerned jurisdictional commissioner or any officer authorized by the Commissioner, he may file at the earliest and preferably within a reasonable period of one month of such detection, an application under Rule 128 of CGST along with necessary details and evidence, with the concerned State Level Screening Committee.
 - v. **Role to be played by Senior Officers**— Officers conducting inspections and monitoring performance of field functionaries/officer may also monitor and review/ inspect the performance of the field functionaries from the perspective of anti-profiteering work.
2. Accordingly, a draft SOP attached as **Annexure 1** is placed before the GST Council for approval.

Annexure 1

Anti-profiteering Standard Operating Procedure (SOP) for CGST and SGST field formations

I. Role to be played by officers posted in CGST & SGST field formations as soon as any GST-rate reduction/ additional ITC benefit is announced:-

A. Record Keeping:-

All executive Commissioners of CGST and SGST may utilise all available resources, including human resources, at their disposal to maintain a list of Notifications allowing change in tax rate or any additional ITC benefit, with effective date thereof, and identify, within their jurisdiction, the specific goods along with HSN codes and services which are going to be affected.

B. Identification of Suppliers:-

Commissioners shall identify top twenty suppliers under their jurisdiction (manufacturers/ distributors/ and service providers) in respect of which the prices/ MRP and availability of Input Tax Credit are likely to be impacted by change in tax rate or any additional ITC benefit. The first B2B invoices of these suppliers' value chains, for the relevant period, may be checked, for any prima facie violations of anti-profiteering provisions.

C. Data Collection:-

Commissioners shall get the data collected, from such suppliers across all levels of the supply chain and collect pre-rate-reduction evidences, such as invoices, which would help them to establish the facts of the case. For this purpose, Commissioners may either use the jurisdictional field functionaries or set up specialised anti-profiteering cell for the purpose of operationalizing and coordinating the anti-profiteering work in their jurisdictions and to help increase awareness regarding the anti-profiteering provisions amongst consumers and other stakeholders.

D. Mock Purchases:-

Commissioners may also cause purchase of any goods or services affected by a rate change. Section 67(12) of the Central Goods and Services Tax Act, 2017, which is reproduced below, authorises the Commissioners to make mock-purchases so as to gather invoices for evidence.

*“67(12) The Commissioner or an officer authorised by him **may cause purchase of any goods or services** or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.”*

This provision of the Act may be proactively used to collect the evidence for profiteering made by any such supplier.

II. Role to be played by officers posted in CGST & SGST field formations after any GST-rate reduction/ additional ITC benefit is implemented: -

A. Verification of first B2B invoices:-

Commissioners shall identify top 20 suppliers under their jurisdiction (manufacturers/ distributors/ retailers /job workers and service providers) in respect of which the prices/ MRP and availability of Input Tax Credit got actually impacted by change in tax rate. The first B2B invoices of these suppliers' value chain, for the relevant period, may be checked, for any prima facie violation of any anti-profiteering provisions, within a reasonable time. Commissioners and jurisdictional officers may supply the details of any such prima facie violation, along with prima facie estimation, of the profiteering amount involved, if any, to the State-level Screening Committee for further action thereon.

B. Documentation to be checked for Identification of Potential Cases of Profiteering:-

Commissioners shall get the possible cases of profiteering identified, by study of the following data depending on the requirement-

- i. changes in prices/ MRPs before and after any reduction in tax rates/ increase
- ii. changes in the availability of input tax credit.

Also, they may get specific cases of profiteering identified by studying the changes in cases of increase in tax credit of inputs of suppliers. Scope of these documents may inter alia include:

- i. Sale price lists/ MRP Lists of each product / SKU/ Service – pre and post GST change/reduction of rate
- ii. Invoice data, GSTR-1 Invoices (Pre & Post)
- iii. New MRP stickers with reduced rates affixed (Both Pre & Post)
- iv. GSTR-2A to check for pre and post rate changes on inputs
- v. ITC ledger of the taxpayer.

