



Agenda for 45th GST Council Meeting

17 September 2021

Volume – 1





**GST Council Secretariat
New Delhi**

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
5 September 2021

Notice for the 45th Meeting of the GST Council scheduled to convene on 17th September 2021

The undersigned is directed to refer to the subject cited above and to convey that the 45th Meeting of the GST Council will be held on **17th September 2021** at Hotel Taj (Vivanta), Gomti Nagar in **Lucknow, Uttar Pradesh**. The schedule of the meeting is as follows:

- **Friday, 17th September 2021:** 11:00 hours onwards

2. In addition, an **Officers' Meeting** will be held on 16th September 2021 at the same venue as per following schedule:

- **Thursday, 16th September 2021:** 11:00 hours onwards

3. The agenda item and other details for the 45th Meeting of the GST Council will be communicated in due course of time.

4. Keeping in view the Covid-19 related protocols, it is requested that participation from each State may be limited to 2 officers in addition to the Hon'ble Member of GST Council.

5. Kindly convey the invitation to Hon'ble Member to attend the 45th Meeting of the GST Council.

(-Sd-)

(Tarun Bajaj)

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, Union Territories of Delhi, Puducherry and Jammu and Kashmir 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. Chairman, CBIC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.

5. Chairman, GST Network

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Discussion on Agenda Items

Agenda Item 1: Confirmation of the Minutes of the GST Council Meetings

Agenda Item 1(i): Confirmation of the Minutes of the 43rd GST Council Meeting 28th May 2021

The 43rd meeting of the GST Council (hereinafter referred to as ‘the Council’) was held on 28th May 2021 at New Delhi under the Chairpersonship of Hon’ble Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon’ble Members/Ministers of the Council who attended the meeting was at **Annexure-I**. A list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting was at **Annexure-II**.

2. The following agenda items were listed for the discussion in the 43rd Meeting of the Council:

1. Confirmation of the Minutes of the 42nd GST Council Meeting held on 05th & 12th October, 2020
2. Deemed Ratification of Notifications and Circulars by the GST Council
3. Decisions of the GST Implementation Committee (GIC) for information of the GST Council.
4. Status report of creation of GRC Zone-wise (CBIC) and States/UTs as on 15.05.2021.
5. Performance Report of the NAA (National Anti-Profiteering Authority) for the 2nd quarter (July, 2020 to September, 2020), 3rd quarter (October 2020 to December 2020) and 4th quarter (January 2021 to March 2021) for the information of the Council.
6. Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information.
7. Status of the Group of Ministers (GoM) on IGST Settlement
8. GSTN related issues for the consideration of the GST Council
 - i. Sanction for extension of Project REAP, LEAP and BIFA till 31st March, 2022 on T&M basis with delegation to the Chairman to reduce the Manpower, if required.
 - ii. In principle approval to expand the scope of IRP project for e-invoice registration and IRN issuance on expanding the scope with reduction of the threshold of turnover and providing for multiple IRPs, if needed,
 - iii. Proposal for approval of deputation guidelines and to request the States to provide manpower to GSTN with SGST experience.
 - iv. Intimation – the Status update on transfer of share-holding with the States and conversion of Goods and Services Tax Network (GSTN) into 100% Government owned Company.
 - v. Status of Payment by the States and Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC.
- 9A. Issues recommended by the Law Committee for the consideration of the GST Council.

- i. Rationalization of late fee imposed under section 47 of the CGST Act
 - ii. Annual Return for Financial Year 2020-21
 - iii. Proposal of amendments in the return related provisions of the CGST Act, 2017
 - iv. Proposal to exempt government departments/entities, governmental authorities/local authorities from the requirement to issue e-invoice
- 9B. Other issues pertaining to GST laws and procedures for consideration of the GST Council
- i. Reduction in late fee for FORM GSTR-3B for months from July, 2017 to April, 2021- Amnesty to clean up pendency in return filing in GST regime
 - ii. Notifying section 112 of the Finance Act, 2021 relating to amendment in section 50 of the CGST Act
 - iii. Proposal for converting quarterly return and monthly payment (QRMP) Scheme to quarterly return and quarterly payment (QRQP) scheme
 - iv. Writ Petitions on difficulties faced by taxpayers to comply with the statutory obligations within the timelines provided under the CGST Act- Issues placed before the Council in pursuance of directions of Hon'ble High Court
10. Seeking concurrence for levy of COVID Cess on power and pharmaceutical sector in Sikkim.
11. Issues recommended by the Fitment Committee for the consideration of the GST Council.
- i. Covid-19 related recommendations
 - ii. Other recommendations related to changes in rates on goods or issuance of clarifications related to goods
 - iii. Recommendations of the Fitment Committee on Services
 - iv. Issues placed before the Council in pursuance of directions of the Court- GST rates on assistive devices
 - v. Issues placed before the Council in pursuance of directions of the Court- Exclusion of ice cream from composition levy
12. Correction of Inverted Rate Structure on textiles and footwear
13. Applicability of Goods and Services Tax on Extra Neutral Alcohol (ENA)
14. GST Revenue Augmentation
15. Decisions/recommendations of the 14th IT Grievance Redressal Committee for the information of the Council along with an agenda for the decision of the Council
- 15A. Minutes/Detailed reasons in respect of 26 cases approved in-principal and 78 cases rejected (total 104) in the 42nd meeting of the GST Council pertaining to 13th ITGRC
16. Review of revenue position under Goods and Services Tax
17. Issues related to GST Compensation Cess
18. Information Agenda on constitution of two new GoMs

Preliminary discussion

3.1. The Secretary, GST Council at the outset stated that the last 42nd GST Council meeting was held on 5th and 12th October 2020 while welcoming the Members to the 43rd meeting. The Secretary, GST Council, at the outset placed on record its appreciation for the valuable contribution made by the outgoing Members and welcomed the new Members who attended the GST Council Meeting for the first time. The Secretary placed on record appreciation for the valuable contribution by Dr. Ajay Bhushan Pandey, the outgoing Secretary to the Council. He stated that today's meeting was being held in the backdrop of a second wave of COVID that has engulfed the Country and informed that during the intervening period, the GST Implementation Committee (GIC) and various other Committees have been at work in terms of pursuing the decisions taken by the Council and taking necessary steps to ameliorate the adversities of the pandemic situation.

3.2. He informed the Council that the two GoMs namely one on capacity-based taxation and special composition scheme in certain sectors like pan masala, gutkha, brick kilns, sand mining, etc. and the second one on casinos, race courses and online gaming have been constituted. He further mentioned that a separate agenda note for the same was also placed in this meeting for information. The new Members of GoMs have also been informed separately. He also mentioned that other four GoMs have also undergone a change in composition on account of change in representatives of the States in the Council.

3.3. He informed the Council that he had met the Officers of the States/ UTs on 27th May 2021 and had a very frank and fruitful discussion on various agenda items which will help further in steering the agenda of this meeting of the Council. With the permission of the Hon'ble Chairperson, the schedule of the meeting was presented by the Secretary as follows:

- | | |
|------------------------|--------------------------------|
| a. 11:00 AM to 1:00 PM | Meeting starting with Agenda 1 |
| b. 1:00 PM to 1:45 PM | Lunch break |
| c. 1:45 PM to 3:45 PM | Meeting continues |
| d. 3:45 PM to 4:00 PM | Small break |
| e. 4:00 PM onwards | Meeting continues till it ends |

3.4. He stated that Hon'ble Members have also been informed about the schedule on 25th May 2021 and that the agenda was also circulated to all the Members and hoped that everybody has got a copy of that and have gone through agenda items. He then requested the Hon'ble Chairperson to initiate the proceedings with the Council.

3.5. The Hon'ble Chairperson stated that while the Council meeting was expected to be held every quarter, this meeting could be called after nearly seven months and she explained that post October, the next quarterly meeting was due in February as per norm. However, post the budget, model code of conduct had come in force and elections were due in some States. With the Parliament session focusing on the clearing of the Finance Bill, meeting could not be conducted within that quarter and after that of the elections ensued. During the elections, meeting could have been held, however, absence of five finance ministers would have been noticed and therefore, had to wait till the result and the formation of the Government happened after which it had been agreed to meet on 28th June 2021.

3.6. The Hon'ble Chairperson welcomed all the new Members and in particular welcomed the senior most Dr. Amit Mitra who continues in the Council. She mentioned that the agenda has been sent in parts over the last ten days. The Officials have met and discussed some of the issues in great detail. She thanked Revenue Secretary for reviving the earlier practice of the Secretary meeting with the Officials of the States on the eve of the GST Council meeting which was helpful and hoped to learn

from the exchange with the Officers. She wished that the Council's discussion as always would be very productive/ constructive in the spirit of cooperative federalism and hoped to address all issues which concern the Indian economy particularly now that there was a second wave and post which a lot of decisions pertaining to revival of the economy will have to be taken collectively. The Hon'ble Chairperson asked the Revenue Secretary and Secretary of the Council to start the meeting.

Agenda Item 1: Confirmation of the Minutes of GST Council Meetings

4.1 The Secretary, GST Council stated that first agenda item pertained to confirmation of the minutes of the 42nd GST Council meeting held on the 5th and 12th October 2020. He further stated that some comments have been received from Rajasthan, Telangana and Odisha which are basically in the form of some typographical errors and some other small errors. They have been corrected and circulated in the latest agenda. Certain suggestions on the amendments to the draft minutes have been received from the State of Tamil Nadu in late evening of 27.05.2021 and accordingly the figure in para 28.6 of the draft minutes has been corrected.

5. The Council thereafter confirmed the minutes of the 42nd GST Council.

Agenda Item 2: Deemed Ratification of Notifications and Circulars by the GST Council

6.1 The Secretary to the Council asked the Commissioner, GST PW, CBIC to present the Agenda Item. The Commissioner, GST PW, CBIC informed that notifications, circulars and orders issued till 30th September, 2019 were ratified during the 42nd Meeting of the Council and now it was proposed to ratify notifications, circulars and orders issued from 30th September, 2020 to 18th May, 2021, under the GST law by the Central Government. The list of Notifications and Circulars is as available in the detailed Agenda Notes (Vol-1, page 90- 95). He informed that these notifications, circulars and orders were placed before the Officers meeting held on 27th June, 2021 as part of a presentation (attached as **Annexure-III** to the Minutes) and that the Officers had agreed to the same. He requested that the Council could agree to grant deemed ratification to the notifications, circulars and orders. The Council agreed to the suggestion.

6.2. The Hon'ble Member from Punjab raised certain concerns about submission of Notifications and Circulars for deemed ratification. He mentioned that there are certain rules where substantial changes have been made in the last eight months.

6.3. The Hon'ble Member from Tamil Nadu stated that the agenda item talks of the 'deemed ratification' and there was a legal question of whether there can be 'deemed' as opposed to 'actual' ratification.

6.4. The Secretary, GST Council informed that some of the decisions mentioned herein are implementation of the earlier GST Council decisions itself.

6.5. For this Agenda Item, the Council approved the deemed ratification of the Notifications, Circulars and Orders issued from 30th September, 2020 to 18th May, 2021, as detailed in the agenda note. The Notifications and Orders issued by the States which are primateria 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

7.1. The Commissioner, GST PW, CBIC informed that the GST Implementation Committee (GIC) took certain decisions between 14-09-2020 and 01-05-2021. Due to the urgency involved and

due to prevailing Covid-19 situations, while some decisions were taken through web meeting of GIC, other decisions were taken after obtaining approval by circulation amongst the GIC Members. The details of the decisions taken are available in the detailed Agenda Notes (Vol-1, page 96-146). Thereafter, he made a presentation (attached as Annexure-III) on the decisions taken by GIC. The decisions taken were submitted to the Council for information.

7.2. The Hon'ble Minister from Punjab suggested that rather than for information, these decisions should come for ratification or approval of the Council.

7.3. The Secretary, GST Council stated that there were fifty-three decisions taken by the GIC in the intervening period and as many as thirty-eight were trade facilitative measures such as relief in return filing, capping of late fees, extension of due dates for filing, etc. Ten decisions were in the nature of enforcement measures, including the one taken in December 2020 for dealing with the cases of fake input tax credit and fake invoices, providing for physical verification of premises, system-based suspension in certain situations and requirement of payment of at least 1% tax liability to be paid in cash by certain registered persons. He further mentioned that these issues were discussed at length in five meetings of the Law Committee, which includes representatives from ten States. All these issues were discussed in the Law Committee and it was felt therein that there was an urgency about the introduction of these measures because of a detection of large number of cases of fake dealers/fake invoices. He stated that during the last 5-6 months, without getting any changes in the laws or increasing the rates, the revenues have really improved and believed that one of the reasons for the same was that these decisions could be taken in timely manner through these Committees, that have been formed by GST Council, where a large number of States are represented. These measures have been extremely beneficial in garnering the GST revenues.

7.4. He further stated that he has gone through the minutes of the previous meetings also and it has been the practice of the Council to place these decisions, that have been taken with the consent and fair discussions with the States and State representatives, for information of the Council. He felt that officers of States would have discussed with political hierarchy before conveying their decisions to the Committees. He also stated that for the well- functioning of the GST Council, it was important to empower the sub-committees to enable them to take such decisions.

7.5. The Hon'ble Member from Delhi desired that the GIC decisions should be submitted for approval and not for ratification or information. The Secretary, GST Council clarified that these decisions were approved by the sub-committees. They have been implemented also. After implementation, it would be a little out of place for the Council to approve the same and it was for that reason that these decisions have chosen to be put to the Council as matters of information. Besides, these decisions are not being taken unilaterally either by the Centre or the States but together by the Centre and the States when they sit together in a sub- committee of Officers, which has been explained earlier.

7.6. The Hon'ble Chairperson directed that the issue may be referred to the Law Committee to report on what the Law Committee feels whether any rules have been violated in bringing in GIC decisions to the Council for information. On the basis of the report of the Law Committee, she suggested that discussion may be held in the next meeting of the Council.

7.7. The Hon'ble Member from Chhattisgarh stated that he believes that an executive body cannot supersede the elected body. He further stated that there are number of precedents where post-facto approvals are taken. If an executive body has taken an action or taken step at any point in time, the approval was always sought.

7.8. The Hon'ble Member from West Bengal stated that the GIC consists of 4 States only. All states are not represented in GIC. Any major decision in GIC cannot take decisions on behalf of 31 States. Extended policies can be extended but no major decisions can be taken as it was too small a Committee.

7.9. The Secretary, GST Council stated that in the Law Committee there are 10 States viz. Maharashtra, Gujarat, West Bengal, Karnataka, Punjab, Madhya Pradesh, Odisha, Uttar Pradesh, Rajasthan and Bihar and in the GIC as very rightly mentioned by the Finance Minister of West Bengal, it was Haryana, Gujarat, Tamil Nadu and West Bengal. He further mentioned that in 2017 there was a record of what the GIC can do. He stated that the 21st Meeting of the GST Council "took note of the decisions of the GIC. It also approved that the GIC could decide on procedural issues and for substantial policy related issues, the GIC should send its recommendations to the Council which could then be decided either through video conference or by a physical meeting of the Council".

7.10. The Hon'ble Member from Goa stated that in the Law Committee and in the GIC, a total number of 14 States out of 31 States have been represented. The Hon'ble Member from Uttar Pradesh supported the reasoning given. The Hon'ble Deputy Chief Minister of Tripura explained that there has to be flexibility. The Hon'ble Member from Meghalaya stated that suggestions are welcome and suggested that the Law Committee may examine the matter. The Hon'ble Deputy Chief Minister of Haryana stated that in the 14th meeting of the Council held on 19-05-2017, the Council had authorized the GIC to take decisions. The Hon'ble Member from Arunachal stated that he was in agreement with the views expressed by the Hon'ble Members from Goa and Meghalaya. The Hon'ble Member from Karnataka supported the decision to refer to the matter to the Law Committee. The Hon'ble Member from Tamil Nadu seconded the motion with a request to expand the mandate of reference to the Law Committee to give outcome as whether approval, ratification or information.

7.11. For this Agenda item,

- i. the Council took note of the decisions taken by the GIC between 14-09-2020 and 01-05-2021, as detailed in the Agenda note; and
- ii. the Council mandated the Law committee to examine whether the powers delegated by the Council to the GIC for taking decisions in the interregnum between two Council meetings and bringing it to the Council only for information is violative of any rule.

Agenda Item 4: Status report of creation of GRC Zone-wise(CBIC) and States/UTs as on 15.05.2021

8.1 The Secretary presented the agenda for information of the Council. During the 38th GST Council meeting held on 18.12.2019, constitution of Grievance Redressal Committee at Zonal/State level consisting of both Central tax and State tax officers, representation of trade and Industry and other GST stake holders for establishing a mechanism to tackle grievances of tax payers was approved. In view of the above decision, an order regarding constitution of Grievance Redressal Committee was issued by the CBIC vide F. No. 20/10/16/2018-GST (Pt. 1) dated 24.12.2019 and the matter was followed up by the GSTC secretariat.

8.2. As reported in the Agenda, GRCs have been constituted in all except the State/Centre level Zones of Gujarat (Ahmedabad) and Haryana (Panchkula).

8.3 The Hon'ble Member from Haryana informed the Council that needful has been done in this regard and that the relevant order shall be provided to the GST Council Secretariat.

8.4 The Hon'ble Member from Gujarat also stated that the needful has been done in this regard

and that the relevant order of the constitution of the GRC will be sent to the GST Council Secretariat.

Agenda Item 5: Performance Report of the NAA (National Anti-Profitteering Authority) for the 2nd quarter (July, 2020 to September, 2020), 3rd quarter (October, 2020 to December, 2020) and 4th quarter (January, 2021 to March, 2021) for the information of the Council

9.1 The Secretary presented the agenda for information of the Council which took note of the performance of the National Anti-Profitteering Authority for the 2nd quarter (July,2020 to September,2020), 3rd quarter (October,2020 to December, 2020) and 4th quarter (January,2021 to March,2021) as tabled in terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017.

Agenda Item 6 - Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information

10.1. The Secretary introduced the Agenda Item and stated that in the 26th GST Council meeting held on 10th March, 2018, it was decided that all ad hoc exemption orders issued with the approval of Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19th August, 2014, as was the case prior to the implementation of GST shall be placed before the GST Council for information. The details of the ad hoc exemption orders issued are as follows:

Order No	Date	Remarks	ISSUING AUTHORITY
AEO No. 01-A of 2020	10th September 2020	Request from the Ministry of External Affairs for exemption from payment of Customs Duties for procurement of 04 Special Armoured vehicles.	Commissioner Customs & EP CBIC
AEO No. 02 of 2020	05th October 2020	Request from Shri Gajendra Haldea for exemption from import duties on import of life saving drug Romidepsin for personal use.	
AEO No. 01 of 2021	09th February 2021	Request from Shri Mihir Kamatfor seeking exemption from payment of import duty for import of lifesaving drug Zolgensma, for gene replacement therapy, for personal use.	
AEO No. 02 of 2021	11th March 2021	Request from the Ministry of Home Affairs, Government of India for the equipment received on gratis basis for setting up a Cyber Lab at CAPT Bhopal from the United States of America	
AEO No. 03 of 2021	15th April 2021	2021 Request from Shri Rajdipsinh Rathodfor seeking exemption from payment of import duty for import of lifesaving drug Zolgensma, for gene replacement therapy, for personal use.	
AEO No. 04 of 2021	3 rd May 2021	Seeks to exempt IGST on imports of specified COVID-19 relief material donated from abroad, up to 30th June, 2021.	

10.2 Ad hoc exemption Order No.4/2021-Customs dated 3.5.2021: Certain COVID related goods such as Remdesivir injection and its API, specified diagnostic markers, medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, and COVID-19 vaccines had already been exempted from BCD and/or Health cess for limited period, vide Customs notification No.

27/2021-Customs dated 20.04.2021, as amended, and No. 28/2021-Customs dated 24.04.2021. In view of the prevailing situation, Ad hoc exemption Order No. 4/2021-Customs dated 3.5.2021 has been issued granting exemption from IGST on those goods for COVID-19 relief imported free of cost for free distribution, till 30th June, 2021, which are covered under the above mentioned Customs notifications. This exemption Order was anticipated to ease the tax incidence on donated COVID-19 relief material meant for free distribution in the country.

10.3 He further stated that all these exemption orders were issued under sub-section (2) of section 25 of the Customs Act, 1962 (52 of 1962) but the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) was getting exempted. Hence these Ad hoc Exemption Orders issued by CBIC are placed for the information of GST Council.

10.4 The GST Council took note of Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962.

Agenda Item 7 - Status of the GoM on IGST Settlement

11.1 The Secretary introduced the Agenda Item and stated that the GoM on IGST Settlement was formed vide O.M. dated 07-12-2019. The GoM, after its meetings, submitted its recommendations to the GST Council in its 42nd meeting held on 05.10.2020 which were discussed in detail.

11.2. He added that certain States had received excess compensation which was required to be recovered. The Hon'ble Chairperson had clarified in the 42nd meeting of the Council that on the issue of mechanism for recovery of excess IGST from States, it was not presently being pressed and could be recovered gradually in view of the COVID pandemic situation.

11.3. In view of the above, since the Terms of Reference of the GoM have been fulfilled, it was proposed to formally close the GoM on IGST Settlement. Thus, a formal announcement about closure of the GoM was made in this regard.

11.4. The GST Council took the decision to discontinue the GoM on IGST Settlement.

Agenda No 8: GSTN related issues for the consideration of the GST Council

12.1 The Secretary presented the Agenda Item No 8 pertaining to the GSTN related matters (**Annexure-VI**).as follows:

- i. Sanction for extension of Projects- Returns Enhancement & Advancement Project (REAP), Lead modules' Enhancement & Advancement Programme (LEAP) and Business Intelligence and Fraud Analytics (BIFA)- till 31st March, 2022 on T&M basis with delegation to the Chairman to reduce the Manpower, if required.
- ii. In principle approval to expand the scope of IRP project for e-invoice registration and IRN issuance on expanding the scope with reduction of the threshold of turnover and providing for multiple IRPs, if needed,
- iii. To place before the GST Council, deputation guidelines approved by Hon'ble Finance Minister and to request to States to provide manpower to GSTN with SGST experiences,
- iv. Intimation – the Status update on transfer of share-holding with the States and conversion of Goods and Services Tax Network (GSTN) into 100% Government owned Company.
- v. Status of Payment by the States and Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC.

12.2 The Secretary requested the states to provide manpower to GSTN emphasizing that states

should provide manpower to GSTN which shall be a good learning experiencing for states and shall help improve the functioning of GSTN.

12.3 The Secretary stated that unless there was any intervention by the Members on the item numbers 8 (i), (iii), (iv) and (v) which are routine items, a presentation on (ii) can be given. Hon'ble member from West Bengal stated that no presentation on these issues was required. But he enquired about the quantum of GST fraud and as to whether it has gone up.

12.4 The Officiating CEO, GSTN stated that the expression fraud means duty short paid or ITC related frauds. The quantum of fraud cannot be easily commented but the cases detected figure can be shared. Overall, as a pattern, after the REAP project wherein a new statement GSTR-2 B has been introduced, where the credit claimed cannot be more than 5% of the eligible credit, there was improved compliance and hence the revenue figures have grown from October to March consistently. He stated that he shall provide the requisite figures to West Bengal. He also informed that GSTN was running a project BIFA where the centre and state have made very good cases consistently. Compliance has improved but the quantitative terms shall be shared separately after consulting GSTN officers.

12.5 The Secretary presented the figures of achievement in Centre regarding detection of fraud i.e. 4264 cases so far amounting to Rs 27,000 Cr. involving arrest of 410 persons. Using Technology, he stated GST officers can pinpoint the person who has caused fraud and catch him. Since they reach the correct person, hence, they have not received adverse publicity from media inspite of high number of arrests made. If permitted, GSTN can give presentation about the activities of this wing and states can also work on it if they are not doing such activity already.

12.6 The Hon'ble Member from West Bengal commented that there was good progress in REAP, LEAP and BIFA and he was very supportive of it.

12.7 The Council took note of the agenda and approved the proposals. The Hon'ble Chairperson stated that on the point touched by Hon'ble member from West Bengal, the Council will have to be informed in great detail and that a detailed presentation can be given in the next meeting which could be the material on the basis of which the Council can have a discussion on the issue if there was any input, which all would like to share.

Agenda Item 9A - Issues recommended by the Law Committee for the consideration of the GST Council

13.1. The Secretary took up the next Agenda on issues recommended by the Law Committee for the consideration of the GST Council. He started by saying that these issues were discussed in detail in the Officers' Meeting held on 27th May 2021. He thereafter asked the Commissioner, GST Policy Wing (Commissioner, GST PW), CBIC to give a brief overview of the deliberations in the Officers' Meeting regarding the recommendations made by the Law Committee on the subject.

Agenda Item No.9A (i) – Rationalization of Late Fee:

13.2. Initiating the discussion, the Commissioner, GST PW made a detailed presentation (attached as **Annexure-III**). He stated that the first Agenda Item 9A(i) was regarding rationalization of late fee imposed under Section 47 of the CGST Act. As per Section 47 of CGST Act read with relevant notifications, the late fee imposed is Rs.20 per day for filing GSTR-3B, GSTR-1 and GSTR-4, subject to a maximum of Rs. 10,000 per return. A number of representations have been received from various trade bodies and associations from all over the country highlighting the problem being faced by small taxpayers, having nil or very small tax liability, who are required to pay a high amount of late fee in a number of cases (even higher than their tax liability), due to the higher amount of capping of the late

fee. An analysis of late fee collected from taxpayers, with respect to their turnover and with respect to tax paid in cash, was presented. He stated that the Law Committee has recommended to rationalize the late fee, by having some correlation of capping of late fee with the turnover / tax liability of the taxpayers.

13.3. Commissioner, GST PW informed that the Law Committee has proposed that the late fee for delay in furnishing of FORM GSTR-3B and FORM GSTR-1 may be capped, per return, as below:

- (i) For taxpayers having nil tax liability in GSTR-3B or nil outward supplies in GSTR-1, the late fee may be capped at Rs 500 (Rs 250 CGST + Rs 250 SGST), irrespective of the Annual Aggregate Turnover (AATO).
- (ii) For other taxpayers:
 - a. For taxpayers having AATO in preceding year upto Rs 1.5 crore, late fee may be capped to a maximum of Rs 2000 (Rs 1000 CGST+Rs 1000 SGST);
 - b. For taxpayers having AATO in preceding year between Rs 1.5 crore to Rs 5 crore, late fee may be capped to a maximum of Rs 5000 (Rs 2500 CGST+Rs 2500 SGST);
 - c. For taxpayers having AATO in preceding year above Rs 5 crores, late fee may be capped to a maximum of Rs 10000 (Rs 5000 CGST+Rs 5000 SGST).

13.4. He added that the Law Committee has also proposed that the late fee under Section 47 for delay in furnishing FORM GSTR-4 may also be capped to Rs.500 (Rs.250 CGST + Rs.250 SGST) per return, if tax liability is nil in the return, and Rs.2000 (Rs.1000 CGST + Rs.1000 SGST) for other taxpayers, as their turnover was also upto Rs 1.5 crores.

13.5. As regards a proposal from West Bengal, Commissioner, GST PW stated that the Law Committee has proposed rationalization of late fee for delayed furnishing of return in FORM GSTR-7 as below:

- a. Late fee payable for delayed furnishing of FORM GSTR-7 may be reduced to Rs.50/- per day (Rs.25/- under the CGST Act plus Rs.25/- under the SGST Act)
- b. The maximum late fee for delayed furnishing of FORM GSTR-7 may be capped to a maximum of Rs.2000/- per return (Rs. 1,000/- under the CGST Act plus Rs. 1,000/- under the SGST Act)

13.6. The Commissioner, GST PW stated that as per recommendations of the Law Committee, the above proposals are to be made applicable for prospective tax periods. He also mentioned that this issue was discussed in detail in the Officers' Meeting held on 27th May 2021 and there was an agreement in the meeting on this proposal.

13.7 The Hon'ble Member from Bihar requested that late fee for delayed furnishing of GSTR-7 be reduced to Rs 20/- per day, with a capping of Rs.500/- per return.

Agenda Item No.9A(ii) – Simplification of Annual Return for Financial Year 2020-21 and related exemptions:

13.8. The next Agenda Item 9A(ii) was regarding Annual Return for Financial Year 2020- 21. The Commissioner, GST PW informed that the Annual returns FORM GSTR-9 & 9C were simplified for the Financial Years 2017-18, 2018-19 and 2019-20 by making few entries optional. Based on the recommendations of the Council, the filing of annual return in FORM GSTR-9/9A was made optional for taxpayers having aggregate annual turnover less than Rs.2 Crore for the Financial Year 2017-18, 2018-19 and 2019-20, and the threshold of aggregate annual turnover for filing of reconciliation statement in FORM GSTR-9C for the Financial Year 2018-19 and 2019-20 was increased from Rs.2

Crore to Rs.5 Crore by amending Rule80. The Commissioner, GST PW also informed that vide Section 110 of the Finance Act, 2021, sub-section (5) of Section 35 of the CGST Act is omitted to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional. He added that vide Section 111 of the Finance Act, 2021, Section 44 of the CGST Act is substituted to provide for filing of the annual return which may include submission of reconciliation statement on self-certification basis. It further provides that the Commissioner may exempt a class of taxpayers from the requirement of filing the annual return. These amendments made through Finance Act 2021 will come into effect from a date to be notified by the Government. He also informed that the said amendments have been viewed very positively by trade, as it will reduce time and cost for them in getting certification of CAs and therefore, it would be desirable to notify the said amendment in provisions of the Act at the earliest, so that there was no requirement of CA certification in Annual return for FY 2020-21 itself. Accordingly, the following proposals were submitted to the Council:

- I. Section 110 and 111 of the Finance Act 2021 may be notified at the earliest (on 01.08.2021) by the Centre. The States will be required to amend the said provision in the respective SGST Acts retrospectively with effect from the same date (01.08.2021).
- II. Rule 80 of the CGST Rules, 2017 to be amended as detailed in Annexure A to the Agenda Item No 9A(ii) Notes (Vol 2/pages 173-174)
- III. The existing Forms GSTR 9 and GSTR 9C (notified for FY 2019-20) may be notified for Annual Return for FY 2020-21, with minimal changes required to implement the said amendment and to incorporate some tax rates in some tables. The tables, which were optional in FY 2019-20, to be continued as optional as detailed in Annexure B and C to the Agenda Item No 9A(ii) Notes (Vol 2/pages 175-190).
- IV. For FY 2021-22, a single revised Form for Annual Return may be designed by merging GSTR 9 and GSTR 9C, for facilitating the taxpayers and improving compliance.
- V. The exemption from filing annual return for FY 2020-21 may be continued as in FY 2019-20, as below:
 - i. The filing of annual return in FORM GSTR-9 to be optional for taxpayers having AATO upto Rs 2 Crore;
 - ii. The filing of annual return in FORM GSTR-9A by composition dealers to be optional;
 - iii. The threshold of AATO for filing of reconciliation statement in FORM GSTR-9C for FY 2020-21 to be kept as Rs 5 Crore.

13.9 The Commissioner, GST PW stated that this issue was discussed in detail in the Officers' Meeting held on 27th May 2021 and there was an agreement on this proposal.

13.10. Hon'ble Minister from Haryana stated that reconciliation return duly certified by CA should be insisted from taxpayers having aggregate turnover above Rs. 50 crore. To this, the Commissioner, GST PW submitted that there are ample powers in the Act for the Commissioner to get the accounts of a taxpayer audited by a Chartered Accountant under section 66 of the CGST Act. The Hon'ble Minister stated that section 66 of CGST Act 2017 was for special audit and was applicable only if there are valuation and ITC related issues. The Commissioner, GST PW stated that the suggestion of Hon'ble Minister of Haryana would be examined separately.

Agenda Item No.9A(iii) – Proposal of Amendments in the Return related provisions of the CGST Act, 2017:

13.11. The next Agenda Item 9A(iii) was regarding proposal of amendments in the return related

provisions of the CGST Act, 2017. The Commissioner, GST PW stated that the original design of return involved an elaborate process of filing of GSTR-1, 2 & 3 in a sequence which also envisaged inter-linking with back and forth flow of invoices and 2-way communication, as detailed in the existing return related sections viz. Section 37 to 43 of the CGST Act, 2017. He added that in the 42nd meeting of the GST Council, it was recommended that the present system of GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system. Accordingly, the Law Committee deliberated on the matter and has recommended amendments to return related provisions of Section 37, Section 38, Section 39, Section 41, Section 42, Section 43, Section 43A and consequential amendments in Section 16, Section 29, Section 34, Section 47, Section 49, Section 50, Section 52 and Section 54 of CGST Act, as detailed in Annexure A to the Agenda Item No 9A(iii) Notes (Vol 2/pages 195-210). He also informed that the above amendments have also been deliberated by GIC, which has also recommended the same on merit. Besides, there was an agreement on this proposal in Officers' meeting held on 27th May 2021.

Agenda Item No.9A(iv) – Proposal to exempt government departments and local bodies from the requirement to issue e-invoice:

13.12 The next Agenda Item 9A(iv) was based on a reference received from the Government of West Bengal to exempt Government Departments and local authorities from the requirement of issuance of e-invoice for reducing compliance burden of the said entities. The impact of proposed exemption was analysed for a sample month of December, 2020 and was presented in the Agenda to the Council. Considering that contribution of Government Departments and local authorities to value of B2B supplies as well as ITC flow was a miniscule percentage i.e. 1.2% of value of total B2B supplies and 0.59% of total ITC flow respectively, the proposal to grant exemption to Government Departments and local authorities from requirement of issuance of e-invoice was submitted for consideration to the Council. This proposal was recommended by the Law Committee and was also agreed upon in the Officers' meeting held on 27th May 2021. One view was that whether an exception should be carved out for the Government departments, whereas other taxpayers are required to comply with the same provision.

13.13 The Secretary stated that as private sector taxpayers (with aggregate annual turnover above Rs.50 cr as on date) are required to generate e-invoices, it may not be proper to exempt the Government departments from requirement of issuance of e-invoice. The Hon'ble Minister from West Bengal justified it by saying that Government is a service entity and should not be equated on par with business entities. The Hon'ble Chairperson said that Government should comply first, before insisting on small taxpayers to comply. The Hon'ble Minister from West Bengal stated that Government is not a profit making entity and therefore, one could justify such exemption from e-invoice for the Government departments.

Agenda Item 9B - Other issues pertaining to GST laws and procedures for consideration of the GST Council

13.14. The Secretary asked the Commissioner, GST PW to place the agenda before the Council. The Commissioner, GST PW stated that these agendas were also discussed in detail in the Officers' Meeting held on 27th May 2021.

Agenda 9B(i) –Late fee Amnesty Scheme:

13.15 The first Agenda Item 9B(i) was regarding conditional reduction in late fee for delayed filing of FORM GSTR-3B for months from July, 2017 to April, 2021 as an Amnesty scheme for taxpayers to provide relief from huge burden of late fee. The Commissioner, GST PW stated that a number of

taxpayers, especially small taxpayers, could not file their GSTR- 3B returns earlier, especially during COVID times, due to lack of knowledge, lack of funds and other difficulties faced, and are now facing problems in filing these pending GSTR-3B returns due to high accumulation of late fee. It was proposed that a Late Fee Amnesty Scheme may be considered for reduction of late fees for GSTR-3B returns for tax periods from July, 2017 to April, 2021:

- i. late fee to be capped to a maximum of Rs.500/- (Rs.250/- each for CGST & SGST) per return for taxpayers, who did not have any tax liability for the said tax period; and
- ii. late fee to be capped to a maximum of Rs 1000/- (Rs. 500/- each for CGST & SGST) per return, for other taxpayers;

Such reduction / capping in late fee to be kept conditional, and to apply only if the returns are filed during the period from 01.06.2021 to 31.08.2021.

13.16 Commissioner, GST PW informed that there was an agreement on this proposal in Officers' meeting held on 27th May 2021.

Agenda 9B(ii) –Notifying section 112 of the Finance Act, 2021 relating to retrospective amendment in section 50 of the CGST Act:

13.17. The next Agenda Item 9B(ii) was regarding notifying Section 112 of the Finance Act, 2021 relating to retrospective amendment to Section 50(1) of the CGST Act 2017. The Commissioner, GST PW stated that Section 50(1) of the CGST Act 2017 has been amended retrospectively w.e.f. 1.7.2017 vide Section 112 of the Finance Act 2021, based on recommendation of GST Council in its 39th Meeting, for levying of interest on net cash liability. Section 50(1) was earlier amended prospectively and notified w.e.f 1.9.2020 to provide for interest on net cash basis through Finance (No.2) Act 2019. Commissioner GST PW stated that early notification of this retrospective amendment will help in removal of ambiguity and legal disputes on the issue and close pending cases, thus benefitting taxpayers. Since States will also be required to amend Section 50(1) retrospectively w.e.f. 1.7.2017 in their respective SGST Acts, therefore, there will be no ambiguity in the matter. Accordingly, it was proposed that Section 112 of the Finance Act 2021, may be notified at the earliest (on 01.06.2021) by the Centre. Commissioner GST PW informed that there was an agreement on this proposal in Officers' meeting held on 27th May 2021.

13.18. Further, he submitted that the Council may like to decide a date, by which time the corresponding amendments in SGST Acts, relating to the amendments done through the Finance Act, 2021, may be carried out by all the States. During the discussion, the Hon'ble Members from Tamil Nadu, Haryana, Assam, Karnataka, Maharashtra and Meghalaya expressed various dates. The Secretary stated that by the first week of October 2021, all State Assemblies may have had at least one session. Accordingly, the Hon'ble Chairperson proposed that 1st October 2021 may be decided as the date by which time the corresponding amendments in SGST Acts, relating to various amendments done through the Finance Act, 2021, may be carried out by all the States.

Agenda 9B(iii) –Proposal for converting Quarterly return and Monthly payment (QRMP) Scheme to Quarterly return and Quarterly payment (QRQP) Scheme:

13.19 The next Agenda Item 9B(iii) was regarding proposal for converting quarterly return and monthly payment (QRMP) Scheme to quarterly return and quarterly payment (QRQP) scheme. The Commissioner, GST PW stated that the GST Council in its 42nd meeting had recommended a Quarterly Return and Monthly Payment (QRMP) Scheme for registered persons having turnover up to Rs. 5 Crore, which has been implemented with effect from 01.01.2021. The QRMP scheme was available to approximately 89% of the total tax base. As per feedback, there was a feeling in the taxpayers feel that

the requirement of monthly assessment and payment of tax was akin to compliance for filing of return on monthly basis, and therefore, the scheme was not providing them the actual benefit of reduced compliance burden. He informed that though the scheme provides an option of payment of monthly tax through a system-generated challan, thus obviating the need for self-assessment of tax liability on actual basis during first two months of the quarter, but a number of taxpayers are still opting for payment of monthly tax on self-assessment basis. The revenue data for the period January-March 2021 was presented to the Council, showing the total GST collections from taxpayers who are in QRMP scheme, as per which less than 4% of the total GST revenue collected during January and February 2021 was collected from the taxpayers under QRMP scheme. Commissioner, GST PW mentioned that if the QRMP scheme was converted into Quarterly Return Quarterly Payment (QRQP) scheme, by requiring payment of tax also on quarterly basis, then it will provide substantial relief to the smaller taxpayers, and will only cause deferment of revenue of 4-5% during first two months of the quarter to the third month of the quarter. It was proposed to the Council that the present QRMP scheme may, therefore, be converted to QRQP scheme and tax may also be collected on quarterly basis through quarterly return. In this regard, in-principal approval of the GST Council was sought. Commissioner GST PW proposed that further modalities for the implementation of QRQP scheme may be worked out by the Law Committee, based on in-principle approval of the Council.

13.20 The Secretary mentioned that that about 90% of the taxpayers in GST are small taxpayers with turnover of upto Rs 5 crore and their contribution to the revenue was also very small, and therefore, converting QRMP to QRQP will benefit such smaller taxpayers. The Hon'ble Member from West Bengal stated that they are in agreement with the said proposal and that they would recommend QRQP scheme, as it will benefit small taxpayers. Hon'ble Member from Delhi stated that it was too early to review QRMP scheme, as this scheme has worked for only three months. The data provided at present was not sufficient to draw any meaningful conclusions and it would be better to allow QRMP scheme to settle before any change was made to the same. He mentioned that in Delhi, the monthly revenue from QRMP taxpayers was 10%, as against 4% for All India. He also added that it would be difficult to return to monthly tax payment, once it was shifted to quarterly payment. The Hon'ble Member from Kerala stated that small traders contribute 20% of revenue in their state and therefore, and hence they would like to continue QRMP scheme. The Hon'ble Member from Maharashtra stated that he agrees in-principle that there was a need for easing the compliances for smaller taxpayers, however, the details of such scheme need to be worked out by the officers. The Hon'ble Member from Himachal Pradesh stated that in Himachal Pradesh, revenue from small taxpayers was 15% and that such conversion to QRQP would defer large amount of revenue to the end of the quarter. The Hon'ble Member from Karnataka stated that though he agrees in-principle with the proposed QRQP scheme, he suggested that the present QRMP may be reviewed at a later stage. He also suggested that this proposed threshold limit of Rs 5 crore may not be increased at a later stage. The Hon'ble Member from Tamil Nadu suggested that GSTN may provide data on what would be the impact on flow in liquidity if QRQP was opted. The Hon'ble Member from Odisha mentioned that QRMP may be continued at present, as it was too early to make change. The Hon'ble Member from Chhattisgarh stated that QRQP would affect flow of funds to States and also stated that the Law Committee should first examine the said scheme. The Hon'ble Member from Jharkhand stated that they would support the views of Chhattisgarh and prefer to continue with QRMP.

13.21 Finally, the Secretary mentioned that taking the sense of the House, the issue may be referred to the Law Committee, which could examine the issues in greater detail and then bring it back to the Council for consideration.

Agenda 9B(iv) –Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions – Matter arising out of directions of Hon'ble Delhi High Court:

13.22. The next Agenda Item 9B(iv) was regarding the issue placed before the Council in pursuance of the directions of the Hon'ble High Court in the matter W.P.(C) No. 5177/2021, in the case of Anil Kumar Goel&Ors Vs UOI &Ors. The Commissioner, GST PW stated that this Agenda was in pursuance of the directions of Hon'ble High Court of Delhi, as communicated by Ld ASG vide email dated 26-05-2021 [submitted as Annexure-A to Agenda Item No.9B(iv) notes (Vol-5, page No.15 & 16)]. The Hon'ble High Court of Delhi has desired that the suggestions made by the Counsels and Amicus Curiae [submitted as Annexure-B and Annexure-C to Agenda Item No.9B(iv) notes (Vol-5, page No.17-18 and 19-20)], may be placed before the Council for consideration. It was informed that the next hearing of Hon'ble Court was on 1st June 2021.

13.23. The issue was discussed in detail in the Officers' meeting held on 27-05-2021. Officers deliberated on the situation of the COVID pandemic, status of the restrictions/ lockdown imposed in various states, the COVID related relief measures already provided under GST to taxpayers through various notifications issued on 01.05.2021 and need for further COVID related relief measures, if any, relating to statutory and regulatory compliances in GST, including extension of due dates. Suggestions/ requests received from various stakeholders, including through Hon'ble High Court of Delhi, were also deliberated. After detailed discussions and deliberation, the following additional COVID related relief measures were suggested by Officers in the meeting and are placed before the Council for approval:

A. For Normal Taxpayers:

- a) For registered persons having aggregate turnover above Rs. 5 Crore: Similar relaxation, as provided for March and April, 2021, may be provided for May 2021 also:
 - (i) Interest @ 9% for first 15 days after the due date of filing return in FORM GSTR-3B for May, 2021
 - (ii) Waiver of late fee for delay in furnishing FORM GSTR-3B for May, 2021 for 15 days from the due date.
- b) For registered persons having aggregate turnover upto Rs. 5 Crore
 - (i) For May, 2021, the following relaxations, as provided earlier for March and April 2021, may be provided:
 - For May, 2021 (for the taxpayers opting to file monthly returns),NIL rate of interest for first 15 days from the due date of furnishing FORM GSTR-3B and @9% thereafter till further 15 days
 - Waiver of late fee for delay in furnishing FORM GSTR-3B for May 2021 (for taxpayers filing monthly returns) for 30 days from the due date.
 - Waiver of interest for 15 days for taxpayers filing delayed PMT-06 Challan (for payment of tax liability) and waiver of interest by 9% interest thereafter for 15 days further, from due date of filing PMT-06 challan for May, 2021 for QRMP taxpayers filing quarterly returns.
 - (ii) In addition, further relaxations in rate of interest and late fee for March and April, 2021 may be provided as below:
 - Reduction in interest: NIL rate of interest for first 15 days from the due date of FORM GSTR-3B or for filing delayed PMT-06 Challan (for payment of tax liability), and 9%

thereafter for further 45 days and 30 days for March, 2021 and April 2021 respectively, and 18% thereafter (for normal taxpayers, including those under QRMP scheme).