C. Checking the fixation of stickers with revised MRPs:-

Commissioners shall get it checked that the sale prices/MRPs have been revised / MRP stickers fixed, in cases of reduction of tax rate at all levels of the supply chain, and ascertained as to whether such change in MRP/ prices is prima-facie commensurate with the change in tax rates.

D. Premise Visits by field officers: -

In case of any probable profiteering, the field officers, whenever they find any such eventuality, may visit the GST registrant/taxpayer, after approval by competent authority, to collect specific prima facie evidences.

E. Centralized Public Grievance Redress and Monitoring System (CPGRAMS)/ Other Complaints: -

Any CPGRAM or other complaints of the nature of the non-reduction of products' prices even after a GST rate reduction shall be duly forwarded to the Standing Committee on Anti-Profiteering, or to the State Screening Committee on Anti-Profiteering, as the case may be.

F. Role of Investigative Agencies/ Verification Teams and Audit: -

GST officers conducting anti-evasion verifications, audits and similar checks, including inspections and search operations, in respect of taxpayers may also include checks from

the perspective of identification of cases of profiteering within the scope of Section 171 of the CGST Act, 2017. Necessary instructions may be issued by the CBIC and Commissioners of SGST to the field functionaries in this regard.

While such checks could include scrutiny of multifarious records and returns of the taxpayer, especially the books of accounts, selling price/MRP Lists of each SKU before and after announcement of any tax rate changes, Invoice Data (GSTR-1) and Input data (GSTR-2 or GSTR-2A), officers may actually look for the following pointers -

- a. sudden swelling up of the ITC for the quarters immediately succeeding any GST rate-reduction or changes in tax structure of inputs.
- b. abrupt increase in the net profits for the quarters immediately succeeding any GST rate-reduction or changes in tax structure of inputs.
- c. any enhancement of the base price of any product (at the SKU level) immediately after announcement of a GST rate reduction/ additional ITC availability, in a manner that the final price/ MRP of the product, being paid by the recipient/ consumer is not reduced commensurately at any level of the supply chain and the ultimate consumers is denied the benefit.

G. **Role of field functionaries at the local/Range/Circle Level:-**

Local field officers shall also identify possible cases of profiteering through study of the periodic returns, specifically price data, Input Tax Credit, etc. filed by the GST registrants and through interaction with trade and industry.

H. **Complaint Filing by Jurisdictional Office, as per Rule 128:-**

In case of a prima-facie detection of a case of profiteering by any taxpayer, the concerned jurisdictional Commissioner or any officer authorized by the Commissioner, may file, at the earliest and preferably within a reasonable period of one month of such detection, an application under Rule 128 of CGST Rules along with necessary details and evidence, with the concerned State level Screening Committee.

III. Role to be played by Senior Officers Monitoring the Performance of Field Functionaries

Officers conducting inspections and monitoring performance of field functionaries/offices may also monitor and review/ inspect the performance of the field functionaries from the perspective of anti-profiteering work.

Agenda Item 11: Recommendations of Committee of Officers on use of RFID data for strengthening of e-Way bill system under GST

In the 30th GST Council Officers' Meeting held on 28th September 2018, the then Finance Secretary tasked GST Council Secretariat with studying the RFID based systems in use for vehicle tracking by various State Tax Departments and to make recommendations on an interoperable system across the country for smooth sharing of information. Accordingly, a Committee of officers (CoO) was constituted to evaluate the available RFID system and make recommendations for use of data for strengthening of analytics of e-Way bill system under GST. The Committee submitted its report on 07th June 2019 to the GST Council Secretariat, the salient points of which are listed below:

2. The Committee observed that while the States of Uttar Pradesh, Maharashtra and Karnataka had developed RFID based solutions, lack of harmonisation between the technologies had led to the interoperability challenges. It was also observed that the Ministry of Road Transport and Highways (MoRTH) had implemented FASTag Programme for Electronic toll collection (ETC) which was operational at 460+ toll plaza on National Highways. The programme was operationalised and monitored by National Highways Authority of India (NHAI) and Indian Highways Management Company Limited (IHMCL). National Payments Corporation of India (NPCI) was running interoperable system with robust clearing and settlement system for National Electronic Toll Collection (NETC) Programme.

3. **Status of FASTag adoption:** FASTag had been mandated by Government of India for Category 'M' and 'N' Vehicles manufactured/sold after December, 2017 and for issuance of National Permit with a timeline of 1st October 2019. FASTag is based on the open specifications which could be developed by any eligible and empanelled service provider. The specifications were not specific and mandated for any of the single entity. Maximum cost of FASTag had been mandated at Rs. 100 per Tag. More than 12 RFID tag manufacturers were enabled most of which are Micro, Small and Medium Enterprise (MSME). Within 2.5 years of operation, FASTag had converted 25% of toll transactions into digital transactions. Since its launch in December 2016, NETC programme had collected more than Rs. 10,000 crore toll amount through FASTag.

4. **On-boarding of States under NETC programme:** One of the Major initiatives taken by NHAI/IHMCL is for inclusion of State toll plazas under NETC programme to facilitate cashless toll payments for the customers throughout the country. There is a provision for financial assistance also in the Scheme guidelines. Uttar Pradesh Expressway Industrial Development Authority (UPEIDA) had already joined NETC programme for Agra Lucknow Expressway. Maharashtra (MSRDC) was under process of joining the programme. States of Gujarat, Madhya Pradesh, Punjab and Karnataka were under stages of joining the NETC programme. This shall ensure more coverage of FASTag acceptance across the Nation.

5. **Analytics and report generation:** It is recommended by the Committee of Officers that EWB generation page shall incorporate FASTag field in addition to the vehicle registration number. FASTag field should be kept optional at the initial stages and could be made mandatory after a pre-decided date. The data captured by the reader of toll plaza would be sent to NPCI central system as per current process. NIC would get the data in real time from NPCI after the integration was completed. NIC had already developed analytics on the basis of the data received from State of Maharashtra and the same could be replicated for the data to be received from FASTag system. State could utilise the same analytics for

tracking the EWB. The data of FASTag could also be made available by NIC to State commercial tax departments for the analytics at State level on need basis.

5.1. There can be many categories of analytics which could be generated with FASTag data. Below could be the types of analytics –

- i. Movement of vehicles without E-way Bills.
- ii. Recycling of the E-way bills.
- iii. Generation of E-way bills, but no movement of goods.
- iv. Tracking the E-way bills and Vehicles.
- v. Detecting the overweight consignments.
- vi. Diversion of goods to another place.
- vii. Watching the movement of goods of the selected Tax payers, Transporters and Vehicles.
- viii. Finding out time taken for the movement of the goods between important locations.

5.2. Weigh-In-Motion (WIM) data was one of the most desired data especially for the State with Mining divisions, to ensure correct movement of consignment. NHAI/IHMCL had mandated installation of WIM at all the National highways toll plaza to identify the overloaded vehicle. This was still under installation stage and the data shall be available to NIC for analysis once the system became ready at all the toll plaza and the data would be available at NETC system.

6. **Interoperability between FASTag and RFID Tags of States:** Interoperability between the FASTag and RFID Tag of Uttar Pradesh and Maharashtra was possible at the readers installed by State governments. However, these should be migrated to FASTag as it had been mandated under Motor Vehicle Act which was applicable across the country and maintaining multiple RFID tags would be difficult for the taxpayers and is not a recommended approach.

7. **Stakeholder consultation:** Transporters are one of the most important stakeholders in the FASTag as well as e-Way bill system and their view was critical to proceed. All India Motor Congress was invited for discussion and consultation. Association expressed interest on the RFID based tracking mechanism.