- Waiver of late fee for delay in furnishing FORM GSTR-3B for the tax period March 2021/ QE March 2021 and April 2021 for 60 days and 45 days respectively, from the due date of furnishing FORM GSTR-3B.

B. For registered persons who have opted to pay tax under the Composition scheme

- a) FORM CMP-08: NIL rate of interest for first 15 days from the due date of payment of self-assessed tax and 9% thereafter for further 45 days and 18% thereafter, for the quarter ending 31st March, 2021.
- b) FORM GSTR-04: At present, the due date of furnishing FORM GSTR-4 for FY 2020-21 is extended to 31st May, 2021. It may be further extended to 31st July, 2021.

C. For all Registered persons:

- a) FORM ITC-04: The due date of furnishing FORM ITC-04 for QE March, 2021 was 25th April. It is proposed that the same may be extended till 30th June, 2021.
- b) FORM GSTR-1/ IFF: Due date of furnishing GSTR-1/ IFF for the month of May 2021 may be extended by 15 days.
- c) Restriction on ITC availment under Rule 36 (4) may be applied commutatively for the months April to June 2021 in the return for June, 2021.
- d) EVC: FORM GSTR-3B and FORM GSTR-1 can be filed using electronic verification code (EVC) instead of digital signature certificate (DSC) by a person registered under the provisions of the Companies Act, 2013 from 27th April, 2021 to 31st August, 2021.

D. Relaxations under section 168A of the CGST Act:

- a) Any time limit for completion or compliance of any action, by any authority or by any person, under the GST Act, which falls during the period from 15th April, 2021 to 29th June, 2021 (with suitable exemptions as in the notification) extended upto 30th June 2021, as far as the same is not covered by order of Hon'ble Supreme Court dated 27.04.2021, which has extended timelines till further order, for appeals and quasi-judicial proceedings.
- b) Deemed registration: Due to difficulties faced by officers to conduct physical verifications during second wave of COVID, the time limit for various compliances for grant of registration under rule 9 of the CGST Rules, 2017, which falls during the period from the 1st May, 2021 to 30th June, 2021, be extended to 15th July, 2021.
- c) Refund orders: Officers to be allowed time for issuance of the refund orders upto fifteen days after the receipt of reply to the

notice from the registered person or 30th June, 2021, whichever is later.

The same were presented to the Council by the Commissioner, GST PW, CBIC and was agreed upon by the Council.

13.24 On the 'issues recommended by the Law Committee for the consideration of the Council' the Council approved agenda item Nos.9A (i), (ii), (iii) & (iv) as detailed below:

(i) The late fee for delay in furnishing of FORM GSTR-3B, FORM GSTR1, FORM GSTR-4 and FORM GSTR-7 to be reduced/ capped, per return, as proposed in agenda note and detailed in agenda9A(i) above.

All the above proposals to be made applicable for prospective tax periods i.e. for the tax period of June 2021 and onwards. For FORM GSTR-4, the same would be applicable from FY 2021-22.

(ii) Regarding Simplification of Annual Return for Financial Year 2020-21:

- A. Section 110 and 111 of the Finance Act 2021, relating to amendment in section 35 and 44 of the CGST Act may be notified at the earliest (on 1.8.2021) by the Centre. The States will be required to make corresponding amendments in their respective SGST Acts retrospectively with effect from the same date.
- B. Rule 80 of the CGST Rules, 2017 to be amended as detailed in Annexure A to the Agenda Item No 9A(ii).
- C. The existing Forms GSTR 9 and GSTR 9C (notified for FY 2019-20) to be notified for Annual Return for FY 2020-21, with minimal changes required to implement the said amendment and to incorporate some tax rates in some tables. The tables which were optional to be continued as optional as detailed in Annexure B and C to the Agenda Item No 9A(ii).
- D. For FY 2021-22, a single revised Form for Annual Return to be designed by merging GSTR 9 and GSTR 9C, for facilitating the taxpayers and improving compliance.
- E. The exemption from filing annual return for FY 2020-21 may be continued as in FY 2019-20, as below:
 - i. The filing of annual return in FORM GSTR-9 to be optional for taxpayers having AATO upto Rs.2 Crore;
 - ii. The filing of annual return in FORM GSTR-9A by composition dealersto be optional;
 - iii. The threshold of AATO for filing of reconciliation statement in FORM GSTR-9C for FY 2020-21 to be kept as Rs.5 Crore.

(iii) Proposed amendments in CGST Act 2017: The GST Council recommended amendments to the provisions of Section 16, Section 29, Section 34, Section 37, Section 38, Section 39, Section 41, Section 42, Section 43, Section 43A, Section 47, Section 49, Section 50, Section 52 and Section 54, of CGST Act as detailed in Annexure A to the Agenda Item No 9A(iii). Final draft to be finalised in consultation with Union Ministry of Law and Justice. Corresponding amendments would also be required in respective SGST Acts.

(iv) Exempt Government Departments and local bodies from the

requirement to issue e-invoice: Government Departments and local authorities may be exempted from the requirement of issuance of e-invoice.

13.25 On the ‘**other issues pertaining to GST laws and procedures submitted for consideration of the Council**’, the Council recommended as below:

- (i) **Amnesty Scheme to provide relief to taxpayers regarding late fee for pending returns.** To provide relief to the taxpayers, late fee for non-furnishing FORM GSTR-3B for the tax periods from July, 2017 to April, 2021 may be reduced / waived as under:
- a) late fee capped to a maximum of Rs 500/- (Rs. 250/- each for CGST & SGST) per return for taxpayers, who did not have any tax liability for the said tax periods;
 - b) late fee capped to a maximum of Rs 1000/- (Rs. 500/- each for CGST & SGST) per return for other taxpayers;
- The reduced rate of late fee would be conditional and would apply if GSTR-3B returns for these tax periods are furnished between 01.06.2021 to 31.08.2021.
- (ii) **Notifying date for Section 112 of the Finance Act 2021 and date for other Sections of the Finance Act 2021:**
- A. Section 112 of Finance Act 2021, relating to retrospective amendment of Section 50(1) to be notified at the earliest by the Centre. 01.06.2021 may be appointed as the date from which the provision of section 112 of the Finance Act, 2021 would come into force.
 - B. All the states may carry out the corresponding amendments in SGST Acts, relating to various amendments done through the Finance Act, 2021, by 1st October 2021.
- (iii) **Proposal to convert QRMP to QRQP:** As regards the proposal to convert the present quarterly return and monthly payment (QRMP) scheme to quarterly return and quarterly payment (QRQP) scheme, it was recommended that the Law Committee may examine the issue in greater detail and then bring it back to the Council.
- (iv) **Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions:** In view of the prevalent Covid situation in the country, the Council recommended to provide further COVID related relief to the taxpayers.

Agenda No 10: Seeking concurrence for levy of Covid cess on power and pharmaceutical sector in Sikkim

14.1 The Secretary requested the Hon’ble Member from Sikkim to present the issue of Covid Cess.

14.2 The Hon’ble Member from Sikkim stated that Sikkim was one of the tiniest State of India with very limited capability to raise resources internally. Pandemic has also affected the revenue of the State from its own taxes and non-tax revenues. The expenditure, however, has continued to increase particularly due to the Pandemic. He explained that manufacturing, mainly pharma companies and hydro electricity generation, together accounts for nearly half of the total Gross State Domestic Product of the State.

Sikkim proposed that a COVID Cess at the rate of—

- (a) **1 per cent of the turnover of pharma sector (excluding the unorganized sector);**
and
- (b) **Rs. 0.1 per unit of power generated**

be imposed for a period until March, 2024. It was explained that this would generate revenue of Rs. 100 crore per annum and Rs. 250 crore to Rs. 300 crore over the entire period. It was argued that this cess was nominal, comes with a sunset clause and was unlikely to affect either the consumers or the industry significantly.

14.3 The Hon'ble Member from Goa supported the proposal of Sikkim and referred to Article 279A (4)(f) introduced vide 101st Constitutional Amendment Act. He further stated that state of Kerala had imposed a cess of 1% for two years during Kerala floods to raise the funds for rehabilitation work. He said that small states like Goa do not have many resources to raise funds and are dependent on tourism which has taken a hit during pandemic. He stated that irrespective of the size of the State, they should be allowed to charge the cess in situations like the one prevailing. He suggested that for two to three years, the states should be allowed to charge 1% cess on certain goods, which would help meet requirements of States to handle the expenditure related to vaccination as well.

14.4 The Hon'ble Member from Arunachal Pradesh also supported the Covid Cess and stated that like Sikkim and Goa, they are also fighting Covid and have limited resources as tourism has stopped due to lockdown. To be able to counter the impending third wave of Covid, the state should be allowed to generate revenue through imposition of cess.

14.5 The Hon'ble Member from Kerala supported the agenda and acknowledged that cess was very helpful to them in gathering resources to fight the Kerala floods.

14.6 The Hon'ble Chairperson stated that in case of Kerala, a GoM was formed to look into issues relating to imposition of Cess. Similarly, in the request of Sikkim also, a GoM may be constituted to submit its recommendations for the consideration of the Council. The GoM can hopefully submit its suggestions in two weeks, which can be circulated to all the States and a call can be taken from there. The Council agreed to the proposal of constituting a GoM.

Agenda no 11: Issues recommended by the Fitment Committee for the consideration of the GST Council

15.1 The Secretary asked Shri G D Lohani, J.S, TRU to place the agenda before the Council. J.S, TRU briefed the Council on the recommendations made by the Fitment committee, to be taken up for decision by the Council. He thereafter made a presentation (**Annexure-IV**) listing the recommendations made by the Fitment committee on issues related to COVID relief agenda No 11(i). In continuation he also made presentation on Agenda items 11(ii) (Fitment recommendation on goods), 11(iii) (Fitment recommendation on services), 11(iv) and 11(v) (issues arising from the directions of Hon'ble Supreme Court and Delhi High Court respectively) GST on assistive devices and request relating to inclusion of ice cream under composition scheme.

15.2 The Secretary drew the attention of the Council to the fact that the exemptions have been granted to goods which are being brought free and are distributed free. He drew attention to the proposal that the same relief should be given to such items if they are paid for by philanthropists, Corporates or anyone else, and if they are distributed free. The Fitment committee proposed that this relief should be granted. He further stated that Fitment Committee was of the view that such exemption should be applicable even if the supplies were received by Centre, or a State or any NGO or hospital. Some States suggested that the earlier notification that has been issued was wider and the same scope

could be adopted for this exemption too. It was felt that State's intervention was desirable for ensuring distribution to the needy. It would also help the Customs in clearance of these goods without payment of duties and taxes.

15.3 As regards Oxygen concentrators, JS (TRU) stated that initially, if an oxygen concentrator was commercially imported or procured from domestic sources, there would be 12% GST, whereas if the same was brought as personal imports or sent as a gift from abroad, it would have attracted 28% IGST. This was changed to apply GST at uniform rate of 12%, irrespective of whether it was purchased within the country, from abroad or sent as a gift. The High Court has changed it so as to subject the oxygen concentrator coming as gift to an individual from a relative abroad to 0% GST, while when an individual purchases the same from abroad; it now attracts 28% IGST. Commercial imports and domestic supplies of Oxygen concentrators remain at 12% GST slab. The Fitment committee has suggested that the rate be made uniform at 5% for all cases, whether it was purchased inside the country, from abroad, or sent as a gift from outside the country. Further, he stated that an order has also come from the High Court on the Black Fungus drug. As regards, medicine, it was mentioned that Fitment committee discussed the issue in detail. Fitment was of the view that while there was a need for subjecting medicine to concessional rate of 5% (where GST on COVID related medicine was 12%) it was desirable that such reduction was done on specific recommendation of Ministry of Health, more so as the COVID protocol was ever changing.

15.4 The Hon'ble Member from Delhi stated that he was grateful to the Hon'ble Chairperson for the ad hoc changes which have been made in the tax structure. He further stated that Oxygen cylinders should be included in the list in Agenda 11(i), along with Oxygen Concentrators/generator and pulse oximeter. He proposed that the suggestion made to reduce tax on donations which were purchased from abroad and donated in India should be made retrospective from 3rd May, as many donations had been made in the peak COVID period and they should be covered by the benefit of the notification. He also submitted that the items on which the Fitment Committee has proposed the tax to be reduced to 5% can further be made exempted, as it was an ad-hoc exemption arrangement for some time and it is not substantial concerns related to ITC.

15.5 The Hon'ble Member from West Bengal, further suggested that the ad hoc exemptions should be extended to the degree possible, as he suggested that date of July 31, 2021 may be a very short period, and the pandemic may continue subsequent to that. He stated that in Agenda 11(i)(B)(a), Fitment Committee has suggested that vaccines should continue at 5%. He referred to the request of the West Bengal CM to make vaccines exempt from tax. He also referred to the reply of the Union Finance Minister, which had explained that under the current law, exemption from GST would make ITC ineligible, and thus prices of vaccines would increase. He suggested that zero rating may be considered for vaccines, with a time boundary, which may require an amendment to Section 16 of the IGST Act. He stated that the four items in Part B, medical grade oxygen, oxygen concentrators, pulse oximeter, and COVID testing kits may also be considered for zero rating. In respect of other items in Part B, namely PPE kits, N95 masks, ventilators, hand sanitizers and temperature check equipment he stated that these were being taxed at high rates. He stated that for ambulance and portable hospitals, zero rating was not required. He referred to recommendations of the Fitment on other non-COVID items, which he was in agreement with. He however stated that he would wish to limit the discussion to COVID related items for the time being. He proposed an alternate suggestion to zero rating, if the Council felt that it was unable to adopt zero rating.

15.6 The Hon'ble Member from Punjab referred to the concessions given by way of exemptions, some of which are terminating on 30th June, some on 31st July and some on 31st August. He said that he failed to understand the rationale for the different dates given to such exemptions as well as the

relatively short period of time given for such exemptions. He suggested that such concessions could be uniformly extended till the 31st March, 2022. He stated that the Fitment Committee has been very conservative, and referred to the recommendation of the committee on Remdesivir, which the committee has stated had been removed from the WHO recommended list and thus been denied benefits. Hon'ble Member was of the opinion that the Council could exempt every drug for COVID treatment, based on the recommendation of the Union Ministry of Health. He stated that the COVID vaccine has not been exempted from tax, as the Fitment committee argued that the tax burden was borne by the Government. This was only partially true, but a lot of private hospital and corporate entities were also sourcing vaccines. This does not look very good even as optics. He suggested that everything that was required for testing, treatment and prevention of the disease can be exempted. These concessions will also help them prepare for the next wave and he stated that this would allow to ramp up their health infrastructure. He seconded the opinion of the Member from West Bengal to zero rate the COVID related items, or to apply a nominal rate of tax with full ITC benefits. He further stated that a blanket exemption could be given on the recommendation of the Ministry of Health.

15.7 The Hon'ble Member from Karnataka said that he welcomed the IGST exemptions given. He stated that the scope of proposed exemption (goods imported on payment basis for donation) should be the same as the present scope (free imports for free distribution), that was free imports and free distribution, for state government, corporates and any entity, where donor purchases and gives for free distribution, with state government certificate. He agreed with the Hon'ble Member from West Bengal, for extension of time beyond July. He further said that other things like PPE kits and thermometers may be included in the exemption, along with Remdesivir and Black Fungus medicines. He also added items such as lifesaving ventilators also need to be looked into. He endorsed the suggestion of the Hon'ble member from Punjab, and stated that the help of the Health Ministry may be sought in deciding list of items. He stated that the GST Council can help the patients by exempting a large number of medicines and equipment. He stated that the list of exemptions should be more inclusive and more easily implementable. He reiterated the need to extend the exemptions beyond July, 2021.

15.8 The Hon'ble Member from Bihar welcomed the reductions in GST rate from 12% to 5%, particularly on pulse oximeter and oxygen concentrator. He also suggested that GST on hand sanitizer and thermometers may also be levied at 5%. He also sought reduction in tax rate for an LPG based project for crematorium in Darbhanga for which equipment are to be received from Haryana as a donation and requested for reduction from 18 to 5%. He also requested that the GST levy on the ropeway in Rajgir district should be reduced as the State Tourism Development Corporation was an arm of the State government, and there was religious significance of the spot as well. It also has value as a tourism destination.

15.9 The Hon'ble Member from Meghalaya stated that there needs to be a balance between reducing GST on devices and preserving revenues. He further stated that there was huge reduction in items mentioned in list in para 3.7A which include medical grade oxygen and oxygen concentrators, devices which are being utilized the most. He stated that a balance has been struck. He mentioned that the rates on testing kits had been reduced, which was a welcome move. He stated that if the rate on hand sanitizers was reduced, there would be demands for reduction in the tax rates of other related goods such as soaps, which can lead to a chain reaction of demands. He stated that exemption of products may only lead to an increase in the price of product, and it would also further burden the central resources, which are very precious at this time. He suggested that a balanced approach must be followed, and there was a need to be practical.

15.10 The Hon'ble Member from Kerala supported the idea of zero rating. He further stated that this was an extraordinary situation, and that a separate model needs to be adopted to counter COVID.

He stated that for vaccines, drugs related to COVID and on related equipment, GST should be zero rated. The laboratory kits, including thermometer may also be brought to zero rating, and this can only be done for a short period, such as three months.

15.11 The Hon'ble Member for Maharashtra said that the state was prepared to vaccinate all citizens. He said that it was important for all COVID related equipment should be given as much of tax relief as was possible. This would reduce the burden on people. Medical grade oxygen, oxygen concentrator and pulse oximeter and COVID testing kits are used by a large number of people. Reduction of rates on these items was appropriate, and that he supported the tax concessions given. He requested that the new rates on COVID testing kits and oxygen concentrator should be given till 31st December. He also said that hand sanitizers should also be taxed at 5%.

15.12 The Hon'ble Member from Chhattisgarh said that on one hand it was proposed that the States should be allowed to impose a cess of 1%, as the States need revenue, and on the other the zero rate structure was not proposed to be accepted, rather a tax of 5% was to be levied. He asked to whom was this money collected going to go to. He said that the State government would be paying the GST, half of which will go to Central Government, and some would be devolved to the State Governments. He stated that as far as the Government sector was concerned, he could not see why the 5% needed to be levied. He stated that as far as the private sector was concerned, in the humanitarian context, whether the Council should be taxing a consumer for whom the product may be a matter of life and death. The arguments against zero rating COVID related equipment was that there was no provision in the law which allowed for such zero rating, and that it was provided only in IGST. Part VII of the IGST act mentions zero rating and section 16, which mentions zero rated taxes, a provision of the IGST act, was being imposed on the CGST Act. He referred to Section 9 of the CGST, the section for levy and collection and said that the section says that tax be imposed at "such rates, as may be notified by the GST Council, not exceeding 20%" and further said that there was no mention that it could not be 0%, and that the section clearly states that it can be upto 20%. Section 17(2) of the CGST Act states "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies." He stated that the CGST Act, and in its wisdom, the Parliament visualized a situation where zero rated supply would be there, and that there was provision in the GST act, very clearly for zero rated taxed. He referred to Chapter XI, Refunds, Section 54(3), which stipulates that "Subject to the provisions of subsection (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period: Provided that no refund of unutilised input tax credit shall be allowed in cases other than— (i) zero rated supplies made without payment of tax". There was clear provision of zero rated tax, and that the procedure was clearly delineated in the Act, and as the Parliament envisaged a situation for zero rated tax, this was the time when it needed to be adopted, even if for a limited time period. The Council should adopt a zero rated tax on cover goods, what those goods are could be worked out.

15.13 The Hon'ble Member from Uttar Pradesh stated that if zero rating was allowed, it would cause loss to the State governments, and further that it would create a bad precedent. All governments work on the basis of tax receipts, and that whatever tax was imposed, it should not be zero. He stated that he was in agreement with the recommendations made by the Fitment committee and the concessions given by the Union government. He submitted that the concessions should be extended three months beyond the 31st July, 2021 end date for them.

15.14 The Hon'ble Member from Odisha stated that the Country was going through the tough phase of the COVID pandemic, and that it was a war like situation. All resources should be focused on

winning this war against COVID. He referred to the letter written by the Hon'ble Chief Minister of Odisha regarding the exemption of tax on GST on procurement of vaccine, and that 0% percent should be charged on the procurement of vaccines. The States have been asked to procure vaccines out of their own resources to cover the vaccination of the 18-45 years' age group of the population. Therefore, a huge amount was needed. If zero rate was charged on vaccine, the rates would come down. He requested the Hon'ble Chairperson to take steps to reduce the tax related to medical supplies, including vaccines and other medicines. He stated that the reduction of tax was needed urgently as the Country was going through a pandemic. He stated that Odisha was fighting a double battle against COVID and also the Cyclone Yaas. He stated that this was the reason the Hon'ble Chief Minister had written a letter requesting taxes being 0% GST on vaccines.

15.15 The Hon'ble Member from Madhya Pradesh thanked the Union Government for the assistance provided during the COVID 19 pandemic. He thanked the Council for the proposal to reduce the GST rate on medical grade oxygen from 12% to 5%, which would allow increased production of oxygen in the States and would make States self-sufficient in terms of oxygen. He suggested that the concessions given on tax should be extended to 30th September uniformly. He stated that Madhya Pradesh was in concurrence with the other suggestions of the Fitment committee. He reiterated the request made by Madhya Pradesh to reduce the GST on biodegradable carry bags to be reduced from current 18% in order to increase use, which would provide a boost to the Swachh Bharat mission and reduce environmental damage.

15.16 The Hon'ble Member from Assam requested that the GST concession period be extended by a month due to the late COVID second wave in the North Eastern states. She further stated that to curb this situation, an extension period of at least one month was needed. She further requested for a reduction in the rate of GST on hand sanitizer, which would also send a positive message to the people, and encourage hand sanitizer use.

15.17 The Hon'ble Member from Goa appreciated the work done by the Fitment committee. He stated that going for zero rating may be fallacious as it would require a change in the law and would not be possible immediately, and that something immediate was needed. He stated that rate of tax on items such as Oxygen concentrators have been slashed from 77% to 12%. He stated that similarly tax on other items has been reduced as well. Every State needs revenue, and was starved for funds. He said that if more and more tax concessions are given, the new industries and entrepreneurs which have developed due to COVID would become habituated to not paying taxes. Governments needed funds from taxation to run. He concurred with Hon'ble Member from Meghalaya on the need for a balanced approach, as revenues were needed from someplace, and that impractical proposals would not help. He stated that everyone needs to be on the same page to fight the pandemic. The message from the Council should be that the Council stands with the common man to face this situation.

15.18 The Hon'ble Member from Arunachal Pradesh stated that he also felt that the Council should take a balanced view. He stated that he agreed to the recommendation of the Fitment committee, but he requested that the period of the ad hoc concessions should be extended.

15.19 The Hon'ble Member from Rajasthan stated that there was a lockdown in place, and that commercial institutions and industries have been shut during this period. He stated that in these circumstances if someone was providing oxygen, medicines or COVID relief material, they should not be taxed. There were exemptions given under Income Tax to charitable institutions. During this period, it was critical to ensure that patients were provided with vaccines, medicines and oxygen. He agreed with the Hon'ble Member from Bengal and Punjab that there should be zero rating of relief material and vaccines.

15.20 The Hon'ble Member from Jharkhand stated while it was good that tax on oxygen concentrator, medical oxygen, pulse oximeter and COVID testing kits has been reduced from 12% to 5%, he felt that zero rating should be considered from these items as suggested by Punjab and West Bengal. He stated that if zero percent was not possible due to legal hurdles, 0.1% tax should be considered.

15.21 The Hon'ble Member from Gujarat stated that the issue being discussed was not only related to income, but was also one of humanity and serving patients. This pandemic was exceptional and unprecedented in the last 100 years. He stated that the issue should be seen in 3-4 parts. First, where the Governments are spending, and where the patients don't have to spend, we have to consider such positions. He thanked the Hon'ble PM and the Hon'ble Minister for Health for the provision of free vaccines where the Central Government was bearing the costs, and the State Governments have not needed to incur any expenses. It was separate issue that if a State attempts to purchase vaccines by private tender, the States would have to pay for that. But till now, the vaccination received by crores of citizens has been borne by the Union Government. He stated that in Gujarat as well, vaccination has been done by using the vaccines provided by the Central Government. In these cases, the tax does not need to be paid by citizens or the State governments, so this was one issue. On the other hand, if the State government purchases vaccines from a private tender using their own funds, the Council should consider reducing the rate of GST in that case, to 1% or 0.5% or some other rate. He stated that the way crores of people have received treatment for Corona, with most patients receiving treatment free of cost, in government hospitals, and the State Governments have borne this cost. He suggested that the expenses for injections being used, such as Remdesivir or Black Fungus injection or medical oxygen, borne by the State governments was a major expense. He gave the example of how Gujarat needed 1100-1200 metric ton oxygen during the peak of the pandemic. Even now 500-600 metric ton oxygen was being supplied. He stated that oxygen was the most critical component of the treatment. He suggested that there could be reduction of tax on these items. Such a reduction can also be considered for Ambulances as well, seeing that there has been a need to procure ambulances in large numbers. He said that the states may need to make more expenditures to prepare for a possible third wave so the States would need the resources. He reiterated that private/foreign vaccine would cost around 2000 rupees per individual for two doses, so the taxation on this vaccine would need to be discussed in the Council. He stated for humanity and citizens of the country, income can be sacrificed for a short period of time. He stated that in the interest of the Nation and welfare of the people, whatever decision will be taken by the Council on this matter, Gujarat will support it.

15.22 The Hon'ble Member from Tripura stated that he appreciated the view of the Member from Meghalaya, as there are challenges to both life and livelihood. He stated that he agreed with the Member from Uttar Pradesh that zero percent could create a bad precedent financially. He said that Member from Meghalaya pointed out rightly that reducing the rate on hand sanitizers would open a Pandora's box, with a cascading effect of demands. He stated that the recommendations of the Fitment committee were very judicious and with a lot of pragmatism of saving lives as well as augmenting revenue. He stated revenue was required to function, especially as the spending has gone up, particularly social sector spending. He welcomed the proposal of the Fitment committee.

15.23 The Hon'ble Member from Haryana stated that the date of the ending of the exemptions should be extended to end of July, 2021 or end of August, 2021 as the second wave has very high numbers. He thanked the Hon'ble Chairperson for expeditiously giving exemptions for imports under both heads, for personal and for private purposes. He stated that exemptions should be looked at for Indian purchases as well. He said that the medicines required are changing from time to time, and that getting the Council to notify medicines would take longer time, and that a blanket list should be created for every COVID related goods which comes under a notification of the Ministry of health and family

welfare. All such medicines should be automatically converted to 5% slab. Essential equipment which are needed for COVID or for creating facilities related to COVID should have a slab below 5%, similar to suggestions made by other Members.

15.24 The Hon'ble Member from Manipur stated that most States, particularly small States face the need to have money, at the same the time, he said that the materials needed to fight COVID 19 must be available at cheap rates, for the common people as well as the State Governments. He welcomed the proposed reductions and stated that ventilator and hand sanitizers are important for fighting COVID, and that the rate recommended for both these items was on the higher side. He stated that he would like to see that the rates on both these items was brought down to 5%, so that they can be used extensively. He stated that on the proposal by Sikkim that items such as pharmaceutical sector should not be touched, as that was the area which would make available all medicines to fight COVID. He stated that if we impose COVID cess on these sectors, it would defeat the goal of making available COVID 19 related items cheaply. He stated that if we are to levy this cess, it should be on items unrelated to COVID 19. He reiterated that the GST on ventilators and hand sanitizers should be modified.

15.25 The Hon'ble Member from Uttarakhand stated that he was in favour of zero rating COVID medicines and equipment.

15.26 The Hon'ble Member from Tamil Nadu stated that India stands unique in the centralization of taxation powers, direct and indirect. He referred to the promise of GST in buoyancy of taxes and the growth of GDP, with the risks being the loss of autonomy of the States. Some of the risks have materialized and many benefits have not. He stated that there was some lack of clarifications on the structural aspects. A lot of data was contained in the GSTN which was not being provided to the States. He said that the Finance commission has not considered ratio of taxes originated in the allocation of the divisible pool, and that there was an increasing trend away from the high GDP States to the low GDP states. He stated that some small States have asked for special consideration due to their small size, and it could not be such that they are considered as small States in some cases, and treated as equal in other cases. He stated that in the case of zero rating, there was a divide between those States which rely less on Central revenue share, which want a zero-rating regime, and those States where 70 to 90 percent come from Central revenue, who want the revenues of the Centre to be protected. He stated that this was a classic case of conflict of interest, and that this was another reason to question one State one vote model. He stated that his written speech may be treated as read.

15.27 The Hon'ble Chairperson stated that the speech of the Member from Tamil Nadu, being first time member, may be circulated. She stated that the GST council meeting is sacrosanct and that the Council discusses important matters in an open and free manner. She stated that all the Council Members can speak to the media after the meeting. However, keeping the spirit of the Council, she appealed to the Council Members to maintain the confidentiality during the course of the meeting. Otherwise, it would lead to a situation when Members would be cautious and guarded in their interventions.

15.28 The Secretary stated that in reference to the statements of the Hon'ble Member from Delhi, oxygen cylinders have already been included in the ad hoc exemption, and will be included in the new exemptions which are a part 11(i)A of the agenda. He proposed exemption on goods imported on purchase for donation would cover cases where donation was made to Central Government, State Government or to any relief agency on the recommendation of State nodal authority. As regards vaccines, he stated that the vaccines are either purchased by the Centre, the States or by private hospitals. When they are purchased by the Centre or the State, the Centre or the State pays tax on them, and the tax comes back to the Centre and State. Even in calculation, almost an equal amount was

coming back to the Centre and the State. In reference to private hospital, the end price was not fixed, so that the benefit was not being passed onto the consumer, and that it would lead to more profits for the hospital. He said that ventilators are purchased by institutions and not individual. In cases where they are purchased by government hospitals, the same logic as that of vaccines applies, and where they are purchased by private hospitals, the benefit will not be passed on to the final patient. Further, he stated that as soon as concessions are given for hand sanitizers, similar demands will be raised for goods like soaps, and that opens a Pandora's box. He stated that similarly RTPCR machines and genome sequencing kits are used by institutions, and whatever was used by institutions, reduction has not been recommended by the Fitment Committee, which has representations from 9 states. He said that for vaccines imported from abroad, and which will be distributed free of cost to the people, these are already included in the ad hoc exemption and they would attract no duty. He requested the Chair to suggest a view on the extension for concessions given, as unanimously all Members were suggesting such extension. He suggested that the concessions be extended till August 31, 2021, and that power to extend it further, based on the prevailing conditions may be delegated to the Hon'ble Union Finance Minister, which will be brought to the Council meeting after that.

15.29 Before this include what was said by the chair on maintain confidentiality. The Hon'ble Member from West Bengal stated that the confidentiality element of the Council must be continued, as it would allow for free discussions. He stated that the matter needs to be decided based on humanitarian ground. He suggested that the mechanism adopted for merchant exporters may be extended here, where a tax of 0.1% may be levied. This can be done with the indication that this was only being done for the special situation faced due to the pandemic. The 0.1% given to merchant exporters did not require a change in the statutes, even though he felt that zero rating may be the right approach to take.

15.30 Upon resumption of meeting, after a short break, the Secretary stated that the Hon'ble Member from West Bengal had requested to clarify the decisions regarding this Agenda. Accordingly, the Secretary stated that regarding the Agenda Item No.11(i), people who want to purchase and want to give free to the people of India through the State or through the Centre or through the agencies which would be agreed to by States and so communicated to the Customs, they would be allowed all the exemptions. Whatever items were earlier allowed under the ad hoc exemption, the same would also be available under this particular exemption.

15.31 On the oxygen concentrator specifically, a view was taken, subject to the Hon'ble Supreme Court decision, to bring down the rate 12% to 5% whether it was purchased domestically or purchased from outside the country or whether it was gifted by someone. As far as drugs are concerned, a view has been taken that medical grade oxygen, oxygen concentrator, pulse oximeter and COVID test kits will be taxable at reduced rate from 12% to 5%. The applicable rate was mentioned till 31st July but now all these benefits shall be available till 31st August with the delegation to the Union Finance Minister that at any stage, if further extension was required and the GST Council meeting was not scheduled soon, she may extend that date.

15.32 Regarding the item No. 11(ii), there is a tablet 'Diethylcarbamazine' which is used for Lymphatic Filariasis and it is distributed through WHO; its rate shall be brought down from 12% to 5%. Re-import of goods sent abroad for repair attract IGST on the value addition only. However, Tribunal has interpreted that IGST does not apply to such value. Proposal was to clarify this. The concessional rate of 12% shall be applicable on laterals and parts of sprinkles and drip irrigation systems which fall under the heading 8424. However, other items which do not fall under the heading 8424, would attract the IGST rates which is applicable to the particular commodity. As far as toy balloons are concerned, their classification falls under 9503 and the GST exemption notification would be amended accordingly.

15.33 Agenda item No.11(iii) on services- the decision was to clarify that supply of services to an educational institution including Anganwadis by way of catering including mid-day meals sponsored by the Centre, State or UTs was exempted from GST. The service provided by National Board of Education or similar central or State Board for entrance examination to educational institution and inputs relating are exempted. On the construction of house, the special circumstances have been explained in detail under which the ITC would be admissible; the MRO facility which was given for the airlines, similar facility was proposed to be given for the ship repair; the guarantee of loan by State or Centre does not attract IGST; it was also being clarified that the annuity paid as deferred payment for construction of roads/highways was not exempted from GST as the tolls or annuity in lieu of tolls are. Similarly, regarding the supply of composite service of milling and fortification of wheat flour under PDS and the services which are taken by the wheat flour mills, it was being clarified that it would be exempt if the value addition by way of goods was less than 25%, otherwise they would be taxed at 5% if provided to a registered person, including a person registered for TDS purposes. There are certain other issues for clarification like GST on construction of rope when provided to Government entities.

15.34 There are certain things which have not been agreed by the Fitment committee, IRDA asking for exemptions by providing services to intermediaries which was not agreed as much as they are being allowed to the insurance companies. It has not been agreed to exempt the service provided by Recruitment Agencies to Indian emigrants. So, there were some items of similar nature. The Council accepted all the recommendations made by the Fitment Committee on services as listed in Agenda Item No. 11(iii). Regarding the item 11 (iv) which was the High Court directions for zero rating of oxygen concentrator. There are two Court judgments one was on the Oxygen concentrator which are already explained and on assistive devices on which Hon'ble court said that it should be brought down to zero. On assistive devices it has been agreed to retain GST at 5%. Further, items No.11 (v) was on the ice cream for the composition scheme, which was mentioned by JS (TRU) in his presentation, it has been suggested that rather than just examining the ice cream, the Fitment committee would actually examine all such commodities where the value addition was very large and give a consolidated recommendation. So, these are the decisions that have been taken for items in agenda No.11.

15.35 The Hon'ble Member from West Bengal Stated that there was nothing on the tax rates on ventilator, hand sanitizer and temperature checking devices. He stated that he made a proposal for zero rating and modified that by saying that it may be considered at 0.1%. He stated that he would humbly like to register his dissent as even the tax rate of 0.1 % proposed by him was not being considered.

15.36 The Secretary reiterated that if the benefit was given to the ventilators, it was the intermediary who was given the concession and it does not reach the final consumer. Suppose, a private hospital takes the ventilator and a concession was given to it, it was not necessary that the benefit will be passed on to the patient, as it will be very difficult for the hospital to calculate the proportionate benefit. On the other hand, if ventilators are purchased by the State government or the central government, the taxes are paid by the State government and central government and the taxes also come back to the State government and central government.

15.37 The Hon'ble Member from West Bengal stated that his humble dissension was on the principle that the council must look at either zero rating or 0.1%. On which item the said zero rating or 0.1% shall be applicable can be discussed. Also, there will be a kind of public pressure on the COVID control items, so, they will be forced to pass on the benefit.

15.38 The Hon'ble Member from Punjab disagreed with this logic that by reduction of the tax, the manufacturer or the dealers or the hospital would stand to benefit. There was an Anti- Profiteering Authority and the benefit of the tax must be passed on to the consumer, otherwise, there could be

prosecution. Further, in the last few years, the concessions have been given to the restaurants, hotels, so on and so forth and they are being passed on to the consumers.

15.39 The Hon'ble Member from Delhi stated that there are small hospitals and if they are benefitted, it shall be good as they are partners in fight against COVID. And since it was for a small time and therefore, either zero rating or nil tax can be considered as 5% was high considering the COVID pandemic situation.

15.40 The Hon'ble Member from Chhattisgarh stated that he was not in agreement with the points raised by the Secretary. If GST was taken, it was very clear that as per the Finance Commission, 42% goes back to the State, still 29% of the State revenue was being transferred to the Central Government. It was another issue whether or not to give, those are the humanitarian grounds.

15.41 The Secretary explained that even considering that two-thirds of the vaccines are being provided by the State and one-third by the Centre. Let us take vaccine value as Rs. 100, then the tax would be Rs. 5, this was being paid by the Centre out of which a little more than three and a half goes to the State. On two-third which mean Rs. 200 for the vaccine, Rs. 10 was paid by the States, out of which Rs.3 goes to the Centre and Rs.7 go back to the State. So, seven plus three and a half, 10.5 to the States and 4.5 to the Centre. It was almost a zero- sum game. There may be some difference between State A, State B and State C and similarly, the things that are purchased in the health sector, there are a lot of things that are purchased by the Centre which are also being provided to the States and to the Central Government institutions for which the taxes are completely paid by the Centre.

15.42 The Hon'ble Member from Kerala stated that in this pandemic situation, maximum benefits should be extended to the people by both the Centre and the State. The Secretary discussed about the hospital and ventilators that, if they purchased the ventilators, benefits will not be passed on to the common people but oxygen concentrators, oximeters, COVID testing kit, other laboratory materials are being purchased by people for personal use also. So, if the cost was coming down, it will be very good and this benefit was not for an unlimited period but for the next three months only. He further suggested for zero rating 0.1% or 1%.

15.43 The Hon'ble Member from Rajasthan stated that if the reduced rates on COVID related items are not considered their dissent may be noted.

15.44 The Hon'ble Chairperson responded that the Central government has supplied vaccines to states free of cost for people above 60 years. The Central government was supplying free vaccine to people above 45+ through Government hospitals. She stated that it may be noted that both the Centre and States are making all out efforts continuously to provide relief to the people in COVID pandemic times.

15.45 The Hon'ble Member from Tamil Nadu stated that at this point anyway, we are all constrained in our ability to source material. He stated that the discussion for reduction was not between 28% and 0% but only between 5% and 0% /1% which was relatively small number in the scheme of the government of India or even for that matter, the government of the States.

15.46 The Secretary stated that the zero rating was available only in a few exceptional circumstances as has been discussed in the officers meeting also. If the zero rating was expanded today, there are certain implications for the future. This was the reason for the suggestion of the Fitment Committee which has about nine or ten States and the States had in their own wisdom supported that view.

15.47 The Hon'ble Chairperson invited the MoS to say a few words. Further, she suggested that a

Group of Ministers(GoM) be formed on this issue. This was a very important issue on which lot of members have written, some Chief Ministers have written letters to the Prime Minister, some senior members are speaking about it in detail after they have applied their mind. Group of Ministers (GoM) can come back quickly within 10 days with its recommendation. The Council will take a call accordingly on the rates and also on the items on which that would be applied whether it was 0 or 0.1 percent, let the group of ministers take a call. She hoped that based on suggestions of the GOM, there will be a decision to which all will agree.

15.48 The Hon'ble MOS stated that PPE kits, masks and ventilators are being manufactured in the country and have been given to the States under the PM CARES Fund. The vaccines have been distributed free of cost by the Centre for benefit of the country. He elaborated the COVID relief measure and that Centre and State should be together in this fight against the pandemic.

15.49 The Secretary stated that the GoM can be formed immediately and pending the recommendations of the GoM and a decision on it, the reduction of rates as recommended by the Fitment Committee can be implemented. However, if deeper cuts in tax rates are required, the same can be considered after the GoM submits its report.

15.50 The Hon'ble Member from Gujarat suggested that till the time, the GoM submits its report; the rate reduction as proposed by the Fitment Committee can be implemented so the benefit of the reduced rates can be given to the people and the relevant notifications should be issued immediately.

15.51 The Hon'ble Member from West Bengal stated that the tax reduction benefit should be implemented in integrated manner only after the GoM submits the report. Otherwise, his dissent sticks.

15.52 The Hon'ble Member from Punjab suggested that GoM may meet immediately and submit its report on Tuesday.

15.53 The Hon'ble Member from West Bengal stated that even with a GoM, the result cannot be predicted. He very earnestly requests that if it cannot be made zero rated because it requires an ordinance, at least the Council may consider 0.1%. He further stated that 18% on hand sanitizer was very high and also on N95 mask and ventilators. He stated that if tax relief was given, it will be passed on due to competitive market forces.

15.54 The Hon'ble Member from Goa stated that there have been instances in the past when the benefit of reduced rates was not passed on like in the case of restaurants when rates were reduced from 18% to 5% with no ITC. There was no guarantee that if the rates are reduced to 0.1% or zero, the benefit will be passed on to the end consumer, that is, the patient. Further, in case of sanitizers, if rates are reduced, soaps will also be affected. It will lead to a cascading effect on what has been decided earlier in the GST council. So, the Council may go by the recommendations of the Fitment committee. Also, the matter can be decided by the GoM.

15.55 The Hon'ble Member from Chattisgarh stated that GoM can give their opinion to the Council and the decision should be taken.

15.56 The Hon'ble Member from UP stated that in the present circumstances, formation of GoM was the most appropriate way to find a way out. It has been the tradition of this GST Council that the decisions have been taken with the common consensus. Therefore, considering all the circumstances, the decision of formation of GoM was appropriate and that the report can be submitted in 1 week instead of 10 days.

15.57 The Hon'ble Member from Meghalaya agreed with the proposal of setting up a GoM. He agreed with Gujarat to implement the reduction of tax rates now. Also the GoM was being empowered

to give suggestions on how further to help the people in the future. That would send a positive message that we have taken the first step and as the Council moves forward, the GoM will come out with better suggestions, let the GoM improve on the suggestions that has been decided today.

15.58 The Hon'ble Member from West Bengal stated that he has reluctantly accepted the decision of formation of GoM but he cannot walk further to accept the proposal to implement the reduction in tax rates immediately.

15.59 The Hon'ble Member from Himachal Pradesh stated he completely agrees with the views of the Secretary, Member from Gujarat and Meghalaya.

15.60 The Hon'ble Chairperson stated that going by the sense of the House, she can say that the Council will implement what the Fitment committee and the Secretary have brought on board today, except the GST rate on individual items as mentioned in the table in part B of Agenda 11(i), and also say that, the GoM will look into the whole thing and come back within 10 days but she wanted to give weight to the principle which the Council have held very sacred that talk with everybody and go along with everybody's views. She stated that she would rather go with forming a GoM and let the GoM come with its recommendations before the 8th of June and move on from there. The suggestion of West Bengal, Kerala, Tamil Nadu and Punjab regarding zero rating or 0.1%, would be considered by the GoM. She suggested that a GoM route was the course which can give some positive outcome and the formation of the GoM may be done at the earliest.

15.61 The Hon'ble Member from Bihar stated that on the Agenda 11(i)(A), there was a consensus and it can be passed.

15.62 The Secretary clarified that this (GoM) was only for items in Agenda 11 (i)(B) and not for 11(i)(A). All other items in agenda 11, as proposed in the agenda note and as agreed and recommended by Council would be valid and implemented.

11(iv): Issues placed before the Council in pursuance of directions of the Court - GST rates on assistive devices

15.63 The Secretary requested JS(TRU), Convener, Fitment Committee to apprise the Council about the issue. The Convener, Fitment Committee made a presentation on the issue. He stated that this agenda note was regarding the applicable GST rate on the supplies relating to disability aids and equipment used by persons with disability, consequent to the Order dated 26-10-2020 of Hon'ble Supreme Court of India in the matter of Nipun Malhotra Vs. Union of India [Writ Petition (Civil) No.725 of 2017]. The gist of the issue covered under this Agenda Item was as follows:

15.64 Under GST regime, a concessional rate of 5% has been prescribed on goods used by the persons with disability [vide S.No. 256 and 257 of the Schedule I of notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017]. These items are being subjected to the concessional rate of 5% in order to allow the suppliers of these to avail the Input Tax Credit (ITC) and get the refund of accumulated ITC on account of inverted duty structure. In case, these goods were to be exempted, the suppliers of the said goods would not be allowed to avail the ITC and the tax paid by such suppliers on the inputs would become a part of the cost of the final supplies to consumers.

15.65 On receipt of some representations from trade and individuals the issue of taxation of the goods used by the persons with disability was discussed in the 14th GST Council held on 18th and 19th May, 2017 wherein it was discussed that the said items may not be exempted because in that case these items will not be eligible for ITC. Subsequently, the request to exempt GST on assistive devices has considered by the Council in its meetings held on 11th June, 2017, 22nd December, 2018, and 20th

September, 2019 and it has been decided not to change the tax rate on such devices so as to enable refund of accumulated input tax credit to the manufacturers. Therefore, it was a conscious decision of the GST Council to keep these items in 5% GST bracket.

15.66 Subsequently, a Writ Petition (Civil) No. 725/2017 was filed by Shri Nipun Malhotra challenging the imposition of 5% GST on assistive devices for the disabled inter alia on the grounds that the imposed GST has the effect of dividing the society amongst the disabled and the able by placing a tax burden on the disabled. This levy violates fundamental right, was at deviation from international practice. Accordingly, it has been pleaded that said tax violated the Fundamental Rights of the disabled.

15.67 The issues raised by the petitioner in his petition was examined in detail and a counter affidavit was filed by the Union Government in the matter. It was apprised by the Union Government to the Hon'ble Court that the extent and rate of taxation was an executive function. If the competence of the legislature stands established, the quantum of tax, conditions of taxation form a part of competence of the legislature. The levy of GST at the lowest rate of 5% was defended on the ground that 5% GST rate enable manufacturer to utilize input tax credit and in case of overflow take refund thereof. Exemption would break ITC chain and thus create blockage of ITC. The GST law does not allow refund of accumulated ITC on exempted goods for domestic consumption. Hon'ble Court was also apprised of international practices which vary from country to country. A few impose GST at lower rates while other exempt and a few zero rate certain supplies for physically handicap. Learned Attorney General appeared on behalf of Union of India.

15.68 Hon'ble Supreme Court in its Order dated 26.10.2020 in the present case has made GST Council as a necessary party in the matter. The Court has further directed the petitioner to file a representation to the GST Council seeking the abolishment of the levy of 5% GST on the goods used by the persons with disability.

15.69 Subsequently, the petitioner has filed a representation dated 25th November, 2020 seeking abolition of the 5% GST imposed on the items used by the persons with disability. The copy of the representation dated 25-11-2020 was placed for consideration of the Council as Volume-4 of the detailed Agenda Notes.

15.70 The representation was examined and issue was discussed in the Fitment Committee and the Committee observed that, tax policy in general and indirect tax concessions in particular, do not appear to be the right instrument to provide relief in the instant case. Indirect tax concessions, especially full exemptions, usually result in duty inversions that blocks input tax credits which may lead to increase in costs of the goods required by the beneficiaries. Besides, a minimum level of GST helps in encouraging domestic manufacturing of these items thereby reducing the dependence on international market for these crucial goods. Committee also felt that zero rating for domestic consumption was not permissible in law. As such, the goods are at lower rate slab of 5% and this rate has been consciously recommended by the Council. This tax does not impinge on the fundamental right. In fact, the council has consciously kept the GST rate on these items at low rate of 5%. The Committee also noted that there are many schemes which are being run by the Department of Empowerment of Persons with Disabilities (Divyangjan) to empower persons with disabilities (list was attached as 'Annexure-I' to the Agenda Item). Therefore, the Fitment Committee was of the opinion that, instead of tax policy, support through public expenditure, especially in the form of direct subsidy to the beneficiaries and disabled friendly infrastructure creation, was the most effective policy option to provide assistance and relief to the persons with disabilities.

15.71 The Council looked into the Hon'ble Court order dated 26.10.2020 and the petitioners'

representation dated 25.11.2020. It was also noticed that the issue was discussed in GST Council in its meetings held on 11th June, 2017, 22nd December, 2018, and 20th September, 2019 and it had been decided not to change the tax rate on such devices to enable refund of accumulated input tax credit to the manufacturers. In view of Hon'ble Supreme Courts directions, the issue was placed before the Council and the Council approved the continuation of present rate structure i.e. 5% on assistive devices.

Agenda Item 11(v): Issues placed before the Council in pursuance of directions of the Court - Exclusion of ice cream from composition levy

15.72 The Secretary requested JS(TRU) to apprise the Council about the issue. The Convener, Fitment Committee stated that this agenda note was regarding the direction of Hon'ble High Court of Delhi in the matter of Writ Petition No. 5252/2019, M/s Del Small Ice Cream Manufacturers Welfare's Association Vs. Union of India wherein petitioner had challenged exclusion of Ice Cream from the ambit of composition levy under section 10 of the CGST Act. Hon'ble Court after consideration of issue has directed that matter be placed before Council for a re-look by the Council. The gist of the issue covered under this Agenda Item was as follows:

15.73 The composition levy covers all goods except those notified by the Government under section 10(2)(e) of CGST Act 2017. The exclusions from Composition Scheme were deliberated in the GST Council in the 17th Meeting held on 18.06.2017 as per Agenda Item 3. After due deliberations above, the Council recommended that the manufacturers of Ice Cream and other edible ice, whether or not containing cocoa, manufacturers of Pan Masala and Tobacco products need to be excluded from the composition levy. Exclusion of ice cream was made on the grounds that major input for ice cream was milk which was exempt from GST, therefore allowing composition levy on ice cream will lead to significant loss of tax revenue.

15.74 Writ Petition (Civil) No. 5252/2019 was filed by M/s Del Small Ice Cream Manufacturers Welfare Association challenging the exclusion of ice cream from the composition levy under Section 10(2)(e) of the CGST Act 2017 inter alia on the grounds that the reasoning for exclusion of ice cream was fallacious as ice cream does comprise of large number of other components on which GST was levied.

15.75 Further, the petitioner also contended that the GST Council, in exercise of powers under Section 10(2)(e) of the Act has clubbed ice cream with pan masala and tobacco which are sin goods very unlike ice cream.

15.76 The Hon'ble Court in its Order dated 09.02.2021 in the present case, has made the following observations:

- i. A reading of Section 10(2)(e) of the Act shows that no parameters, whatever, on the anvil of which the respondent No.2 GST council may recommend for notification, any goods from the benefit of Section 10(1) of the Act, have been prescribed.
- ii. On the perusal of minutes of 16th and 17th GST Council meeting, the Hon'ble Court has enquired whether any study has been done by the respondent No.2 GST Council, of the tax effect of extending benefit of Section 10(1) to small scale manufactures of other similar goods and services. The perusal of minutes also shows that the reason as emanating from the 17th meeting viz. of the taxation effect, on benefit of Section 10(1) being permitted to be given to ice cream, being enormous.

15.77 The Hon'ble Delhi High court has passed following directions in the present WP vide order dated 09.02.2021: -

“22. Only direction which can be issued in this petition is, to direct the respondent no. 2 GST Council to reconsider the exclusion of small scale manufacturers of ice cream from the benefit of Section 10(1) of the Act, including on the aforesaid two parameters i.e. the components used in the ice cream and the GST payable thereon and other similar goods having similar tax effect continuing enjoy the benefit. We direct accordingly.

23. The respondent no. 2 GST Council to take up the aforesaid aspect in its next meeting and to take a decision thereon at the earliest, keeping in view that the ice cream season has just begun, and preferably within three months of today.”

15.78 Accordingly, the copy of the Order dated 09-02-2021 was placed for consideration of the Council in **Volume-4** of the Detailed Agenda Notes. Consequent to this order by Hon’ble High Court, the two issues were under consideration were as under:

- a) The components used in the ice cream and the GST payable thereon.
- b) Other similar goods having similar tax effect continuing enjoy the benefit.

15.79 As regards the components used in the ice cream and the GST payable thereon, as per the standard for ice cream, kulfi, chocolate ice cream, etc. issued under Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011, Ice-Cream, Kulfi, Chocolate Ice Cream or Softy Ice-Cream means the frozen milk (product conforming to the composition specified in entry (i) of sub-item (c) of item 2 (of the said regulations), obtained by freezing a pasteurized mix prepared from milk or other products derived from milk, or both, with or without addition of nutritive sweeteners and other permitted non-dairy ingredients.

15.80 In case of ice cream, approximate costing calculations show that for every ice-cream manufactured of value Rs 100, Rs 54 worth of milk and cream was used which was exempt from GST which was the primary input. A detailed analysis was done by Fitment Committee as placed in the Agenda Item shows that total tax paid on inputs worth Rs 100 was Rs 4.17 which was less than 5% of the value of inputs. Hence, ice cream dealer was required to pay significant portion of his liability in cash (ITC being low).

15.81 The market size of ice cream in India was estimated to be around Rs 15000 Cr in 2019. This market was dominated by Amul and Kwality Walls (together account for 75% of the market). Other big players include Vadilal, Naturals, Havmor, Mother Dairy etc. In addition, there are few local brands that enjoy significant turnover. However, there are many small vendors operating locally who may have turnover of upto Rs. 1.5 Cr. They may have smaller share of the market but are large in numbers.

15.82. The Fitment Committee examined the issue and was prima facie of the view that exclusion of Ice Cream has been well debated in the Council. Inclusion of Ice Cream under composition scheme will have significant revenue implications as it has high value addition. Council had decided this exclusion taking relevant factors into account. Even, aerated water exclusion has been made, while it was earlier covered, w.e.f. Oct 2019 on the grounds of revenue implication. The Committee observed that even in pre-GST regime it was excluded from composition in a number of states. Under GST regime, the exclusion has been limited only to ice cream, Aerated drinks, Pan Masala and Tobacco. It also felt that there was a need for a detailed study of coverage (inclusions and exclusions) from composition scheme, particularly as regards sectors where there was significant value addition and consumption.

15.83 The Council looked into the Hon’ble Delhi High Court order dated 09.02.2021 and discussed the issue. It was noticed by the Council that for every ice-cream manufacturer milk and cream are the primary inputs (more than 50%) which are exempted from GST. Analysis of Fitment Committee also shows that total tax paid on all inputs was less than 5% of the value of inputs in ice cream

manufacturing industry. Hence, ice cream Manufacturer/dealers are required to pay significant portion of their liability in cash as ITC was very low. It was also noticed that the exclusion of Ice Cream from composition levy has significant revenue implications and the issue has been well debated in earlier Council Meetings. In view of Hon'ble High Court directions, the issue was placed before the council and the Council has approved the continuation of exclusion of ice cream from composition levy. Considering the observations of Hon'ble Court, it was also decided that Fitment Committee shall conduct a detailed study of parameters of coverage of composition scheme, particularly as regards sectors where there was significant value addition and consumption and submit the study report before GST Council Meeting.

Agenda Item No.12: Correction of Inverted Rate Structure on textiles and footwear

16.1 The Secretary requested JS (TRU) to make a presentation (**Annexure-IV**) regarding the inverted rate structure on textiles and footwear.

16.2 JS (TRU) stated that the inverted duty structure whereby the inputs attract higher rate of duty as compared to the final product, creates distortion in terms of ITC overflows, which in turn causes hardship to domestic manufacturer vis-a-vis imports. Further, domestic manufacturers get refund accumulated ITC on inputs goods only. Refund of accumulated ITC on input services and capital goods are not allowed. Inversion in GST rate has impacted investment decisions, led to litigations, and created a need for giving refunds, which in itself entails efforts on parts of taxpayers. The refund was estimated to be Rs 25,000 cr. on this account and was likely to increase every year. Detailed presentations were made on this issue in the 39th and the 40th meeting, wherein four items representing the basket of the inverted rate structure items (involving higher inversion and refund) were discussed. Out of the four items, the Council has already taken decisions on mobile phones and its parts, and rate of these items were revised from 12 to 18 percent to correct inversion in rates. On the other items, the Council has taken a view that on these items, while in principle, correction of inversion was required but now was not the right time because of the prevailing situation.

16.3. Recommendations have been received from Textile Ministry that there was a need for correcting the inverted rate structure in textiles if the potential of the sector has to be realised in India, growth has to be achieved and the industry has to be enabled to become a big player in the international market. Explaining the evolution of GST rate in textiles, it was mentioned that the inputs, namely, fibres and yarns were initially placed at 18%. Subsequently, yarn was shifted to 12% to correct inversion to an extent. However, fabrics and ready-made garments/made-up continue at 5%. (RMG/ made-ups of value upto Rs 1000). Input services (other than job-work) and capital goods are mostly at 18%. Dyeing service was at 12%. Hence, the inversion in rates. Recommendations have also been received from an IMG consisting of Textiles Ministry, NitiAyog and Dept. of Commerce to immediately correct the inversion. He also mentioned the other distortions and consequences of inverted rates in textiles, including its implication to investment decisions.

16.4 On footwear, it was mentioned that 5% rate covers more than 70% of the segment. This causes an inversion whereby refund involvement in a year was Rs 2000 Crore. In footwear, the inputs and chemicals and adhesive are at 18% so also the soles, natural or synthetic rubber, elastic polymer, all are at 18%. Only some kind of leather are at 5%, industrial textile was at 12%, input services and capital goods also attract GST of 18%. Overall industry data and inputs figure reveals that there was an inversion of about at least 6% in footwear which means that rate actually should be at around 11-12 % to correct the inversion at minimum.

16.5 JS (TRU) informed the Council that the recommendation of Fitment Committee after due examination was that dual rate for same commodity may not be appropriate and therefore, ideally there

should be single rate of footwear which was 18% but, if it was not possible to take those items which are at 5% to 18% because of various other considerations, then the footwear which are having retail sale price upto Rs 1000 per pair could be taken to 12%, so that inversion in footwear was corrected. He also briefly mentioned the other items which are suffering inversion in GST rates.

16.6 The Secretary stated that this matter has been discussed by the Council earlier also. He sought the guidance of the Council and stated that the same along with the issue of compensation cess was also discussed in the officers meeting and as of now, the compensation Cess was available till June, 2022.

16.7 The Hon'ble Member from West Bengal stated that he has received representations from across the country, from associations from Gujarat & Maharashtra as also from the national association which relates to garments, ready-mades and cotton in particular. He agreed with the proposal that there was a need to correct the inverted duty structure. But as per the representations from the apex bodies of the garment manufacturers who had in fact earlier asked for correction in inverted duty structure from Gujarat as well as Maharashtra, have now requested not to change the inverted duty structure in the middle of Covid pandemic. He stated in principle, he was in agreement that the inverted duty structure was to be corrected but not at this time. As was well known, the job loss was now 5.6 Crore or more, 14.4% job loss among those who were already working are not new people looking for jobs. He requested that all inverted duty structure corrections on all these items may be held back though he has only received representations from the garment and apparel manufacturers and cottons like dhotis and all kinds of chadars and mundus from the South, etc. He stated that the Council should not act on it right now in the middle of the Covid crisis. He further stated that the position of the Council regarding the Covid related issues may be given. In the earlier GST meetings, wherever possible the decisions were taken in the GST Council. He requested the Chair to inform them of the decision regarding Covid issues based on the multiple positions taken by the members in the House.

16.8 The Hon'ble Chairperson explained that the attempt to bring the agenda for correction in inversion was done each time consciously without taking a position on it because it was felt that it should be left to the Council to take a call as to when they want to do anything on correction. She stated that the agenda was brought to the Council last time too when Council met physically in Delhi and even at that time, a call was taken by the Council that it may not have been the appropriate time except agreeing to correct rate structure on the mobile phones. In principle, the Council was in favor of correcting inversion in rates at an opportune time. The issue of inverted rate structure has been raised by the members time and again, therefore this agenda has been placed before the Council for taking a view. She observed that Dr. Amit Mitra has raised a very valid point that this may not be the right time.

16.9 The Hon'ble Member from Punjab stated that the Fitment Committee very rightly recognized that there was no rationale for differential tax rates today on the basis of value as far as footwear was concerned and this also creates opportunities for tax evasion. So, Punjab was of the view that there was a need to align tax rates uniformly for all footwear and, if 70% of the footwear was of the value of 5% today, why not align rates uniformly, may be at 12% and do a classification-based value. Punjab does not support changes in tax rates in bits and pieces. The time has come and maybe in the next three to six months, there was a need to go in for a comprehensive review of GST rates and exemptions and at that stage, rate on footwear may also be aligned and as Hon'ble member from West Bengal said this is not at all the time to hike tax rates when people are hardly buying footwear to get out of their homes. Some amount of prior consultation should take place in this regard. He mentioned that he has heard about an agitation somewhere in Gujarat and as far as possible tax must be collected at the early stage of the chain from large manufacturers of fiber and yarn so that downstream industry finds little incentive to evade taxes. He stated that he does not see much rationale to treat natural fibers and yarn differently

from others. He further stated that, what is relevant is the tax rates on fabrics and garments. He further urged that the entire chain be kept at a uniform rate to avoid this type of tax evasion. He suggested doing a comprehensive review of all the rates, all the exemptions and maybe giving the Council three to six months to do so. He stressed upon the stake holder consultation at least in textiles, or otherwise, there may be an agitation.

16.10 The Hon'ble Member from U.P. stated that this issue has already come to the meeting before also many a times and the Council has deferred it many times. He submitted that the decision on the agenda should be made in this meeting. He stated that the proposal that has come from the Fitment Committee is justified even if this is made applicable from a later date, its execution or implementation should be done from January, 2022 or from a thereafter date.

16.11 The Hon'ble Member from Kerala supported the argument and stated that it was not a proper time to increase the rates now because naturally the price increase will affect the customers. Also, due to this economic recession, this agenda needs to be deferred further.

16.12 The Hon'ble Member from Gujarat also stated that this was not the right time because of Corona due to which the condition of the markets, the factories, producers and business was not good. In view of that, no changes should be made now. When good times will prevail then it should be considered. Textile, which was a huge industry of Gujarat, gives employment to lakhs of people, so no decision should be taken on this right now. He proposed that the present tax slab should be continued.

16.13 The Hon'ble Member from Odisha stated that in textiles there are two sectors-one was power loom and another one was handloom and the effect on each of these sectors should be explained and whether handloom was adversely affected with this decision, be made known. If handloom sector was not impacted, they do not have any issue in this regard. Otherwise, their repeated demand was that the existing tax rate of 5% of handlooms should be reduced.

16.14 The Hon'ble Chairperson appreciated the concerns of the Members of the Council. The view that emerged as also getting the sense of the Council she thought it appropriate to postpone the decision on the agenda. However, regarding the specific question raised by Odisha that textile has to be looked at in two compartments- the handloom and power loom, she fully agreed to the point and assured the department shall get the details and share it with all Hon'ble members so that the Council has better information whenever they have to take a call on the issue.

Agenda Item 13: Applicability of Goods and Services Tax on Extra Neutral Alcohol (ENA)

17.1 The Secretary to the Council stated that the issue of applicability of GST on Extra Neutral Alcohol (ENA) has already been discussed in the earlier GST Council Meetings and various Supreme Court Judgments and the advice of learned Attorney General has also been discussed but no decision has been taken. He then invited JS (TRU) to make a presentation (Annexure-IV) on this issue for seeking the guidance of the council in the matter.

17.2 JS (TRU) stated that while denatured alcohol was taxable at 18% GST, however, there have been divergent views regarding GST on ENA used for manufacturing of alcoholic liquor for human consumption. This matter was listed before the GST Council earlier. This issue has been raised because ENA or rectified spirit as it is sold, is not directly consumed by human beings but it is used as an input for manufacturing. So the issue arises that whether the taxing entry in state covers ENA. In earlier discussions the GST Council took a decision to maintain status quo. In between legal opinion of Learned Attorney General was also sought and the opinion so received was placed before the Council. The arguments to keep ENA outside GST were based on (i) the decision of the Hon'ble Supreme Court in case of Bihar Distillery, and (ii) in the previous regime, the States were collecting VAT on ENA.

However, learned Attorney General clearly opined that ENA is an input for the manufacture of alcoholic beverages for human consumption. It is an industrial item and therefore, it would be covered under GST and it was also highlighted in his opinion that the Bihar Distillery judgment has been overruled by other larger benches of the Supreme Court. Essentially, the opinion of Learned Attorney General was based on these judgments of Supreme Court in the case of Deccan Sugar & Abkari Company Ltd, the Supreme Court categorically held that State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category, the State legislature cannot impose any excise duty on rectified spirit or ENA. The Ld. AG also relied on the judgment in the case of Synthetic Chemicals Vs. State of UP wherein it was held that by common standards, ethyl alcohol (which had 95 per cent strength) was an industrial alcohol and was not fit for human consumption. This was placed before the GST Council in its 26th Meeting and then again in the 37th meeting.

17.3 JS(TRU) further submitted that there has been lack of clarity as a result of which divergent practices are now being followed by the manufacturers/suppliers and this was leading to a situation where some distillers are paying GST on it, some are paying VAT on it whereas others are paying State excise duty. There are also instances where distillers are neither paying VAT nor State excise duty. In some cases, they have gone to Courts to take advantage of the situation as the issue does not have clarity. These kinds of divergent practices have implications on the Revenue. Since Supreme Court clearly held that it was an industrial input and not an item used for human consumption and hence was not covered by the State list for taxation. Therefore, this needs to be resolved quickly based on the clear pronouncement of Supreme Court. Therefore, the matter was placed before the Council to take a view on this so that confusion, which was pending for last 3 years in status quo mode without having been finalized, can be resolved.

17.4 The Hon'ble Member from Andhra Pradesh stated that this issue has been in discussion since the 20th GST Council Meeting and Andhra Pradesh has been involved in the discussions from the beginning. ENA is generally of two types. One is denatured and other is un-denatured. So, there was clear distinction between denatured and un-denatured. Denatured was where some sort of chemical was added in various forms so that it was not fit for human consumption and only fit for chemical use. Un-denatured is the ENA which is used for human consumption. Here, now with regard to the jurisdiction and power to tax between GST and Sates, two issues have been taken. One was the 3-bench judgment of Supreme Court where it says the State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under the category of State list, it cannot impose any excise duty. Second was the opinion of the learned Attorney General that the judgment of court in Bihar Distillery doesn't denude the Centre & State of the powers to levy GST on ENA that is used to manufacture alcoholic liquor for human consumption. Here, actually the genesis and the origin point of Bihar Distillery case was as per opinion of Learned Attorney General in paragraph 4. It was of different nature and doesn't truly reflect on the jurisdiction of taxation. It was only about a particular case where particular Distillery manufacturing ethanol -whether the State government had complete jurisdiction over them or not but not specifically on taxation aspect. Herein, while referring to the opinion of the learned Attorney General in Para 5 of his opinion, he says that the 3 Judge bench was constituted where State can levy excise duty only on potable liquor fit for human consumption and as rectified spirit, etc. If we refer to the final paragraph of the Attorney General's opinion, it says alcoholic liquor for human consumption. There was big difference. One was fit for human consumption and one was alcoholic liquor for human consumption. Therefore, looking at the entries of 7th Schedule, list II, Entry No. 51 clearly says Alcoholic Liquor for Human consumption. Whereas entry No. 25 of GST says either alcohol or other spirits denatured of any strength. So, here clearly in the GST Entry No 25, it says the power to tax lies on the ethyl alcohol and other spirits denatured of any strength. Therefore, there was

very clear difference between fit for human consumption and alcoholic liquor for human consumption. Where sometimes when they actually look at by error or otherwise the important word “fit” has actually been left over and the criteria used for jurisdiction over the taxation authority was actually either in the constitution or in the GST list, it was basically usage. So, when originally it was intended to give power to the States to tax alcohol for human consumption, then it was not correctly represented in the opinion of the Learned Attorney General. At the same time, the authority of the State to tax after the GST’s implementation has drastically come down. Further, in many States, excise was one area where States have some sort of leverage and some sort of authority and power to tax to suit the need of the state requirement. This has been very clearly mentioned in the 15th Finance Commission recently that whereas the resources to the Union was about 62.7% & the States is 37.3%, the expenditure of the Union is 37.6% & the States 62.4%. This was almost exactly opposite to the resources & expenditure. Similarly, looking at the share of States taxes by devolution approx. after cesses and surcharges has been sizably increased the Centre’s gross tax revenue has increased because cess and surcharge increased from 2.3% in 1980-81 to almost 15% in 2019-20. While the State’s share has gone up from 28% in 2012-13 to 32%, devolution and cesses surcharges rose from 9% in 2012-13 to 17% by 2019-20. In 2012-13, cesses and surcharges were to the tune of Rs 91,700 Crore which in 2019-20 RE, was as high as Rs. 3,37,433 Crore. Here again, big one was petroleum. Whereas in April, 2017, cess& surcharge on petrol was Rs 21.48, it increased to Rs 32 and similarly on diesel from Rs 17.33 to Rs 31.83. Because of the surcharge on Income Tax, corporation tax and also on petroleum products, the amount of money that was coming to the State has reduced. The surcharges out of the cesses & surcharge from IT companies, IT others & special additional duties of Excise on Motor spirits, it was almost on 2020-21 RE, which was about 1.60 Lac Crores that was almost the size of the entire compensation cess. In such a situation, it becomes imperative for the states to put before the GST Council the request & opinion to consider this particular issue of anything to do with the alcohol for human consumption to be completely within the authorities of the State because of the limited options in the State. One was VAT on petroleum & one was Excise. Moreover, excise policy is extremely state specific. Dual taxation on any product such as alcohol for human consumption not only brings the price of the product up, it also creates a lot of confusion which needs to be put an end to this. It is from almost 20th GST Council meeting, the issue has been under discussion. As entry No. 25, the GST Council has the authority for Ethyl Alcohol & Spirits de-natured. Here, we are talking about de-natured alcohol& the same thing is listed in the Constitution, in IInd list, 7th Schedule, Item No. 51 which is for human consumption. The Learned Attorney General has opined that word ‘fit’ makes the entire difference. Therefore, the state of Andhra Pradesh puts before the Hon’ble Members of the Council to completely let only the States to have the authority for taxation on alcohol for human consumption.

17.5 The Hon’ble Member from Odisha submitted that this matter was not discussed earlier in the Council. Only Andhra Pradesh had put their grievances on the issue and it was deferred. He stated that it is a state specific subject and the Council cannot impose GST on it because at the time of discussion and understanding on GST in the beginning, it was settled between the States and the Union that the petroleum products & alcoholic products will be retained by the State. He further submitted that State was not a party in the Supreme Court decision. One case can’t be adopted in other case and in this case, the decision was passed ex- parte. Most states are not party to the decision, so it was not binding and as Andhra Pradesh said that on entry number 25 i.e. denatured spirit, they don’t have any objection. Denatured spirit is under GST and ENA is only material for making Alcohol. He stated that ENA is a raw material for making alcohol but no second product can be made from ENA. As one can make any product from denatured spirit so Odisha doesn’t have any objection if GST was imposed on denatured spirit. The states have power to impose tax on alcohol and petroleum only. He submitted before the Council that status quo be maintained and issue can be discussed further. He suggested filing review petition before the Supreme Court as it was an ex-parte order. He submitted before the Council that

status quo may be maintained on levy of VAT by the State on ENA when sold for production of alcoholic liquor for human consumption only.

17.6 The Hon'ble Member from Arunachal Pradesh stated that Arunachal Pradesh has an area of more than 83000 square kms. It was sparsely populated. He stated that every village has to be taken care of irrespective of the number of houses in it. There was no PMGSY especially in small villages and they have to take care with provisions of roads, schools and hospitals. So, the State has a lot of difficulty in managing them with whatever their finances are. Being a part of this welfare government, they have to take care of all the areas along with people who live in our frontier areas. Their government has decided that in border area, a modern village will be built as people do not have a permanent residence in that area. So, they want to build modern villages under the project in that area which was adjacent to the international border. He stated that this type of project requires a lot of financial resources. He stated that whatever comes under central scheme was earmarked for a specific scheme. Further, their forest revenue has also reduced a lot due to the judgment of the Supreme Court. Their main finance comes from power sector, geology mining and water supply. Only a small amount of finance comes from their tax revenue. He stated that whatever little tax revenue that comes to them from ENA will go into GST, then Arunachal Pradesh will face even more difficulty in terms of finances. It was requested that ENA be allowed to remain under the control of States.

17.7 The Hon'ble Member from Rajasthan stated that this decision was taken in the 20th meeting of GST and then in the 37th meeting that status quo be maintained until the final decision of the council was made. He stated that it has been the opinion of Rajasthan in the past that if production of potable liquor was for sale, excise and VAT should be levied and if the production was for industrial use, then GST can be applied on it and on that, the industry will also get the benefit of ITC. He stated that their request was that VAT was very important for revenue as the economic condition of the states was not good and there has been a tremendous loss of revenue. He stated that there was 18% loss of revenue in Rajasthan and requested that the Council should allow it and keep the excise and VAT applicable on selling the ENA potable liquor. He stated that Rajasthan does not have any problem to implement GST on this item for industrial use.

17.8 The Hon'ble Member from Goa stated that this issue about ENA was hanging on for quite some time from earlier council meetings. There was always going to be resistance from the States on this issue because they will lose revenue. He stated that one has to take a decision considering the Supreme Court Ruling as well as the opinion of the Learned Attorney General in this matter. He suggested for constitution of a GoM for this matter and after due deliberations by the GoM along with their recommendations, this matter should come to the council within a limit time to have finality. Otherwise, this issue will continue to remain because there was the case of ENA which was not for human consumption and one which leads to human consumption because it was converted into different types of whisky and other alcoholic drinks.

17.9 The Hon'ble Member from Kerala stated that this was a serious issue. He stated that the ENA was generally used for making Liquor. Generally, denatured alcohol only was covered under GST while the two items alcohol & petroleum are the only ones left with the States. Therefore, irrespective of technical details or whatever things legal experts are saying, Council has to look into real issue faced by the States. He further said that as far as Kerala was concerned they are getting the revenue from this and if this new change was implemented, it will affect all the states very seriously. He stated that Kerala was getting 95% ENA from other states and then ENA was diluted to make liquor. So, the revenue of the States will be affected in a big way. He further stated that if the Council was forming a GoM and it adversely affects the rights of the state, then also it will be difficult. He emphasized that harmonious relationship between Centre and the States was important. He strongly recommended that the earlier

position on ENA should continue and it should be dealt under states subject.

17.10 The Hon'ble Member from Uttar Pradesh submitted that ENA has more than 95 percent of its content as alcohol and of these more than ninety percent was used for making liquor. The states have very limited resources anyway, given the limited sources of income. The nature of this was such that it was mostly used for making liquor. Since the GST came into existence, five things were excluded from it and alcohol was one of the excluded items. He submitted that in view of the limited source of income of the states, it should be kept with the state itself. It should be kept out of GST because as its nature was that 95 percent content was alcoholic and it comes under the category of alcohol and it should remain with the states. He submitted that the demand of the whole house was that it should be kept in the domain of the States without going into more legal issues, it should be kept in the State's domain and GST should not be applicable on it.

17.11 The Hon'ble Member from West Bengal, referring to his letter dated 09.03.2018 stated that ENA was used for alcohol and small portion of it was used for industrial purpose. So, the industrial purpose ENA comes under GST and the potable liquor whose raw material comes from ENA must remain with States. He submitted that the Council has gone into depth of the matter and he thinks that there was no dispute on this as evident from the sense of the house that this must remain with the State as one of its sources of Revenue.

17.12 The Hon'ble Member from Telangana stated that he fully agrees with Andhra Pradesh Minister on the issue. He stated that only two subjects are left with states after GST that was excise on alcohol & Petroleum. He stated that the devolution to the states was coming down year on year. He submitted to defer this as this was the state subject and in practice also ENA was diluted normally before it can be used for human consumption. He sincerely requested that as almost all the Ministers /States are requesting the Hon'ble Chairperson that this subject be kept with the States.

17.13 The Hon'ble Member from Punjab stated that what was more relevant than what Hon'ble Court has said and opinion of Hon'ble Attorney General was that how the Council wishes to define this term. He stated that GST Constitutional bill was introduced in 2014 and Council had to take into account the popular understanding of the issue and the true scope of ENA. He stated that the Central Government surely believes that it was not excisable and left the entry blank in the Central Excise Tariff and States were levying VAT or Excise. He stated that in the interest of time and gravity of the issue, he agrees with the rest of the states that ENA should be kept out of GST.

17.14 The Hon'ble Member from Madhya Pradesh stated that if GST was levied then the producers will not get input tax credit. Secondly, the alcohol will become more expensive under GST because VAT will also be levied by the states on manufactured liquor. He stated that present excise duty structure in Madhya Pradesh on alcohol was already high and with the increase, the problem of illicit liquor will increase and suggested that there should be no GST on ENA.

17.15 The Hon'ble Member from Tamil Nadu stated that that they are net importers of ENA and therefore, they lose if it was kept outside GST. However, in solidarity with fellow states and for state's rights, they would prefer that it was kept out of GST and left to states.

17.16 The Hon'ble Member from Karnataka stated that he concurs with other states that ENA should be with the States since the entry tax will not be applicable and therefore alcohol prices will soar up. Further it will affect the net sales and income of the state. He therefore supported that let ENA be with the States.

17.17 The Hon'ble Member from Chhattisgarh also stated that it supports that ENA be kept out of GST.

17.18 The Hon'ble Chairperson stated that in view of the comments of the States on the issue, this agenda may be deferred.

Agenda Item 14: GST Revenue Augmentation

18.1 The Secretary informed the Council that this item was discussed and the Hon'ble Member from Punjab had mentioned that we should come back with the consolidated position in the next 3 to 6 months. Accordingly, he suggested that the Fitment Committee could be expanded to have more members to be part of it because this matter will need quite a lot of work to do. The recommendation of the Fitment Committee can keep coming to the GST Council for taking decisions.

18.2 The Hon'ble Member from Punjab suggested that there should be one meeting to discuss this matter post July, 2022 and not just revenue augmentation should be the part of this but the post 2022, how would states like Punjab grapple with their deficits and how they will move forward. He stated that there was a need to put mind and experience of all members for which the Council can call a special meeting just on this issue.

18.3 The Hon'ble Chairperson agreed with Punjab that this was an issue not just for Punjab but for all the members and stressed upon that there was a need to understand how we are going to pan out the finances post July,2022. She suggested, like it was done for the compensation issue last time, sometime within the next quarter, there can be a Council meeting on this one agenda. She further stated that we can have one agenda meeting on July, 2022 and after, where revenue can be discussed and how we plan to take it further. She responded to Punjab that she will definitely have one completely dedicated session for it at the earliest.

Agenda Item 15: Decisions/recommendations of the 14th meeting of IT Grievance Redressal Committee for the information of the Council along with an agenda for the decision of the Council

19.1 The Secretary stated that the 14th meeting of the IT Grievance Redressal Committee (ITGRC) was held on 4th March, 2021 to resolve grievance of the taxpayers arising out of technical problems faced by them on GSTN portal in relation to filing of TRAN-1, TRAN-2 and migration to GST along with a case of non-technical nature.

19.2 The agenda for the 14th ITGRC meeting had total 66 cases pertaining to TRAN- 1/Tran-2/migration comprising 43 Nodal officer cases, 22 court cases (including one migration case of M/s Guru Shoes Components) and 1 non-technical case of M/s Veliath Steel Agencies.

19.3 Recommendations of the ITGRC

- (i) The ITGRC had recommended the 5 court cases of TRAN-1 falling under category A1 and 1 case of TRAN-2 falling under category A1. The migration case of M/s Guru Shoes components and non-technical issue case of M/s Veliath Steel Industries had also been recommended. In absence of any technical glitch the ITGRC had not recommended 14 cases of TRAN-1 falling under categories B1/B3, and 1 case of TRAN-2 falling under the category B. For the nodal officers' cases, the committee had recommended that 16 cases falling under category A1 out of 43 cases merit acceptance and remaining 27 cases falling under category B1, B2, B3, B4, B8 were not recommended as no technical glitch was noticed by the GSTN in these cases on technical analysis. The Committee approved on merit 24 cases of TRAN- 1/TRAN-2 including the 6 court cases, 1 migration case, 1 non-technical case and 16 nodal officers' cases subject to placing before the GST council. The ITGRC was of the view that they meet the requirements for considering the cases and fall in the four walls, however, as the due date of 31.08.2020 was

already over, the same be placed before the GST council for their view and recommendations. It was observed that the nodal officers had received these 16 cases falling in category A before 31.8.2020.

- (ii) The ITGRC had recommended that the past cases once decided by the ITGRC and approved by the GST Council shall not be reopened.

19.4 GSTN requested for clarity as to whether the cases still pending with nodal officers are to be taken up by GSTN for processing as the last date for submitting the declaration electronically has lapsed on 31.08.2020. GSTN also requested for clarity whether the nodal officer should stop accepting fresh application from taxpayer in TRAN-1 and TRAN-2 cases. GSTN has informed vide mail dated 19.5.2021 that 4 cases have been received by it from nodal officers as per Annexure C to the Agenda Item. The date of receipt of these cases by the nodal officers was prior to 31.8.2020.

19.5. The Committee had further sought the final decision from GST Council about the further agenda of the ITGRC and whether the cases received after/ before due date by nodal officers and which are still lying with the Nodal Officers or with GSTN, should be considered at all or not by the ITGRC.

19.5 The recommendations of ITGRC as per Minutes of the 14th ITGRC Meeting in Annexure A were placed for information of the Council along with request for its decision/ directions regarding cases recommended by ITGRC and also in respect of the clarity sought by ITGRC as mentioned above.

19.6 The Council took note of the decisions/recommendations of the 14th Meeting of the ITGRC and (a) approved the 24 cases recommended by the ITGRC. Further, (b) Council noted that the due date was over on 31.08.20 and it was presumed that by this time which was nine months from the due date, the nodal officers would have sent all the cases and the option can therefore be closed and the 4 cases still remaining with GSTN as indicated above can be taken up.

Agenda Item 15 A: Minutes/Detailed reasons in respect of 26 cases approved in principle and 78 cases rejected (total 104) in the 42nd meeting of the GST council pertaining to 13th ITGRC

20.1 The Secretary stated that the 13th meeting of the ITGRC was held on 01.09.2020 to resolve grievances of the taxpayers arising out of technical problems in filing TRAN-1, TRAN-2 and migration cases. In the meeting, out of the 104 cases presented by GSTN, 26 cases were falling under category A where technical glitches were found and they were recommended and 78 cases falling under category B where technical glitches were not found were rejected by the ITGRC. Accordingly, in the Agenda for the 42nd GST Council meeting, it was mentioned that there were 26 cases which have been recommended by the 13th ITGRC meeting and the same along with other issues were placed before GST Council for recommendation. The GST Council gave in-principle approval for opening up the portal for these 26 cases. The Minutes along with the list of the recommended 26 cases and 78 not-recommended cases along with the detailed reasoning was placed before the GST Council as Annexure-A, 1,2 and 3 to the Agenda Item.

20.2 The Council took note of the decisions/recommendations of the 13th Meeting of the ITGRC.

Agenda Item 16 – Review of revenue position under Goods and Services Tax

21.1 The Secretary introduced the Agenda Item and asked the Joint Secretary, DoR to give a presentation (Annexure-V). The Joint Secretary, DoR submitted monthly gross GST collections from October 2020 to April 2021 and stated that the GST revenues have seen a positive trend in last few months and reached ₹1.4 lakh crore by April 2021. He also submitted the figures of IGST collected, refunded and settled / apportioned during the FY (2020-21). He also submitted the figures of Compensation Cess collected since implementation of GST w.e.f. 01.07.2017 till April 2021 and the

compensation released. He submitted the State-wise details of gap between the protected revenue and the post settlement gross SGST revenue (including ad-hoc settlement) for FY 2020-21 as compared to FY 2019- 20. He also submitted the trend in return filing in FORM GSTR-3B till due date and till date for return periods upto April, 2020. He concluded by saying that as the effect of COVID pandemic subsides and the economic activity normalizes, some impact on GST revenues might be seen in the coming months.

21.2 The GST Council took note of revenue position under the Goods and Services Tax.

Agenda Item 17-Issues related to GST Compensation Cess

22.1 The Secretary introduced the Agenda Item and asked the Joint Secretary, DoR to give a presentation. Joint Secretary, DoR stated that consequent to the discussions in the 42nd meeting of the Council held on 5th & 12th October 2020, for the FY 2020-21, the Government of India raised Rs.1.1 lakh crore of debt and passed it on as loan to the States on a back-to- back basis with an average interest rate of 4.85%.

22.2. It was submitted to the Council that if a view was taken to extend the same arrangement as last FY 2021-22 on the same principles for the current financial year 2021-22 also, the estimated amount calculated based on the normative growth of 7% on the revenues of FY 2019-20, that would have to be borrowed and passed on to the States as loan on a back- to-back basis would be Rs.1,58,267 crores as shown in the detailed Agenda Notes.

22.3. It was further explained that if the projected monthly gross GST Revenue collection during FY 2021-22 was taken as Rs. 1.1 lakh crore, the actual gap would be about Rs. 1.5 lakh crores and if the projected monthly gross GST Revenue collection during FY 2021-22 was Rs. 1.15 lakh crore, the actual gap would be about Rs. 1.25 lakh crore.

22.4. It may be recalled that the GST Council in its 42nd meeting approved the proposal to extend the levy of compensation cess beyond June 2022 till the entire shortfall is covered. It was further submitted to the Council that the compensation cess amount collected during the FY 2021-22 would be released in accordance with the provisions of the GST (Compensation to States) Act 2017. The decision on the borrowing, the exact amount and the timing would be taken based on the above principles in consultation with the Reserve Bank of India, Department of Economic Affairs, Department of Expenditure and the States.

22.5. The Hon'ble Member from Madhya Pradesh requested that just like last year, compensation may be transferred through back-to-back loan arrangement. He also requested that it was not proper to assume growth rate of revenues to be more than 6%.

22.6. Hon'ble Member from West Bengal stated that they did a study and found that for the period April 2020-January 2021, the revenue collection growth had been -3%. The assumption of Government of India was 7% growth but because of COVID pandemic, the growth rate in revenue fell down to -3% and hence, the difference is 10%. As per the calculations done by West Bengal, the compensation needed for the States for the period April 2020 to January 2021 is Rs 63,489 crore. He requested that they would be very eased if the amount of compensation to the State is given as a grant. Secondly, as against the Central Government's calculated borrowing of Rs 1,58,267 crores, they have done their calculations and found that the gap to be funded through borrowing in 2021-22 will be Rs 2,13,000 crores. The detailed calculations done by them would be sent to the Secretary to the Council. The Hon'ble Chairperson requested the Hon'ble Member from West Bengal to send their paper with the detailed calculations.

22.7. Hon'ble Member from Rajasthan stated that for the period from April 2020 to May 2021, in Rajasthan, a fall of 80% was observed in collections of State Excise, Stamp Duty, Registration fee, SGST etc. In FY 2020-21, the GST compensation of Rs 4,604 crore was shown as a loan which should have been shown as a grant and has requested that this figure should be shown as a grant. He also requested that for the FY 2021-22, a compensation of Rs 4635 was owed to the State of Rajasthan. He also requested that the levy of compensation cess may be extended for five more years beyond July 2022.

22.8. Hon'ble Member from Karnataka requested that the Hon'ble Chairperson may like to continue the same format as last year. He stated that the dues for Karnataka are around Rs 11,000 crore and they should be made good during the current year. He stated that the issue of compensation entitlement to States, which will end in 2022, needs to be discussed in detail. He also requested that the loan may be treated as a grant and the change of account heads as a special case needs to be taken up and addressed with State AG so that their State finances will not be affected because it being considered as a public debt.

22.9. The Hon'ble Member from Tamil Nadu stated that the second wave of COVID was on them and they have a very correlated pro-cyclical risk and its worth thinking bit more deeply on managing this risk. The States require more compensation. He was sure that the Hon'ble Chairperson would do that at the right time.

22.10. The Hon'ble Member from Kerala stated that the growth rate was assumed to be 7% but practically, there was a negative growth. He requested for a further five-year period extension for levy of cess. He also requested that the arrears of compensation to Kerala State of an amount of Rs 4,077 cr. may be paid to them immediately.

22.11. The Hon'ble Member from Punjab reminded that while disbursing the borrowings of Rs.1.1 lakh crores given as back to back loan to the States, it was agreed by the Centre (as given in Option-1 of Agenda Item No.9A of 42nd meeting of the Council) that the interest on the borrowing would be paid from the compensation cess until the end of the transition period and the principle and the interest would also be paid from the proceeds of the compensation cess by extending the cess beyond the transition period of upto July 2022 for such period as may be required. He stated that for the sake of comparison the total amount would come close to Rs 2.2 lakh crore as against Rs 1 lakh crore estimated by the Government of India.

22.12. The Hon'ble Member from Goa stated that under Special Borrowing Scheme, Goa had got only Rs 840 crores and requested for disbursement of the balance pending amount of around Rs 840 crores. Just like the request of Sikkim would go to a GoM for decision, he reiterated that there would be avenues where smaller States like Goa may be permitted.

22.13. The Hon'ble Member from Chhattisgarh stated that there was a gap between the protected revenue for 2020-21 and the actual revenue. The system that worked went against the assurance given to all the States that there would be a 14% protected revenue assurance. For the FY 2021-22, Chhattisgarh's shortfall would be Rs 3779.86 crores. He requested that the borrowings should be to that extent since the borrowings would not be a loan on Government of India and it would be serviced by the extended cess fund account. This must be protected and the States must be assured that they would get their protected revenue from 2021 onwards. Extension of the cess levy beyond five years is a given and as Hon'ble Chairperson had allowed, it would be discussed in the next meeting.