8. **Scheme for setting up RFID infrastructure in certain regions:** While toll plazas are available across the National Highways and State Highways, there are parallel roads available for the users at few places. There are also certain regions of the country which do not have any toll plaza infrastructure that are required to be installed to capture the movement of the vehicles through RFID tags at identified locations. States, therefore, need to identify such locations and arrange for necessary RFID infrastructure in order to track the vehicle movement. Karnataka had done the pilot for similar scenario which could be adopted by other States. **RFID based tracking infrastructure at such locations should be rolled out under the aegis of a centrally sponsored scheme under suitable cost sharing formula with the assistance of MoRTH.**

9. **Recommendations:** Presently, FASTag distribution stands at 4.6 million out of which 40% were commercial vehicles. Further, the study of EWB Database showed that EWBs had been generated for 11.3 million unique vehicles. Given the gap, the present distribution outreach and numbers; **RFID tag permissible under Rule 138A should be made mandatory preferably by 1st April 2020.** However, in the meantime, NETC FASTag data may be considered as authentication for the movement of goods and

rule 138 (9) of the CGST rules may be suitably amended to disallow the cancellation of corresponding EWBs.

9.1. Based on the above conclusions, the Committee recommended that FASTag based EWB tracking mechanism should be adopted by GSTC. Integration of NETC system with EWB system would exhibit a classic case of convergence of two flagship Programmes of the Government complementing one another. The integration would prove to be beneficial for both the programmes.

9.2. RFID based tracking infrastructure at identified locations should be installed under the aegis of a centrally sponsored scheme with suitable cost sharing formula with the assistance of MoRTH.

10. The recommendations made in the Report of the Committee of Officers is placed for the consideration and approval of the Council. The said Report has been circulated to States separately for information.

Agenda Item 12: Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC

1. Background

- i. As per the Revenue Model of GSTN approved by the Empowered Committee of State Finance Ministers (EC) in its meeting held on 30th August 2016 (copy attached as **Annexure I**), the GST System Project is being implemented by GSTN as per approval of the Cabinet and the cost incurred on the project (Capex and Opex) along with GSTN's own expenses is to be shared equally by the Centre and States in the form of User Charges to be remitted by them in two (2) installments on a half-yearly basis by 1st March and 1st September of the year.
- ii. Further, as per Para iii (b) of the Revenue Model "Any Government that fails to pay the Advance User Charges (AUC) before the due date will pay the defaulted amount together with interest at the rate at which GSTN borrows money from the banks for this purpose".

2. Status of Payment of AUC as on 31st March 2019

2.1. As per the approved Revenue Model, GSTN had raised demand for the payment of AUC to the Central and State Governments for the FY 2017-18 and 2018-19. The status of AUC demanded and received (as on date) is given below:

(Rs. in crore)

Financial Year	Amount demanded	Amount received	Amount Pending	Pending States
2017-18 – 1 st Instalment	306.01	306.01	0	NA
2017-18 – 2 nd Instalment	266.06	262.19	3.87	Telangana – 3.87
2018-19 – 1 st Instalment	261.43	250.96	10.47	Punjab – 5.29 Telangana – 4.81 Andhra Pradesh -0.37
2018-19 – 2 nd Instalment	261.43	77.64	183.79	As per Annexure II

2.2. However, a few States have paid the AUC after the due date, i.e. 1st July 2017 for the First Instalment of FY 2017-18, 1st September 2017 for the Second Instalment of FY 2017-18, 1st March 2018 for the First Instalment of FY 2018-19 and 1st September 2018 for the Second Instalment of FY 2018-19. The details of amount paid along with due date, actual date of payment and interest calculation on the same are placed at **Annexure III**.

3. Observation made by CAG:

3.1. During the course of Compliance/Propriety Audit of GSTN for the period from 1st April 2016 to 31st March 2019, the Comptroller & Auditor General (CAG) has pointed out that though there is a provision in the approved Revenue Model of GSTN to charge Interest for delayed payment of Advance User Charges by the States and Centre, GSTN has not raised any demand for the same. In its reply to the CAG's observation, GSTN has stated that:

- i. The AUC is to be received not from any private entities but from the Central and State Governments who are the key Stakeholders of GSTN and taking an extreme step against them like charging penal interest will not be in the interest of maintaining harmonious relationship with them which is an essential pre-requisite for the smooth roll-out of a Federal Tax like GST.
- ii. The sole purpose of making the provision of penal interest in the Revenue Model was to compensate GSTN for the cost of interest on loan to be taken in the event that any Government defaults in making timely payment of AUC. However, due to timely receipt of AUC from the Centre and most States, GSTN did not face any shortage of funds and was not required to obtain any loan from the bank. Thus, the question of charging penal interest to the defaulting Governments, which is to be based on interest paid to bank, does not arise.