22.14. The Hon'ble Member from Jharkhand requested for the compensation as per the promised 14% protected revenue figures. For FY 2020-21, due to shortfall resulting from COVID, Rs 1,516

crores is owed to State of Jharkhand and this may be immediately paid to Jharkhand. He supported the views of the Hon'ble Member from West Bengal and stated that it would be proper to transfer the compensation amount as a grant and not as a loan. He also suggested that the compensation to States may be extended for further five years (from 2022 to 2027)

22.15. The Hon'ble Member from Telangana requested the Hon'ble Chairperson to increase the limit under FRBM Act for the States from 3% to 5% in FY 2021-22 as it was done in the last year. He also requested the Hon'ble Chairperson to settle the pending IGST amount by releasing Rs 218 crores to Telangana State. He also requested that this FY 2021-22, full compensation to States may be extended.

22.16. The Hon'ble Member from Gujarat stated that just as the Council decided to give the compensation, he requested that another decision may be taken to increase compensation amount for this FY 2021-22 to Gujarat. He also requested for devising a mechanism through RBI or otherwise so that all States can get a loan for the next five years and the compensation may also continue.

22.17. The Hon'ble Member from Odisha informed that they had received a loan of Rs 3,822 crores through back-to-back arrangement last year. Rs 3,580 crores of compensation was still outstanding for Odisha. He requested Hon'ble Chairperson to continue this back-to-back loan arrangement in the ensuing FY.

22.18. The Joint Secretary, DoR clarified that 7% was not the estimated growth rate but was a normative growth rate that was assumed. As far as arrears were concerned, it was discussed in the past that they will have to be liquidated from cess which had been extended beyond 2022.

22.19. The Secretary stated that the downfall in GST revenue this year may not be as much as last year. He anticipated that more than 7% increase over last year might be achieved as was presented by JS, DoR. He explained that borrowings of States is covered under Article 293 of the Constitution and they also have to consult the RBI and his colleagues in Ministry of Finance. He would request the Expenditure Secretary to separately write to the States giving the exact amount they would be eligible for. He would look for consent from the Hon'ble Members before they go ahead in case RBI and others agree on the said borrowing program. He concluded by saying that he would initiate negotiations on Rs 1.58 lakh crores with his colleagues and also with RBI for a back-to-back borrowing.

Agenda Item 18 – Information Agenda on constitution of two new GoMs

23.1 The Secretary introduced the Agenda Item and stated that it was decided in the 42nd meeting of the GST Council that certain issues that were discussed earlier should be referred to GoM constituted for the purpose. One set of issues pertains to special composition scheme and capacity-based levy in certain evasion prone sectors along with other revenue augmentation measures like reverse charge on mentha oil. The second set of issues pertains to valuation of services provided in casinos, race courses and online gaming centres and issues related to these sectors. Accordingly, two GoMs were constituted vide OMs dated 24.05.2021 outlining the constitution and the Terms of Reference of these GoMs. This agenda was placed for the information and perusal of the GST Council.

23.2. The Hon'ble Member from Uttar Pradesh stated that the OM No. S-31011/12/2021- DIR(NC)-DOR dated 24-05-2021 for constitution of the GoM on 'capacity based taxation and special composition scheme in certain sectors on GST' stated that the GoM shall submit its recommendations to the Council within six months. He requested that the term may be reduced to three months for quicker decision making. The Hon'ble Chairperson agreed to this request.

22.3. The Hon'ble Member from Telangana requested that the State of Telangana may be made a

member in the GoM on 'Casinos, Race Courses and Online Gaming' since they had a race course issue. The Hon'ble Chairperson agreed to this request.

22.4. The GST Council took note of the constitution of the GoM on capacity based taxation and special composition scheme in certain sectors on GST and the GoM on Casinos, Race Courses and Online Gaming. The Hon'ble Chairperson agreed to the request of UP for reducing the time period for the GoM on 'capacity based taxation and special composition scheme in certain sectors on GST' to three months. The Hon'ble Chairperson agreed to the request of Telangana to make Telangana also a member of the GoM on 'Casinos, Race Courses and Online Gaming'.

23. The Meeting ended with a vote of thanks to the Chair.

Annexure-1**List of Hon'ble Ministers who have attended the 43rd GST Council Meeting on 28th May 2021**

S.No.	Centre/State	Name of Hon'ble Minister	Charge
1	Govt of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Finance Minister
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Smt. Ajanta Neog	Finance Minister
6	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
7	Chattisgarh	Shri T S Singh Deo	Minister for Commercial Tax
8	Delhi	Shri Manish Sisodia	Deputy Chief Minister
9	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
10	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
11	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
12	Himachal Pradesh	Shri Bikram Singh	Minister for Industries
13	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Lieutenant Governor
14	Jharkhand	Dr. Rameshwar Oraon	Minister for Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
15	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs, Law & Parliamentary Affairs
16	Kerala	Shri K.N. Balagopal	Minister for Finance
17	Madhya Pradesh	Shri Jagdish Devda	Minister for Finance & Planning, Commercial Tax and Statistics
18	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister
19	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister

20	Meghalaya	Shri Conrad K. Sangma	Chief Minister
21	Mizoram	Shri Lalchamliana	Minister for Taxation, Home, Disaster Management & Rehabilitation
22	Nagaland	Shri Metsubo Jamir	Minister for Rural Development
23	Odisha	Shri Niranjana Pujari	Minister, Finance & Excise
24	Punjab	Shri Manpreet Singh Badal	Finance Minister
25	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development & Housing, Law and Legal Affairs and Parliamentary Affairs,
26	Sikkim	Shri B.S. Panth	Minister for Tourism & Industries
27	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resource Management
28	Telangana	Shri T. Harish Rao	Finance Minister
29	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
30	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs, Medical Education
31	Uttarakhand	Shri Subodh Uniyal	Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
32	West Bengal	Dr. Amit Mitra	Finance Minister

List of Officials who have attended 43rd GST Council Meeting on 28.05.2021			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri Sandeep M. Bhatnagar	Member (Customs), CBIC
5	Govt. of India	Shri Om Prakash Dadhich	Member(Investigaton), CBIC
6	Govt. of India	Shri Vivek Johri	Member (GST & Tax Policy),CBIC
7	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
8	GSTN	Shri Manish Kumar Sinha	Officiating CEO & Executive Vice President
9	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU , DoR
10	Govt. of India	Shri Sanjay Mangal	Commissioner, GST Policy Wing , CBIC
11	GST Council	Shri S.K. Rahman	Joint Secretary
12	GST Council	Smt. Ashima Bansal	Joint Secretary
13	Govt. of India	Shri S S Nakul	PS to Finance Minister
14	Govt. of India	Shri Binod Kumar	PS to MoS (Finance)
15	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
16	GST Council	Shri Kshitendra Verma	Director
17	Govt. of India	Shri Amaresh Kumar	Addl. Comm., GST Policy Wing
18	Govt. of India	Shri Pramod Kumar	Director, TRU
19	GST Council	Shri Arjun Meena	Joint Commissioner
20	Govt of India	Shri Rakesh Dahiya	OSD, TRU-II, CBIC
21	Govt of India	Shri Gaurav Singh	Deputy Secretary (TRU)

22	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
23	Govt of India	Dr. Vikash Shukla	Media Advisor to Revenue Secretary
24	Govt of India	Shri J.S. Kandhari	Deputy Secretary, TRU-1
25	Govt of India	Shri Dibyalok	OSD, TRU
26	Govt of India	Shri Shashikant Mehta	TO, TRU
27	Govt of India	Ms. Neha Yadav	Deputy Commissioner, GST Policy Wing
28	Govt of India	Shri Rajiv Ranjan	Under Secretary, TRU-1
29	GST Council	Shri Krishna Koundinya	Under Secretary
30	GST Council	Shri Naveen Agrawal	Under Secretary
31	GST Council	Shri Karan Choudhary	Under Secretary
32	GST Council	Shri Joginder Singh Mor	Under Secretary
33	GST Council	Shri Adesh Nayak	Superintendednt
34	GST Council	Shri Abhishek Kumar	Superintendednt
35	GST Council	Shri Manoj Kumar	Superintendednt
36	GST Council	Shri Krishan Kumar Verma	Superintendednt
37	GST Council	Shri Rakesh Joshi	Inspector
38	GST Council	Shri Vijay Malik	Inspector
39	Andhra Pradesh	Dr Rajath Bhargava	Special Chief Secretary, Revenue Department
40	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner of State Tax
41	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Special Chief Secretary, Revenue
42	Andhra Pradesh	Shri K. Ravishankar	Commissioner State Tax GST (FAC)
43	Andhra Pradesh	Shri J. V. M Sarma	Joint Commissioner State Tax, GST
44	Arunachal Pradesh	Shri Kanki Darang	Commissioner
45	Arunachal Pradesh	Shri Tapas Dutta	SNO (GST)

46	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
47	Assam	Md. Shakeel Saadullah	Additional Commissioner of State Tax
48	Bihar	Dr Pratima	Commissioner cum Secretary ,Commercial Taxes
49	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
50	Chandigarh	Shri Mandip Singh Brar	Excise & Taxation Commissioner
51	Chandigarh	Shri Rakesh Kumar Popli	Additional Excise & Taxation Commissioner,
52	Chhattisgarh	Gaurav Dwivedi	Principal Secretary, Commercial Tax
53	Chhattisgarh	Ms. Ranu Sahu	Commissioner of State Tax
54	Delhi	Shri Sandeep Kumar	Secretary, Finance
55	Delhi	Shri Ankur Garg	Commissioner, GST
56	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
57	Goa	Shri Hemant Kumar	Commissioner, State Tax
58	Goa	Shru Sarita Gadgil	Additional Commissioner of State Tax-I
59	Goa	Shri Ashok Rane	Additional Commissioner of State Tax-II
60	Gujarat	Shri Pankaj Joshi	Additional Chief Secretary, Finance
61	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
62	Gujarat	Shri Milind Torawane	Secretary (Economic Affairs), Finance Department
63	Gujarat	Shri Dilip Thaker	Deputy Secretary(Tax),Finance Department,
64	Gujarat	Shri Riddhesh Raval	Deputy Commissioner, State Tax
65	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation
66	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
67	Haryana	Siddarth Jain	Additional Excise & Taxation Commissioner
68	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
69	Himachal Pradesh	Sh. Rohan Chand Thakur	Commissioner of State Taxes and Excise

70	Himachal Pradesh	Shri Rakesh Sharma,	Addl. Commissioner of State Taxes and Excise
71	Jammu and Kashmir	Dr. Arun Kumar Mehta	Financial Commissioner
72	Jammu and Kashmir	Showkat Aijaz Bhat	Commissioner, State Taxes
73	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
74	Jharkhand	Ms Vandana Dadel	Principal Secretary, Commercial Tax
75	Jharkhand	Ms Akanksha Ranjan	Commissioner, Commercial Tax
76	Jharkhand	Shri Santosh Kumar Vats	Special Secretary, Commercial Tax
77	Jharkhand	Shri Brajesh Kumar	State Taxes Officer
78	Karnataka	Shri Srikar M.S.	Commissioner of Commercial Taxes
79	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary (Finance)
80	Kerala	Shri Bishwanath Sinha	Principal Secretary, Taxes
81	Kerala	Shri Anand Singh	Commissioner, State Tax
82	Kerala	Dr. Karthikeyan	Special Commissioner, State Tax
83	Kerala	Shri Abraham Renn	Additional Commissioner, State Tax
84	Madhya Pradesh	Ms Deepali Rastogi	Principal Secretary, Commercial Tax
85	Madhya Pradesh	Shri Raghendra Kumar Singh	Commissioner, Commercial Tax
86	Madhya Pradesh	Shri R.K. Sharma	Joint Commissioner, Commercial Tax
87	Maharashtra	Shri Manoj Saunik	Additional Chief Secretary, Finance
88	Maharashtra	Shri Rajgopal Devara	Principal Secretary, Financial Reforms
89	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
90	Maharashtra	Ms. Vishakha Borse,	Joint Commissioner of State Tax
91	Maharashtra	Shri Kiran Shinde	Deputy Commissioner of State Tax
92	Manipur	Shri Yumnam Indrakumar Singh	Assistant Commissioner of Taxes
93	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Excise, Registration, Taxation & Stamps

94	Meghalaya	Shri Arunkumar Khembavi	Commissioner , SGST
95	Mizoram	Shri Vanlal Chhuanga	Commissioner and Secretary
96	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
97	Mizoram	Shri Hrangthanmawia	Assistant Commissioner of Taxes
98	Nagaland	Shri Kesonyu Yhome	Secretary Finance & Commissioner of State Taxes
99	Nagaland	Shri Y Mhathung Murry	Special Commissioner of State Taxes
100	Nagaland	Shri Wochamo Odyuo	Additional Commissioner of State Taxes
101	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance
102	Odisha	Shri Sushil Kumar Lohani	Commissioner, Commercial Taxes & GST
103	Odisha	Shri N.K.Rautray	Special Secretary, Finance
104	Puducherry	Shri. Shurbir Singh	Commissioner-cum-Secretary to Govt. (Finance)
105	Puducherry	Shri. L. Kumar	Commissioner (ST), Commercial Taxes Department
106	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to Chief Minister
107	Punjab	Shri A. Venu Prashad	Additional Chief Secretary(Taxation)
108	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
109	Punjab	Shri Ravneet Khurana	Additional Commissioner (Audit)
110	Rajasthan	Shri Akhil Arora	Principal Secretary(Finance)
111	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
112	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
113	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
114	Sikkim	Shri V.B. Pathak	Additional Chief Secretary, Finance & Planning
115	Sikkim	Shri J.D. Bhutia	Commissioner, Commercial Taxes & GST
116	Tamil Nadu	Shri S.Krishnan	Additional Chief Secretary to Government
117	Telangana	Shri Somesh Kumar	Chief Secretary

118	Telangana	Smt Neetu Prasad	Commissioner of Commercial Taxes
119	Telangana	Shri N. Sai Kishore	Additional Commissioner (ST) (Legal)
120	Telangana	Smt Rupa Sowmya	Deputy Commissioner (ST) (Policy)
121	Telangana	Smt V.D.N. Sravanthi	Deputy Commissioner (ST) (Statistics)
122	Tripura	Shri J.K. Sinha	Principal Secretary, Finance
123	Tripura	Sri Apurba Roy	Secretary, Finance
124	Tripura	Dr.Vishal Kumar	Chief Commissioner of State Tax
125	Tripura	Dr. Sudip Bhowmik	Deputy Commissioner of State Tax
126	Tripura	Shri Ashish Barman	Nodal Officer GST
127	Tripura	Sri Badal Baidya	Assistant Commissioner of State Tax
128	Uttarakhand	Dr. Ahmed Iqbal	Commissioner, State Tax
129	Uttarakhand	Shri Anil Singh	Additional Commissioner, State Tax
130	Uttarakhand	Dr Sunita Pandey	Joint Commissioner, State Tax
131	Uttarakhand	Shri Ajay Kumar	Joint Commissioner, State Tax
132	Uttarakhand	Shri S S Tiruwa	Deputy Commissioner, State Tax
133	Uttar Pradesh	Shri Sanjeev Mittal	Additional Chief Secretary, State Tax
134	Uttar Pradesh	Smt Ministhy S.	Commissioner, Commercial Tax
135	Uttar Pradesh	Shri Brijesh Kumar Tripathi	Additional Commissioner(GST), Commercial Tax HQ
136	Uttar Pradesh	Shri Sunil Kumar Raj	Additional Commissioner(Vidhi) , Commercial Tax HQ
137	Uttar Pradesh	Shri Ashok Kumar Singh	Joint Commissioner, Commercial Tax HQ
138	Uttar Pradesh	Shri Manoj Tiwari	Joint Commissioner (Statistics), Commercial Tax HQ
139	Uttar Pradesh	Shri Vivek Singh	Joint Commissioner(GST), Commercial Tax HQ
140	West Bengal	Shri Manoj Pant	Principal Secretary, Finance
141	West Bengal	Shri Smarakai Mahapatra	Secretary, Finance

142	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
143	West Bengal	Rajib S. Sengupta	Senior Joint Commissioner of State Tax



Deemed Ratification of Notifications and Circulars

**Agenda 2: Deemed Ratification of Notifications,
Circulars, Orders etc.** [Vol 1- Pg. 90-95]

Act/Rules	Notification/Circular/Order Nos.	Description/Remarks
CGST Act/CGST Rules	Thirty Eight (38) Central Tax Notifications issued (from No. 73/2020 to 95/ 2020) and 1/2021 to 15/2021) & 1 Central Tax (Rate) Notification No. 5/2020 dated 16.10.2020 issued	3 amendments to CGST Rules carried out in 2020, 4 amendments to CGST Rules carried out in 2021, implementation of various decisions of GST Council/GIC and COVID relief measures; etc.
UTGST Act	Two (2) Union Territory Tax Notifications issued (01/2021 – UT dated 01.05.2021 & 05/2020 - UT(Rate) dated 16.10.2020)	For implementation of various COVID relief measures & Rate notification to exempt satellite launch services provided by ISRO, Antrix Co- Ltd and NSIL as recommended by GST Council
IGST Act	Three (3) Integrated Tax Notifications issued (06/2020 - Integrated Tax dated 15.10.2020, 01/2021 - Integrated Tax dated 01.05.2021 & 05/2020 - Integrated Tax (Rate) dated 16.10.2020)	To notify the number of HSN digits required on tax invoice & implementation of various COVID relief measures; Rate Notification to exempt satellite launch services provided by ISRO, Antrix Co. Ltd and NSIL as recommended by GST Council
Circulars	Seven (7) Circulars issued (from Circular No. 142/12/2020 dated 09.10.2020 to Circular No. 148/04/2021 dated 18.05.2021)	Clarification of issues relating to application of rule 36(4), Quarterly Return Monthly Payment Scheme, Waiver from recording of UIN on the invoices during COVID period, SOP for implementation of suspension of registrations under sub-rule (2A) of rule 21A, clarification on issues related to issuance of B2C invoices with dynamic QR code, refund related issues, SOP for implementation of extension of time limit to apply for revocation of cancellation of registration.

**Decisions of
GST Implementation Committee (GIC)
for information of the GST Council**

Agenda 3: Decisions of the GST Implementation Committee (GIC) for information of the GST Council (1/2)[Vol 1- Pg. 96-146]

- ❖ GST Implementation Committee (GIC) took various decisions during the period from 14.09.2020 to 01.05.2021.
- ❖ The important **decisions facilitating trade and industry or providing relaxations to taxpayers** are :
 - i. Notifying rules for Quarterly Return and Monthly Payment (QRMP) Scheme
 - ii. Amnesty scheme for GSTR-4 and GSTR-10 returns
 - iii. Extension of time limit under section 31 (7) for goods exported on consignment basis
 - iv. Second and third phase of Roll out of e-invoicing for the taxpayers having aggregate turnover exceeding Rs.100 crore from 1st January 2021 and exceeding Rs. 50 crore from 1st April 2021
 - v. Extension of the due date for filing of Annual Return for the FY 2019-20 from 31.12.2020 to 28.02.2021 and subsequently to 31.03.21.
 - vi. The proposal for excluding the time period between filing of refund application to issuance of Deficiency Memo for computation of 2 year time limit for filing refund under sub-section (1) of section 54.
 - vii. Relief Measures to taxpayers for various compliances in GST due to restrictions imposed in various states for containment of COVID
 - viii. GST exemption on transport of goods by air, previously valid till 30.09.2020, extended till 30.09.2021
 - ix. Extension of Duty Exemption on the imports made by the holders of Advance Authorization holders (AA) / EPCG licenses and EOU's from 31.03.2021 to 31.02.2022
 - x. To reduce IGST on oxygen concentrator imported for personal use upto 30th June 2021, from 28% to 12% to bring the rate at par with commercial imports of oxygen concentrators.

Agenda 3: Decisions of the GST Implementation Committee (GIC) for information of the GST Council (2/2) [Vol 1- Pg. 96-146]

- ❖ The important **decisions relating to compliances under GST** are :
 - i. Mandatory furnishing of HSN Code at 8-digit level in invoice and Form GSTR-1 for 32 scheduled chemicals of Chemical Weapon Convention.
 - ii. Implementation of Phase 2 of Aadhaar Authentication in Registration under GST. Aadhaar authentication for registration would be applicable for all the new applicants seeking registration through FORM REG01 (regular & composition taxpayers), except government departments, local authorities, Statutory Body and PSUs.
 - iii. Measures taken to curb the menace of fake invoices and fake dealers:
 - Amendments in CGST Rules, 2017 in provisions related to registration, provisions related to suspension & cancellation of registration and restrictions in availment / utilization of ITC [Rule 8, 9, 21, 21A, 22, 36, 59 and insertion of a new rule 86B].
 - Further, e-way bill validity has been restricted w.e.f. 01.01.2021 to one day for distances up to 200 Kms (from 100 kms per day earlier).

Summary of discussions on Agendas 9A and 9B in Officers' Meeting held on 27th May 2021

Agenda No	Issue	Status during Officers Meeting
9A(i)	Rationalization of Late Fee	Agreed..
9A(ii)	Simplification of Annual Return for Financial Year 2020-21 and related exemptions	Agreed
9A(iii)	Proposal of Amendments in the Return related provisions of the CGST Act, 2017	Agreed
9A(iv)	Proposal to exempt government departments and local bodies from the requirement to issue e-invoice	Broadly agreed. However, one view was that whether an exception should be carved out for the government in the name of reducing compliance, whereas other taxpayers are required to comply with the same provision.

Agenda No	Issue	Status during Officers Meeting
9B(i)	Late fee Amnesty Scheme	Agreed
9B(ii)	Notifying section 112 of the Finance Act, 2021 relating to retrospective amendment in section 50 of the CGST Act	Agreed
9B(iii)	Proposal for converting Quarterly return and Monthly payment (QRMP) Scheme to Quarterly return and Quarterly payment (QRQP) Scheme	<p>Concerns raised in the Officers' Meeting:</p> <ol style="list-style-type: none"> 1. Deferment of revenue for states by two months 2. Let the system for QRMP scheme be stabilized, as it is only one quarter old. 3. There may a misuse of this facility by unscrupulous elements to pass on credit through IFF on monthly basis, and not pay any tax subsequently.
9B(iv)	Directions of Hon'ble High Court of Delhi for placing the suggestions of Counsel and Amicus before GST Council for consideration for COVID related relief measures	The suggestions of Counsel and Amicus were discussed in the Officers' Meeting and the COVID related relief measures agreed/ suggested during the meeting are in Slide No. 25-27.

Recommendations of the Law Committee

Agenda 9A(i): Rationalization of Late Fee (1/2)

[Vol 2- Pg. 168-170]

Issue

- ❖ Problem faced by smaller taxpayers due to high amount of late fee for delayed filing of returns, sometimes even higher than tax liability.
- ❖ The late fee presently is Rs 20 per day (Rs 10 CGST + Rs 10 SGST) for returns with nil liability/ nil outward supply and Rs 50 per day (Rs 25 CGST + Rs 25 SGST) for others, with a capping of Rs 10,000 per return (Rs 5000 CGST + Rs 5000 SGST).
- ❖ There is a need to rationalize the late fee structure, specially for capping of late fee, by having some correlation with the turnover/ tax liability of the taxpayers.
- ❖ West Bengal raised issue of need for rationalization of late fee for delayed furnishing of return in FORM GSTR-7 by registered persons (mainly government departments) required to deduct tax at source under section 51.

Proposal:

- ❖ Late fee for delay in furnishing of FORM GSTR-3B and FORM GSTR-1 may be capped, per return, as below:
 - (i) For taxpayers having nil tax liability in GSTR-3B or nil outward supplies in GSTR-1, to be capped at Rs 500 (Rs 250 CGST + Rs 250 SGST), irrespective of the Annual Aggregate Turnover (AATO).

Agenda 9A(i): Rationalization of Late Fee (2/2)

[Vol 2- Pg. 168-170]

- (ii) For other taxpayers:
 - a. For taxpayers having AATO in preceding year upto Rs 1.5 crore, capping at a maximum of Rs 2000 (1000 CGST+1000 SGST);
 - b. For taxpayers having AATO in preceding year between Rs 1.5 crore to Rs 5 crore, capping at a maximum of Rs 5000 (2500 CGST+2500 SGST);
 - c. For taxpayers having AATO in preceding year above Rs 5 crores, capping at a maximum of Rs 10000 (5000 CGST+5000 SGST).
- ❖ For FORM GSTR-4, late fee to be capped to Rs 500 (Rs 250 CGST + Rs 250 SGST), if tax liability is nil in the return, and Rs 2000 (Rs 1000 CGST + Rs 1000 SGST) for other taxpayers, as their turnover is also upto Rs 1.5 crores.
- ❖ The late fee for delayed furnishing of FORM GSTR-7 to be rationalized as below:
 - a. Late fee to be reduced to Rs.50 per day (Rs. 25 CGST + Rs 25 SGST)
 - b. Capping at a maximum of Rs 2000 per return (Rs. 1000 CGST + Rs 1000 SGST)
- The Law Committee has recommended the above proposal to be made applicable for prospective tax periods.
- The proposal will benefit a large number of smaller taxpayers.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9A(ii): Annual Return for Financial Year 2020-21

(1/2)

[Vol 2- Pg. 171-190]

Issue:

- ❖ Through Sections 110 and 111 of the Finance Act 2021, provisions of section 35 and 44 of CGST Act are proposed to be amended, as per recommendations of GST Council in its 39th Meeting.
- ❖ As per the proposed amendments, the provisions for certification of Reconciliation Statement in FORM GSTR-9C, along with Annual Return, by chartered accountants has been done away with, replacing it with self-certification by the taxpayer.
- ❖ The said proposed amendments have been viewed very positively by trade, as it will reduce cost for them in getting certification of CAs.
- ❖ Due date for the annual return for FY 2020-21 is 31.12.2021.
- ❖ If the said provisions are notified only after all the states/ UTs get these amendments approved in their legislative assemblies, then the last date of filing annual return for FY 2020-21 may be over and the said amendment will not be applicable for Annual return for FY 2020-21.

Proposal:

- ❖ It is proposed that Section 110 and 111 of the Finance Act may be notified at the earliest (on 1.8.2021) by the Centre. The states will be required to notify the said amendments retrospectively with effect from the same date.
- ❖ This will facilitate a large number of taxpayers from this year itself.

Agenda 9A(ii): Annual Return for Financial Year 2020-21 (2/2)

[Vol 2- Pg. 171-190]

- ❖ The existing Forms GSTR 9 and GSTR 9C (notified for FY 2019-20) to be notified for Annual Return for FY 2020-21, with minimal changes required to implement the said amendment and to incorporate some tax rates in some tables..
- ❖ Rule 80 of the CGST Rules, 2017 to be amended to this effect.
- ❖ For FY 2021-22, a single revised Form for Annual Return to be designed by merging GSTR 9 and GSTR 9C, for facilitating the taxpayers and improving compliance.
- ❖ The exemption from filing annual return for FY 2020-21 may be continued as in FY 2019-20, as below:
 - i. The filing of annual return in FORM GSTR-9 to be optional for taxpayers having AATO upto Rs 2 Crore;
 - ii. The filing of annual return in FORM GSTR-9A by composition dealers to be optional;
 - iii. The threshold of AATO for filing of reconciliation statement in FORM GSTR-9C for FY 2020-21 to be kept as Rs 5 Crore.
- The proposal has been deliberated and recommended by the Law Committee.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9A(iii): Proposal of Amendments in the Return related provisions of the CGST Act, 2017
[Vol 2- Pg. 191-210]

Issue:

- ❖ In 42nd meeting, GST Council recommended that the present system of GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system.
- ❖ Law Committee has, therefore, deliberated the issue in a number of meetings.
- ❖ The Law Committee recommended amendments to return related provisions of section 37, section 38, section 39, section 41, section 42, section 43, section 43A and consequential amendments in section 16, section 29, section 34, section 47, section 49, section 52 and section 54 of CGST/ SGST Act.

Proposal:

- The above return related and consequential law amendments, recommended by the Law Committee, have also been deliberated by GIC and have been recommended on merit.
- The same are placed before the Council for approval.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9A(iv): Proposal to exempt government departments and local bodies from the requirement to issue e-invoice
[Vol 3- Pg. 10-12]

Issue:

- ❖ Reference received from Government of West Bengal to exempt Government departments and local authorities from the requirement of issuance of e-invoice for **reducing compliance burden of the said entities**.
- ❖ The impact of proposed exemption has been analysed for a sample month of December, 2020:
 - Out of total GSTINs required to issue e-invoice, number of GSTINs for government departments and local authorities constitute only 0.31%.
 - Value of B2B Supply made by such government departments and local authorities is only 1.2% of all B2B supplies.
 - ITC passed through B2B invoices by such government departments and local authorities is only 0.59% of total ITC flow.

Proposal:

- ❖ It is proposed to exempt government departments and local authorities from the requirement of issuance of e-invoice.
- ❖ Law Committee has recommended the same.

Other Proposals related to GST Law and Procedures

Agenda 9B(i): Late fee Amnesty Scheme

[Vol 2 Pg. 211-213]

Issue:

- ❖ Problem being faced by small taxpayers in filing pending GSTR-3B returns due to high accumulation of late fee on delayed filing, preventing them from filing returns.

Proposal:

- ❖ The Late Fee Amnesty Scheme may be considered for reduction of late fees for **GSTR-3B returns** for tax periods from **July, 2017 to April, 2021**: -
 - late fee to be capped to a maximum of **Rs 500/- (Rs. 250/- each for CGST & SGST) per return** for taxpayers, who did not have any tax liability for the said tax period; and
 - late fee to be capped to a maximum of **Rs 1000/- (Rs. 500/- each for CGST & SGST) per return** for other taxpayers;
- ❖ Such reduction/ capping in late fee to be kept **conditional**, and to apply only if the returns are filed during the period **from 01.06.2021 to 31.08.2021**.
- ❖ The proposal will benefit a large number of small taxpayers.
- ✓ There was an agreement on this proposal in Officers meeting held on 27th May 2021.

Agenda 9B(ii): Notifying section 112 of the Finance Act, 2021 relating to retrospective amendment in section 50 of the CGST Act [Vol 2- Pg. 213]

Issue:

- ❖ Section 50 of CGST Act has been proposed to be amended **retrospectively** w.e.f. 1.7.2017 vide section 112 of the Finance Act 2021, based on recommendation of GST Council in its 39th Meeting, for levying of **interest on net cash liability**.
- ❖ Section 50 was earlier amended prospectively and notified w.e.f 1.9.2020 to provide for interest on net cash basis through Finance (No. 2) Act 2019.
- ❖ Early notification of this retrospective amendment will help in removal of ambiguity and legal disputes on the issue and close pending cases, **thus benefitting taxpayers**.

Proposal:

- ❖ Section 112 of Finance Act, proposing retrospective amendment of Section 50, proposed to be **notified at the earliest (on 01.06.2021)** by the Centre.
- ❖ The States will also be required to notify the said amendment in section 50 retrospectively w.e.f. 1.7.2017 in their SGST Acts and therefore, there will be no ambiguity in the matter.
- ✓ **There was an agreement on this proposal in Officers meeting held on 27th May 2021.**
- ❖ Further, a **date may be decided by the Council**, by which time the **corresponding amendments in SGST Acts relating to other amendments done through the Finance Act, 2021**, may be carried out by all the States.

Agenda 9B(iii): Proposal for converting Quarterly return and Monthly payment (QRMP) Scheme to Quarterly return and Quarterly payment (QRQP) Scheme (1/2) [Vol 2- Pg. 214-216]

Issue:

- ❖ GST Council in its 42nd meeting had recommended a Quarterly Return and Monthly Payment (QRMP) Scheme for registered persons having turnover up to Rs. 5 Crore, which has been implemented with effect from 01.01.2021.
- ❖ The QRMP scheme is available to approximately 89 % of the total tax base.
 - Though there are 90,92,954 taxpayers eligible for QRMP scheme, only 35,53,400 taxpayers have opted for QRMP scheme. Therefore, **only 39% of eligible taxpayers have opted for QRMP scheme**.
 - As per trend observed during the period upto 10th May, 2021, a larger number of taxpayers are **opting out** of the QRMP scheme, in comparison to those who are opting in for the QRMP scheme.
- ❖ As per feedback, the taxpayers feel that the requirement of monthly payment of tax is akin to compliance for filing of return on monthly basis, and therefore, the scheme is not providing them the actual benefit of reduced compliance burden.
- ❖ **It is felt that if the requirement of monthly payment of tax liability during M1 and M2 of the quarter is done away with and instead, if the tax liability for the quarter is made payable through quarterly return itself, then it may address the concern of return-like compliance burden for monthly payment of tax liability during M1 and M2.**

Agenda 9B(iii): Proposal for converting quarterly return and monthly payment (QRMP) Scheme to quarterly return and quarterly payment (QRQP) scheme (2/2) [Vol 2- Pg. 214-216]

❖ Perusal of revenue data for January-March 2021 indicates that :

- The total GST collections from taxpayers, who were in QRMP scheme, during the first quarter of its operation, viz. January-March, 2021 is Rs. 14,712 Crores.
- During these three months, the total GST collection was Rs. 3,78,429 Crores
- Accordingly, on an average, the taxpayers who are under QRMP scheme are contributing about 4% of total revenue.
- It is also seen that during the first two months, i.e. January and February 2021, the revenue recovered from QRMP taxpayers was only to the extent of Rs 3919 Crores and 3868 Crores respectively only, even less than 4% of the total revenue collected for the said months.
- Therefore, converting QRMP scheme to QRQP, will only defer the collection of less than 4% of tax to the third month of the quarter. However, it will provide substantial relief to small taxpayers.

Proposal

- It is proposed that the present QRMP scheme be converted to QRQP scheme and tax be also collected on quarterly basis through quarterly return.
- In-principal approval of the GST Council is sought. Further modalities for its implementation to be worked out by the Law Committee, based on in-principal approval of the Council.

Issue arising from Directions of Hon'ble High Court

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of directions of Hon'ble Delhi High Court (1/4)[Vol 5-Pg. 11-20]

Issues:

- ❖ This Agenda note is in pursuance of the observations of Hon'ble High Court of Delhi on 25.05.2021 during the hearing of the W.P.(C) NO. 5177/2021, in the case of Anil Kumar Goel and Ors. Vs UOI and Ors.
- ❖ In view of the challenges faced by taxpayers during the second wave of COVID-19, the Government has issued Notifications no. 08/2021 to 14/2021-Central Tax, all dated 1st May, 2021, providing various relief measures for taxpayers under GST.
- ❖ The Hon'ble High Court in its order dated 25.05.2021 has directed that the suggestions of the counsels and amicus regarding timelines and other relief measures for taxpayers, be placed before the GST Council for consideration.
- ❖ Hon'ble Court has fixed the next hearing on 01.06.2021.
- ❖ The suggestions of the counsels and amicus are given in Annexure-B and Annexure-C of Agenda Note respectively.
- ❖ These suggestions were discussed in Officers Meeting on 27.05.2021 and the COVID relief measures agreed/ suggested in Officers meeting are in next slides.

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of observations of Hon'ble Delhi High Court (2/4) [Vol 5-Pg. 11-20]

Measures agreed/ suggested in Officers Meeting on 27.05.2021:

❖ **For Normal Taxpayers:**

- For registered persons having aggregate turnover above Rs. 5 Crore
Similar relaxation, as provided for March and April, 2021, may be provided for May 2021 also:
 - Interest @ 9% for first 15 days after the due date of filing return in FORM GSTR-3B for May, 2021
 - Waiver of late fee for delay in furnishing FORM GSTR-3B for May, 2021 for 15 days from the due date.
- For registered persons having aggregate turnover upto Rs. 5 Crore
 - (a) For May, 2021, the following relaxations, as provided earlier for March and April 2021, may be provided:
 - For May, 2021 (for the taxpayers opting to file monthly returns), NIL rate of interest for first 15 days from the due date of furnishing FORM GSTR-3B and @9% thereafter till further 15 days
 - Waiver of late fee for delay in furnishing FORM GSTR-3B for May 2021 (for taxpayers filing monthly returns) for 30 days from the due date.
 - Waiver of interest for 15 days for taxpayers filing delayed PMT-06 Challan (for payment of tax liability) and waiver of interest by 9% interest thereafter for 15 days further, from due date of filing PMT-06 challan for May, 2021 for QRMP taxpayers filing quarterly returns.

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of observations of Hon'ble Delhi High Court (3/4) [Vol 5-Pg. 11-20]

- (b) In addition, further relaxations in rate of interest and late fee for March and April, 2021 may be provided as below:
- **Reduction in interest:** NIL rate of interest for first 15 days from the due date of FORM GSTR-3B or for filing delayed PMT-06 Challan (for payment of tax liability), and 9% thereafter for further 45 days and 30 days for March, 2021 and April 2021 respectively, and 18% thereafter (for normal taxpayers, including those under QRMP scheme).
 - **Waiver of late fee** for delay in furnishing FORM GSTR-3B for the tax period March 2021/ QE March 2021 and April 2021 for 60 days and 45 days respectively, from the due date of furnishing FORM GSTR-3B.
- For registered persons who have opted to pay tax under the Composition scheme
- **FORM CMP-08:** NIL rate of interest for first 15 days from the due date of payment of self-assessed tax and 9% thereafter for further 45 days and 18% thereafter, for the quarter ending 31st March, 2021.
 - **FORM GSTR-04:** At present, the due date of furnishing FORM GSTR-4 for FY 2020-21 is extended to 31st May, 2021. It may be further extended to 31st July, 2021.
- ❖ For all Registered persons :
- **FORM ITC-04:** The due date of furnishing FORM ITC-04 for QE March, 2021 was 25th April. It is proposed that the same may be extended till 30th June, 2021.
 - **FORM GSTR-1/ IFF:** Due date of furnishing GSTR-1/ IFF for the month of May 2021 may be extended by 15 days.

Agenda 9B(iv): Difficulties faced by taxpayers to comply with timelines under GST due to COVID related restrictions- Matter arising out of observations of Hon'ble Delhi High Court (4/4) [Vol 5-Pg. 11-20]

- **Restriction on ITC availment under Rule 36 (4) may be applied commutatively** for the months April to June 2021 in the return for June, 2021.
 - **EVC:** FORM GSTR-3B and FORM GSTR-1 can be filed using electronic verification code (EVC) instead of digital signature certificate (DSC) by a person registered under the provisions of the Companies Act, 2013 from 27th April, 2021 to 31st August, 2021.
- ❖ Relaxations under section 168A of the CGST Act :
- **Any time limit** for completion or compliance of any action, by any authority or by any person, under the GST Act, which falls during the period from 15th April, 2021 to 29th June, 2021 (with suitable exemptions as in the notification) extended upto 30th June 2021, as far as the same is not covered by order of Hon'ble Supreme Court dated 27.04.2021, which has extended timelines till further order, for appeals and quasi-judicial proceedings.
 - **Deemed registration:** Due to difficulties faced by officers to conduct physical verifications during second wave of COVID, the time limit for various compliances for grant of registration under rule 9 of the CGST Rules, 2017, which falls during the period from the 1st May, 2021 to 30th June, 2021, be extended to 15th July, 2021.
 - **Refund orders:** Officers to be allowed time for issuance of the refund orders upto fifteen days after the receipt of reply to the notice from the registered person or 30th June, 2021, whichever is later.

Proposal:

The matter is placed before the Council for deliberation and decision in the matter.

THANK YOU

Fitment agenda on goods and services

Agenda items 11(i)/11(ii)/11(iii)

43rd Council meeting

28th May, 2021

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GST relief for Covid items

Agenda item 11 (i) -Volume 3, pages 13 to 18

12

GIST of recommendations/representations

- To expand the scope of adhoc exemption to cover imports of specified goods procured either by specified agencies (eg WHO), or by any person and donated to government or hospital/covid management facility.

- GST exemption/ rate concession on
 - Covid vaccines
 - Covid related drugs and medicine (e.g., remdesivir and its inputs)
 - Oxygen therapy equipment (concentrator, ventilator, oximeter, medical oxygen etc)
 - Other covid relief item (PPE, mask, gloves, sanitizer, modular hospitals etc)
 - Personal imports of items like oxygen concentrators

3

Discussions in the fitment Committee

- **Broad principles applied by Fitment after detailed deliberations:**
 - IGST exemption to import of relief material (even if on cost basis) for free distribution be allowed subject to conditions as are necessary.

 - As regards GST rate concession for specific items, it may be considered by way of rate reduction instead of outright exemption.
 - 5% rate is nominal and puts a small incidence. All critical pharma attract 5%. Hence a rate lower than this may not be considered.
 - The goods that are mostly purchased by Government may not require exemption as GST thereon comes back as revenue.
 - GST concession should essentially be on items purchased by patients
 - Zero rating of domestic consumption is not permissible in law.

Recommendations for consideration of Council

- Exempt any such imports from IGST, of specified goods covered by adhoc exemption, that are imported by any person (with payment), that are donated to Central or State Government or any not for profit hospital or covid management facility.
- Condition proposed are that donee acknowledges that he would be receiving such goods for free distribution and subsequent to receipt acknowledges receipt of goods (within three months of imports)- upto 30.6.2021).

This will provide a major relief.

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Recommendations for consideration of Council

On individual items:

Item	Present rate (%)	Proposed rate (%)	Fitment's view
Vaccine	5	5	It is at lowest slab along with all life saving drugs. ITC issues. Mostly, purchased by Govt. and distribute free .
Medicines	5/12	5/12	Medicine protocol changing, e.g. WHO has taken out remdesivir from protocol
Oxygen concentrator /generator	12	5	Upto 31.7.2021
Pulse Oximeter	12	5	Upto 31.7.2021
Medical grade oxygen	12	5	Upto 31.7.2021
Covid Test Kits (RT PCR kit)	12	5	Upto 31.8.2021 (as recommended by Ministry of Health)
Ventilators	12	12	Are procured by hospitals, produced sufficiently now in India and not covid specific, all medical equip are at 12%
Mask, PPE kit	5	5	Already at 5%. Produced domestically. Readily available

Recommendations for consideration of Council

- On individual items:

Item	Present rate (%)	Proposed rate (%)	Fitment's view
Intermediates like API	18	18	Pharma companies get refund for inverted rate structure. Lower rate to cause difficulty for domestic API manufacturers
Thermometers	18	18	Thermometer is a general requirement – not covid specific. Short duration concession may not provide any major relief
Ambulances	28	28	Institutional purchases. A short term concession may not provided any significant relief
Other diagnostic kit like d-dimer, il-6, LDH	12	12	These are general purpose kit
RT-PCR m/c. genome seq kit, rNA seq machine	12/18	12/18	Institutional purchase. ITC available
Modular hospital construction	18	18	Such modular hospital may not be very effective for covid relief. Exception may not be made only for such hospitals.

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WP No. 16554/2021 – Gurcharan Singh v/s Ministry of Finance

- Matter relates to exemption of IGST on personal import of oxygen concentrators as gift
- Summary of HC order dated 21.05.2021
 - exemption is available to the petitioner from IGST, on personal import of concentrator as gift, vide an entry 607A of notification 50/2017-Cus.
 - Said entry 607A provides exemption for lifesaving drugs and medicines for personal use, supplied free of cost by overseas supplier' subject to the similar condition of certification by prescribed medical authorities.
 - Hon'ble Court has also waived of the condition as being impractical and inefficacious
 - Court has stated that drugs include oxygen concentrator and therefore covered under this exemption
 - Notification prescribing 12% IGST rate on personal imports of Oxygen concentrator was quashed holding it to unconstitutional
- SLP has been filed in the matter
- In an another matter Hon'ble High Court has directed to exempt imports of medicine for black fungus (including IGST)- relying on the above judgement and that till the time issue is not decided, clearance shall be allowed without payment of customs duty and IGST. The medicine (amphotericin b) attracts 5% BCD and 5% IGST.

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Other recommendation of Fitment on goods

Volume 3, pg 19-35

9

S. No.	Request	Fitment Committee views	Recommendations
1.	Diethylcarbamazine tablet (DEC) supplied to WHO, India by SEZ unit (<u>12% to exempt</u>)	DEC is used for treatment of endemic lymphatic filariasis. So deserves same concession as life saving drugs. Domestic units when make exempted or gift supplies required to reverse Input tax credit.	Reduce GST to 5%
2.	IGST on goods sent abroad for repair be clarified to settle dispute	Decision of the GST Council that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight may be explicitly clarified, making the intention clear, in the light of discussion taken place in the Councils on the issue.	If required clarificatory amendment along with circular.

S. No.	Request	Fitment Committee views	Recommendations
3.	Parts of the Sprinklers/Drip Irrigation system if supplied separately (<u>CTH: 8424, GST Rate: 12%</u>)	<ul style="list-style-type: none"> Parts of the sprinklers/drip irrigation system falling under heading 8424 (laterals and nozzles) attract GST rate of 12%, even if these are supplied separately. General parts falling under other headings, attract the GST rate as applicable for that respective heading. 	Issue clarification
4.	Toy balloons made up of natural rubber latex (<u>CTH: 9503, GST Rate: 5%</u>)	<ul style="list-style-type: none"> Issue necessary clarification/ amendment to the notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 to provide that 'toy balloons' are classifiable under heading 9503. 	Make necessary ammendments

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Issues deferred and not recommended for change

- Fitment Committee discussed 24 additional agenda items which were either recommended to be deferred for further inputs for examination.
- These issues have been separately mentioned in Agenda Note and will be placed before the GST Council for consideration
- Majority of these requests contain issues that have been examined earlier by the Council and not agreed to.

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Recommendation of Fitment on Services

Volume 3, pg 36-67

13

Recommendations on services

1. Supply of food/mid day meals to Schools and Anganwadis:

- Fitment Committee discussed the request of Akshaya Patra for a clarification.
- Has recommended for issuing a clarification that services supplied to an educational institution including anganwadis, which provide pre-school education, by way of serving of food including mid- day meals under any midday meals scheme sponsored by the Government, is exempt from levy of GST irrespective of its funding from government grants or corporate donations.

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Recommendations on services

2. Conduct of entrance examinations by National Board of Examination (NBE) for admission to Diplomate National Board (DNB)/Fellow of National Board (FNB) courses offered by medical colleges and on other services provided by NBE. Fitment recommends:

- fees collected by NBE towards conduct for such entrance examination, **examination for the students of DNB/FNB** and related input services are exempt from GST in view of explanation 3(iv) and sl. No. 66 (aa) & 66(b)(iv) of the notification No. 12/ 2017 CTR.
- Service provided by similar other central or state **educational** Boards for conduct of examinations including entrance examination shall accordingly be exempt.
- Other service provided like accreditation of medical colleges and **screening test for** registration of doctors (having obtained education outside India) are taxable

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Recommendations on services

3. ITC on construction of houses to landowner developer by promotor developer

- 5%/1% GST rate applicable for construction of houses, with no ITC except that land owner who transfer development rights to developers and sell the portion of constructed flats/houses received by them from the developer against TDR have been allowed to take ITC of GST charged to them by developer promoters.
- The construction industry has represented that land owners are not able to utilize ITC as developer promoters is required to pay tax on such services only at the date of issuance of the completion certificate for the project, by which time land owner had deposited all his tax on under construction **flats** sold by him. .

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Fitment committee has recommended that:

- appropriate changes may be made in the GST rate notification so as to allow land owner promoters to utilize credit of GST charged to them by developer promoters.

- Changes may also be made in notification No. 6/2019-CTR so as to provide that the developer promoter may pay GST on services supplied to land promoters in any tax period not later than the tax period in which the date of issuance of the completion certificate for the project.

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Recommendations on services

4. GST on ship repair units : The committee discussed and accepted the proposal of Ministry of Shipping to extend the same GST dispensation to ship repair units as extended to aviation MROs in order to provide them level playing field vis a vis foreign MRO units and accordingly recommended that ,-

- (a) GST on MRO services in respect of ships may be reduced from 18% to 5% with full ITC.
- (b) PoS of B2B supply of MRO Services in respect of ships/ vessels may be changed to location of recipient of service, by way of issuing a notification under section 13(13) of the IGST Act.

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Recommendations on services

5. GST guaranteeing of loans by State Govt.: Fitment Committee discussed the request of Haryana Shehri Vikas Pradhikaran (HSVP) seeking clarification regarding applicability of GST on service supplied by State Govt. by guaranteeing its loans.

Committee recommended for issuance of a clarification that service supplied by State Govt. to its **Undertaking or PSUs** by guaranteeing loans from banks and financial institutions is exempt under entry no. 34A of Notification no. 12/2017-CT (R) dated 28.06.2017.

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Recommendations on services

6. GST on annuities paid under the Hybrid Annuity Model Project for construction of roads: Committee discussed the request of Ministry of Road Transport and Highways regarding exemption on annuities paid under the Hybrid Annuity Model Project and has recommended that clarification may be issued that entry 23A of notification No. 12/2017-CT(R) exempts services by way of providing access to road or bridge on payment of annuity. It does not exempt annuity paid for construction of roads.

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Recommendations on services

7. GST exemption on milling of wheat into fortified Atta for under PDS: The committee discussed the issue referred by West Bengal/AP Government regarding taxability of the activity of milling of wheat into fortified atta or paddy into rice for distribution by State Government under PDS and recommended for issuance of clarification as under:

- (a) supply of such service would be exempt under entry 3A of the notification No. 12/2017-CT (Rate) dated 28.06.2017 provided value of goods in the composite supply does not exceed 25% of the value of the composite supply; and
- (b) where the value of goods in the composite supply exceeds 25%, and the service is supplied to a registered person, including a person registered only for the purpose of deduction of tax under section 51 of CGST Act , shall be entitled to the 5% GST rate applicable to job work services in relation to food and food products

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Recommendations on services

8. GST rate applicable on construction of Ropeway: Fitment Committee discussed the request of Bihar to clarify rate of tax applicable on construction services provided to a Government Entity in relation to construction of a ropeway on turnkey basis and recommended that,-

- clarification may be issued that services supplied by way of construction of a ropeway in the instant case would not be eligible for the concessional rate of 12% GST prescribed against Sl. No. 3 (vi) of Not. No. 11/2017- CT (R) dt. 28.06.2017 as the ropeway is not a civil structure or any original work meant predominantly for use other than for commerce, industry, business or profession. A general clarification be issued in this regard.

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Recommendations on services

Fitment Committee proposes not to accept the following requests

1. Request of Insurance Regulatory and Development of India (IRDAI) to exempt GST on all the services provided by them such as to **intermediaries** like brokers etc, instead of only those supplied to 'the insurers' as is the case presently.
2. Request to waive GST on service charges paid by Indian emigrants to the registered Recruiting Agents (RAs) and to grant moratorium on payment of GST by RAs for a period of 18 months in view of COVID-19 situation.
3. Request of IVCA to eliminate GST on management fees or extend the deemed export or **pass through** status for services rendered to AIFs. The issue also figured in the 112th Report of the Parliamentary Committee on Finance.

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Recommendations on services

Deferred Proposals on services

The committee deferred the rest of the 8 proposals for detailed examination in the next Fitment Committee. The issues are listed in the approved agenda on services for the Council meeting.

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GST Rate on Disability Aids & Equipment

[Arising from direction of Hon'ble Supreme Court]

Agenda item 11 (iv): Vol 3 pg 68-71

43rd Council meeting

28th May, 2021

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GST Rate on Disability Aids and Equipment

- A concessional rate of 5% (lowest GST slab) has been prescribed on goods used by the persons with disability

S.No.	HS	Description of Goods	GST rate
256	90 or any other Chapter	Parts of the following goods, namely:- 1. Crutches; 2. Wheel chairs; 3. Walking frames; 4. Tricycles; 5. Brailers; and 6. Artificial limbs	5%
257	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule	5%

- GST Council did not exempt Disability Aids and Equipment after discussions in its 14th,/16th/31st and 37th meetings

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Petition by Shri Nipun Malhotra

- A Writ Petition (Civil) No. 725/2017 has been filed by Shri Nipun Malhotra in the Supreme Court, challenging 5% GST on assistive devices for the disabled on following grounds:
 - Imposed GST has the effect of dividing the society amongst the disabled and the able by placing a tax burden on the disabled
 - This levy violates fundamental rights of disabled as envisaged under Article 14, 15, 19, 21 and 21A of the Constitution
 - It is also a deviation from the international practice
- Supreme Court Order, dated 26.10.2020:
 - Directed the petitioner to file a representation to the GST Council seeking the abolishment of the levy of 5% GST on the goods used by the persons with disability

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Representation by the petitioner

- **Points made in the Representation:**
 - The levy of 5% GST on the Disability aids and equipment is incorrectly stated as “beneficial” for the end disabled user by the Respondent
 - False and misleading assumption that 5% GST causes reduction of cost in domestic markets as the manufacturers claims ITC
 - This “benefit” is wrongly referenced to a “zero-tax regime”. Benefit of ITC accrued only to the manufacturer and not to the disabled consumer
 - The levy of 5% GST on disability aids and equipment violates the fundamental rights of the person with disability as envisaged under Article 14, 15, 19, 21 and 21A of the Constitution

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Examination by the Fitment Committee

- Tax policy is not the right instrument
- Indirect tax exemptions causes inversions. It lead to increase in costs of the goods required by the beneficiaries
- A nominal GST necessary to encourage domestic manufacturing and reducing import dependence
- Zero rating for domestic consumption is not permissible in law
- Many schemes are being run by the Department of Empowerment of Persons with Disabilities (Divyangjan)
- Support through public expenditure (direct subsidy) would be the more effective policy option to provide assistance and relief

Issue is placed before the Council for consideration and direction

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Existing Schemes for the disabled

1. Deendayal Disabled Rehabilitation Scheme (DDRS)
2. District Disability Rehabilitation Centers (DDRCs)
3. Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances (ADIP)
4. Scheme for Implementation of Rights of Persons with Disabilities Act, 2016 (SIPDA)
5. Accessible India Campaign / Sugamya Bharat Abhiyan
6. Scheme for Awareness Generation and Publicity
7. Research on Disability Related Technology, Products and Issues
8. Unique Disability ID Project (UDID)
9. Incentive Scheme for providing employment to Persons with Disabilities (PwDs) in the private sector
10. In-Service Training and Sensitization of key Functionaries of Central and State Government, Local Bodies and other Service
11. Scheme of "Support for Establishment/ Modernization/ Capacity Augmentation of Braille Presses"
12. State Spinal Injury Centre

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Existing Schemes for the disabled - continued

13. Scheme for Financial Assistance to Colleges for Deaf in Five Regions of the country Providers
14. Scholarship Schemes
15. Scheme for providing Financial Assistance under the National Fund for Persons with Disabilities
16. Exhibitions/workshops to showcase the products including paintings, handicraft, etc. made by the PwDs.
17. Support persons with benchmark disabilities who have excelled in sports/ fine arts/music/dance/film/theatre/literature at the State level to participate in the National and International events.
18. Support certain exclusive needs of persons with high support needs as recommended by the Assessment Boards on specific recommendation by the States on a case-to-case basis.
19. Indian Spinal Injury Centre (ISIC)
20. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities
21. National Handicapped Finance and Development Corporation (NHFDC)
22. National Awards for the Empowerment of Persons with Disabilities.

31

Plea for inclusion of Ice cream in composition levy

[Arising out of an order of Hon'ble Delhi HC]
Agenda item 11(v)- Volume 3 pg 72-74]

32

Issue: Writ Petition No. 5252/19 challenged the exclusion of Ice Cream from the ambit of composition levy

Background

- Exclusions from Composition Scheme was deliberated by Council [17th Meeting-18.6.2017]. The Council recommended the following exclusions:
 - ✓ Ice Cream and other edible ice, whether or not containing cocoa [HS 2105 00 00].
 - ✓ Pan Masala [HS 2106 90 20].
 - ✓ Tobacco and manufactured tobacco substitutes [Chapter 24]
- Said Writ Petition challenged exclusion of ice cream. Hon'ble Delhi Court in its order dated 9.2.2021 issued directions for re-consideration by GST Council including the following two parameters:
 - ✓ The components used in the manufacture of ice cream and the GST payable thereon.
 - ✓ Other similar goods having similar tax effect continuing enjoy the benefit.

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For consideration of the Council

- The issue was discussed in Fitment Committee. It's view are :
 - ✓ The exclusion of Ice Cream has been well debated in the Council.
 - ✓ Has high Revenue implication as Ice Cream has high value addition.
 - ✓ In pre-GST regime too ice cream was excluded from composition in a number of states.
 - ✓ GST Council in its 37th Meeting [20th Sep 19] recommended exclusion of Aerated water on account of revenue implication.
- Fitment Committee felt that there is a need for a detailed study of coverage (inclusions and exclusions) from composition scheme, particularly as regards sectors where there is significant value addition and consumption. In this regards direction of the Council be taken.
- **Order of High Court is placed before the Council for further directions.**

34

Correction of inverted rate structure

Agenda item 12: Volume 3, pg 75-80

43rd Council meeting

28th May, 2021

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Inverted Rate Structure

- Manufactured goods in lower rate slabs (5% /12%) suffer inverted rate structure
- Inversion in rates has led to
 - Demand for refund ITC on services and capital goods.
 - Hardship to domestic manufacturers
 - Affecting investment decisions
 - Litigation, distortions, interface
- Estimated refunds on account of inverted rates ~ Rs 25,000 cr/ year

Items
Fertilizers
Footwear
Renewable equip
Man-made yarns
Tractors
Fabrics
Pharma
RMG and Madeups
Generators/inverters
Job work
Aggarbatti
Agri machinery

Items
Utensil
Bicycles
LED light
Milling & agri M/Cs
Ink
Medical equip
Water pumps
Pen
Animal feed
Railway parts
Other Misc items

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Inverted rate structure in GST

- A presentation was made in the 39th and 40th meetings on the inverted rate structure based on the recommendations of Committee of Officers and Fitment Committee
- Inversions in the four sectors was emphasized,-
 - Mobile phone
 - Textiles
 - Footwear
 - Fertilizers
- The Council took a decision on mobile phones (**Rate increase-12% to 18%**)
- On others, the Council recommended further discussions in future meetings
- Textile Ministry has again reiterated and recommended a uniform rate structure and correction of inverted rate structure for textiles sector

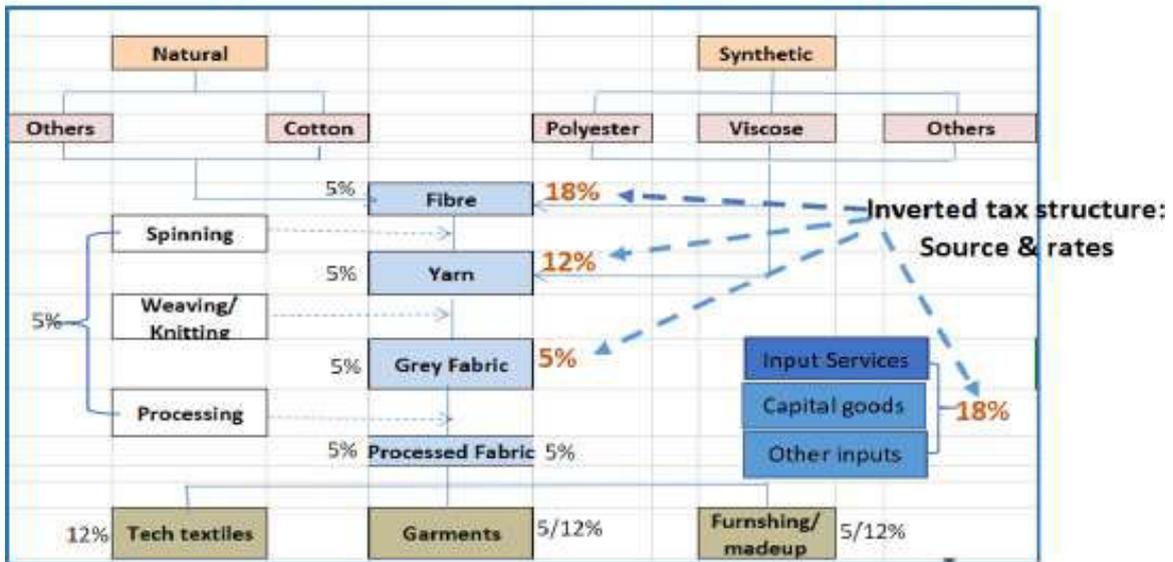
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Inverted rates on Manmade Textiles segment

Evolution of Rate Structure	Implications and suggestions
<p>Initial rate: 18% on fibre & yarns, 5% on fabrics with no refund on fabrics</p> <p>GST on yarns to 12% [Sep 2017]</p> <p>Restriction on refund of ITC removed w.e.f. 1.8.2018</p>	<ul style="list-style-type: none"> ▪ Based on 2018-19 numbers, it is estimated that annual refund for textiles sector is about ₹ 6,000 cr ▪ In coming years this amount would further increase ▪ Ministry of Textiles has strongly recommended for correction ▪ An IMG of NITI, DoC and MoT has also requested for correction

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Inverted rates on Manmade Textiles segment



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Proposed Rate Structure

	Item	Present rate	Proposed GST Rate
1.	Cotton and natural fibres/yarn (except raw jute, silk, and wool)	5%	5%
2.	Manmade Fibres	18%	12%
3.	Manmade Fibre Yarns	12%	12%
4.	Fabrics [Technical and spl fabrics are at 12%]	5%	12%
5.	Garments and made-up	5%/12%	12%
6.	Dyeing Services	5%	12%

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Footwears:

Refund on account of inversion ~ Rs 2000 cr a year

GST rate structure on footwears	
5%	If RSP upto Rs 5,00 [upto 25.7.2018]
	If RSP upto Rs 1,000 [upto 31.12.2018]
	If sale price upto Rs 1000 [w.e.f. 1.1.2019]
18%	Footwears other than the above

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Inverted Rate in Footwear

Items	GST Rate	Share in Value	Inversion
Chemicals: Adhesives, [PU, polychloroprene, PVA, Acrylics, IsoCyanate], Solvents [MEK], Colours and Pigments, Catalysts	18%	15%	Overall Inversion of upto 6%
SOLE: Natural/Synthetic Rubber, Precipitated Silica, Elasto Polymer	18%	30%	
UPPER: Leather, Industrial Textile, Rubber, Plastic	5%/12%/18%	35%	

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Proposed Rate Structure on footweares

- Fitment Committee felt that dual rate structure be avoided if possible. Ad valorem rate ensured that goods having lower prices suffer lower quantum of tax. Hence, uniform rate of 18% is a better option.
- However, if uniform rate is not found feasible, a 12% rate may be considered for footweares having price upto Rs 1,000 per pair

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Other significant items having inversion

Item	Approximate refund in a year
Renewable energy equipment, cells, panel, inverter, generators, windmill	Rs 1500 cr
Pharma	Rs 800 cr
Tractors	Rs 400 cr
Specified Railways parts	No refund allowed. Corrected partially by raising rate to 12%.
Wooden craft	Rs 400 cr
Aggarbati, water pumps, agri machines, utensil, ink	Rs 350 cr
Ores	Inversion on account of services being at 18%.
Others (medical equipment, bicycles, LED, Pen, animal feed)	

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Taxability of ENA in GST

[Agenda item 13: Volume 3, pg 81-86]

43rd Council meeting

28th May, 2021

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Taxability of Extra Neutral Alcohol (ENA)/rectified spirit in GST

Background

- Denatured ENA is taxable at 18% GST
- However, there are divergent views as regards applicability of GST on ENA, i.e., whether it is alcoholic liquor for human consumption (hence outside the ambit of GST), or it is otherwise liable to GST (as it is not consumed by human as such and is only an input).
- GST Council in its 20th Meeting held on 5th August 2017 recommended:
 - ✓ Status quo to be maintained: thus ENA continue to attract VAT
 - ✓ legal opinion of the Attorney General of India may be sought
 - ✓ Views of States on the issue may be placed before the Ld. AG and States may also be invited to attend the briefing.

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Taxability of Extra Neutral Alcohol (ENA) in GST

- A number of States are of the view that ENA falls outside GST. Reliance placed by them on *Bihar Distillery v. Union of India* (1997) 2 SCC 727 in which Hon'ble Court held that rectified spirit (ENA) for manufacture of liquor will be under state control and regulated by state.
- **Opinion of the Attorney General**
 - a) *Bihar Distillery* has been over ruled in *Deccan Sugar & Abkari Co. Ltd. V Commissioner of Excise*. Larger bench in in (2004) 1 SCC 243 it held that “the state can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category the State Legislature cannot impose any excise duty”.
 - b) Thus the judgment of the Court in *Bihar Distillery* does not denude the Centre or the States of the power to levy GST on ENA that is used to manufacture ‘alcoholic liquor for human consumption’

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Taxability of Extra Neutral Alcohol (ENA) in GST

- Ld AG has based his opinion on the judgements of Hon'ble Supreme Court.
- In case of *Deccan Sugar & Abkari Co. Ltd. V. Commissioner of Excise, A.P.*, Larger Bench has held that “the state can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category the State Legislature cannot impose any excise duty” [(2004) 1 SCC 243]
- Ld AG also relied on judgments in the case of *Synthetics and Chemicals v. State of UP* (1990) 1 SCC 109 (7 judges) and *State of UP v. Modi Distillery* (1995) 5 SCC 753 (3 judges), wherein dealing with the power of the State under Entry 51 List II, it was held that “by common standards, ethyl alcohol (which had 95 per cent strength) was an industrial alcohol and was not fit for human consumption.”

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Taxability of Extra Neutral Alcohol (ENA) in GST

- Opinion of Ld. AG was placed before the Council in its 26th meeting.
- It was again placed before the Council in 37th meeting (20.9.19). It was decided that status-quo be maintained till the time Council takes a view in the matter.
- However, due to lack of clarity, divergent practices are being adopted by distilleries. There is divergence in interpretation by States too.
- Units paying GST on ENA have been served demand notices for non-payment of VAT, whereas units paying VAT have been served notices for non-payment of GST.

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Taxability of Extra Neutral Alcohol (ENA) in GST

- DGGI has informed that different practices are being followed on ENA:
 - Some Distilleries are paying GST on it.
 - Some Distilleries are paying VAT/ State Excise Duty on it; and
 - Some Distilleries are neither paying VAT/State Excise Duty nor GST on it
- It has also been observed that some distilleries are adopting a dual practice i.e. paying GST @ 18% on ENA cleared to the manufacturers of 'liquor for human consumption', but not paying any GST on similar products namely Grain Neutral Spirits (GNS) etc. when supplying to a bottling unit.

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Taxability of Extra Neutral Alcohol (ENA) in GST

- Further comments have been received from the States
 - ✓ West Bengal and Rajasthan are of the view that ENA for manufacture of alcoholic liquor for human consumption is outside GST.
 - ✓ Uttar Pradesh is of the view that ENA is not fit for human consumption in its form and hence is chargeable at 18% rate in GST. However recommended a 12% rate on it.
- Writ petitions have also been filed on this issue.
- Considering the issue has wide implication. Divergent practices have led to disputes and doubts having implication to the revenue.
- The GST Council may like to consider the issue of applicability of GST on rectified spirit/ Extra Neutral Alcohol (ENA) for manufacture of alcoholic liquor for early resolution of this issue.

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Committee of Officers to suggest measures to augment GST Revenue [Agenda item 14: Volume 3 pg 87]

43rd Council meeting

28th May, 2021

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Context

- After witnessing impressive growth in the fourth quarter of last FY, the GST revenue growth rate declined in recent months.
- The compensation requirements have increased significantly. The compensation cess collections are inadequate to meet this requirement.
- In view of these concerns, a Committee of Officers was constituted to suggest measures to augment revenue.

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Constitution of Committee

- **State CCTs**
 - Maharashtra
 - Tamil Nadu
 - Uttar Pradesh
 - West Bengal
 - Punjab
 - Any other State (opts to join)
 - Odisha
 - M.P.
 - Haryana
 - Rajasthan
- **Centre**
 - Joint Secretary (Revenue)
 - Pr Commissioner GST
 - Joint Secretary (TRU I/II)
 - ADG (ARM)
 - ADG (System)
 - Joint Secretary (GST Council)
 - Executive VP, GSTN
- **GSTC Sectt and GSTN**
 - Joint Secretary (GST Council)
 - Executive VP, GSTN

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Suggestions received for augmenting revenue (1/2)

▪ RATE SLAB

- Rate slabs be reviewed (two slabs of 10% and 20% for example).
- Special higher rate only on sin goods
- Correct inverted rate structure
- Widening Cess on items like cosmetics, gambling etc, and cess increase on certain items
- Rationalisation of exemptions

▪ COMPOSITION

- Revise composition rate upward for manufacturers
- Review of coverage under composition scheme

▪ PLUGGING LEAKAGE

- Widening of TDS
- MRP based levy of certain items like Pharma or goods sold to consumer
- ECO (e-commerce operator) may be made principal supplier
- Feasibility and efficacy of capacity based levy be examined

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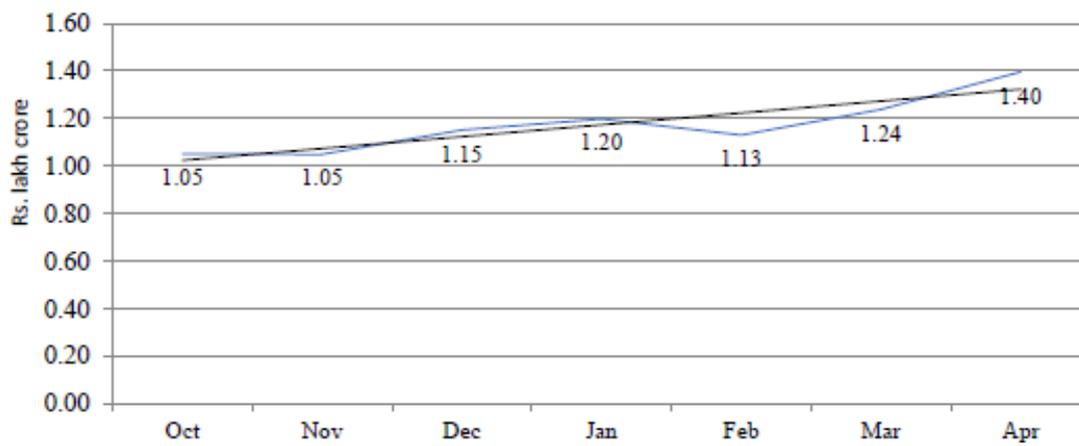
Submissions

- Inverted rate structure agenda is before the Council
- Issues concerning capacity based levy are before GoM
- Other issues like review of slabs, review of exemption, MRP based levy on certain items, widening of TDS, Review of composition scheme coverage require elaborate discussion in the council.
- **It is proposed that Fitment Committee shall examined each recommendation of the Committee in detail, and place it item wise for consideration of the Council in next few meetings for taking a view within this Financial year.**

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Review of Revenue Position

Trends in monthly gross GST Revenue



Details of monthly gross GST revenue

Rs. Crore

MONTH	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21
CGST	19,193	19,189	21,365	21,932	21,092	22,973	27,837
SGST	25,411	25,540	27,804	29,025	27,273	29,329	35,621
IGST	52,540	51,992	57,426	60,293	55,253	62,842	66,878
<i>Domestic</i>	29,165	29,913	30,375	32,869	30,871	31,745	38,882
<i>Imports</i>	23,375	22,078	27,050	27,424	24,382	31,097	27,996
Comp Cess	8,011	8,242	8,579	8,626	9,525	8,757	9,372
<i>Domestic</i>	7,079	7,432	7,608	7,739	8,865	7,822	8,464
<i>Imports</i>	932	809	971	886	660	935	908
Total	1,05,155	1,04,963	1,15,174	1,19,875	1,13,143	1,23,902	1,39,708

IGST Account for 2020-21

Rs. Crore

1. Collections (+)	5,65,719
2. Recovery from IGST Ad-hoc apportionment (+)	0
3. Refunds (-)	83,800
4. Settlement (-)	4,07,485
i. CGST	2,27,601
ii. SGST	1,79,884
5. Ad-hoc Settlement	76,000
i. CGST ad hoc	38,000
ii. SGST ad hoc	38,000
6. Net (1+2-3-4-5)	-1,565

Compensation Fund

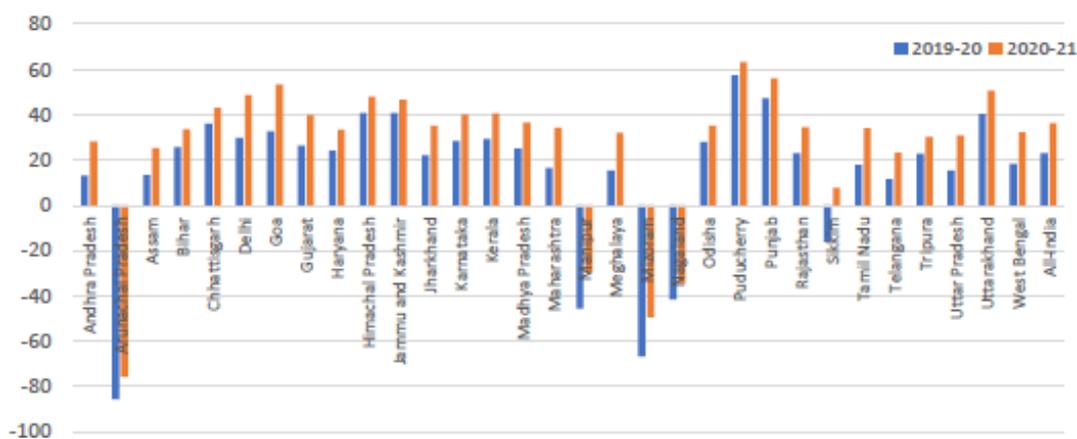
Rs. Crore

	2017-18	2018-19	2019-20	2020-21	2021-22 [#]
Opening Balance		21,466	47,272	55,737	3,940
Compensation Cess collected (Net)	62,612	95,081	95,551	85,191	9,100
Compensation released	41,146	69,275	1,20,498	1,36,988	
Balance	21,466	47,272	55,737*	3940	13,040

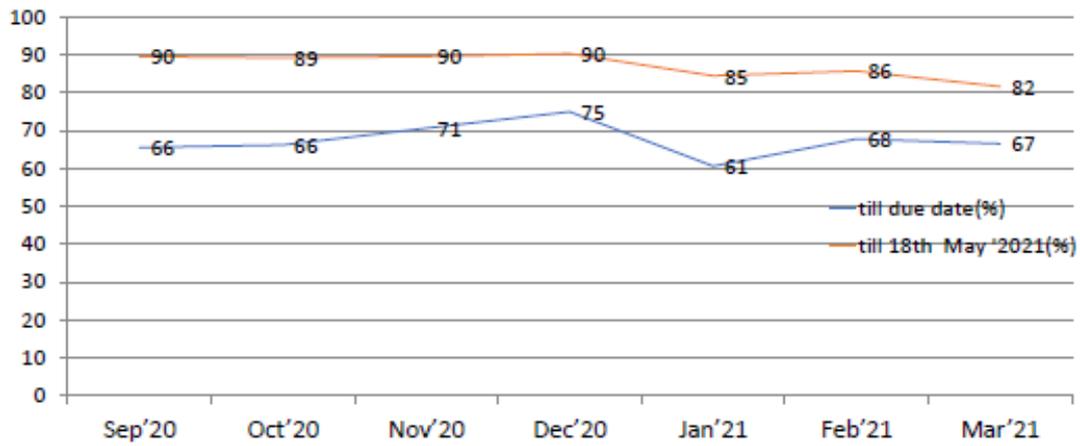
* Centre had transferred Rs. 33,412 crore from CFI to Compensation Cess Fund as part of an exercise to apportion balance IGST pertaining to FY 2017-18

[#] till 30.04.2021

Revenue Shortfall



Trend in GSTR-3B Return filing



GST Compensation Cess

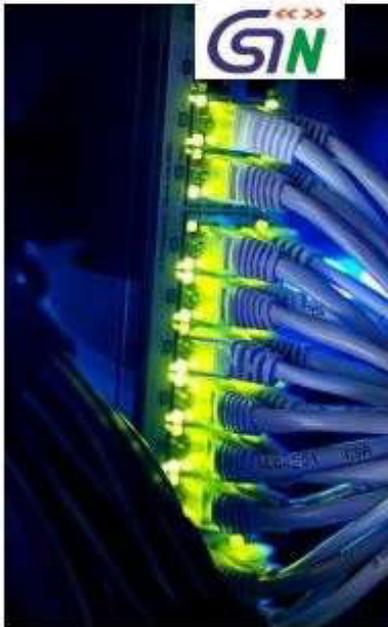
Estimates for 2021-22

Background

- Shortfall in compensation due to 14% increase in protected revenue y-o-y, dip in SGST revenue as well as compensation cess collection due to pandemic
- Issue was discussed in detail in 41st and 42nd - legal provisions and the opinion of Ld. AGI were discussed in detail
- Two models for raising resources through debt to meet a part of shortfall
- Calculated based on the normative approach – 7% growth on 2019-20 revenues
- **During 2020-21, GoI raised Rs. 1.1 lakh crore of debt and passed on to the States on a back-to-back basis – the average rate of interest was 4.85%**

2021-22

- If the same model as last year is adopted, GoI will have to borrow approximately Rs. 1.6 lakh crore and pass it on to States on back-to-back basis
- If the monthly gross GST Revenue collection during 2021-22 is Rs. 1.1 lakh crore, the actual gap would be about Rs. 1.5 lakh crore
- If the monthly gross GST Revenue collection during 2021-22 is Rs. 1.15 lakh crore, the actual gap would be about Rs. 1.25 lakh crore



GST COUNCIL MEETING 28TH MAY, 2021

AGENDA POINTS OF GSTN



GSTN Agenda Points



- 1) Sanction for extension of Project REAP, LEAP and BIFA under T&M Model.**
- 2) Proposal to Establish more than one IRP.**
- 3) Intimation: GSTN Recruitment Guidelines Approved by Hon'ble Finance Minister.**
- 4) Intimation: The Status of Transfer of Share-holding with the States.**
- 5) Waiver of Interest on delayed receipt of Advance User Charges (AUC).**

Sanction for extension of Project REAP, LEAP and BIFA under T&M Model



Summary: Engaging Tech Resources on T&M basis

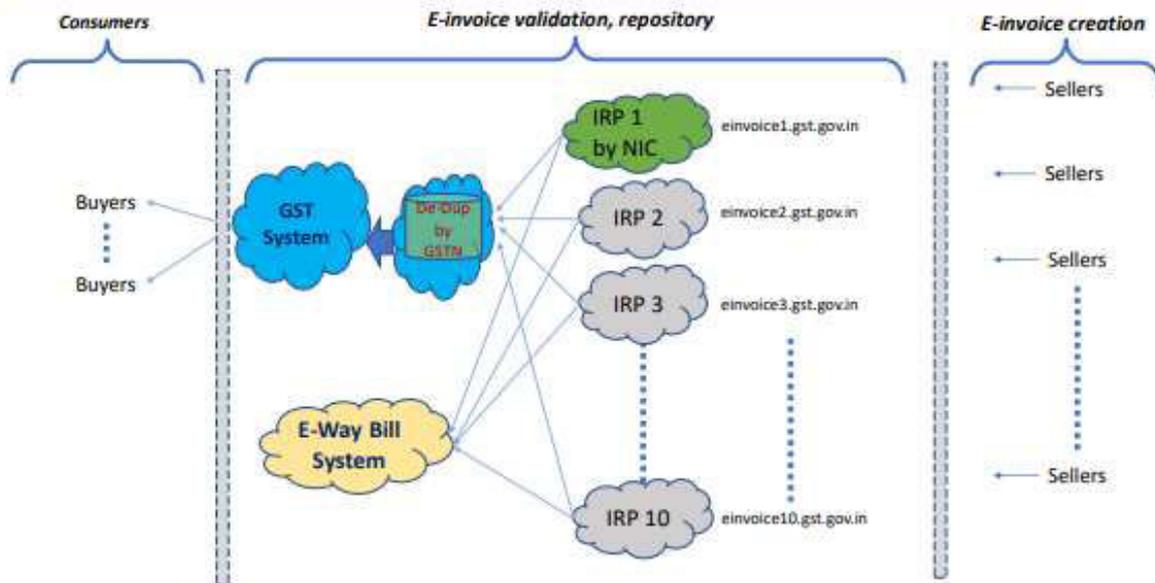
- The proposal of engaging Manpower from Infosys on T&M basis was approved in **39th Meeting** of the GST Council held on 14th March, 2020.
- GSTN and Infosys had started T&M model since April 2020 for developing the Incremental Changes in the Return under REAP [Return Enhancement and Advancement Project].
- Prompt monitoring through daily scrum calls and weekly governance calls by the senior management and continuous assignments etc. entailed a promising result of this model.
- Taking note of the expeditious delivery of critical changes, GST Council in its **42nd Meeting** on 5th of Oct, 2020 had approved the extension of T&M model till 30th June 2021 with 136.5 manpower counts.

Proposal: Considering the new Developments & Change Requirements in GST System, GST Council may like to:

- **Approve and extend** the engagement model of tech resources on T&M basis from Infosys up to 31st March, 2022 for fast tracking the developments and implementations of critical applications in GST System and BIFA.
- Maximum number of tech. resources (including BIFA) under T&M shall not exceed 200. The deployment of resources, however, will be based on the actual requirement of works at a given point of time.
- Tech Resources for BIFA are required to be engaged under T&M immediately, since development of new use cases as suggested by the states are required to be accelerated. Tech resources of BIFA are of higher value as they need to have adequate skills in analytics to be developed.

Turnover PAN wise	Number of PANs eligible to generate e-invoice	No. of GSTINs eligible to generate e-Invoice	% age of number of Total B2B Invoices Reported in GST-R1	% of value (ITC % would be similar) of B2B supplies of these GSTINs	e- invoice launched from	No of GSTINs generated e-invoice in Mar-21/Apr*-21	Number of invoices generated in Mar-21/Apr*-21
500 Cr plus	6,938	53,523	22.26%	41.24%	1 st of Oct, 20	33,573	6,24,11,777
100-500 Cr	33,359	91,583	8.80%	15.32%	1 st of Jan, 21	46,508	2,06,25,294
50-100 Cr	51,200	95,461	6.86%	9.98%	1 st of April, 21	38,186*	85,03,764*
25-50 Cr	68,703	96,455	5.56%	5.55%	To be decided	Not implemented	
10-25 Cr	2,10,034	2,53,348	10.14%	7.12%			
5-10 Cr	3,02,470	3,38,356	9.02%	4.90%			
1.5 - 5.00 Cr	9,98,801	10,65,521	17.36%	7.69%			
Below 1.5 Cr	68,76,061	70,52,503	20.01%	8.20%			
TOTAL	85,47,566	90,46,750	100.00%	100.00%		118,267	9,15,40,835

Proposed E-invoice eco system with multiple IRPs



Proposal: For multiple IRPs



- Keeping in view the futuristic vision for digitization of invoices and the need for capacity augmentation of the e-Invoice Registration system, the GST Council may like to approve the selection and establishment of 3 to 5 IRPs by GSTN to provide a robust and uninterrupted ecosystem of IRPs for all the taxpayers. (Present system is running on e-way bill system.)
- NIC IRP system shall be strengthened to a full fledged DCDR system. It may also be explored if NIC can provide the services of IRP 2 as well.
- Decision on financial support, if any, to IRPs other than NIC shall be taken by GSTN to achieve appropriate scalability.
- The common platform for de-duplication of IRNs shall be managed by GSTN. It shall also provide an e-invoice download facility to the buyers (counterparties).
- The new IRPs shall provide e-Invoice registration and IRN generation services free of cost to the taxpayers, however, they will be free to provide other over the top (OTT) services to their clients on a chargeable basis.
- The multiple IRP system shall improve the turnaround time and reduce risk of outages and non-availability of system. It would also leverage load balancing during peak business hours.

Approval of GSTN Recruitment Guidelines



- The Recruitment Guidelines for onboarding the officers on deputation in GSTN and consolidation of existing guidelines for recruitment of market recruits was approved by the Board of GSTN in its 44th Meeting held on 11th Jan 2021.
- The recruitment guidelines were thereafter, also approved by the Hon'ble Finance Minister.
- **The Recruitment Guidelines along with the annexures are placed before the GST Council for kind perusal and information/approval.**
- The States are requested to send their experienced officers on deputation to GSTN, basis the vacancy circulars and requests made from time to time.
- CBIC is requested to continue supporting GSTN by providing adequate manpower.



Intimation: The Status of Transfer of Share-holding with the States



- Based on the decision taken in 27th GST Council Meeting dt. 4th may, 2018 and the Union Cabinet Meeting dt. 26th September, 2018, the process of conversion of GSTN into 100% Government-owned entity started.
- The GST Council in its 31st Meeting dt. 22nd December, 2018 and the Department of Revenue, vide its letter dt. 17th January, 2019 approved the revised shareholding of GSTN.
- The conversion plan of GSTN into 100% Government owned company, the procedure involved are detailed in the ROC/MCA Compliance Action Plan.
- The Empowered Committee & the Non- Government Institutions have already offered their entire existing shareholding in GSTN through Share Transfer Notice for Sale/Transfer to Centre, States & UTs.
- Centre, States & UTs have acknowledged the receipt of the above Share Transfer Notices and communicated their acceptance through Purchase Notices and have paid Share Purchase Consideration to Empowered Committee & Non- Government Institutions accordingly.

The states/UTs, who have not executed Security Transfer Form (SH-4)



The following States/UTs have not yet executed the 'Securities Transfer Form' in the prescribed Format (**Form SH-4**) along with the documents as required under the Companies Act, 2013

S No.	Government	S No.	Government
1	Rajasthan	10	Goa
2	Sikkim	11	Kerala
3	Andhra Pradesh	12	Manipur
4	Bihar	13	Delhi
5	Himachal Pradesh	14	Jharkhand
6	Mizoram	15	Uttar Pradesh
7	Arunachal Pradesh	16	Chhattisgarh
8	Haryana	17	Madhya Pradesh
9	Assam		

Proposal



- Accordingly, the States/UTs as mentioned above may like to execute the Securities Transfer Form in the prescribed format (Form SH-4) along with necessary documents as per the requirements under the Companies Act, 2013 and share the same with GSTN in order to expedite the process of conversion.
- The Council may take the note of the above and may like to issue necessary advisory to all the concerns in order to complete the process of conversion at the earliest.

Status of Payment of User Charges by the States/Centre



- The expenditures on account of implementation, operation support & maintenance of GST System Project as approved by the Empowered Committee of State Finance Ministers (EC) in its meeting dt. 30th August 2016 and the Cabinet, are shared equally by the Centre and States and are remitted in 2 installments, half-yearly basis (1st March and 1st September). Further, as per Para iii (b) of the Revenue Model, interests are accrued on delayed payment.
- The GST Council in its 35th Meeting dt. 21st June 2019 had approved the waiver of interest on delayed payment of Actual User Charges to be paid till 31st July 2019 for all the past periods.
- Further, keeping in view the COVID-19 problems, the GST Council in its 42nd Meeting held on 5th and 12th Oct. 2020 had further approved the extension of payment of AUC of FY 2020-21 till 31st March 2021 on the basis of request made by few States.
- However, some of the States and CBIC have remitted the amount of AUC for FY 2017-18, 2018-19 and 2019-20 after expiry of waiver period i.e. 31st July, 2019 for the past periods. This interest amount is Rs 11.5 cr as calculated till 10th of May, 2021.
- The amount of interest on delayed remittance for the FY 20-21 comes to Rs 0.13 Cr till 10th May, 2021. Considerable payment for the year FY 20-21 is still due.

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Proposal:



Keeping in view the need for extension of time limit for payment of AUC due to the present situation of pandemic and its fiscal impact and for the waiver of the interest amount, the following proposals are placed before Hon'ble GST Council for approval:

- The time limit of payment of full payment of AUC or of the outstanding amount for FY 2020-21 may also be extended till 31st December, 2021.
- Payment for the year FY 20-21 is pending from some of the States as per the details provided in the agenda and the same may kindly be paid during this extended period.
- The interest accrued on delayed remittance of AUC by the States/Centre amounting to Rs.11.63 Cr. (till 10th May 2021), may be waived off for all the previous financial years and also for the year 20-21 as the due date for payment is being extended for the same.



Thank You

Agenda Item 1(ii): Confirmation of the Minutes of the 44th GST Council Meeting 12th June

2021

The 44th meeting of the GST Council (hereinafter referred to as ‘the Council’) was held on 12th June, 2021 at New Delhi under the Chairpersonship of Hon’ble Finance Minister, Smt. Nirmala Sitharaman. The list of the Hon’ble Members of the Council who attended the meeting is at **Annexure-I**. The list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure-II**.

2. The Secretary, GST Council (hereinafter referred to as ‘The Secretary’) welcomed all the Members to the 44th meeting of the GST Council and sought the permission of the Chairperson to begin the proceedings of the meeting. He stated that there was only one agenda for the 44th GST Council meeting which emanated from the 43rd GST Council meeting held on 28th May, 2021.

2.1 In the 43rd meeting of the GST Council, in agenda item No.11 there were two items under consideration:

- First, to extend the scope of the ad hoc exemption notification to include the import of COVID related materials on payment basis and provided free to the people, to the State/ Centre or State agencies.
- Second, to include certain more COVID related items and reduce taxes on them.

2.2 There was consensus on the first item in the said meeting and the notifications have already been issued, which provides for exemption for individuals and institutions who import COVID related notified items on payment basis and provide these free of cost for COVID relief.