3.2. GSTN is a Not-for-Profit Company registered under Section 25 of the Companies Act, 1956 (now Section 8 of the Companies Act, 2013) and it is not supposed to make profit from its operations. The Centre and State Governments are to reimburse all the expenses of GSTN including interest on term loan, if any. Under this scenario, if we charge interest on late payment of AUC, there will be duplication of charges against the cost of interest on loan, which does not appear to be proper.

4. Proposal:

4.1. Keeping into consideration the above and to settle this matter permanently to enable GSTN to give a satisfactory reply to the CAG, the following is proposed for the consideration and approval of the Council:

- i. The States and Centre who have not yet paid the AUC for FY 2017-18 and 2018-19 may be asked to pay their share **positively by 31st July 2019** failing which interest on delayed payment of AUC may be levied by GSTN as per the approved Revenue Model.
- ii. The interest payable by the defaulting Governments due to delayed payment of AUC up to 31st July 2019 may be waived off.

Annexure I

REVISED REVENUE MODEL OF GSTN

i. Sharing of User Charges Between Centre and States

The GST System infrastructure managed by GSTN will be used by taxpayers, tax administrations, banks, etc. but the user charges will be paid entirely by the Central Government and the State Governments in equal proportion i.e. 50:50 on behalf of all users. The State share will be apportioned to individual States in proportion to the number of dealers in the State. For calculating individual State's share for the first year, the number of dealers in the State under VAT, as communicated by all the States to GSTN in May 2015, will be used. For the second and subsequent years, the total number of dealers in the State as on 1st October of the previous year will be taken.

ii. Pre-operative Expenses

GSTN will raise a term loan from a commercial bank to meet the pre-operative expenses. The amount of loan repayment (principal + Interest) will be included in the calculation of user charges payable by the Central and State Governments.

iii. Operating Expenses

- a. On 1st October every year, GSTN will raise bills for advance payment of user charges for the next year and send them to the Central and the State Governments.
- b. The respective Governments will make payment to GSTN before 1st March of the FY in which the bills for advance user charges are raised. Any Government that fails to pay the advance user charges before 1st March will pay the defaulted amount together with interest @ 12% per annum for the period of delay.
- c. The total amount of user charge for the next year will be equal to the sum of the following components:
 1. Operating expense payments to be made to the Managed Service Provider next year (as per contract) ;
 2. Payment actually made to the MSP for changes in software up to 1st October
 3. Payment made up to 1st October for undertaking new activity based on new requirements;

4. GSTN's own estimated annual operational expenditure for next year;
 5. Depreciation amount as per Company Law (equal to one fifth of the capitalized value of Pre-operative Expenses before Go Live);
 6. Amount of loan installments (principal + interest) payable to the bank next year; and
 7. Guarantee fee payable to the Govt next year.
- d. The Central Government will pay 50% of the total amount mentioned in para 5(iii) (c) above and the State Governments will pay the balance 50% in proportion to number of dealers in each State.
- e. After GST operations begin, GSTN will raise the following user charge bills every month:

1. Bills for the use of GST Portal and Services (the Front End)

- i. For this purpose, the monthly per dealer user charge will be calculated by subtracting expenses on backend system as per contract from total amount of user charges as defined in para 5(iii)(c) above and dividing this amount by two (since this expense is to be shared equally by the Central and State Govts) and further dividing the amount so obtained by total number of dealers divided further by 12 (12 months of a year).
- ii. Bill for the Central Govt will be raised by multiplying per dealer monthly charges as derived in sub-para 5(iii) (c) (1) (i) above with the total number of GST dealers as on the last day of the month.
- iii. Bill for each State Govt will be raised by multiplying per dealer monthly charges as derived in sub-para 5(iii) (c) (1) (i) with the number of GST dealers in that state as on the last day of the month.