2.3 On the second item, there were different viewpoints and accordingly, a Group of Ministers (GoM) was constituted on 29/05/2021 with Hon’ble Chief Minister of Meghalaya as the Convenor with Members from seven other States. In total, there were eight Members including the Convenor (**Annexure A**).

2.4 He then requested the Hon’ble Chief Minister of Meghalaya being the Convenor of the GoM to present the report along with the recommendations of the GoM to the Council.

3. The Hon’ble Member from Meghalaya and the Convenor of GoM thanked the Hon’ble Chairperson for providing him the opportunity to deliberate on this very important issue and table recommendations of the GoM for the Council to consider. He also thanked all the Members of the GoM for their valuable inputs. He made a presentation (**Annexure III**) outlining the recommendations of the GoM as well as the principles they had adhered to in the GoM. He stated that the GoM had considered giving relief to the common man in these difficult times as the paramount consideration. The GoM also sought to minimize the impact of the exemptions on the manufacturing sector and to ensure that the manufacturing sector was not adversely affected. He stated that the Committee looked at the overall GST structure and avoided tinkering with the fundamental GST rate structure besides minimizing the impact of their recommendations on the resources of the Central as well as the State Governments.

3.1 He stated that two options of zero rating and a lower rate of GST like 0.1% were considered along with the option of full exemption. He mentioned that the Hon’ble Member from Kerala had sent a letter reiterating that zero-rating or 0.1% rate should be considered. The Hon’ble Member from Odisha also suggested for zero-rating or 0.1% rate for vaccines.

3.2 He informed the Council that the GoM felt that while exemptions would lead to Input Tax Credit related issues in the long run; zero-rating would require amendments under the GST Laws and it may tinker with the fundamentals of the GST rate structure. Also, a 0.1% rate would affect

manufacturing units adversely in the short, medium as well as in the long term. Therefore, looking at all these aspects, the GoM did not recommend zero-rating or a 0.1% rate.

3.3 He then stated that tax rate for vaccines was the main issue which was considered, and that 85-90% of vaccines were being procured by the State or the Central Governments, out of which over 50% were being procured by the Central Government, which indicated that for vaccines, the major impact of the rate would not fall upon the end consumers. Therefore, keeping in mind the adverse impact of rate reduction in manufacturing, the Deputy Chief Minister of Maharashtra had also recommended keeping GST rate on vaccines at 5% and not at a lower rate.

3.4 He also stated that the GoM had felt that creating domestic demand in the long run was very important and bringing down the rates to 0.1% or zero-rating would impact that adversely and therefore they had decided not to opt for zero-rating or a 0.1% rate. The GoM discussed each of the items individually and broadly categorized them into five categories as follows and presented their recommendations:

- A. Vaccines
- B. Medicines
- C. Oxygen, oxygen generation equipment, and related medical devices
- D. Testing kits and machines, and
- E. Other covid-19 related relief materials

He then presented the recommendations of the GoM based on the discussions on these goods as detailed below.

3.5 Vaccines

He stated that for vaccines, the GoM opined that there should not be any change and it should remain at 5% only as mentioned earlier. Though some of the States in the GoM had suggested that the GST rate should be brought down, but for the reasons mentioned earlier, it was felt that it would create more issues in the long-run. Besides, the direct impact to the end consumers was not there as the Centre and the State Governments were procuring most vaccines. Further, as it has recently been decided that the Central Government would be procuring all the vaccines and paying for the same, there would not be any impact on the end consumers.

3.6 Medicines

He stated that on medicines, there was a suggestion from the Hon'ble Member of Maharashtra to either exempt or zero-rate or to bring down the rate to 0.1% on Tocilizumab and Amphotericin B as these were used for treatment of severe Covid-19 and Black Fungus infections post-COVID complications respectively. Though the GoM did not want to opt for zero-rating or a 0.1% rate due to concerns about structural issues, the GoM had suggested that these medicines be exempted in accordance with the suggestions of Hon'ble Member from Maharashtra and the other States which had supported that view, even though in the short run, there might be some impact on the manufacturing sector. As at the moment these medicines were largely imported, the issues of ITC blockage etc. may not arise in the short period. As regards other medicines, it was decided to bring down the rate to 5% as the cost was being borne by the patient and directly impacted them.

3.7 Oxygen, oxygen generation equipment, and related medical devices

He stated that the GoM discussed the other items that were very critical for the treatment of COVID-19

and looked at the direct impact on the end consumers. It was recommended to keep rate of 5% for all the materials and machines that were directly used for COVID-19 treatment now, as it would help the institutions in the long run which would eventually benefit the end consumers. This shall help in developing health infrastructure.

3.8 Testing kits and Machines

He stated that in case of testing kits, they were also very crucial and though some States were paying for them but in many cases, they were being paid for by the end consumers directly. Therefore, the GoM decided to give relief to people and recommended rate reduction on COVID-19 testing kits, diagnostic kits namely D-Dimer, IL-6, etc. Regarding RT-PCR machines, other genome sequencing and RNA extraction machines, the GoM opined that as most of the machines had been purchased, there was no direct impact on the patients as such. Therefore, no change was recommended. Similarly, for raw materials for COVID-19 testing kits, no change was suggested.

3.9 Other covid-19 related relief materials

He stated that hand sanitizer directly affected the consumers and some suggestions had come to reduce the rate to 12% from 18%. The Hon'ble Member from Goa had suggested that even 6% is a large decrease but post discussions, it was decided to reduce the rate to 5%. There was a concern that other similar products may also be impacted and people might ask for relief on those products as well. However, the GoM opined that if relief was given in a time bound manner, then it would not have too much of an impact on other complementary products.

In the case of pulse oximeters, it was felt that relief could be given on it in a time bound manner by bringing down the rate from 12% to 5%. Similarly, for temperature check equipment there were recommendations to reduce the rate by 6% (from 18% to 12%). Regarding gas/ electric and other furnaces for crematorium, there was also a Court case and the GoM had been asked to give recommendation on it. Therefore, considering not just the current situation which the country was facing but also long-term environmental impact, it was recommended to reduce rates on them from 18% to 12%. Most of the items like PPE kits, N95 masks were already in the lower rate bracket (i.e., 5%) and therefore no change was recommended on these. In the case of ambulances, being an automobile, it was opined that they should remain at 28% only. For portable hospitals, the GoM felt that they should remain at 18% only.

3.10 He stated that while making recommendations, they had kept public interest in the forefront and had opined that rate should be reduced on all those items which would directly benefit the public. Zero-rating or a 0.1% rate was not recommended as it would adversely impact the manufacturers in long run as well as short run. Regarding vaccines, it was felt that a 0.1% rate would impact manufacturing; zero-rating would require amendments to the GST Laws and exemption would lead to ITC issues. It was also noted that as the Hon'ble Prime Minister had announced that all the vaccines would be procured by the Central Government, it would not impact the public now.

4. The Secretary, GST Council thanked the Hon'ble Convenor of the GoM for his elaborate presentation and opened the floor for discussion.

5. Hon'ble Member from Madhya Pradesh welcomed the decisions taken by the GoM. He stated that the GoM had suggested that for medicines and other items which were directly procured by the public and where the GST burden was borne by the public, GST rates should be kept at a minimum. The GoM further considered that the changes in GST rates should not impact the Country's resources. He thanked the GoM for considering these issues. He then stated that as vaccines were mostly being procured by the Central Government and the GST on vaccines would be paid by Central Government

only, the GoM has recommended no change in rates, and that this was a welcome step. He then expressed his gratitude for Hon'ble Prime Minister's decision of bearing the entire expenditure pertaining to vaccines by the Union Government.

6. Hon'ble Member from Bihar thanked the Co-convenor of the GoM for coming up with the recommendations on various issues pertaining to the public at large in such a short span of time which had made it possible to hold the GST Council meeting quickly again for a decision. He also thanked Hon'ble Prime Minister and all his colleagues for their concern towards the public in announcing free vaccination for the people of India. He fully supported the GoM report and welcomed the report for exempting medicines required for the treatment of Black Fungus and for reducing rates on other medicines, medical grade oxygen, concentrators, ventilators, COVID testing kits etc. He stated that the demand pertaining to reducing the rates on thermometers and hand sanitizers was first made by Bihar and the GoM had accepted that and for that he expressed his gratitude towards the Hon'ble Chairperson and the Members of the GoM. He thanked GoM for reducing the rates on gas/ electric and other furnaces for crematorium for which a request had been made by him. This report took care of the domestic manufacturers as well. Simultaneously, reducing the rates on medicines needed for the treatment of COVID, as recommended by the Union Ministry of Health and Family Welfare of the Union of India would give great relief to the public. He expressed full support for the GoM recommendations and requested the Council to accept it with consensus and implement the recommendations to provide relief to the maximum people at the earliest.

7. Hon'ble Member from Manipur stated that the GoM had taken into consideration the deliberations which took place in the 43rd GST Council meeting. He stated that there were numerous demands for zero-rating and a 0.1% rate but the Convenor of the GoM had explained that with a view to promoting the manufacturing sector and developing the economy, these could not be considered. He then stated that he has particularly requested for rate reductions in case of ventilators and hand sanitizers and that had been taken into consideration by the GoM. He stated that what he found was, that those items which would directly affect the public in fighting with COVID had been taken into consideration and relief on such items had been provided to the public. He stated that the GoM had adopted a very balanced approach. On the one hand, they had provided relief to the people in fighting COVID and on the other, they had also taken into consideration the fact that States would need revenues from GST. He stated that Manipur depended a lot on GST. He fully supported the recommendations of the GoM.

8. Hon'ble Member from Assam appreciated the sincere efforts made by the GoM to resolve some of the important issues on COVID-19 related items. She stated that the GoM had done a very commendable job by submitting the report in a very short period of time. The GoM had rightly concluded that the concept of zero-rating was limited to exports under GST laws. There was no provision of zero-rate in domestic supply and it was not possible to make amendments in the CGST, SGST and IGST Acts in such a short period of time. Regarding application of a 0.1% rate, the GoM felt that there was no point in creation of separate rate for domestic supplies which would only lead to inverted rate structure and would not be beneficial to anyone. She then stated that the Committee had very meticulously gone through each and every COVID related item and then made their observations and recommendations. She fully agreed with the views of the GoM and supported the recommendations of the GoM.

9. Hon'ble Member from Punjab stated that he appreciated the hard work done by the Hon'ble Members of the GoM, however, having read the report, he felt disappointed. He stated that there were two ways to look at the report, either every item could be examined individually and then it could be decided what the appropriate rate was, or one could holistically look at the issue. Healthcare services were exempt per se and this had been so even under Service Tax and it included any medicine which

was given as part of healthcare in allopathy, homeopathy, naturopathy and even yoga. So, all supplies of medicines were also actually exempt, and there was a liberal healthcare policy in India as far as taxation was concerned. He then stated that it was being debated whether to restrict vaccines only for Government hospitals as private hospitals would probably make a profit, but the hospitals were treating people and it would be difficult for them to get registration and start billing 2.5% CGST and 2.5% SGST and then file returns. The optics of the GST being in the final bill were not good and as profit had been restricted to only Rs. 150 on vaccination, there was no rationale in saying that the hospitals would be making profit on vaccination. He further stated that he did not think that the Council would want the revenues to come from crematoriums and cremation services. Similarly, in RT- PCR machines it had been decided to retain the rate of 18%. He stated that even if these machines were bought at concessional rates, most State Governments had set the rates and he did not think profiteering was possible in this. He stated that he was in favour of zero-rating or a 0.1% rate. He suggested that exemptions may be given till 31st March, 2022. He stated that he would not be able to go along with the proposals of the GoM. He requested for the appointment of a Vice-Chairperson to the Council as also to operationalize the Dispute Resolution Mechanism.

10. Hon'ble Member from Tripura stated that Convenor of the GoM had given a very elaborate presentation. The recommendations showed a very balanced view. He further stated that Hon'ble Chief Minister of Meghalaya had rightly pointed out the concerns in the zero- rate and 0.1% rate and he had rightly made the point that tinkering with the fundamentals of GST or GST Council was perhaps not wise and most articles that would benefit the common man had been exempted and on vaccines he had elaborately explained why they could not be exempted. On sanitizers, as discussed in the previous meeting, rates had been reduced. So, this recommendation given by the GoM had good logic, and a wide perspective. He wholly and fully supported the recommendations made by the GoM.

11. Hon'ble Member from Jharkhand thanked Hon'ble Chairperson for constituting the GoM. He stated that all the Members of GoM deserved appreciation for their hard work, but Jharkhand did not agree with these recommendations. He seconded the view of the Hon'ble Member from Punjab and said that they demanded that for COVID-19 related materials and medicines GST should be at a 0.1% rate to benefit the common man. He requested for a 0.1% rate on COVID related materials and medicines and asked for the relief to be provided till 31st March, 2022.

12. Hon'ble Member from Rajasthan thanked Hon'ble Prime Minister of India for announcing free vaccines for the people above 18 years of age. Then, he mentioned that in Rajasthan the positivity rate was quite high and there was a danger of Black Fungus as a number of people were getting admitted to the hospitals but there was a dearth of medicines. He stated GoM had made changes only in some goods out of the recommendations made by the Fitment Committee and then questioned the purpose of constituting a GoM, as the Council could have accepted the Fitment Committee recommendations only in that case. He also asked for concessions/ relief to be given beyond 31st August ,2021 keeping in view the anticipated third wave of COVID around September/ October. He stated that exemptions should be extended at least till 31st March, 2022.

He also requested the release of pending GST Compensation for FY 2020-21 amounting to Rs. 4,635 crores to cope up with the situation and to continue the existing welfare schemes and announce new schemes. He disagreed with the proposals given by the GoM and stated that if not zero-rated then at least a 0.1% rate should be considered and that it would not impact the finances of the Government much.

13. Hon'ble Member from Himachal Pradesh thanked GoM for coming up with the recommendation in a very short span of time. He stated that their recommendations on the one hand gave relief to the people in these difficult times and on the other hand also took care of the domestic

manufacturers in the long run. He fully supported the recommendations of GoM and thanked Hon'ble Prime Minister of India for free vaccines to all.

14. Hon'ble Member from Chhattisgarh expressed his disagreement with the recommendations made by the GoM and registered his protest at the formulation of the GoM. He stated that the suggestions made by the GoM did not appear to show consistency in the rates that had been suggested for various items and the reasoning that had been given. He referred to the Section 9(1) CGST Act, 2017 which stated that "at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person." So, the intent of the Parliament clearly states that the rates of CGST could be up to 20% and hence, zero-rated taxes were permissible under GST laws. So, he could not be in agreement with the suggestion of the Fitment Committee which stated that zero rating was against the provisions of the law. He further referred to the Section 17(2) and Section 54(3) of the CGST Act and stated that there were provisions in the law for zero-rated supply and it was erroneous to state that the Act did not have a provision. He also stated that when nil rates had been provided for Tocilizumab and Amphotericin B, then there could be nil rates on other items also. He suggested that the period of relief in taxation should be beyond August and should be extended to March, 2022 or a flexible date. He stated that Chhattisgarh was in the process of setting up of many labs. Government too could set up labs as per the recommendations made by Ministry of Health of Government of India to enable maximum testing through RT-PCR. So, rates on machinery pertaining to RT PCR tests too should be reduced to check the drain on the exchequer.

15. Hon'ble Member from Delhi stated that while GoM had put in lots of efforts, he was not in agreement with their recommendations and demanded that vaccines, oxygen cylinders, concentrators, PPE kits, masks, oximeters, and thermometers should either be exempt or zero- rated. He further stated that public was looking at the outcome of the meeting with the hope that the cost of masks, sanitizers, thermometers, etc. would be reduced from their monthly budget. He also stated that every State Govt. was trying to increase the number of ventilators in small hospitals to cope up with the anticipated third wave of the COVID-19 and such hospitals also have hope that after this meeting, there would be a new price which would have no GST. He opposed the GoM recommendations and sought retrospective effect (i.e. form 3rd May) to be given to the ad-hoc exemptions on the goods imported on payment basis stating that it would benefit those people who had donated the COVID related goods to the Government and hospitals in the peak time.

16. Hon'ble Member from Karnataka stated that for Zero Rate supply as given in Section 16 of the Act, is only for exports and not for supply within India. Thus, zero rating was not brought into the GoM. For 0.1% the ITC on the input goods / services would be high and there would be inverted duty structure and blockage of capital. Then domestic producers would be affected. Rates on crematoriums and ambulances and temperature checking equipment could be further reduced. He thanked the Chairperson for giving compensation to the States which could be used for COVID relief work. He accepted the report of the GoM as pragmatic but suggested that the time period of relief could be extended beyond 31.08.2021. Further, the rate on temperature checking equipment is used by the common man could also be considered for reduction. He thanked the Hon'ble Chairperson for the timely arrangement of State compensation.

17. Hon'ble Member from Arunachal Pradesh thanked the Hon'ble PM for taking the responsibility of supplying the vaccine free of cost to the States for all people above the age of 18 years. He agreed with all the recommendations of the GoM.

18. Hon'ble Member from Uttar Pradesh thanked the Hon'ble PM, the Hon'ble FM and the Union Government for the free vaccination initiative. He stated that the GoM recommendations would

benefit the common man and that the report was balanced. If the tax rates were reduced to zero, it would affect revenue. He stated that they were in agreement with the report and the report should be accepted by consensus.

19. Hon'ble Member from Telangana stated that they accept the report prepared by the GoM. He stated that since vaccines were being supplied free of cost by the Central Government the revenue of the States would not be affected. He stated that he accepted the report completely. He requested an increase in the FRBM limit by 1% as it would increase demand, boost the economy and employment and it would facilitate revenue inflow.

20. Hon'ble Member from Sikkim stated that the report needed to be appreciated. It reduced the rates substantially on the COVID-19 related materials. He stated the Government of Sikkim endorsed the recommendation of the GoM to avoid zero rating or concessional rates of 0.1% of GST on COVID 19 related individual items. Hence the recommendation of GoM on revised rates structures reducing the GST rates substantially on COVID relief items from 12% to 5 % on some items from 18% to 12% and allowing exemption on Tocilizumab and Amphotericin B for which there was little manufacturing capacity in India, was supported and endorsed by Government of Sikkim.

21. Hon'ble Member from West Bengal stated that the Member from Kerala had sought zero rating. Therefore, the report could not be considered unanimous and the contents of his letter needed to be elaborated. Further, the Hon'ble Member from Odisha had also requested for zero rating before the Council. Two Hon'ble Members had proposed 31st March, 2022 as the end date for exemptions. By that time, only 20% would be vaccinated. In view of a possible third COVID wave, this date should be reconsidered. He stated that zero rating should be considered and an ordinance could be passed which could amend the laws and later a bill could be taken to parliament. Further, for a 0.1 % rate, no ordinance would be required. This route could be adopted if the ordinance route was considered as too long. He then stated that even by reducing the rate to 5%, there would still be an inverted duty structure, so if the reduction to 5% could be made, then a 0.1% rate could also be considered. He stated that as there were two items which were nil rated as per the report of GoM, the domestic producers of these medicines would be affected adversely. In these cases, they would not be able to take advantage of the input tax credit. He urged the Chairperson to take the zero rating or 0.1% route and said that he strongly disagreed with the report. He further stated that the two medicinal items which had been put at Nil rate would adversely affect domestic producers. He also stated that rates on certain items like sanitizers, masks, PPE kits had not been changed. He stated that he strongly opposed the GOM recommendations for the reasons advanced above.

22. Hon'ble Member from Gujarat appreciated the GoM for submitting their report in a very short time window. He stated that if there was anything that the States would like to suggest on the subject matter of GoM, the same could be considered. However, the GoM report should be considered positively. The GoM was entrusted with the responsibility of coming to a consensus of GST rate relaxations for COVID related items after analysing the prevailing rates and taking into consideration the interest of all stake holders. He requested for the acceptance of the GoM report. He thanked the Hon'ble Prime Minister for understanding the issue of vaccination with the help of the Hon'ble Union Finance Minister, and undertaking this initiative of shouldering the vaccine expense.

23. Hon'ble Member from Goa congratulated the Central government and the Hon'ble Prime Minister and the Union Finance Minister for resolving the issue of vaccines. He stated that the GoM report has considered all the issues like impact on economy, finances of the Centre and the State, domestic manufacturers and also the overall context has been carefully analysed. The GoM report was unanimous and had taken a balanced view. Zero rating was meant for exports and could not be considered in the current scenario. The GoM had considered the long-term impact on the economy as

well. Further, he stated that issuing an ordinance was not the right option. He stated that the Council, as a constitutional body, had been appreciated internationally and it should work by consensus. He congratulated the Convenor of the GoM for giving a well-considered report. He congratulated the Chairperson and the Honourable Prime Minister for living upto the expectation of their countrymen and that the main issue regarding vaccination had been taken care of by the Central Government.

24. Hon'ble Member from Tamil Nadu stated that GoM report was very meticulous and detailed. He stated that some issues such as vaccination had been taken care of. He stated that he was not in acquiescence with 5% but was looking for zero rating since the time period was very short and that there would be no fundamental change at a financial level. He stated that to bring in zero rating only an amendment may be needed in the IGST Act. He further stated that he was not comfortable with this notion of unanimity in the process and that he was supportive for zero rating and not for 5%.

25. Hon'ble Member from Kerala stated that the decision of the Union Government to provide vaccination had given them relief concerning State finances for vaccination. Further, he stated that he was relieved as the state had announced universal vaccination even though they had serious constraints of finances. He stated that he could not attend the GoM fully due to preparations for the State Budget, but had submitted a letter later to the Convenor of the GoM, stating his disagreement with the decision to not zero rate or reduce tax rate on all COVID-19 related medicines and oxygen therapy equipment to 0.1%. Further, 75% of vaccines were coming from the central pool and 25% from the private sector. In the private sector, they would transmit the tax burden to the common people, and that zero rating would be helpful there.

26. Hon'ble Member from Haryana stated that he had recommended that the GIC could finalise regarding drugs that were recommended by the Ministry of Health and Family Welfare. He further requested the Council that the tax rate on crematoriums should be further reduced from 12% to 5% as that would help reduce pollution. He also stated the Council should extend the last date for exemption by another two months.

27. Hon'ble Member from Uttar Pradesh stated that the discussions should only be in respect of the GoM and associated issues. He stated that he believed that the tradition of the Council had been to decide issues in consensus and all Members should respect that.

28. Hon'ble Chairperson stated that they had all come together to balance revenue and not to burden the consumer.

29. Hon'ble Member from Kerala clarified the background and intention behind his writing the letter to GoM specifying that he just wanted to place his opinion on record and it was not to be construed dissent note.

30. Hon'ble Convenor of the GoM stated that there was a need to consider the immediate impact of specific items and take an immediate decision. He also clarified that nil rate means that the manufacturers would not get input tax credit. However, since the two items to be nil rated were largely imported, therefore, manufacturers would not be affected. He also clarified that the letter received from the Hon'ble Member from Kerala. clearly mentioned that it was not a dissent, and that he wanted to record his viewpoint which supported zero rate or a 0.1% rate. He stated that the GoM had gone through all aspects to find a balance within the framework of Constitution and fundamental principles of GST while trying to give maximum relief to the people. He requested all Members to accept the recommendations of the GoM.

31. Upon a direction to explain the statutory provision relating to zero rating, JS, TRU stated that the issue as to whether zero rating is permissible for domestic supply is crucial to the whole discussion.

One opinion expressed was that there were already provisions in the CGST Act which allows for zero rating, and that there was a way which allowed for it to be done. He stated that zero rating meant that GST would not to be imposed on the final product, and at the same time, refund of accumulated ITC on input goods and services to be claimed/refunded. He then stated that there were some essential steps for granting zero rating. The first step was to identify those supplies where zero rating would apply. To identify these supplies, there was only one provision in the IGST Act, which is Section 16. This section prescribes which supplies would be entitled to zero rating. Once Section 16 was applicable to certain goods and services one could go to the next step which was to apply zero rate, that is to prescribe in law that ITC would be available even if no GST on such goods or services applies. This is achieved through section 17 (2) of the CGST Act. Third step is to allow in law to refund of accumulated ITC, which is achieved through section 54 (3) of the CGST Act. That first step was only satisfied by export or supplies made to SEZ. Hence amendment would be required in section 16 of the IGST Act. Another issue raised was that if perhaps only an amendment in the IGST act was required, and not in the CGST and SGST Act. In this context he submitted that currently zero rating is only for interstate supply, that is export and supplies to SEZ, and accordingly, the supplies to which zero rating apply is prescribed only in the IGST Act, however, if zero rating is also to be considered for intra state supply, which does not fall within the ambit of IGST, then some provisions would need to be built into CGST and SGST Acts as well. Hence, for zero rating of Covid-19 relief item, which would be both inter-state and intra state, amendment would be needed in IGST Act, CGST Act and all SGST Acts.

32. The Secretary further added that in view of above discussion, it is clear that an amendment or ordinance by the Centre would not suffice and all States would need to amend their respective acts as well. He also clarified that in zero rating, input credit of capital goods would need to be carried forward, and would not be immediately available. He elucidated that if rate was brought down to 0.1%, then not only the credit of capital goods would need to be carried forward, but also the credit for input services would need to be carried forward, and only credit of the input goods would be available. So, the impact of these two would go into the cost of product. He then stated that while benefit should go to the customer, awareness was required as to how domestic industry or the domestic manufacturers would react to such changes, so that they would not be disagreeable to changes made. He then stated that interactions had been held with the two vaccine manufacturers, and they had stated that if the vaccine was made zero rated or 0.1%, then they would need to keep separate books of accounts for input and output of the products. Thus, the manufacturers would need to maintain separate books for the period of the relief and they were uncomfortable with such a scenario. On the exemption of the two medicines, referred to by convener of the GoM, he stated that these two medicines were imported, and this would have salutary effect on the cost, and the exemption would be over by the time any domestic manufacturer started making it. On the exemption, he stated that he wished to inform the Council that if any goods are exempted, they would not get ITC on input goods, services and capital goods. He stated that this could lead to an increase in cost. He then stated that 75% vaccines were being procured by the Central Government, and that 25% of vaccines would be purchased by hospitals. Further he stated that even though 25% of the vaccines would be purchased by hospitals, but it was not mandatory for anyone to go to private hospitals, and anyone could go to the Government hospital and get vaccinated for free. So if anyone takes the decision to go to a Private hospital, then the cost of GST would be a minor part of the cost of the vaccines, so this would be a minor consideration. He also stated that GST on vaccine is to be paid by its supplier. Therefore, no compliance burden is added for hospital. He clarified that out of the tax being paid, 70% would go to the State governments, and only 30% would go to the Central Government. He informed that the black fungus drugs had already been covered under ad hoc exemption. He expressed that he would discuss the matter raised by the Member from Delhi, about retrospective application of the exemption with officials.

33. Hon'ble Chairperson thanked the Hon'ble Convenor and all Members of the GoM

particularly for the prompt report as well as for having looked at the technical matters in great detail. The exemption could be extended to September and it could be reviewed then if it was needed to be extended further based on the advice of the Ministry of Health Ministry and Family welfare and the situation at that time. The Chairperson stated that it could be explained as to how the functioning of GIC was critical. She stated that if a decision was to be taken on extending the exemption beyond September, the GIC being a body of officials from some States, could take guidance from the political leadership and those who are not a part of the GIC could contact it and state that they would like it to be extended. The GIC, with concurrence of the leadership, could take the call, instead of the GST council meeting again for one or two agenda items and the GIC could function with the guidance of the Council. The importance of GIC for execution purposes, particularly in a time like this was not to be lost out on. Regarding the FRBM limit, mentioned by the Telangana State, she stated that the Finance Ministry shall take a call on the same and it is not for the Council to decide on it. She also clarified that the Council had been briefed as to why two items had been nil rated. She proposed that GST rates on gas/electric and other furnaces for crematoriums could be reduced from 18% to 5% considering the environmental impact. She further proposed that on the temperature checking equipment GST could be reduced from 18% to 5% and on ambulances, the rates could be reduced from 28% to 12%. She stated that mutual hand holding was required to manage the Pandemic and nobody wanted a third wave. She said that compassion was being taken on board by saying that the vaccine shall be given for free and that she was grateful to the States who have thanked the Hon'ble Prime Minister. Vaccine policy was not a GST matter but since it had been raised, she clarified that the issue had been discussed with the States. She stated that consensus, or trying for it, had always been the culture in the Council.

34. The Secretary concluded the meeting with the permission of the chair and stated that the GoM report was accepted by the Council with modifications as proposed by the Hon'ble Chairperson. The decisions would be implemented at the earliest to give relief to the people.

F.No. S-31011/12/2021-DIR(NC)-DOR

Government of India
Ministry of Finance
Department of Revenue

New Delhi, 29th May, 2021

Office Memorandum

Subject: Constitution of a Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material-reg.

In pursuance of the decision of the GST Council at its 43rd meeting on 28 May 2021, a Group of Ministers (GOM) has been constituted to examine the issue of GST concessions/ exemption to COVID relief material. The GOM shall consist of the following members:

S. No.	Name	Designation and State	
1.	Shri Conrad Sangma,	Chief Minister, Meghalaya	Convenor
2.	Shri Nitinbhai Patel,	Deputy Chief Minister, Gujarat	Member
3.	Shri Ajit Pawar,	Deputy Chief Minister, Maharashtra	Member
4.	Shri Mauvin Godinho,	Minister for Transport & Panchayati Raj, Housing, Protocol and Legislative Affairs, Goa	Member
5.	Shri K.N. Balagopal,	Minister for Finance, Kerala	Member
6.	Shri Niranjan Pujari,	Minister for Finance and Excise, Odisha	Member
7	Shri T. Harish Rao,	Minister for Finance, Telangana	Member
8	Shri Suresh Kr Khanna,	Minister for Finance, U. P.	Member

2. **Terms of Reference:** The GOM shall examine the need for GST concession/exemption and make recommendations on -

(i) COVID vaccines, drugs and medicines for COVID treatment, and testing kits for COVID detection;

(ii) Medical grade oxygen, Pulse oximeters, Hand sanitizers, Oxygen therapy equipment such as Concentrators, Generators and Ventilators, PPE kits, N 95 masks, surgical masks, temperature checking equipment; and

(iii) any other items required for COVID relief.

3. The GOM on COVID relief shall be assisted by a Committee of officers from the Centre and the States as convened by the GOM.

4. The secretarial assistance to this GOM shall be provided by Joint Secretary (TRU-I), CBIC.

5. The GOM shall submit its recommendations to the Council latest by 8 June, 2021.


(Dinesh Bouddh)
Director (DoR)
Tel:011-23092686

To

1. All Members of GoM and Officers
2. Revenue Secretary, North Block, New Delhi
3. Chairperson, CBIC, North Block, New Delhi
4. Member (Tax Policy), North Block, New Delhi
5. Joint Secretary, TRU-I, Department of Revenue, North Block, New Delhi
6. GST Council Secretariat, New Delhi
7. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
8. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.

List Hon'ble Ministers who have attended the 44th GST Council Meeting on 12th June 2021

S.No.	Centre/State	Name of Hon'ble Minister	Charge
1	Govt of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Finance Minister
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Smt. Ajanta Neog	Finance Minister
6	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
7	Chhattisgarh	Shri T S Singh Deo	Minister for Commercial Tax
8	Delhi	Shri Manish Sisodia	Deputy Chief Minister
9	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
10	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
11	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
12	Himachal Pradesh	Shri Bikram Singh	Minister for Industries
13	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Lieutenant Governor
14	Jharkhand	Dr. Rameshwar Oraon	Minister for Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
15	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs, Law & Parliamentary Affairs
16	Kerala	Shri K.N. Balagopal	Minister for Finance
17	Madhya Pradesh	Shri Jagdish Devda	Minister for Finance & Planning, Commercial Tax and Statistics
18	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister
19	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
20	Meghalaya	Shri Conrad K. Sangma	Chief Minister

21	Mizoram	Shri Lalchamliana	Minister for Taxation, Home, Disaster Management & Rehabilitation
22	Odisha	Shri Niranjan Pujari	Minister, Finance & Excise
23	Punjab	Shri Manpreet Singh Badal	Finance Minister
24	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development & Housing, Law and Legal Affairs Parliamentary Affairs,
25	Sikkim	Shri B.S. Panth	Minister for Tourism , Civil Aviation, Commerce & Industries
26	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resource Management
27	Telangana	Sri T. Harish Rao	Finance Minister
28	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
29	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs, Medical Education
30	Uttarakhand	Shri Subodh Uniyal	Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
31	West Bengal	Dr. Amit Mitra	Finance Minister

List of officials who have attended 44th GST Council meeting on 12.06.2021			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri Vivek Johri	Member (GST & Tax Policy), CBIC
5	GST Council	Dr. C.S. Mohapatra	Additional Secretary
6	Govt. of India	Shri Ritvik Pandey	Joint Secretary, DoR
7	Govt. of India	Shri Sanjay Mangal	Commissioner (GST PW), CBIC
8	GST Council	Shri S.K. Rahman	Joint Secretary
9	GSTN	Shri Manish Kumar Sinha	Executive Vice President
10	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU
11	GST Council	Ms Ashima Bansal	Joint Secretary
12	Govt. of India	Shri S.S. Nakul	PS to Finance Minister
13	Govt. of India	Shri Binod Kumar	PS to MoS (Finance)
14	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
15	Govt. of India	Shri B.N. Bhaskar	Addl. PS to Finance Minister
16	Govt. of India	Shri J.S. Kandhari	Deputy Secretary, TRU
17	Govt. of India	Shri Gaurav Singh	Deputy Secretary, TRU-I

18	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
19	Govt. of India	Shri Shashikant Mehta	OSD, TRU-II, CBIC
20	Govt. of India	Shri Sameer Patil	Deputy Commissioner, TRU
21	GST Council	Shri Kshitendra Verma	Director
22	GST Council	Shri Harish Kumar	Deputy Secretary
23	GST Council	Shri Arjun Kumar Meena	Joint Commissioner
24	GST Council	Shri Krishna Koundinya	Under Secretary
25	GST Council	Shri Naveen Agrawal	Under Secretary
26	GST Council	Shri Karan Choudhary	Under Secretary
27	GST Council	Shri Joginder Singh Mor	Under Secretary
28	GST Council	Shri Abhishek Kumar	Superintendent
29	GST Council	Shri Adesh Nayak	Superintendent
30	GST Council	Shri Manoj Kumar	Superintendent
31	GST Council	Shri K.K. Verma	Superintendent
32	GST Council	Shri Rakesh Joshi	Inspector
33	GST Council	Shri Vijay Malik	Inspector
34	Andhra Pradesh	Dr Rajath Bhargava	Special Chief Secretary, Revenue Department
35	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner of State Tax
36	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Special Chief Secretary, Revenue
37	Andhra Pradesh	Shri. K. Ravishankar	Commissioner State Tax GST (FAC)

38	Andhra Pradesh	Shri. J. V. M Sarma	Joint Commissioner State Tax, GST
39	Arunachal Pradesh	Shri Kanki Darang	Commissioner
40	Arunachal Pradesh	Shri Tapas Dutta	SNO (GST)
41	Assam	Shri Manish Thakur	Commissioner & Secretary, Finance
42	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
43	Assam	Md. Shakeel Saadullah	Additional Commissioner of State Tax
44	Bihar	Dr. Pratima	Commissioner cum Secretary, Commercial Taxes
45	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
46	Chandigarh	Shri Mandip Singh Brar	Excise & Taxation Commissioner
47	Chandigarh	Shri Rakesh Kumar Popli	Additional Excise & Taxation Commissioner,
48	Chhattisgarh	Shri Gaurav Dwivedi	Principal Secretary, Commercial Tax
49	Chhattisgarh	Shri Sameer Vishnoi	Commissioner of State Tax
50	Delhi	Shri Sandeep Kumar	Secretary, Finance
51	Delhi	Shri Ankur Garg	Commissioner, GST
52	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
53	Goa	Shri Hemant Kumar	Commissioner, State Tax
54	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
55	Gujarat	Shri Dilip Thaker	Deputy Secretary(Tax), Finance Department,
56	Gujarat	Shri Riddhesh Raval	Deputy Commissioner, State Tax
57	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation

58	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
59	Haryana	Shri Siddarth Jain	Additional Excise & Taxation Commissioner
60	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
61	Himachal Pradesh	Shri Jagdish Chander Sharma	Principal Secretary (Excise & Taxation)
62	Himachal Pradesh	Shri Rohan Chand Thakur	Commissioner of State Tax and Excise
63	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
64	Jammu and Kashmir	Dr. Arun Kumar Mehta	Financial Commissioner
65	Jammu and Kashmir	Shri Showkat Aijaz Bhat	Commissioner, State Taxes
66	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
67	Jharkhand	Ms Aradhana Patnaik	Secretary, Commercial Tax
68	Jharkhand	Ms Akanksha Ranjan	Commissioner, Commercial Tax
69	Jharkhand	Shri Santosh Kumar Vats	Special Secretary, Commercial Tax
70	Jharkhand	Shri Brajesh Kumar	State Taxes Officer
71	Karnataka	Shri Srikar M.S.	Commissioner of Commercial Taxes
72	Kerala	Shri Bishwanath Sinha	Principal Secretary, Taxes
73	Kerala	Shri Anand Singh	Commissioner, State Taxes
74	Kerala	Dr. S.Karthikeyan	Special Commissioner, State Tax
75	Kerala	Shri. Abraham Renn	Addl. Commissioner, State Taxes
76	Kerala	Shri Mansur.M.I	Joint Commissioner, State Taxes
77	Madhya Pradesh	Shri Manoj Govil	Principal Secretary, Finance

78	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
79	Madhya Pradesh	Shri R.K. Sharma	Joint Commissioner, Commercial Taxes
80	Maharashtra	Shri Manoj Saunik	Additional Chief Secretary, Finance
81	Maharashtra	Shri Nitin Gadre	Principal Secretary (Financial Reforms)
82	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
83	Maharashtra	Ms. Vishakha Borse	Joint Commissioner of State Tax
84	Maharashtra	Shri Kiran Shinde	Deputy Commissioner of State Tax
85	Manipur	Shri Yumnam Indrakumar Singh	Assistant Commissioner of Taxes
86	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Excise, Registration, Taxation & Stamps
87	Meghalaya	Shri Arunkumar Khembavi	Commissioner , SGST
88	Meghalaya	Shri L. Khongsit	Additional Commissioner, SGST
89	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary , Taxation Department
90	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
91	Mizoram	Shri HK Lalhawngliana	Joint Commissioner, State Tax
92	Mizoram	Shri Lalthansanga	Joint Commissioner, State Tax
93	Nagaland	Shri Y Mhathung Murry	Special Commissioner of State Taxes
94	Nagaland	Shri Wochamo Odyuo	Additional Commissioner of State Taxes
95	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance
96	Odisha	Shri Sushil Kumar Lohani	Commissioner, Commercial Taxes & GST

97	Puducherry	Shri Shurbir Singh	Secretary (Finance)
98	Puducherry	Shri L. Kumar	Commissioner (ST)
99	Puducherry	Shri K. Sridhar	Deputy Commissioner (ST)
100	Punjab	Shri A. Venu Prashad	Additional Chief Secretary(Taxation)
101	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
102	Punjab	Shri Ravneet Khurana	Additional Commissioner (Audit)
103	Rajasthan	Shri Akhil Arora	Principal Secretary(Finance)
104	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
105	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
106	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
107	Rajasthan	Shri Vibhu Gautam	Assistant Commissioner, GST
108	Sikkim	Shri V.B. Pathak	Additional Chief Secretary, Finance & Planning
109	Sikkim	Shri J.D. Bhutia	Commissioner, Commercial Taxes
110	Sikkim	Shri Bikash Diyali	Deputy Director (GST), CTD
111	Tamil Nadu	Shri S. Krishnan	Additional Chief Secretary, Finance
112	Tamil Nadu	Shri M. A. Siddique	Principal Secretary/Commissioner, Commercial taxes
113	Tamil Nadu	Ms B. Jothi Nirmalasamy	Secretary, Commercial Taxes & Registration
114	Tamil Nadu	Shri K. Gnanasekaran	Senior Additional Commissioner (Policy and Public Relations)
115	Telangana	Shri Somesh Kumar	Chief Secretary

116	Telangana	Ms Neetu Prasad	Commissioner of Commercial Taxes
117	Telangana	Shri N. Sai Kishore	Additional Commissioner (ST) (Legal)
118	Telangana	Ms Rupa Sowmya	Deputy Commissioner(ST) Policy
119	Telangana	Ms V.D.N. Sravanthi	Deputy Commissioner(ST) Statics
120	Tripura	Shri Apurba Roy	Secretary, Finance
121	Tripura	Dr. Vishal Kumar	Chief Commissioner of State Tax
122	Tripura	Shri Badal Baidya	Assistant Commissioner of State Tax
123	Tripura	Shri Ashin Barman	Nodal Officer, GST
124	Uttarakhand	Ms Sowjanya	Secretary, Finance
125	Uttarakhand	Shri Vipin Chandra	Additional Commissioner, State Tax
126	Uttarakhand	Shri Anil Singh	Additional Commissioner, State Tax
127	Uttarakhand	Shri Amit Gupta	Additional Commissioner, State Tax
128	Uttarakhand	Dr Sunita Pandey	Joint Comm/Nodal Officer, State Tax
129	Uttarakhand	Shri Pramod Joshi	Joint Commissioner, State Tax
130	Uttarakhand	Shri S.S. Tiruwa	Deputy Commissioner, State Tax
131	Uttar Pradesh	Shri Sanjiv Mittal	Additional Chief Secretary, State Tax
132	Uttar Pradesh	Ms Ministhy S	Commissioner, Commercial Tax
133	Uttar Pradesh	Shri Vivek Singh	Joint Commissioner (GST),Commercial Tax HQ
134	Uttar Pradesh	Shri Manoj Tiwari	Joint Commissioner (Statistics), Commercial Tax HQ

135	West Bengal	Shri Manoj Pant	Principal Secretary, Finance Department
136	West Bengal	Ms Smaraki Mahapatra	Secretary, Finance Department
137	West Bengal	Shri Khalid Aizaz Anwar	Commissioner, Commercial Taxes
138	West Bengal	Shri Rajib S. Sengupta	Senior Joint Commissioner, Commercial Taxes

Report of the Group of Ministers (GoM) For GST concession on Covid relief items

Thought process of the GoM

- Relief to the common man was paramount
- Impact of GST exemptions/concessions on domestic manufacturing and supply side management
- Long-term implications on GST rate structure across all sectors of the economy
- Effect on resources of the Governments, particularly if States are to procure the vaccines
- Approach was to discuss each item at length, and arrive at consensus.

Discussions of the GoM

Option of Zero Rating

Considering zero rating as an immediate short-term relief was not found feasible

Option of 0.1% Rate

May not be considered for Covid relief items as a short-term measure

Discussions of the GoM

GST Exemption/Concession on Covid relief items

Items were placed in the following categories and discussed at length:

- A. Vaccines
- B. Medicines
- C. Oxygen, Oxygen generation equipment and related medical devices
- D. Testing Kits and Machines
- E. Other Covid related relief material

Recommendations of the GoM

S. No.	Description	Present GST Rate	GoM Recommended GST Rate
A. Vaccines			
1.	Covid-19 Vaccines	5%	No change
B. Medicines			
1.	Tocilizumab	5%	Nil
2.	Amphotericin B	5%	Nil
3.	Anti-Coagulants like Heparin	12%	5%
4.	Remdesivir	12%	5%
5.	Any other drug recommended by Ministry of Health and Family Welfare and Dept. of Pharma for Covid treatment	Applicable Rate	5%

Recommendations of the GoM

S. No.	Description	Present GST Rate	GoM Recommended GST Rate
C. Oxygen, Oxygen generation equipment and related medical devices			
1.	Medical Grade Oxygen	12%	5%
2.	Oxygen Concentrator/ Generator, including personal imports thereof	12%	5%
3.	Ventilators	12%	5%
4.	Ventilator masks / canula / helmet	12%	5%
5.	BiPAP Machine	12%	5%
6.	High flow nasal canula (HFNC) device	12%	5%

Recommendations of the GoM

S. No.	Description	Present GST Rate	GoM Recommended GST Rate
D. Testing Kits and Machines			
1.	Covid Testing Kits	12%	5%
2.	Specified Inflammatory Diagnostic Kits, namely D-Dimer, IL-6, Ferritin and LDH	12%	5%
3.	(i) RT PCR Machines; (ii) RNA Extraction Machines (iii) Genome sequencing machine	18%	No change
4.	Genome sequencing kits	12%	No change
5.	Raw materials for Covid Testing Kits	Applicable rate	No change

Recommendations of the GoM

E. Other Covid-19 related relief material			
1.	Pulse Oximeters, including personal imports thereof	12%	5%
2.	Hand Sanitizer	18%	5%
3.	Temperature check equipment	18%	12%
4.	Gas/Electric/other Furnaces for crematorium	18%	12%
5.	PPE Kits	5%	No change
6.	N95, triple layer, surgical masks	5%	No change
7.	Ambulances	28%	No change
8.	Portable Hospital Units	18%	No change

These rate reductions/exemptions are recommended for a period upto 31.8.2021

Agenda Item 2: Ratification of the Notifications, Circulars and orders issued by the GST Council and decisions of GST Implementation Committee for the information of the Council.

In the 22nd meeting of the GST Council held at New Delhi on 6th 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, till the 43rd meeting held on 28.05.2021, the GST Council had ratified all the Notifications, Circulars, and Orders issued up to 18.05.2021.

2. In this respect, the following Notifications, Circulars and Orders issued after 18.05.2021 till 08.09.2021 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.	Description/Subject
Notifications under CGST Act / CGST Rules	Central Tax	1. Notification No. 16/2021-Central Tax dated 01.06.2021	Seeks to appoint 01.06.2021 as the day from which the provisions of section 112 of the Finance Act, 2021, relating to amendment of section 50 of the CGST Act, 2017 shall come into force.
		2. Notification No. 17/2021-Central Tax dated 01.06.2021	Seeks to extend the due date for FORM GSTR-1 for May, 2021 by 15 days.
		3. Notification No. 18/2021-Central Tax dated 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.
		4. Notification No. 19/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-3B; and to provide conditional waiver of late fee for delay in filing FORM GSTR-3B for the period from July, 2017 to April, 2021; and to provide waiver of late fees for delayed filing

			of return in FORM GSTR-3B for specified taxpayers and specified tax periods.
		5. Notification No. 20/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in furnishing of the statement of outward supplies in FORM GSTR-1.
		6. Notification No. 21/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-4.
		7. Notification No. 22/2021-Central Tax dated 01.06.2021	Seeks to rationalize late fee for delay in filing of return in FORM GSTR-7.
		8. Notification No. 23/2021-Central Tax dated 01.06.2021	Seeks to amend Notification no. 13/2020-Central Tax to exclude government departments and local authorities from the requirement of issuance of e-invoice.
		9. Notification No. 24/2021-Central Tax dated 01.06.2021	Seeks to amend notification no. 14/2021-Central Tax in order to extend due date of compliances which fall during the period from "15.04.2021 to 29.06.2021" till 30.06.2021, under section 168A.
		10. Notification No. 25/2021-Central Tax dated 01.06.2021	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.07.2021.
		11. Notification No. 26/2021-Central Tax dated 01.06.2021	Seeks to extend the due date for furnishing of FORM ITC-04 for QE March, 2021 to 30.06.2021.
		12. Notification No. 27/2021-Central Tax dated 01.06.2021	Seeks to make amendments (Fifth Amendment, 2021) to the CGST Rules, 2017.
		13. Notification No. 28/2021-Central Tax dated 30.06.2021	Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21 st March 2020 between the period from 1 st day of December, 2020 to the 30 th day of September, 2021.

		14. Notification No. 29/2021-Central Tax dated 30.07.2021	Seeks to notify section 110 and 111 of the Finance Act, 2021 w.e.f. 01.08.2021.
		15. Notification No. 30/2021-Central Tax dated 30.07.2021	Seeks to amend Rule 80 of the CGST Rules, 2017 and notify FORM GSTR 9 and 9C for FY 2020-21. Rule 80 provides for exemption from filing FORM GSTR-9C to taxpayers having AATO upto Rs. 5 crores. (Sixth Amendment, 2021 to the CGST Rules, 2017)
		16. Notification No. 31/2021-Central Tax dated 30.07.2021	Seeks to exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2020-21.
		17. Notification No. 32/2021-Central Tax dated 29.08.2021	Seeks to make amendments (Seventh Amendment, 2021) to the CGST Rules, 2017.
		18. Notification No. 33/2021-Central Tax dated 29.08.2021	Seeks to extend the last date for FORM GSTR-3B late fee Amnesty Scheme (provided vide Notification No. 19/2021-Central Tax) from 31.08.2021 to 30.11.2021.
		19. Notification No. 34/2021-Central Tax dated 29.08.2021	Seeks to extend timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where due date for filing such application falls between 01.03.2020 to 31.08.2021, in cases where registration has been canceled under clause (b) or clause (c) of section 29(2) of the CGST Act.
	Central Tax (Rate)	1. Notification No. 01/2021-Central Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 1/2017-Central Tax (Rate) to prescribe change in CGST rate of goods.
		2. Notification No. 02/2021-Central Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43 rd meeting held on 28.05.2021.

		3. Notification No. 03/2021-Central Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 06/2019- Central Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43 rd meeting held on 28.05.2021.
		4. Notification No. 04/2021-Central Tax (Rate), dated 14.06.2021	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify GST rates of various services as recommended by GST Council in its 44 th meeting held on 12.06.2021.
		5. Notification No. 05/2021-Central Tax (Rate), dated 14.06.2021 along with corrigendum dated 15.06.2021	Seeks to provide the concessional rate of CGST on Covid-19 relief supplies, up to and inclusive of 30 th September 2021.
Notifications under UTGST Act	Union Territory Tax	1. Notification No. 02/2021-Union Territory Tax, dated 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.
	Union Territory Tax (Rate)	1. Notification No. 01/2021-Union Territory Tax (rate), dated 02.06.2021	Seeks to amend notification No. 1/2017- Union Territory Tax (Rate) to prescribe change in CGST rate of goods.
		2. Notification No. 02/2021-Union Territory Tax (rate), dated 02.06.2021	Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43 rd meeting held on 28.05.2021.
		3. Notification No. 03/2021-Union Territory Tax (rate), dated 02.06.2021	Seeks to amend notification No. 06/2019- Union Territory Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43 rd meeting held on 28.05.2021.

		4. Notification No. 04/2021-Union Territory Tax (rate), dated 14.06.2021	Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify GST rates of various services as recommended by GST Council in its 44 th meeting held on 12.06.2021.
		5. Notification No. 05/2021-Union Territory Tax (rate), dated 14.06.2021 along with corrigendum dated 15.06.2021	Seeks to provide the concessional rate of UTGST on Covid-19 relief supplies, up to and inclusive of 30 th September 2021.
Notifications under IGST Act	Integrated Tax	1. Notification No. 02/2021- Integrated Tax dated 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.
		2. Notification No. 03/2021- Integrated Tax, dated 02.06.2021	Seeks to amend Notification No. 4/2019-Integrated Tax dt. 30.09.2019 to change the place of supply for B2B MRO services in case of Shipping industry, to the location of the recipient.
	Integrated Tax (Rate)	1. Notification No. 01/2021-Integrated Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 1/2017- Integrated Tax (Rate) to prescribe change in CGST rate of goods.
		2. Notification No. 02/2021-Integrated Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 43 rd meeting held on 28.05.2021.
		3. Notification No. 03/2021-Integrated Tax (Rate), dated 02.06.2021	Seeks to amend notification No. 06/2019- Integrated Tax (Rate) so as to give effect to the recommendations made by GST Council in its 43 rd meeting held on 28.05.2021.
		4. Notification No. 04/2021- Integrated Tax (Rate), dated 14.06.2021	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify GST rates of various services as recommended by GST Council in its 44 th meeting held on 12.06.2021.

		5. Notification No. 05/2021- Integrated Tax (Rate), dated 14.06.2021 along with corrigendum dated 15.06.2021	Seeks to provide the concessional rate of IGST on Covid-19 relief supplies, up to and inclusive of 30th September 2021.
Circulars under CGST Act, 2017		1. Circular No. 149/05/2021-GST dated 17.06.2021	Clarification regarding applicability of GST on supply of food in Anganwadis and Schools.
		2. Circular No. 150/06/2021-GST dated 17.06.2021	Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity).
		3. Circular No. 151/07/2021-GST dated 17.06.2021	Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination).
		4. Circular No. 152/08/2021-GST dated 17.06.2021	Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis.
		5. Circular No. 153/09/2021-GST dated 17.06.2021	GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS.
		6. Circular No. 154/10/2021-GST dated 17.06.2021	GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them.
		7. Circular No. 155/11/2021-GST dated 17.06.2021	Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System.
		8. Circular No. 156/12/2021-GST dated 21.06.2021	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification no. 14/2020- Central Tax dated 21st March, 2020.

	9. Circular No. 157/13/2021-GST dated 20.07.2021	Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.
	10. Circular No. 158/14/2021-GST dated 06.09.2021	Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021 – Central Tax dated 29.08.2021

3. The GST Council may grant ratification to the Notifications, Circulars and Orders as detailed in para 2 above.

4. It is further informed that out of the Notifications, Circulars and Orders as detailed in para 2 above, the following Notifications, Circulars and Orders were issued to implement the decisions of the GST Implementation Committee (GIC) taken during the period since the 43rd meeting of the Council.

S. No.	Notification/Circular No.	Details
1.	Circular No. 156/12/2021-GST dated 21st June, 2021	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification no. 14/2020- Central Tax dated 21st March, 2020.
2.	Notification No. 28/2021 – Central Tax, dated 30th June, 2021	Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020 between the period from 1st day of December, 2020 to the 30th day of September, 2021.
3.	Circular No. 157/13/2021-GST dated 20th July, 2021	Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.
4.	Notification No. 34/2021-Central Tax, dated 29th August, 2021.	Seeks to extend timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where due date for filing such application falls between 01.03.2020 to 31.08.2021, in cases where registration has been canceled under clause (b) or clause (c) of section 29(2) of the CGST Act.
5.	Notification No. 33/2021-Central Tax, dated 29th August, 2021	Seeks to extend the last date for FORM GSTR-3B late fee Amnesty Scheme (provided vide Notification No. 19/2021-Central Tax) from 31.08.2021 to 30.11.2021.
6.	Notification No. 32/2021-Central Tax, dated 29th	Seeks to make amendments (Seventh Amendment, 2021)

	August, 2021	to the CGST Rules, 2017.
7.	Circular No. 158/14/2021-GST dated 6th September, 2021	Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021

5. The details of decisions of the GIC are enclosed as **Annexure-I** to this Agenda Note.

Decisions of the GST Implementation Committee (GIC) for Information of the GST Council.

The GST Implementation Committee (GIC) took certain decisions between 29th May 2021 and 5th September 2021. Due to the urgency involved, some decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions taken are given below:

2. Decisions of GIC by circulation on 08.06.2021 on Issuance of FAQs for clarifications on Dynamic Quick Response (QR) Code in B2C invoice

2.1 It was mentioned in the agenda note that various representations had been received from trade regarding the challenges in implementation of Dynamic QR Code as per the Notification No.14/2020 dated 21st March, 2020 as amended, which were clarified vide Circular No.146/02/2021 dated 23rd February, 2021. Trade and associations have further sought clarity regarding various other compliance requirements vis-à-vis the implementation of Dynamic QR Code, especially for the supplies made through Electronic Commerce Operators (ECO). The agenda note also stated that the issues raised in these representations have been discussed with all stakeholders in consultation with the National Payment Corporation of India (NPCI) and have been examined.

2.2 Lastly it was stated that all the issues raised, were discussed in Law Committee meeting held on 12.05.2021. The Law Committee, in the said meeting, has approved the draft circular / FAQs related to Dynamic QR Code.

2.3 The draft Circular was put before the GIC and the GIC approved the proposed circular.

2.4 The recommendation of GIC has been implemented by way of issuance of Circular No. 156/12/2021-GST dated 21st June, 2021.

3. Decisions of GIC by circulation on 23.06.2021 on Waiver of penalty for issuing invoice without dynamic QR Code

3.1 In the agenda note it was stated that notification No. 14/2020-Central Tax, dated 21st March 2020 as amended by notification no. 71/2020-Central Tax dated 30th September, 2020 was issued, which requires dynamic QR code on B2C invoice issued by taxpayers having aggregate turnover above 500 crore rupees, w.e.f. 01.12.2020. Based on various interactions with banks and trade bodies, it was however noticed that banks and payment service providers were not in a ready state to roll out the facility for the dynamic QR code w.e.f. 01.12.2020

3.2 Accordingly, to facilitate the transition for implementation of scheme of Dynamic QR Code, the penalty payable under section 125 of the CGST Act, 2017 for non-compliance of the provisions regarding Dynamic QR Code, was waived vide notification no. 89/2020 -CT dated 29th November, 2020, for the period from 01.12.2020 to 31.03.2021, and then was further waived vide notification no. 06/2021 -CT dated 30th March, 2021, for the period from 01.12.2020 to 30.06.2021, subject to the condition that the said persons comply with the provisions of the said notification from 01.07.2021. Meanwhile, to address various queries/issues represented by the trade, Circular number 146/02/2021-GST dated 23.02.2021 was issued, which clarified a number of the queries raised by the trade. Further clarifications have been issued through a circular number 156/12/2021-GST dated 21.06.2021 to clarify the additional queries/issues raised by trade.

3.3 In the agenda note it was stated that as per feedback provided by NPCI, which is the nodal agency for on boarding of the banks for QR Code application, most of the banks are in advanced stage of development and certification process for Dynamic QR Code and will be able to go live and release

their application by end of June 2021. As informed by them, 15 Banks including major PSU banks such as SBI, Punjab National bank, Bank of Baroda etc. are already ready and live, while major private banks such as HDFC, ICICI, Axis Bank, Yes Bank, etc. are expected to go live by 30th June, 2021.

3.4 It was also mentioned in the agenda note that interactions have been done with major trade associations like NASSCOM, USISPF, Retailers Association of India (RAI), ASSOCHAM and other major retailers / e-commerce operators to outreach about the scheme and to understand further challenges, if any, being faced by them. NPCI has also conducted various workshops with banks and merchants for smooth on boarding of merchants and vendors. As the merchants are dependent on their banks to initiate making changes in their systems to integrate with bank applications, the requisite banks' applications need to be made available by banks with their customers (merchants). It has been informed that banks are handholding their customers in this regard, but applications of a number of banks are yet to go live yet.

3.5 Feedback has been received from the trade bodies and merchants that after the last extension granted vide notification dated 31st March 2021, restrictions and lockdowns have been imposed in various parts of the country since mid-April 2021 to contain the spread of COVID-19 pandemic. Due to this, most of the retail business had come to standstill and most of the offices/ establishments were lying closed. The unlock process has recently started with various levels in various parts of the country. This has led to delays in development and implementation of the required IT and logistical infrastructure required for the QR Code to work. The trade bodies are requesting that due to these delays and dependency on banks, they will need more time to be fully compliant with the requirement of dynamic QR code at their end are seeking an extension of another three months for the relaxations from penalty granted in respect of implementation of dynamic QR code. It has also been highlighted by them that if extension to this effect for relaxation from imposition of penalty for non-compliance of provisions of Dynamic QR Code is not made after 30.06.2021, merchants/taxpayers may be subjected to harassment and penal action, by the tax officer due to non-compliance of provisions of Dynamic QR Code.

3.6 Considering the above, there may be a need of extending the relaxation from imposition of penalty under Section 125 of CGST Act for noncompliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020, beyond 30.06.2021 for another 3 months. It is also mentioned that earlier, the relaxation from imposition of penalty under Section 125 of CGST Act for noncompliance of the provisions of dynamic QR Code, was conditional, subject to the compliance of the provisions of dynamic QR code with effect from 01.07.2021. It is proposed that considering that the banks were not ready during this period for implementation of dynamic QR code and therefore, merchants/ retailers were not in a position to comply with the said provisions, it would be desirable that the conditionality is removed for relaxation of penalty during this interim period.

3.7 Accordingly, it was proposed that the penalty payable under section 125 of the CGST Act, 2017 for non-compliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020 as amended, may be waived till 30.09.2021.

3.8 The proposals were put before the GIC and the GIC approved the proposal of waiving the penalty payable under section 125 of the CGST Act, 2017 for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020 between the period from 1st day of December, 2020 to the 30th day of September, 2021.

3.9 The recommendation of GIC has been implemented by way of issuance of Notification No. 28/2021 – Central Tax, dated 30th June, 2021.

4. Decisions of the 39th Meeting of the GIC held on 29th June, 2021

Agenda: Regarding Clarification on the issue of extension of limitations for various compliances / actions under GST in the light of Hon'ble Supreme Court's order dated 23.03.2020, 08.03.2021 and 27.04.2021 in suo-motu Writ petition (Civil) No. 3 of 2020.

4.1 In the Agenda Note it was stated that an Agenda Note for the Law Committee was received from CCT, West Bengal vide email dated 04.05.2021 for seeking clarification in respect of the applicability of the order of the Hon'ble Supreme Court dated 27/04/2021 relating to extension of period of limitation, for matters under GST. The Hon'ble Supreme Court had, in its order dated 23rd March, 2020 directed that the period of limitation in filing petitions / applications / suits / appeals / all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March 2020 till further orders. The Hon'ble Court thereafter, in its order dated 8th March 2021 sought to regulate and bring to end the extension of period of limitation by issuing inter-alia certain directions. In view of the extraordinary situation caused by the sudden and second outburst of COVID-19 virus, the Hon'ble Court vide order dated 27.04.2021 has restored the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021, directed that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

4.2 The Notification No.14/2021-CT dated 1st May, 2021 was issued wherein the time limit for completion or compliance of any action, by any authority or by any person, under the CGST Act, which falls during the period from the 15th day of April, 2021 to the 30th day of May, 2021 (with suitable exemptions), was extended upto the 31st May, 2021, as per the powers granted under Section 168A of the CGST Act 2017.

4.3 The Law Committee in its meeting held on 12-05-2021, deliberated on this issue and opined as follows:

(i) A reference may be sent to Law Officer and seek legal opinion. Till such time, the notifications issued under section 168A of CGST Act, to be followed.

(ii) Unilateral action may not be taken by States and a uniform stand to be taken by all States and Centre.

4.4 The matter of further relief measures was also deliberated by the GST Council in its 43rd meeting held on 28.05.2021 and the time limit for completion or compliance of any action was further extended upto 30th June, 2021 vide Notification No.24/2021-Central Tax dated 01.06.2021.

4.5 As recommended by the Law Committee, legal opinion was sought from learned Additional Solicitor General of India (ASG) about applicability of the order dated 27.04.2021 of the Hon'ble Supreme Court on various compliances and actions under GST. The legal opinion dated 14.06.2021 was received from the ASG.

4.6 The Law Committee examined the issue in its meeting dated 16.06.2021. Considering the opinion received from the learned ASG, the Law Committee recommended to issue a circular after getting the same vetted by the learned ASG.

4.7 The above agenda was deliberated in the 39th meeting of the GIC held through video conferencing on 29th June 2021 and the GIC made the following decisions:

(a) GIC approved the draft circular; and

(b) the proposal for notification under Section 168A of the CGST Act 2017 for extension of timelines for application for revocation of cancellation of registration would be examined by the Law Committee.

4.8 The recommendation of GIC has been implemented by way of issuance of Circular No. 157/13/2021-GST dated 20th July, 2021.

5. GIC Decision by Circulation 05.08.2021 regarding proposal to settle IGST amount of Rs. 24000 crore on ad hoc basis

5.1 In the Agenda Note it was stated that depending on the amount of IGST remaining un-apportioned under the IGST Head, provisional settlement was done from time to time on ad-hoc basis. Details of previous ad-hoc settlements were as under:

Month	Amount (in Rs. Crore)
February, 2018	35,000
June, 2018	50,000
August, 2018	12,000
October, 2018	30,000
December,2018	18,000
March, 2019	20,000
April, 2019	12,000
June 2019	15,000
March 2020	6,000
Feb 2021	48,000
March 2021	28,000

5.2 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. Based on the collection of IGST during the year (2021-22) upto June, net of refunds and the settlement of IGST during the period, both regular and provisional, it was proposed to do ad-hoc settlement of another Rs. 24,000 crore, 50% to Centre and 50% to States. This would reduce the revenue gap of States and therefore, the compensation required

5.3 The proposals were put before the GIC and the GIC approved the proposal.

6. Decisions in the 40th Meeting of the GIC held on 18 August 2021

The 40th Meeting of the GST Implementation Committee (GIC) was held via WebEx on 18 August 2021 from 03:00PM onwards.

6.2 The five agenda items, circulated through email among Members of GIC, were discussed and decisions taken are as under:

6.3 Agenda-1: Extension of time limit for filing application for revocation of cancellation of registration

6.3.1 In the agenda note it was stated that GIC (GST Implementation Committee) in its 39th meeting held on 29.06.2021, while approving the circular (157/30/2021-GST dated 20.07.2021) on the subject issue had decided the following:

“The proposal for notification under section 168A of the CGST Act 2017 for extension of timelines for application for revocation of cancellation of registration would be examined by the Law Committee.”

6.3.2 Accordingly, the issue was placed in the Law Committee. It may be noted that notification No.14/2021-CT dated 1st May 2021 was issued wherein the time limit for completion or compliance of any action, by any authority or by any person, under the CGST Act, which falls between 15th April 2021 to 30th May 2021 **was extended up to the 31st May, 2021**, as per the powers granted under section 168A of the CGST Act 2017. Subsequent to the deliberations at the 43rd meeting of the GST Council dated 28.05.2021, the said time limit for completion or compliance of any action was further **extended up to 30th June 2021** vide Notification No. 24/2021-Central Tax dated 01.06.2021 (i.r.o. due date of compliances which falls between 15th April 2021 to 29th June 2021). This notification had extended the date of filing of application for revocation of cancellation of registration till 30th June 2021, where the due date of filing of application falls between 15th April 2021 to 29th June 2021.

6.3.3 It was further stated that the GST Council in its 43rd meeting dated 28.05.2021 had approved an Amnesty Scheme whereby late fee for non-furnishing FORM GSTR-3B for the tax periods from July 2017 to April 2021 has been reduced / waived if the returns for these tax periods are furnished between 01.06.2021 to 31.08.2021. However, various representations have been received stating that many taxpayers, whose GST Returns and Tax Payment were outstanding, couldn't comply earlier due to higher late fee, and their registrations were cancelled due to non-filing of returns. With the Amnesty Scheme, they may be willing to avail benefits of the reduced late fee and furnish the outstanding returns. But, where the time limit for application for revocation of such cancellation of registration is already over, the taxpayers are not able get their registration cancellation revoked and are not able to get the real benefit of the amnesty scheme. This is more relevant for those registered persons whose registration have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

6.3.4 It was also stated that earlier a one-time relaxation was provided vide Removal of Difficulty Order No. 01/2020-CT dated 25.06.2020 wherein the due date of filing of application of revocation of cancellation of registration in respect of all the cancellation order passed up to 12th June 2020, was effectively extended up to 30th September 2020.

6.3.5 The Law Committee, in its meeting dated 28.07.2021, had recommended to extend the timelines for filing of application for revocation of cancellation of registration to 30.09.2021, under section 168A of the CGST Act, where the due date of filing of application for revocation of cancellation of registration falls between 01.03.2020 to 31.08.2021. Further, it was also recommended that the extension may be limited for those cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

6.3.6 **Decision:** The GIC made the following decisions:

(i) Approved the proposed scheme for extension of the timelines for filing of application for revocation of cancellation of registration to 30.09.2021, under section 168A of the CGST Act, where the due date of filing of application for revocation of cancellation of registration falls between 01.03.2020 to 31.08.2021, in cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

(ii) Last date to avail benefit of the late fee amnesty scheme be extended from 31.08.2021 to 30.11.2021.

6.3.7 The recommendations of GIC have been implemented by way of issuance of Notification No. 34/2021-Central Tax, dated 29th August, 2021 and Notification No. 33/2021-Central Tax, dated 29th August, 2021.

6.4 **Agenda-2: Authentication using EVC (e-verification code)**

6.4.1 In the agenda note it was stated that Sub-rule (1) of rule 26 of the CGST Rules, 2017 provides for the methods of authenticating applications, returns, appeals or any other documents required to be submitted electronically under the CGST Rules. The default method provided for such authentication is digital signature certificate or e-signature as specified under the provisions of the Information Technology Act, 2000 or any other mode of signature or verification as notified by the Board.

“26. Method of authentication.- (1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.”

6.4.2 It was further stated that the Board, vide Notification No. 06/2017-Central Tax, dt. 19.06.2017 as amended vide Notification No. 11/2017-Central Tax, dt. 28.06.2017, has notified the following modes of verification, for the purpose of the said rule, namely: -

- (i) Aadhaar based Electronic Verification Code (EVC);
- (ii) Electronic verification code generated through net banking login on the common portal; and
- (iii) Electronic verification code generated on the common portal.

6.4.3 However, the first proviso to the said rule mandates authentication through digital signature certificate (DSC) only, for a registered person registered under the provisions of the Companies Act, 2013, as under: -

“Provided that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall furnish the documents or application verified through digital signature certificate.”

6.4.4 Considering the problems faced by such registered persons in accessing DSC during the period of nationwide lockdown imposed in view of COVID-19 pandemic, the Government has relaxed the condition to verify using DSC and allowed authentication through EVC to the companies during the period 27.04.2021 to 31.08.2021 for furnishing the return under section 39 and the details of outward supplies under section 37.

6.4.5 It was further highlighted that it is felt that the mandatory requirement of authentication using DSC for such registered persons may be done away with and they may be allowed to authenticate documents using DSC or e-signature as specified under the Information Technology Act, 2000 or EVC, at par with other registered persons. As such, the facility of authentication using such means other than DSC may be extended to companies for all forms including returns, applications, replies etc. furnished by taxpayers on GST portal. However, DSC will remain an optional facility for authentication whosoever intends to use the same.

6.4.6 It was also stated that GSTN had informed that such functionality to allow authentication of documents by such registered persons will be ready for deployment on the common portal by 31.10.2021.

6.4.7 Accordingly, until the said functionality is developed and deployed by GSTN on common portal, the option to furnish **GSTR-3B, IFF and GSTR-1** using EVC may be further extended from 31.08.2021 to 31.10.2021.

6.4.8 Thereafter, rule 26(1) may be amended to remove the special requirement of authentication through DSC for registered persons registered under the provisions of the Companies Act, 2013.

6.4.9 It was also stated that the Law Committee, in its meeting dated 28.07.2021, has recommended the proposals placed above.

6.4.10 **Decision:** The GIC made the following decisions:

(i) The option to furnish **GSTR-3B, IFF and GSTR-1** using EVC for companies may be further extended from 31.08.2021 to 31.10.2021.

(ii) Rule 26(1) may be amended with effect from 01.11.2021 to remove the mandatory requirement of authentication through DSC for registered persons registered under the provisions of the Companies Act, 2013.

6.4.11 The recommendation of GIC has been implemented by way of issuance of Notification No. 32/2021-Central Tax, dated 29th August, 2021.

6.5. Agenda-3: Restriction on furnishing of information in PART A of FORM GST EWB-01

6.5.1 In the agenda note it was stated that Rule 138 E of the CGST Rules, 2017 mandates that no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of any outward movement of goods of a registered person, who do not file two or more consecutive GSTR-3B or the statement of outward supplies in GSTR- 1 or the statement in FORM GST CMP-08

6.5.2 It was further stated that various relief measures were provided to the taxpayers during the second wave of the COVID which, *inter-alia*, included waiver / reduction of interest for delay in payment of tax and waiver of late fee for furnishing return in FORM GSTR-3B for the months / tax period of March to May 2021. However, the actual due date for furnishing return in FORM GSTR-3B was not extended.[*Notification No. 8&9/2021-CT dated 01.05.2021 and Notification No. 18&19/2021-CT dated 01.06.2021 may be referred*] Therefore, the provision of rule 138E of the CGST Rules viz. blocking of e-way bill generation if the return/ outward supply statement is not furnished for consecutive period of two months/quarters was still applicable on the taxpayers during the second wave of the COVID relief period.

6.5.3 It was also highlighted that during the first wave of the COVID pandemic, keeping in view the extraordinary circumstance, this issue was deliberated by the Law Committee in its meeting held on 08.06.2020 and 22.07.2020. It was deliberated that though the due dates for filing FORM GSTR-3B for the months of February 2020 to April 2020 had not been extended, yet the taxpayers had been granted relief in interest and late fee, if filed by dates as given in the corresponding notifications. Considering the spirit in which relaxations were granted to the taxpayers, EWB blocking was kept in abeyance during the COVID period. Accordingly, a proviso was inserted, w.e.f. 20.03.2020, in rule 138E of the CGST Rules, vide notification No. 79/2020-CT, dated 15.10.2020, as below:

“Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020.”

6.5.4 It was mentioned that in terms of the relief measures as explained above, blocking of E way bill for the month of March, 2021 onwards had been kept in abeyance, w.e.f 01.05.2021. It should be noted that the said relief measures for the months of March, April and May, 2021 are over by end July, 2021. It was proposed that blocking of e-way bill generation for taxpayers who fail to file their FORM GSTR-3B/1 returns for a consecutive period of two months or more or statement in FORM CMP-08 for two quarters or more in respect of a registered person, may be resumed from mid-August 2021 after issuing necessary advisory on the portal. Further, CGST Rules may have to be amended, as was done last year.

6.5.5 Lastly, it was stated that the Law Committee, in its meeting dated 28.07.2021, had recommended the proposals placed above.

6.5.6 **Decision:** The members of the GIC agreed that:

(i) 19th August 2021 shall be the date from which e-way bill blocking will restart. The following proviso may, therefore, be inserted in Rule 138E of the CGST Rules, 2017, with effect from 01.05.2021:

*Provided also that the said restriction shall not apply during the period from the 1st day of May, 2021 till the 18th day of August, 2021 in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period March, 2021 to May, 2021.”*

6.5.7. The recommendation of GIC has been implemented by way of issuance of Notification No. 32/2021-Central Tax dated 29th August, 2021.

6.6 Agenda-4: Proposed amendment in Form GST ASMT-14

6.6.1 In the agenda note it was stated that Section 63 of CGST Act, 2017 provides for assessment of those taxable persons who have failed to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 of the CGST Act, 2017. Rule 100 of CGST Rules, 2017 provides the relevant procedure to be followed in cases where Section 63 of CGST Act, 2017 is applicable.

6.6.2 Further, as per rule 100, a show cause notice in Form GST ASMT-14 is to be issued to a taxable person in accordance with the provisions of section 63 of CGST Act, 2017.

6.6.3 It was further highlighted that per Section 63 of CGST Act, 2017, assessment of unregistered person can be made under two conditions-

- (i) Where a taxable person fails to obtain registration even though liable to do so; or.
- (ii) Where registration of a person has been cancelled under section 29(2) of the CGST Act 2017 but the said person was liable to pay tax.

However, from a careful reading of the form ASMT-14, it was clear that the show cause notice for assessment under section 63, as per the present Form ASMT-14, does not appropriately elaborate

reason for show cause in cases where registration has been cancelled under section 29(2). The last paragraph of the ASMT-14 reads as under:-

“Therefore, you are hereby directed to show cause as to why a tax liability along with interest not be created against you for conducting business without registration despite being liable for registration and why penalty should not be imposed for violation of the provisions of the Act or the rules made thereunder.”

As evident, this paragraph in FORM ASMT-14 does not appropriately show cause for tax liability on cancellation of registration under section 29(2) of the CGST/ RGST Act, 2017.

6.6.4 Therefore, it was proposed in the Law Committee meeting held on 19.05.2021 that the format of Form GST ASMT-14 may be amended. The Law Committee recommended amendment in the format of Form GST ASMT-14, to appropriately provide for show cause notice in respect of both the conditions mentioned in Section 63 of CGST Act, 2017.

6.6.5 **Decision:** The GIC approved the proposed amendment, along with the proposal of Tamil Nadu to also add address field (of the tax officer) in the Form GST ASMT-14.

6.6.7 The recommendation of GIC has been implemented by way of issuance of Notification No. 32/2021-Central Tax dated 29th August, 2021.

6.7 Agenda-5: Suspension of Registration under sub-rule (2A) of rule 21A of the CGST Rules, 2017.

6.7.1 In the agenda note it was stated that Vide Notification No.-94/2020-Central Tax dated 22.12.2020 sub-rule (2A) has been inserted in Rule 21A of the Central Goods and Services Tax Rules, 2017 (CGST Rules, 2017). The said clause is reproduced as under:

“(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

- a. *the details of outward supplies furnished in FORM GSTR-1; or*
- b. *the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,*

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.”

6.7.2 In this regard, reference was made to an analytical report generated by GSTN of Turnover slab wise summary of taxpayers who have not filed specified number of GSTR-3B returns, including the quarterly filers (QRMP).

6.7.3 Thus it was suggested that GSTINs, which are liable for cancellation, might be suspended centrally through the GST portal under sub-rule (2A) of Rule 21A of the CGST Rules, 2017. It was also stated that as per data provided by GSTN, the number of active such GSTINs whose registrations are to be suspended is approximately fifteen thousand.

6.7.4 **Decision:** The GIC approved the centralized suspension of registration under rule 21A(2A) of the CGST Rules, as proposed in the agenda note. GIC also directed GSTN to bring out analysis and data in respect of additional parameters for consideration by GIC for centralized suspension of registration.

7. Decision of GIC by circulation on 27.08.2021 on clarification regarding extension of time limit to apply for revocation of cancellation of registration

7.1 In the agenda note, it was mentioned that the GIC, in its 40th meeting held on 18.08.2021 had recommended that where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, the time limit for filing of application for revocation of cancellation of registration may be extended to 30th September, 2021. While recommending the above extension, the GIC also desired that a circular clarifying the impact of provision for further extension of due date for filing application for revocation by tax officers under section 30 of CGST Act, 2017, may be issued.

7.2 Accordingly, the issue was deliberated by the Law Committee in its meeting held on 25.08.2021. The Law Committee approved a draft circular for issuance.

7.3 The draft circular was put before the GIC and the GIC approved the proposed circular.

7.4 The recommendation of GIC has been implemented by way of issuance of Circular No. 158/14/2021-GST dated 6th September, 2021

Agenda Item 3: Issues recommended by the Law Committee for the consideration of the GST Council

Agenda Item 3(i): Aadhaar authentication of existing taxpayers under GST

Reference is invited to the deliberations in the 39th GST Council meeting held on 14.03.2020 on the issue of amendment in rules for operationalization of Aadhaar based authentication of new and existing taxpayers. It was recommended, to begin with the notification/rule for enabling Aadhaar based authentication in GST for only new taxpayers, as the date for enabling Aadhaar based authentication for the existing taxpayers was yet to be decided. Accordingly, Aadhaar authentication for new registration was notified w.e.f. 21.08.2020.

2. In this context, attention is drawn to sub-section (6A) to section 25 of the CGST Act relating to provisions for authentication of Aadhaar for existing taxpayers. Sub-section (6A) of section 25 of the CGST Act is reproduced hereunder for reference:

“(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed: Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe: Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.”

Thus, broadly the section provides for the following:

- Every registered person to undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed.
- There is a proviso for exceptional handling in cases where furnishing Aadhaar / Aadhaar authentication is not possible.
- Registration allotted to such person shall be deemed to be invalid in case of failure to undergo Aadhaar authentication/ furnishing proof of possession of Aadhaar/ furnishing alternative means of identification.

3.1 The issue has been examined. It may not be desirable to implement aadhaar authentication for all existing registered persons in one go as there are more than 80 lakhs taxpayers in the database as “existing registered persons” and enforcing Aadhaar authentication in one go for all these exiting taxpayers may raise concerns about increased compliance burden. In order to implement the provisions of sub-section (6A) of section 25 and to also help in filtering out risky and fake dealers, thus restricting misuse of ITC and refund facility, it is proposed that Aadhaar authentication of existing taxpayers is implemented in the manner as detailed below.

3.2 The requirement to get the GST registration Aadhaar authenticated may be made mandatory on such occasions where there is potential threat to revenue or the taxpayer is availing a beneficial provision under GST law. These events may include:

- a. **Refund:** Any taxpayers making a refund application may be required to get the GST registration Aadhaar authenticated before submission of such application. As a one-time measure, Aadhaar authentication may be required to be done based on 1+1 rule i.e., authentication of Primary Authorized Signatory and one person from Promoter/Partner/Director etc. as selected by the applicant. Refund application may be

considered to be filed only when the registration has been Aadhaar authenticated.

- b. **Revocation of cancellation of registration:** As an application for revocation of cancellation is akin to reviving a registration, the requirement to get the registration aadhaar authenticated may be imposed before such a cancellation is revoked. Aadhaar authentication in this case may also be done based on 1+1 rule, discussed above.

At later stages, more processes may be included where there would be a prior requirement to get the GST registration aadhaar authenticated. Some of these suggested processes/ criteria that could be considered in future are- filing an application to make core amendment of registration, generation of e-way bills, filing an application for advance ruling, request for un-blocking of e-way bills, filling appeals, taxpayers paying tax predominantly through ITC, etc.

3.3. The proposed changes in the CGST Rules, 2017 are enclosed as **Annexure-A** to this agenda note. Further, in order to provide exemption from Aadhaar authentication for certain categories in terms of section 25(6D), the notification No. 03/2021-Central Tax dated 23.02.2021 will also be required to be amended to include section 25(6A) also. The draft notification is enclosed as **Annexure-B**.

4. The Law Committee approved the above proposal in its meeting dated 28.07.2021 and recommended that the proposed draft rule may be finalized in consultation with Ministry of Law and Justice.

5. Accordingly, the issue is placed before the GST Council for deliberation and approval.

1. Insertion of new rule 10B in CGST Rules 2017:

“10B. Aadhaar authentication for registered person :— The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu Undivided Family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the purposes as specified in column (2) of the Table below:

Table

S. No.	Purpose
(1)	(2)
1.	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
2.	For filing of refund application in FORM RFD-01 under Rule 89
3.	For refund under Rule 96 of integrated tax paid on goods exported out of India

Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

- a. Her/his Aadhaar Enrolment ID slip; and
- b. (i) Bank passbook with photograph; or
 - (ii) Voter identity card issued by the Election Commission of India; or
 - (iii) Passport; or
 - (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such persons shall undergo the authentication of Aadhaar number within 30 days of the allotment of the Aadhaar number.”

2. Amendment of rule 89 of the CGST Rules, 2017

89. Application for refund of tax, interest, penalty, fees or any other amount.-(1) Any person, except the persons covered under notification issued under section 55, claiming refund of

any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file, **subject to provisions of rule 10B**, an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in **FORM GSTR-3** or **FORM GSTR-4** or **FORM GSTR-7**, as the case may be:

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

- a. supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- b. supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

[Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund]

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

3. Amendment in rule 96

96. Refund of integrated tax paid on goods [or services] exported out of India. -(1) The shipping bill filed by [an exporter of goods] shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when: -

(a) the person in charge of the conveyance carrying the export goods duly files [a departure manifest or] an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in **FORM GSTR-3** or **FORM GSTR-3B**, as the case may be;

(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;

4. Amendment of rule 23 of the CGST Rules, 2017:

“23. Revocation of cancellation of registration.-(1)A registered person, whose registration is cancelled by the proper officer on his own motion, may, **subject to provisions of rule 10B**, submit an application for revocation of cancellation of registration, in **FORM GST REG-21**, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration [or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,] at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns:

[Provided further that all returns due for the period from the date of the order of cancellation of registration 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 of registration 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]

(2)....”

[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/2021-Central Tax**

New Delhi, the, 2021

G.S.R.....(E).– In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council the Government, hereby makes the following amendment in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 03/2021-Central Tax, dated the 23rdFebruary, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 132(E), dated the 23rd February, 2021, namely: -

In the said notification, in the first paragraph after the words, “hereby notifies that the provisions of”, the words and letters “sub-section (6A) or”, shall be inserted.

[F. No. CBEC-20/06/02/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal Notification No. 03/2021 -Central Tax, dated the 23rd February, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the dated the 23rd February, 2021.

Agenda Item 3(ii): Agenda Note for issuance of clarification relating to export of services-condition (v) of the Section 2 (6) of the IGST Act 2017

Export of services has been defined under sub-section (6) of section 2 of IGST Act, 2017. As per the definition, any supply of services needs to fulfil five conditions for it to qualify as export of services. Section 2(6) of the IGST Act 2017 is reproduced below:

“(6) “export of services” means the supply of any service when, –
(i) the supplier of service is located in India;
(ii) the recipient of service is located outside India;
(iii) the place of supply of service is outside India;
(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;”

2. One of the conditions mentioned at clause (v) of Section 2(6) of the IGST Act, 2017 is that the supplier and recipient of the service shall not be mere establishment of distinct person as per Explanation 1 in Section 8. On perusal of the Explanation 1 in Section 8 of IGST Act, it is observed that the said explanation lists the cases wherein two establishments of a person would be treated as distinct establishments. Explanation 1 of Section 8 of IGST Act, 2017 is reproduced below:

“Explanation 1.—For the purposes of this Act, where a person has,—
(i) an establishment in India and any other establishment outside India;
(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,
then such establishments shall be treated as establishments of distinct persons.”

On conjoint reading of clause (v) of section 2(6) and Explanation 1 in section 8, it can be stated that the said reference to the explanation has been made in the definition of export of services to clarify that the cases where the supply is between two establishments of a person, that supply of service would not qualify as the export of services.

3. However, due to ambiguity in interpreting the Explanation 1 under section 8 of the IGST Act 2017, refund claims of the exporter of services were being rejected by the field formations. Further, in many cases even demands are being issued seeking to recover the past refunds which were sanctioned to these exporters. Accordingly, a reference in this regard was made by Delhi Government, which was deliberated by the Law Committee in its meeting held on 27th December 2019, wherein the following recommendation was made by the Law Committee:

Explanation 1 of the Section 8 of the IGST Act 2017 provides for the treatment of the different establishment of a person. The definition of person has been provided in the CGST Act 2017. Therefore, as such there is no ambiguity in the provisions of the Act. However, to ensure uniformity in interpretation of the provisions of the Act, a circular need to be issued.

4. Accordingly, the draft circular was placed before the Law Committee and was deliberated in its meetings dated 16.06.2021 and 25.08.2021. The circular as approved by the Law Committee is enclosed as **Annexure A** to this note.

5. Accordingly, the agenda note along with the draft circular is placed before the GST

Council for approval.

F. No. CBEC-20/08/03/2020– GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, the _____, 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners
of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam / Sir,

Subject: Clarification relating to export of services-condition (v) of the Section 2 (6) of the IGST Act 2017–reg.

Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of sub-section (6) of section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issue in succeeding paragraphs.

3. Relevant legal provisions:

3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act 2017 as under:

- (6) “export of services” means the supply of any service when,—
- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) *an establishment in India and any other establishment outside India;*
- (ii) *an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) *an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.*

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below:

“Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.”

3.4 Reference is also invited to the definition of “person” as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. “Person” has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under:

(84) “person” includes—

- (a) an individual;*
- (b) a Hindu Undivided Family;*
- (c) a company;*
- (d) a firm;*
- (e) a Limited Liability Partnership;*
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*
- (h) any body corporate incorporated by or under the laws of a country outside India;*
- (i) a co-operative society registered under any law relating to co-operative societies;*
- (j) a local authority;*
- (k) Central Government or a State Government;*
- (l) society as defined under the Societies Registration Act, 1860;*
- (m) trust; and*
- (n) every artificial juridical person, not falling within any of the above;*

3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:

(20) “company” means a company incorporated under this Act or under any previous company law;

(42) “foreign company” means any company or body corporate incorporated outside India which—

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*
- (b) conducts any business activity in India in any other manner.*

Analysis of the issue:

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of **a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act**, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of “person” under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of “company” and “foreign company” under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate “person” under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate “person” under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

Clarification:

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate **persons** under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.

5.2 Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a ‘company’ in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

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

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner

Agenda Item 3(iii): Clarification in respect of certain GST related issues

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. A gist of such issues and its analysis in light of relevant legal provisions is presented below.

2. Entitlement of ITC in respect of debit note in terms of section 16(4) of Central Goods and Services Tax Act, 2017:

2.1 Section 16(4) of the CGST Act, 2017 was amended *vide* the Finance Act, 2020 to omit the words “invoice relating to such” w.e.f. 01.01.2021. The text of the amended section 16(4) of CGST Act, 2017 is reproduced below:

“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

2.2 Through the said amendment, the date of issuance of debit note has been delinked from the date of issuing underlying invoice for the purposes of availing ITC. However, an advance ruling by Gujarat AAR (Authority for Advance Ruling) in the case of M/s I-Tech Plast India Pvt. Ltd. has held that even though amendment has been carried out in section 16(4) of CGST Act, the recipient cannot claim ITC in respect of debit notes that are issued after furnishing of **FORM GSTR-3B** for the month of September following the end of financial year to which such invoice pertains or furnishing of the relevant annual, whichever is earlier. Basically, Gujarat AAR has upheld the legal position that existed prior to the said amendment. The ruling stated that the debit note is not an independent document like an invoice. Instead, it is linked to the underlying invoice as it is issued in order to change the details that were declared in the original invoice. The ruling also held that it is the date of issuance of invoice, and not the date of issuance of debit note, which determines the relevant ‘financial year’ for the purpose of determining the due date in terms of section 16(4) of CGST Act, 2017. Representations have also been received from various field formations as well, regarding the interpretation of section 16(4) of the CGST Act, 2017, i.e. whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?