2. Bills for the use of Back End of GST System

- i. For this purpose, the monthly per dealer user charge will be calculated by dividing total expenses on backend system as per contract by 12 (number of months in a year) and further dividing it by total number of dealers in Model-2 states.
- ii. Bill for each Model 2 state will be raised by multiplying

monthly per dealer user charge as derived in sub-para 5(iii)(e)(2)(i) above with the number of GST dealers in that state as on the last day of the month.

- F. The amount of these bills will be set off against the advance user charges paid by the respective Government in the manner indicated below:
1. If the advance user charges paid by a Government exceeds the total amount of the bills for the year, the excess amount will be adjusted against the advance payment to be made by that Government for the next year.
 2. If the advance user charges paid by a Government is less than the total amount of the bills for the year, the amount of shortfall will be paid by that Government by 30th April of the following year.

iv. Working Capital Credit from Bank

- a. GSTN will obtain working capital credit limit from a commercial bank and avail credit under this arrangement as and when necessary in order to meet the shortfall in advance user charge receipts.
- b. If the total amount of advance user charges received from the Central and the State Governments gets exhausted any time during the course of a year, GSTN will draw working capital credit from the Bank to defray its operational expenses. In such an eventuality, GSTN will raise bills to the Central and the State Governments for additional contributions to repay the loan raised from Bank.

Annexure II

Amount in Rs.

Advance User Charges - Second Instalment of FY 2018-19		Annexure - II
Sl. No.	CENTRE/STATE/ UT	Amount
I	Centre Government:	
1	CBIC	1,18,76,00,000
Total - I		1,18,76,00,000
II	State Government:	
1	Andhra Pradesh	3,78,00,000
2	Assam	2,43,00,000
3	Bihar	4,47,00,000
4	Chhattisgarh	2,27,00,000
5	Goa	37,00,000
6	Karnataka	8,69,00,000
7	Kerala	3,33,00,000
8	Maharashtra	15,43,00,000
9	Manipur	12,00,000
10	Nagaland	11,00,000
11	Odisha	3,07,00,000
12	Punjab	5,29,00,000
13	Sikkim	5,00,000
14	Tamil Nadu	10,24,00,000
15	Telangana	4,81,00,000
16	Tripura	30,00,000
Total - II		64,76,00,000
III	Union Territory:	
1	Daman & Diu	9,00,000
2	Dadra & Nagar Haveli	11,00,000
3	Andaman & Nicobar	7,00,000
4	Lakshadweep	50,000
Total - III		27,50,000
Grand Total (I+II+III)		1,83,79,50,000

Annexure 3

Calculation of Interest on delayed payment to Advance User Charges of FY 2017-18 and 2018-19

Amount (Rs.)
Annexure - III

Sl. No.	CENTRE/STATE/ UT	User Charges to be Collected	Due Date	Date of Collection	Amount Collected	Number of Delayed days	Interest Amount
1st Instalment - 2017-18							
1	CBEK	1,39,19,00,000	1-Jul-17	25-Aug-17	1,39,19,00,000	55	1,79,32,629
2	Kerala	4,94,00,000	1-Jul-17	14-Sep-17	4,94,00,000	75	8,67,884
3	Meghalaya	53,00,000	1-Jul-17	9-Feb-18	53,00,000	223	2,76,856
4	Andaman & Nicobar	5,52,000	1-Jul-17	23-Feb-18	5,52,000	237	30,645
5	Lakshadweep	11,500	1-Jul-17	19-Sep-17	11,500	80	216
							1,91,08,230
2nd Instalment - 2017-18							
1	CBEK	1,21,03,00,000	1-Sep-17	25-Jan-18	1,21,03,00,000	146	4,13,92,260
2	Andhra Pradesh	2,82,00,000	1-Sep-17	31-Mar-18	2,82,00,000	211	13,93,814
3	Assam	3,43,00,000	1-Sep-17	15-Mar-18	3,43,00,000	195	15,66,758
4	Bihar	8,18,00,000	1-Sep-17	15-Dec-17	8,18,00,000	105	20,11,944
5	Chhattisgarh	2,18,00,000	1-Sep-17	8-Dec-17	2,18,00,000	98	5,00,444
6	Goa	65,00,000	1-Sep-17	27-Oct-17	65,00,000	56	85,266
7	Gujarat	11,35,00,000	1-Sep-17	19-Sep-17	11,35,00,000	18	4,78,566
8	Jharkhand	1,33,00,000	1-Sep-17	2-Nov-17	1,33,00,000	62	1,93,160
9	Karnataka	10,25,00,000	1-Sep-17	28-Dec-17	10,25,00,000	118	28,33,212
10	Kerala	4,30,00,000	1-Sep-17	6-Jul-18	4,30,00,000	308	31,02,362
11	Madhya Pradesh	7,09,00,000	1-Sep-17	22-9-17 / 12-4-18	7,09,00,000	223	8,64,534
12	Manipur	12,00,000	1-Sep-17	20-Nov-17	12,00,000	80	22,488
13	Meghalaya	46,00,000	1-Sep-17	9-Feb-18	46,00,000	161	1,73,483
14	Mizoram	12,00,000	1-Sep-17	16-Nov-17	12,00,000	76	21,363
15	Odisha	3,71,00,000	1-Sep-17	30-Oct-17	3,71,00,000	59	5,12,742
16	Punjab	6,19,00,000	1-Sep-17	4-Oct-17	6,19,00,000	33	4,78,495
17	Sikkim	7,00,000	1-Sep-17	4-Nov-17	7,00,000	64	10,494
18	Tamil Nadu	11,44,00,000	1-Sep-17	25-Sep-17	11,44,00,000	24	6,43,147
19	Telangana	3,87,00,000	1-Sep-17		-	637	57,74,623
20	Tripura	48,00,000	1-Sep-17	6-Nov-17	48,00,000	66	74,209
21	Daman & Diu	11,00,000	1-Sep-17	14-Nov-17	11,00,000	74	19,068
22	Dadra & Nagar Haveli	11,00,000	1-Sep-17	24-Oct-17	11,00,000	53	13,657
23	Delhi	6,99,00,000	1-Sep-17	29-Mar-18	6,99,00,000	209	34,22,132
24	Andaman & Nicobar	4,80,000	1-Sep-17	23-Feb-18	4,80,000	175	19,677
25	Lakshadweep	10,000	1-Sep-17	20-Nov-17	10,000	80	187
							6,56,08,085

1st Instalment - 2018-19							
1	CHC	1,18,76,00,000	1-Mar-18	20-Jul-18	1,18,76,00,000	141	3,92,24,964
2	Andhra Pradesh	3,78,00,000	1-Mar-18	31-Mar-18	3,41,00,000	30	2,65,636
3	Arunachal Pradesh	12,00,000	1-Mar-18	31-Jan-19	12,00,000	336	94,448
4	Assam	2,43,00,000	1-Mar-18	7-Jul-18	2,43,00,000	128	7,28,601
5	Bihar	4,47,00,000	1-Mar-18	16-Apr-18	4,47,00,000	46	4,81,658
6	Chhattisgarh	2,27,00,000	1-Mar-18	17-Apr-18	2,27,00,000	47	2,49,918
7	Gujarat	13,14,00,000	1-Mar-18	27-Mar-18	13,14,00,000	26	8,00,280
8	Jammu & Kashmir	1,11,00,000	1-Mar-18	8-Mar-18	1,11,00,000	7	18,201
9	Jharkhand	1,87,00,000	1-Mar-18	28-Mar-18	1,87,00,000	27	1,18,271
10	Karnataka	8,69,00,000	1-Mar-18	8-Mar-18	8,69,00,000	7	1,42,492
11	Kerala	3,33,00,000	1-Mar-18	25-Jun-18	3,33,00,000	116	9,04,848
12	Madhya Pradesh	6,03,00,000	1-Mar-18	31-Mar-18	6,03,00,000	30	4,23,752
13	Maharashtra	15,43,00,000	1-Mar-18	17-Jul-18	15,43,00,000	138	49,87,906
14	Meghalaya	21,00,000	1-Mar-18	15-Oct-18	21,00,000	228	1,12,157
15	Nagaland	11,00,000	1-Mar-18	5-May-18	11,00,000	65	16,749
16	Punjab	5,29,00,000	1-Mar-18			456	56,50,590
17	Tamil Nadu	10,24,00,000	1-Mar-18	17-Jul-18	10,24,00,000	138	33,10,185
18	Telangana	4,81,00,000	1-Mar-18			456	51,37,871
19	Tripura	30,00,000	1-Mar-18	8-Mar-18	30,00,000	7	4,919
20	West Bengal	8,14,00,000	1-Mar-18	30-May-18	8,14,00,000	90	17,16,090
21	Daman & Diu	9,00,000	1-Mar-18	7-Jun-18	9,00,000	98	20,661
22	Dadra & Nagar Haveli	11,00,000	1-Mar-18	23-Jul-18	11,00,000	144	37,105
23	Delhi	9,53,00,000	1-Mar-18	29-Mar-18	9,53,00,000	28	6,25,064
24	Andaman & Nicobar	7,00,000	1-Mar-18	23-May-18	7,00,000	83	13,610
2nd Instalment - 2018-19							6,50,85,973
1	Arunachal Pradesh	12,00,000	1-Sep-18	31-Jan-19	12,00,000	152	42,727
2	Gujarat	13,14,00,000	1-Sep-18	26-Dec-18	13,14,00,000	116	35,70,480
3	Jammu & Kashmir	1,11,00,000	1-Sep-18	4-Sep-18	1,11,00,000	3	7,800
4	Jharkhand	1,87,00,000	1-Sep-18	31-Mar-19	1,87,00,000	211	9,24,267
5	Madhya Pradesh	6,03,00,000	1-Sep-18	5-Sep-18	6,03,00,000	4	56,500
6	Meghalaya	21,00,000	1-Sep-18	15-Oct-18	21,00,000	44	21,644
7	Mizoram	6,00,000	1-Sep-18	27-Dec-18	6,00,000	117	16,444
10	Uttar Pradesh	18,65,00,000	1-Sep-18	12-Sep-18	18,65,00,000	11	4,80,557
11	Uttarakhand	2,15,00,000	1-Sep-18	28-Mar-19	2,15,00,000	208	10,47,551
12	West Bengal	8,14,00,000	1-Sep-18	25-Sep-18	8,14,00,000	24	4,57,624
13	Delhi	9,53,00,000	1-Sep-18	12-Oct-18	9,53,00,000	41	9,15,272
Grand Total							15,73,43,154

Table Agenda

35th GST Council Meeting – 21st June 2019

Agenda Item 13: Any other agenda item with the permission of the Chairperson

Agenda Item 13(i): Blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017

The provisions of rule 138E of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) have been made operational with effect from 21st June, 2019 *vide* notification No. 22/2019-Central Tax dated 23rd April, 2019. It provides that e-Way bill cannot be generated by a registered person, whether as a supplier or a recipient, if he has not furnished his return for two consecutive tax periods. The facility to generate e-Way bill would become available to such registered person as soon as he furnishes his returns for both the tax periods or at least for one tax period.

2. The proviso to Rule 138E of the CGST Rules, however, provides that the Commissioner can allow generation of e-Way bill even if the returns for consecutive period of two tax periods have not been furnished subject to such conditions and restrictions as may be specified by him. It has been informed that GSTN/NIC has developed **FORM GST EWB-05** and **FORM GST EWB-06** to operationalize the facility provided in proviso to rule 138E. However, the requisite **FORM GST EWB-05** and **FORM GST EWB-06** have neither been approved by the Law Committee nor been notified so far. Further the API integration related to said Forms is also required to be completed by Model -1 States/CBIC.

3. Accordingly, it is proposed that the provision of rule 138E for blocking of e-Way bills on account of non-filing of returns for two consecutive tax periods may be introduced after another two months, i.e. with effect from 21st August 2019. Accordingly, it is proposed to amend notification No. 22/2019-Central Tax dated 23rd April, 2019 so as to make the provisions of rule 138E effective from 21.08.2019.

4 The issue is placed before the GST Council for approval of proposal at paragraph 3 above.