2.3 The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that “*Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to **delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.***” Clearly, the advance ruling is contrary to the legislative intent of the said amendment. From the legal standpoint, the recipient is entitled to avail ITC in respect of a debit note by considering that F.Y. during which such debit note was issued, irrespective of the date of issuance of underlying invoice. Further, as the amended provision of section 16(4) have come into effect from 01.01.2021, any availment of ITC on or after 01.01.2021 will be governed by the provisions of amended section 16(4).

2.4 **Illustration.** A debit note dated 07.07.2021 is issued to change the value of supply, as declared in the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year in terms of section 16 (4) to avail ITC in respect of the said invoice shall be 2020-21. However, as the debit note has been issued in F.Y. 2021-22, the relevant financial year shall be 2021-22 to avail ITC in respect of the said debit note in terms of section 16(4) of the CGST Act.

2.5 Accordingly, the issue may be clarified through a Circular by including the following clarification:

Issue	Clarification
<p>Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p> <p>Doubts have been raised seeking following clarification:</p> <ol style="list-style-type: none"> 1. Which of the following dates are relevant to determine the ‘financial year’ for the purpose of section 16(4): <ol style="list-style-type: none"> (a) date of issuance of debit note, or (b) date of issuance of underlying invoice. 2. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021? 	<ol style="list-style-type: none"> 1. With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended <i>vide</i> the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. The amendment made is shown as below: <i>“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”</i> As can be seen, the words “invoice relating to such” were omitted w.e.f. 01.01.2021. 2. The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that <i>“Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit</i> 3. Accordingly, it is clarified that: <ol style="list-style-type: none"> a) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act. b) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed

	<p>by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.</p> <p>Illustration 1. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.</p> <p>Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p>
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3. Dispensing off the requirement to carry invoice in physical printed form in terms of rule 138A (1) of the CGST Rules, 2017 in cases where e-invoice has been generated:

3.1 Representations have been received raising the question specifically in context of those taxpayers, who generate e-invoices, as to whether producing QR Code of invoice for verification during the physical movement of goods would be sufficient or there is an additional need to carry the physical copy of the invoice. Apparently, the said doubt has arisen due to the seemingly contrary provisions under rule 138A (1) and rule 138A (2) of CGST Rules, 2017.

3.2 The relevant legal provisions in this regard are presented below:

(i) **Rule 138A (1) of CGST Rules, 2017:**

“(1) The person in charge of a conveyance shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of good by rail or by air or vessel:

*Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of **FORM GST EWB-01.***”

(ii) **Rule 138A (2) of CGST Rules, 2017:** Rule 138A (2), which provided for the requirement to obtain an Invoice Reference Number from the common portal by uploading a tax invoice, was substituted vide notification No. 72/2020-Central Tax dated 30.09.2020 after the implementation of e-invoice. Accordingly, the provision of Rule 138A(2) before and after the said notification is reproduced below:

Before notification:

“A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.”

After notification:

“*In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded **Invoice Reference Number (IRN)** in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.*”

(iii) **Rule 48(4) of CGST Rules, 2017:**

“*The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an **Invoice Reference Number** by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.*”

3.3 In these representations, it has been stated that while rule 138A(2) was substituted to do away with the requirement of carrying physical printed invoice during movement of goods, rule 138A(1) is **not aligned** with rule 138A(2), as the rule 138A(1) still requires the person in charge of the conveyance to carry the physical copy of the invoice/delivery challan/bill of entry whereas the substituted rule 138A(2) doesn't require the same consequent upon the implementation of e-invoice. It has been represented that apparently, the amendment to rule 138A (1) has been missed inadvertently and accordingly, it has been requested to either align rule 138A (1) with rule 138A (2) by suitably amending rule 138A (1) and/or issue a clarification to the effect that in cases where e-invoice has been generated, then the transporter carrying the goods can produce only the QR Code of that invoice and the physical copy of invoice is not needed.

3.4 In this regard, a conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded **Invoice Reference Number (IRN)** in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.

3.5 The issue has also been clarified by NIC vide email dated 28.07.2021. It has been informed by NIC that:

“The QR Code has the important parameters of the invoice document. The officer is provided with an app to scan and verify the E-Waybill and if IRN exists for the EWB then complete details of the e-Invoice can also be viewed.

Also, the officer can scan and verify the digital signature of QR Code of the e-Invoice through app. He can also view the complete details of the e-Invoice after scanning the QR code using the app as app will hit the e-invoice portal and get the details and show to him. The same functionality also exists in the web based MIS system”

3.6 Accordingly, the issue may be clarified through a Circular by including the following clarification:

Issue	Clarification
<p>Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).</p>	<ol style="list-style-type: none"> <li data-bbox="799 763 1417 1128">1. Rule 138A (1) of the CGST Rules, 2017 <i>inter-alia</i>, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner. <li data-bbox="799 1173 1417 1538">2. Further, rule 138A (2) of CGST Rules, after being amended <i>vide</i> notification No. 72/2020-Central Tax dated 30.09.2020, states that <i>“In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice”</i> <li data-bbox="799 1583 1417 2011">3. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.

	<p>4. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>
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4. Applicability of first proviso to Section 54(3) of CGST/SGST Act, prohibiting refund of unutilized ITC in cases of exports of goods which are subjected to export duty:

4.1 Section 54(3)(i) of CGST/SGST Act permits a registered person to claim refund of unutilized ITC on account of zero-rated supplies of goods and services. However, the first proviso to Section 54(3) of CGST/SGST Act, prohibits refund of unutilized input tax in those cases where the goods exported out of India are subjected to export duty.

4.2 Doubts have been raised as to whether the first proviso to Section 54(3) of CGST/SGST Act, prohibiting refund of unutilized ITC, is applicable in those cases of exports of goods also which are having NIL rate of export duty.

5.1 The issue has been examined. In terms of Section 12 of the Customs Act, 1962, read with section 2 of the Customs Tariff Act, 1975, export duty is leviable as duties of customs at specified rate under Second Schedule to the Customs Tariff Act, 1975 on goods exported from India. There are a number of goods, which though may be covered under Second Schedule to the Customs Tariff Act, 1975, but which are either having Nil rate as specified in the said Schedule or are subjected to Nil rate of export duty by virtue of exemption notifications. Further, in terms of Note (4) to the second schedule to the Customs Tariff Act, 1975, in respect of all other goods which are not having specified rate of export duty under Second Schedule, the rate of duty shall be 'Nil'. Thus, all other goods, which are not specified in Second Schedule to the Customs Tariff Act, 1975 are covered under NIL rate of export duty.

5.2 The term '**subjected to export duty**' used in section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to customs export duty and suffering export customs duty at the time of export. These goods cannot be allowed to be exported without payment of export duty. Therefore, goods which are not subject to any export duty and having NIL rate of export duty, either as specified in Second Schedule to the Customs Tariff Act, 1975, or in any customs exemption notification, or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be subjected to the restriction on refund of unutilized ITC imposed by the first proviso to section 54(3).

5.3 Accordingly, the issue may be clarified through a Circular by including the following clarification:

Issue	Clarification
Whether the first proviso to section 54(3) of CGST / SGST Act,	1. The term ' subjected to export duty ' used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually

<p>prohibiting refund of unutilized ITC is applicable in cases of exports of goods which are subject to export duty at NIL rate.</p>	<p>leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.</p> <p>2. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.</p>
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5. The Law Committee deliberated the matter in its meetings held on 11.08.2021 and 25.08.2021 and recommended that the issues mentioned in para 2, 3 and 4 above may be clarified through a Circular.

6. Accordingly, the agenda note along with draft circular (enclosed as **Annexure A**) is placed before the GST Council for approval.

F. No. CBEC-20/01/01/2021-GST

Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Indirect Taxes and Customs
 GST Policy Wing

New Delhi, the , 2021

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of
 Central Tax (All)
 The Principal Directors General / Directors General (All)

Madam / Sir,

Subject: Clarification in respect of certain GST related issues - reg.

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies each of these issues as under:

S. No.	Issue	Clarification
1.	Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. Doubts have been raised seeking following clarification: 3. Which of the following dates are relevant to determine the ‘financial year’ for the purpose of section 16(4): (c) date of issuance	4. With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended <i>vide</i> the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. The amendment made is shown as below: <i>“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”</i> As can be seen, the words “invoice relating to such” were omitted w.e.f. 01.01.2021. 5. The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that “ <i>Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the</i>

	<p>of debit note, or (d) date of issuance of underlying invoice.</p> <p>4. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?</p>	<p><i>Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.</i></p> <p>6. Accordingly, it is clarified that:</p> <p>c) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.</p> <p>d) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.</p> <p>Illustration 1. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.</p> <p>Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p>
2.	Whether carrying physical copy of invoice is compulsory during movement of goods in cases where	5. Rule 138A (1) of the CGST Rules, 2017 <i>inter-alia</i> , provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan , as the case

	<p>suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).</p>	<p>may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.</p> <p>6. Further, rule 138A (2) of CGST Rules, after being amended <i>vide</i> notification No. 72/2020-Central Tax dated 30.09.2020, states that “<i>In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice</i>”</p> <p>7. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.</p> <p>8. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>
<p>3.</p>	<p>Whether the first proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.</p>	<p>3. The term ‘subjected to export duty’ used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to</p>

		<p>any export duty under Customs Tariff Act, 1975.</p> <p>4. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.</p>
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2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner

Agenda Item 3(iv): Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal

Section 146 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to “CGST Act”) provides that Common Goods and Services Tax Electronic Portal may be notified for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions as may be prescribed. The said section is reproduced below:

*“146. Common Portal.— The Government may, on the recommendations of the Council, **notify** the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.”*

Further in terms of section 20 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to “IGST Act”), the said provision applies mutatis mutandis to the IGST Act.

2. Vide notification No. 4/2017 dated 19.06.2017, **www.gst.gov.in** was notified as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax and electronic way bill. Subsequently, the said notification was superseded by notification No. 9/2018 dated 23.01.2018 vide which **www.gst.gov.in** was notified as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and **www.ewaybillgst.gov.in** was notified as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill.

3. Further, vide notification No. 69/2019 dated 13.12.2019 certain websites such as **www.einvoice1.gst.gov.in**, **www.einvoice2.gst.gov.in**, etc. were notified as the Common Goods and Services Tax Electronic Portal for the purpose of preparation of the invoice in terms of sub-rule(4) of rule 48 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to “CGST Rules”) i.e. for e-invoice.

4.1 From the above, it is seen that for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, furnishing electronic way bill and preparation of e-invoice, various common portals have been notified under section 146 of the CGST Act read with section 20 of the IGST Act. However, various other functions and purposes, in addition to above, have been prescribed in the CGST Rules which do not have a common portal notified yet. For instance, the CGST Rules prescribes various forms such as **FORM GST DRC-07A, FORM GST DRC-08A, FORM GST ITC-01, FORM GST ITC-02, FORM GST ITC-02A, FORM GST CMP-/01/02/03/04** which are required to be furnished electronically on the **common portal**. In addition, provisions of the refund rules provide for furnishing **FORM GST RFD-01 / 02/ 03** etc. electronically on **common portal**.

4.2 Though a technical issue, it appears that the ‘common portal’ for the various provisions related to Composition levy, Input Tax Credit, Refund, Transitional provisions, Assessment, Demand, Audit, etc. have not been notified yet under section 146 of the CGST Act. It is proposed that **www.gst.gov.in** may be designated, with retrospective effect, as the Common Goods and Services Tax Electronic Portal, for all functions and purposes under CGST Act 2017 and CGST Rules 2017, other than e-way bill and e-invoicing. This may be done by retrospectively amending notification number 9/2018-CT dated 23.01.2018 and issuance of a retrospective notification w.e.f. 22.06.2017. Draft notifications in this respect are enclosed as **Annexure-A**.

5. The Law Committee deliberated the issue in its meeting dated 25.08.2021 and recommended that retrospective amendment to notification/ issuance of retrospective notification may be done as discussed in para 4.2. The draft notifications would be finalized in consultation with the Union

Ministry of Law and Justice.

6. Accordingly, the issue is placed before the GST Council for deliberation and approval.

[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/2021 – Central Tax

New Delhi, the , 2021

G.S.R.....(E).– In exercise of the powers conferred by section 146 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)) (hereinafter referred to as the “said Acts”), the Government, on the recommendations of the Council, save as otherwise provided in any other notification issued under the said provision, hereby notifies *www.gst.gov.in* as the Common Goods and Services Tax Electronic Portal for all functions and purposes under the said Acts and the rules made thereunder.

Explanation.- For the purposes of this notification, “*www.gst.gov.in*” means the website managed by the Goods and Services Tax Network, a company incorporated under the provisions of section 8 of the Companies Act, 2013 (18 of 2013).

2. This notification shall be deemed to have come into force on the 22nd day of June, 2017

[F. No. CBEC-/ / 2021-GST]

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Under Secretary, Government of India

[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/2021 – Central Tax

New Delhi, the , 2021

G.S.R.....(E).– In exercise of the powers conferred by section 146 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)) (hereinafter referred to as the “said Acts”), the Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 9/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 58(E), dated the 23rd January, 2018, namely:–

(i) in paragraph 1, the words “*www.gst.gov.in* as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and” shall be omitted;

(ii) Explanation 1 shall be omitted.

2. This notification shall be deemed to have come into force on the 16th day of January, 2018

[F. No. CBEC-/ /2021-GST]

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Under Secretary, Government of India

Agenda Item 3(v): Mechanism to collect late fee imposed under section 47 of the CGST Act for delayed filing of FORM GSTR-1

Reference is drawn to sub-section (1) of section 47 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) which provides for levy of late fee for failure to file returns by the due date. The same is reproduced hereunder:

47. Levy of late fee- (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

Similar late fee is also levied under corresponding provisions of the SGST/UTGST Acts.

2. In this context, reference is drawn to notification no. 04/2018-CT dated 23.01.2018 whereby the late fee payable per day under section 47 for delay in furnishing **FORM GSTR-1** was reduced to twenty rupees per day (Rs. 10/- under CGST Act plus Rs. 10/- under SGST Act) for persons having NIL outward supplies and fifty rupees per day (Rs. 25/- under CGST Act plus Rs. 25/- under SGST Act) for others. Further, vide Notification No. 20/2021-CT dated 01.06.2021, the upper cap of late fee payable for delay in furnishing of **FORM GSTR-1** has also been rationalised, per return, as below:

(i) For taxpayers having nil outward supplies in **FORM GSTR-1**, the late fee has been capped at Rs. 500 (Rs. 250 CGST + Rs. 250 SGST)

(ii) For other taxpayers:

a. For taxpayers having Annual Aggregate Turnover (AATO) in preceding year upto Rs. 1.5 crore, late fee has been capped to a maximum of Rs. 2000 (1000 CGST+1000 SGST);

b. For taxpayers having AATO in preceding year between Rs. 1.5 crore to Rs. 5 crore, late fee has been capped to a maximum of Rs. 5000 (2500 CGST+2500 SGST);

c. For taxpayers having AATO in preceding year above Rs. 5 crores, late fee remains at a maximum of Rs. 10000 (5000 CGST+5000 SGST).

3.1 However, as of now, there is no mechanism (other than self-declaration and payment by the taxpayer) to compute and collect the late fee for delayed filing of **FORM GSTR-1**. In contrast, late fee for **FORM GSTR-3B** is system-computed based on the number of days elapsed after the due date of filing and is automatically added to the taxpayers’ liability while furnishing subsequent **FORM GSTR-3B**. It is felt that the late fee for delayed filing of **FORM GSTR-1** may also be similarly computed and collected while furnishing **FORM GSTR-3B**.

3.2 Now, that the late fee has been significantly reduced and rationalized, as discussed above; it may be prudent to collect late fee for delay in furnishing **GSTR-1** through **GSTR-3B**. It may incentivize timely furnishing of **GSTR-1**, which in itself is crucial for claiming ITC by recipients. Moreover, the gap between number of **GSTR-3Bs** filed vis-à-vis number of **GSTR-1s** filed has also narrowed down considerably over a period, owing to the various amnesty schemes provided and policy measures undertaken viz. introduction of rule 36(4). The gap now remains within 6-7% of the number of **GSTR-3Bs** filed for any tax period. For December, 2020 and March, 2021, the details as on 24.06.2021, are as under:

Table: Number of returns filed

	GSTR-3B	GSTR-1
December, 2020	99,60,866	92,29,454
March, 2021	94,62,500	88,52,674

Moreover, the system is now evolving towards sequential filing of **FORM GSTR-1** and mandatory filing of **FORM GSTR-1** before furnishing return in **FORM GSTR-3B**. The GST Council in its 43rd meeting dated 28.05.2021 has recommended amendments in provisions of the Act for the same.

3.3 In such a scenario, it is also feasible to collect late fee for delayed filing of **FORM GSTR-1** while furnishing the next open **GSTR-3B** return. Further, to ensure uniformity in implementation, the aforementioned system for collection of **GSTR-1** late fee may be deployed for prospective tax periods and an advisory may also be displayed on portal for the same.

4. The Law Committee deliberated the issue in its meeting dated 28.07.2021 and recommended that:

(i) late fee for delayed filing of **FORM GSTR-1** should be auto-populated in next open GSTR-3B, and the same may be implemented on portal for prospective tax periods (From July, 2021 tax period onwards).

(ii) Section 47 may be amended by omitting the words “*or section 38*” when section 38 would be amended (as recommended by the Council in 42nd Council meeting).

5. Accordingly, the issue is placed before the GST Council for information in respect of para 4(i) and for approval of para 4(ii).

Agenda Item 3(vi): Review of requirement of filing FORM GST ITC-04

Various representations have been received regarding difficulties being faced by taxpayers regarding compliance of provisions of rule 45 (3) of the CGST Rules, 2017 i.e. filing of **FORM GST ITC-04**.

2.1 In the representation of the Western Maharashtra Tax Practitioners' Association, it is represented that for movement of goods for Job work, supplier is required to prepare a delivery challan and is also required to generate e-way Bill. Further, he is required to file **FORM GST ITC-04** return, which contains details of all goods sent to job worker and received from job worker. It has been represented that **FORM GST ITC-04** is duplication of compliance, since e-way bill is also prepared and that **FORM GST ITC-04** has number of issues for preparation, uploading and filing which makes it impossible/extremely difficult to file. It has also been represented that this issue is faced by all taxpayer in India and that the compliance of **FORM GST ITC-04** should be removed.

2.2 Representation has also been received from CAIT wherein it has been represented that **FORM GST ITC-04** is very difficult and it is not possible for small suppliers to comply with filing of the same. It has been requested that **FORM GST ITC-04** should be done away with or alternatively the suppliers having turnover of less than Rs. 5 crores should be exempted from filing **FORM GST ITC-04**.

2.3 Similar representations have also been received from various other forums.

3.1 The issue has been examined. The requirement of **FORM GST ITC-04** emanates from section 143 of the CGST Act, read with sub-rule (3) of rule 45 of the CGST Rules. The relevant provisions are as below:

Section 143: Job work procedure. — (1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;
- (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

- (i) where the job worker is registered under section 25; or
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner:

Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

- (2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie

with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Rule 45: Conditions and restrictions in respect of inputs and capital goods sent to the job worker.—(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

(2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in FORM GST ITC-04 furnished for that period 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:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall

be liable to pay the tax along with applicable interest.

3.2 It may be seen that sub-rule (1) of rule 45 mandates that goods shall be sent to the job worker under the cover of a challan issued by the principal. Further, the delivery challan contains the details specified in rule 55, namely: -

- (i) date and number of the delivery challan;
- (ii) name, address and Goods and Services Tax Identification Number of the consigner, if registered;
- (iii) name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
- (iv) Harmonised System of Nomenclature code and description of goods;
- (v) quantity (provisional, where the exact quantity being supplied is not known);
- (vi) taxable value;
- (vii) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
- (viii) place of supply, in case of inter-State movement

Further, the delivery challan is prepared in **triplicate**, in case of supply of goods, in the following manner: –

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER

Accordingly, each movement of goods for job-work is statutorily required to be recorded and details to be maintained by the registered person, as specified in rule 45. All such details would be available for any audit, inspection etc. by the tax officers and the details can be correlated, if required, from job-worker's record during investigation.

3.3 FORM GST ITC-04 is essentially to keep track of the movement of inputs/capital goods gone from Principal to Job worker and return of finished goods from job worker within the time span of one year/ three year. In the event goods are not returned within the time span prescribed, duties on such goods are to be paid by the Principal from the date they are sent to the Job worker. In this context, the provision of section 143 of the Act suggests that a registered person (principal) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker. Therefore, it appears that, though, seeking ITC-04 return may be within the statutory powers, an intimation by registered person would also suffice. Under Central Excise Act, 1944 also, the manufactures were required to give an intimation (annually) for sending the goods for job work along with an undertaking to pay the duty in case the goods are not returned from the job-work premises within stipulated time (180 days).

3.4 Vide a special procedure under section 148 issued vide notification No. 38/2019 - Central Tax, dated 31.08.2019, the requirement of filing **FORM GST ITC-04** was conditionally waived for the period July, 2017 to March, 2019. The total number of **FORM GST ITC-04** filed for each quarter ending (From June, 19), as on 30th May, 2021 is tabulated as below:

QE	June,19	Sept 19	Dec 19	March, 20	June, 20	Sept 20	Dec., 20
No. of returns	23,972	21,852	21,078	19,501	15,301	16,304	15,390

It is observed that in the first two years, the requirement of filing the said return was waived and for

last 7 quarters, the total number of ITC-04 filed is in the range of, approximately, 15,000 – 20,000.

3.5 The data on number of GSTINs who have filed **FORM GST ITC-04** has also been analyzed based on turnover and the same is tabulated below:

Table

Financial year wise, AATO wise Unique GSTIN count

FY (1)	No. of GSTINs who have filed ITC-04 (2)	Out of (2), GSTINs having AATO above 5 Cr (3)	% of filers having AATO above 5 Cr (4)	% of filers having AATO upto 5 Cr (5)
2017-18	41912	20954	50 %	50 %
2018-19	37403	21777	58.2 %	41.8 %
2019-20	30367	20142	66.3 %	33.7 %
2020-21	20278	14317	70.6 %	29.4 %

Approximately 57778 Unique GSTINs have filed ITC-04.

4. Based on the facts mentioned in para 3.1 to 3.5 above, it is felt that the requirement of filing quarterly return in **FORM GST ITC-04** may be reviewed. For tax administration, the details of job-worker and the details of the goods which are not received back from job-worker within the stipulated time, and for which a tax invoice is required to be raised, appears to be more relevant. However, it is not clear how the field formations are utilizing the information contained in ITC-04, and whether they have been able to recover any additional revenue on the basis of the information contained in ITC-04. Besides, the utility of the various details sought in ITC-04 as well as periodicity of the said return, needs to be reviewed. For this purpose, a feedback from the field formations may be required. Therefore, CBIC is in the process of conducting a study to examine the utility of various tables/ information sought in ITC-04, the results achieved as a result of use of information in ITC-04 for garnering additional revenue/ detection of cases of misuse of job work provisions, the need for continuity or otherwise of ITC-04 and suggestion for any alternate mechanism to capture the relevant details for tax administration's requirement without burdening the taxpayers.

5.1. The Law Committee deliberated the issue in its meeting dated 30.06.2021 and recommended that till the time a final decision is taken on the requirement of **FORM GST ITC-04**:

- (i) Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish ITC-04 once in six months;
- (ii) Taxpayers whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores shall furnish ITC-04 annually;

5.2. Accordingly, the Law Committee recommended amendment in rule 45(3). The amended rule to be notified is reproduced below:

*“(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a specified period shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty-fifth day of the month succeeding the said period or within such further period as may be extended by the Commissioner by a notification in this behalf:*

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Explanation. - For the purposes of this sub-rule, the expression "specified period" shall mean:

- (a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and*
- (b) a financial year in any other case.";*

- 5.3.** The Law Committee has also recommended *pari-materia* changes in **FORM ITC-04**.
- 6.** Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 3(vii): Agenda Note for amendment in CGST Rules for refund to be disbursed in bank account linked with same PAN and Aadhaar on which registration has been obtained under

Reference is invited to the deliberations in the 42nd meeting of GST Council held on 05.10.2020 wherein it was decided that the refund to be disbursed in bank account linked with same PAN and Aadhaar on which the registration has been obtained.

2. The intent behind the said proposal was that even after putting in place various measures to identify the person and to verify the financial footprints of the said person, there may arise a situation where a person may defraud the government by obtaining registration in other person's name by utilising their PAN and Aadhaar details. Such person may also get Aadhaar authenticated during the registration process and may thereafter indulge in passing on the fake credit or obtaining refund from the government fraudulently. The said person may open a bank account in name of a third person/entity, on the basis of forged documents, and may give details of such bank account for the purpose of obtaining refund under GST, thus defrauding the government by creating an un-traceable chain. Once the refund amount is disbursed, the amount is withdrawn from the said account and closed immediately.

3. Therefore, in order to prevent such misuse in future, it was proposed that refund shall be paid/ disbursed in a bank account, which is linked to the **same PAN and Aadhaar** on which the registration has been obtained, as it would help in creating trail of money and if any refund has been obtained fraudulently, it would be easier to catch the intended beneficiary. The said proposal was placed in the 42nd GST Council held on 05.10.2020 wherein the Council has agreed to the proposal. Accordingly, GSTN has been requested to develop the functionality for the same.

4. In this regard, it would be pertinent to refer to the definition of Aadhaar number as provided in section 2(a) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, which is reproduced hereunder:

(a) "Aadhaar number" means an identification number issued to an individual under sub-section (3) of section 3;

On perusal of the aforesaid definition, it is observed that **Aadhaar number is issued to an individual/natural person and not to a legal/juridical person**, who have been defined as a person for specific purpose.

5. In view of the above, it can be stated that the decision of the GST Council regarding disbursement of refund in the same PAN and Aadhaar linked bank account, on which registration has been obtained, may be implemented in the following manner:

- i. **In case of Proprietorship concern:** Refund to be paid/ disbursed in the bank account linked to the **same PAN** (of the proprietor) and **Aadhaar** (of the proprietor) on which the registration has been obtained under GST, in case of proprietorship concern.
- ii. **In case of others:** Refund to be paid/ disbursed in the bank account linked to the **same PAN** of the Company or Business entity or firm, on which the registration has been obtained under GST.

6. Therefore, in order to implement the said recommendation of the GST Council, there is a

need to make suitable amendment in the CGST Rules, 2017. In this regard, reference is made to rule 10A of the CGST Rules, 2017 which provides for furnishing of bank account details by the taxpayer after he has obtained registration within a specified period of time. In this regard, it is submitted that at present, a taxpayer can furnish details of any bank account under rule 10A. Further, reference here is invited to sub-rule (3) of rule 91, sub-rule (4) of rule 92, rule 94 and sub-rule (3) of rule 96 of CGST Rules, 2017 which provide that the refund to be paid to the applicant in any of the bank accounts mentioned in his registration particulars. Therefore, **it is felt that it would be prudent to make amendment in rule 10A itself to the effect that any new taxpayer would be able to furnish details of those bank accounts only which are opened with the same PAN, on which GST registration has been obtained and the said bank account/ PAN must also be linked with the Aadhaar of the proprietor (in case of proprietorship concern).**

7. Further, reference to bank account for disbursement of refund has been made in rules 91, 92, 94 and 96 of CGST Rules, 2017. In respect of the existing registrations, the bank accounts, the details of which have been furnished by the taxpayers under rule 10A of CGST Rules 2017, may not have been linked with PAN of the taxpayer, and also with Aadhaar, in case of proprietorship concern. Therefore, there may be a need to prescribe condition to the effect that the refund will be disbursed only in the bank account obtained on the same PAN on which registration has been taken under GST and that the said bank account/ PAN should also be linked to the Aadhaar, in case of proprietorship concern. Instead of making amendment in each of the said rules/sub-rules, where there is reference to bank account for disbursement of refund amount, it would be desirable that **a new rule may be inserted in CGST Rules, 2017 in this regard.**

8. In view of the above, the following amendments are proposed in CGST Rules, 2017:

(a) **Amendment in Rule 10A:**

“10A. Furnishing of Bank Account Details.-After a certificate of registration in FORMGST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, **which is in name of the registered person and obtained on Permanent Account Number of the registered person,** or any other information, as may be required on the common portal in order to comply with any other provision:

Provided that in case of a proprietorship concern, the said bank account shall also be linked with the Aadhaar number of the proprietor.”

(b) **Insertion of Rule 96C:**

“96C. Bank Account for credit of refund: For the purpose of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, “bank account” shall mean such bank account of the applicant which is in name of the applicant and obtained on Permanent Account Number of the applicant:

Provided that in case of a proprietorship concern, the said bank account shall also be linked with the Aadhaar number of the proprietor.”

It is further mentioned that at present, the refund of integrated tax paid on export of goods is processed by proper officer of customs on the ICEGATE portal. Further, such refunds are disbursed in a bank account of the exporter mentioned in his registration particulars and intimated to the Customs Authorities. As the functionality for validating the bank account with respect to PAN and also Aadhaar (in case of proprietorship concern) would first be developed by GSTN and only thereafter the requisite changes would be carried out in the ICEGATE portal, it is proposed that the said requirement of disbursement of refund in the bank account linked with the same PAN and also Aadhaar, in case of proprietorship concern, may be extended to refund of integrated tax paid on export of goods, only after requisite changes in ICEGATE portal are carried out by DG Systems (ICEGATE). Once the changes in ICEGATE portal are made, the aforesaid rule 96C would be substituted with the following rule:

Post amendment on ICEGATE portal

“96C. Bank Account for credit of refund: For the purpose of sub-rule (3) of rule 91, sub-rule (4) of rule 92, rule 94 and sub-rule (3) of rule 96, “bank account” shall mean such bank account of the applicant which is in name of the applicant and obtained on Permanent Account Number of the applicant:

Provided that in case of a proprietorship concern, the said bank account shall also be linked with the Aadhaar number of the proprietor.”

9. The aforesaid agenda was placed before Law Committee in its meeting held on 25.08.2021 wherein it was approved with the comments that rules to be inserted/amended from a date to be notified.

10. Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 3(viii): Applicability of interest on ineligible Input Tax Credit (ITC) wrongly availed and/or utilized, in terms of section 50 of Central Goods and Services Tax Act, 2017 (CGST Act)

Certain representations have been received from the field formations seeking clarification regarding interest applicable on reversal of ineligible ITC. Doubts have been raised as to whether interest is to be paid by a taxpayer on “ineligible ITC availed and utilized” or on “ineligible ITC availed”.

2. In order to examine this issue, it is pertinent to examine the relevant legal provisions under GST, as reproduced below:

i. **Section 73 of CGST Act, 2017: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.**— (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or **where input tax credit has been wrongly availed or utilized for any reason,** other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice **along with interest payable thereon under section 50** and a penalty leviable under the provisions of this Act or the rules made thereunder.

ii. **Section 50 of the CGST Act, 2017: 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:

Provided that the interest on tax payable in respect of supplies made during a 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 proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

(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.

(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.

3. In order to understand this issue in totality, the following points are noteworthy:
- a) **Interest to be levied on net cash liability:** GST Council, in its 31st meeting held on 22.12.2018, gave in-principle approval to amend section 50 of the CGST Act, 2017 so as 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. Accordingly, a proviso was inserted to section 50(1) of CGST Act, 2017 *vide* section 100 of the Finance (No. 2) Act, 2019 to this effect. Further, the GST Council, in its 39th meeting held on 14.03.2020, recommended that the amendment to section 50 of CGST Act, 2017 be made applicable retrospectively w.e.f. 01.07.2017. Accordingly, section 50(1) was amended retrospectively, w.e.f. 01.07.2017, vide the Finance Act, 2021.
 - b) **Section 50(3) is not operational as it has to be read with sections 42 and 43 of CGST Act, 2017:** Section 50(3) of CGST Act, 2017 mandates levy of interest if undue or excess ITC has been claimed under sub-section (10) of section 42 or if undue/excess reduction in output tax liability is done under sub-section (10) of section 43 of CGST Act, 2017. While section 42 of CGST Act, 2017 deals with matching, reversal and reclaim of Input Tax Credit, section 43 of CGST Act, 2017 deals with matching, reversal and reclaim of reduction in output tax liability. As the mechanism of matching, reversal and reclaim in terms of sections 42 and 43 of CGST Act, 2017 was envisaged under the original return scheme (comprising FORM GSTR-1, 2 & 3), these provisions never came into force because the original return scheme was not implemented. **Till such time sections 42 and 43 of CGST Act, 2017 are not made operational, interest cannot be levied in terms of section 50 (3) of CSGT Act, 2017.** Therefore, interest cannot be charged on undue/excess claim of ITC under section 50(3) of CGST Act, 2017.
 - c) **Excess claim of ITC is to be added to the output tax liability of the taxpayer:** The original return model provided that excess claim of ITC by a taxpayer is required to be added to his output tax liability in the returns filed for subsequent tax periods. Essentially, excess claim of ITC has to be treated at par with output tax liability. As such, excess ITC claim (that is reversed in subsequent tax periods) shall be subjected to interest in terms of section 50 (1) of CGST Act, 2017 which provides for interest on delayed payment of output tax. This also implies that section 50(1) of CGST Act, 2017 covers both scenarios i.e. levy of interest on delayed payment of tax; and levy of interest on undue/excess claim of ITC.
 - d) GST Council, in its 43rd meeting had recommended amendment in return related provision wherein the provisions of section 42 and 43 of the CGST Act, 2017 are proposed to be omitted. Amendment was accordingly also proposed in section 50 (3) of the CGST Act, 2017 as below:

~~(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.~~

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent., as may be notified by the Government, on the recommendations of the Council.

4. The discussion at para 3 makes it abundantly clear that the legislative intent behind carrying out the amendment to section 50 of CGST Act, 2017 was to levy interest only on the cash component of tax paid by a taxpayer. As the reversal of ineligible ITC is to be treated as similar to output tax liability [refer para 3(c)], the principle of payment of interest on “**net cash liability**”, as made applicable for delayed payment of tax, should be made applicable for payment of interest on excess/undue claim of ITC. As such, it is not the entire ITC availed, but only the utilised portion of ITC, that shall attract interest. In other words, it is not the **availment of ITC per se but the utilization of ITC** that determines the applicability of interest in terms of proviso to section 50(1) of CGST Act, 2017. Therefore, it does not appear legally correct to demand interest on excess ITC availed (but not utilised) by the taxpayer in terms of section 50 of the CGST Act, 2017. Hon’ble High Court of Madras, in the WP No. 28437 of 2020 etc. batch, has taken the same stand that interest would be charged on such ineligible ITC that is availed and utilized.

5. The Law Committee deliberated the matter in its meeting dated 11.08.2021 and recommended that:

(i) amendment in Section 50(3), as recommended by the Council in 43rd meeting, may be made retrospectively, w.e.f. 01.07.2017. Sub-section (3) also needs to be slightly modified to provide for calculation of interest in the manner as prescribed in Rules, as below:

“(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent., as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”

(ii) The notification issued to notify rate of interest under section 50 may be amended retrospectively (w.e.f. 01.07.2017) to specify rate of interest as 18% for ITC availed and utilized, till the time amended section 50(3) is notified.

6. Accordingly, the issue is placed before the GST Council for deliberation and approval.

Agenda Item 3(ix): Proposal for clarification in respect of refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act-

An agenda was brought before the Law Committee seeking clarification on the following issues:

- i. Whether limitation of time for making an application for refund as provided in section 54 would be applicable to an application for refund of taxes provided in section 77(1) of the CGST/SGST Act or section 19(1) of the IGST Act and, if not,
 - ii. Whether there is a specific requirement to frame rule for section 77.
2. The relevant sections quoted verbatim are as follows:
- 2.1 Section 77(1) of the CGST/SGST Act, 2017 reads as follows:

“77. Tax wrongfully collected and paid to Central Government or State Government.— (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”

- 2.2 Section 19 of the IGST Act, 2017 reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government-----(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”

3. Accordingly, the matter was examined. It may be noted that there are two major issues pertaining to refund under Section 77 of CGST Act and Section 19 of IGST Act, which require clarification and deliberation, which are:

- i. Regarding interpretation of the term “**subsequently held**” in the said sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-state or intra-state, is subsequently held by tax officers as intra-state and inter-state respectively, either on assessment, or as a result of any adjudication/ appellate or any other proceeding like audit/ investigation, etc. Alternatively, whether the refund under the said sections is also available when the inter-state or intra-state supply made by a taxpayer, is subsequently found by taxpayer himself as intra-state and inter-state respectively.
- ii. Whether there is any time limit for applying for refund under section 77 of CGST Act/ section 19 of IGST Act, i.e. whether time limit of two years prescribed under Section 54 (1) of CGST Act is applicable to such refund claims also, and if so, what is the relevant date for the same. Besides, whether there is a need to prescribe separate rule/ sub-rule for prescribing the

manner and conditions for such refunds, as section 77 of CGST Act and section 19 of IGST Act use the phrase “*in such manner and subject to such conditions as may be prescribed*”.

4. **Issue of Interpretation of the term “subsequently held”**

4.1 From a nuanced reading of the aforementioned sections, it is clear that the refund of the tax amount which has been paid in the wrong head shall be granted only when the matter is “***subsequently held***”. However, the interpretation of the phrase “subsequently held” as mentioned in the Act and the implications of the same on granting refund of the tax amount paid in the wrong head are not clear.

4.2 There can be a number of possible interpretations of the term “subsequently held” such as:

- i. Whether the refund is admissible in the said sections, only if the intra-state/ inter-state supply is *subsequently held* to be inter-state or intra-state supply, as the case may be, by the tax authority. Further, if so, under what scenarios the matter will be considered as “subsequently held” by tax officer:
 - a. Whether it would suffice to say that the matter is said to be “subsequently held” when it comes to the notice of the proper officer during scrutiny proceedings/ assessment and is pointed out by the tax officer to the taxpayer through a letter/ notice and the taxpayer agrees and pays the required tax amount under correct head.
 - b. Similarly, if the matter comes to the notice during an investigation by anti-evasion teams or during audit by audit teams, whether any letter/ notice issued by such tax officers would be sufficient to be treated as “subsequently held”?
 - c. Alternatively, whether there would be a need for an adjudication order/ appellate order by an adjudicating/ appellate authority for the matter to be treated as “subsequently held”?
- ii. Whether the refund is also admissible in the said sections, if the intra-state/ inter-state supply is *subsequently held/ found* to be inter-state or intra-state supply, as the case may be, by the taxpayer on his own? If so,
 - a. Whether refund claim in such cases can be granted based on the assertion by the taxpayer, or
 - b. Whether the refund claim can be granted only if the claim/ assertion of the tax payer is confirmed by the proper officer through an order/ report.

5. In this context, it is pertinent to mention that the original draft law had used the term “subsequently **found**”. However, based on deliberation by the Law Committee / Council, the phrase was changed to “subsequently **held**”. This change was made in the 11th GST Council Meeting held on 4th March 2017. Para 6.1 (x), page 5 of Minutes of the meeting may kindly be referred

“Issue No. 10–

Section 19 - Tax wrongfully collected and paid to Central Government or State Government.

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-state supply, but which is subsequently ***held found*** to be an intra-State supply, shall, be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.”

6. Accordingly, the issue relating to the interpretation of term “subsequently held” was placed before the **Law Committee in its meeting held on 28.07.2021**. The Law Committee has recommended that the refund under Section 77 is also available when the inter-state or intra-state supply made by a taxpayer, **is subsequently found by taxpayer himself as intra-state or inter-state respectively**, and the corrections are accordingly made by taxpayers on their own and **it was decided**

that the issue may be clarified through a Circular.

7. **The issue of time period and the relevant date for claiming refund under section 77 of CGST Act/ section 19 of IGST Act** **77**

7.1 Further, another issue which needs to be deliberated is whether there is any time limit for applying for refund under section 77 of CGST Act/ section 19 of IGST Act, i.e. whether time limit of two years prescribed under Section 54(1) of CGST Act is applicable to such refund claims also, and if so, what is the relevant date for the same. The relevant date for refund, in general, is determined by Section 54 of the CGST Act, 2017, the relevant provisions of which are reproduced as follows:

“54. Refund of tax.— (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

...

Explanation.—For the purposes of this section,— (1) —refund includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) —relevant date means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.”

7.2 From a plain reading of the aforementioned, it is clear that Section 54 of the CGST Act, 2017 does not separately specify the relevant date for seeking refund in cases where the integrated tax on a supply is subsequently **held** to be an intra-State supply.

7.3 One interpretation could be that time limit prescribed under sub-section (1) of Section 54 is also applicable to the refunds under section 77 of CGST Act 2017 or section 19 of IGST Act 2017 and that the relevant date in the impugned cases shall be determined by Explanation 2(h) of the Section 54 of the CGST Act, 2017 i.e. the relevant date in the impugned cases shall be the date of payment of tax. It can be argued that Section 54 of the CGST Act, 2017 also refers to the refunds under section 77 in its sub-section (8) which provides that the refund shall instead being paid to fund, be credited to applicant. If this interpretation is accepted, then the question arises what is the date of payment of tax in cases under section 77 of CGST Act or under section 19 of CGST Act. There may be an interpretation that even if Explanation 2(h) of the Section 54 of the CGST Act, 2017 is applicable in cases of such refunds, the date of payment of tax in such cases, would be the date of payment of tax in correct head on being “subsequently held”, as the amount paid originally under wrong head does not represent the amount of tax payable on the said supply. Accordingly, the relevant date for calculating period of 2 years under section 54(1) would be the date of subsequent payment of tax in correct head on being subsequently held.

7.4 However, there may be an alternative interpretation that the manner and procedure of the refund in the impugned cases are not governed by Section 54 of the CGST Act, 2017 as per the current position of the existing law. This interpretation is based on the following assertions:

(i) Language of the Section 77 of the CGST Act, 2017 and Section 19 of the IGST Act, 2017 clearly mentions “...**shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.**” A careful reading of the aforementioned sections suggests that refund in the impugned cases “**shall**” be granted and the only manner and conditions of such refund may be prescribed. As per section 2(87) of CGST Act, “prescribed” can only be through the CGST Rules. As no time limit has been prescribed in the CGST Rules 2017 in respect of such refund claims, it appears that the time limit prescribed in section 54 of CGST Act 2017 is not applicable for such refund claims, and thus, there is no time limit for filing such refund claims, unless the same is prescribed specifically through CGST Rules, 2017.

(ii) If time period under section 54 is considered for refund claims under section 77 of CGST Act/ section 19 of IGST Act, and the relevant date is considered as the date when the tax was originally paid *albeit* under the wrong head, then many cases may become time-barred for refund. In such scenarios, the taxpayers will not be able to apply for the refund of the tax inadvertently paid in the wrong head, even though the mistake was not deliberate, and the matter could come to light much later in scrutiny/ assessment or audit or anti-evasion proceedings, which could be even later than the 2 years of date of payment of tax in wrong head. It is not a case, when the tax was not paid by the taxpayer, but was inadvertently paid under a wrong head, and therefore depriving the taxpayer from refund of tax paid in wrong head, even when he has paid tax under correct head now, would not be justifiable. It appears that considering the same only, the wording used in section 77 of CGST Act and section 19 of IGST Act is “**shall be refunded the amount of taxes so paid**”.

(iii) In FAQs issued by the CBIC, following clarification in the impugned matter has been given:

“Q 87. A registered person pays IGST for a supply which is subsequently held to be intra-state. What is the relevant date, within which he has to file a claim for refund of IGST wrongly paid?”

Ans. Section 77 of CGST Act, 2017, read with Section 19 of IGST Act, are the enabling provisions for grant of refund in such cases. These provisions use the words “.....shall be granted refund of the amount of Central/integrated tax so paid in such manner and subject to such conditions as may be prescribed....” Thus, refunds will have to be mandatorily

granted. The stipulation in Section 54(1) that claims will have to be filed within 2 years from the relevant date, will not apply for a claim under this category.

7.5 In this regard, it is also added that clause (j) of sub-rule (2) of rule 89, specifies that the person claiming refund in the impugned category is required to submit a statement showing the details of transactions considered as intra-state supply but which is subsequently held to be inter-State supply along with the refund application. Accordingly, a separate category of refund i.e. “*Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa (change of POS)*” has been created in FORM GST RFD-01. However, there is no other provision in CGST Rules, 2017 specifically prescribing any manner or conditions for refund in such cases covered by Section 77 of CGST Act, 2017 and Section 19 of the IGST Act, 2017. The sections clearly mention “...***shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.***” Thus, there appears to be a need to prescribe the procedure and conditions for granting refunds in the impugned category.

8.1 The issue was placed before the Law Committee in its meeting held on 28.07.2021 wherein it was recommended that sub-rule (1A) may be inserted to rule 89 of the CGST Rules. Further, the said sub-rule should also cover past cases. Accordingly, the Law Committee recommended insertion of the following sub-rule (1A) to be finalized in consultation with Law Ministry:

*“(1A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of two years from the date of payment of the tax on the inter-state supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that the said application may, as regards any payment of tax on inter-state supply before the coming into effect of this sub-rule, be filed before the expiry of two years from the date on which this sub-rule comes into effect.”

Further, the Law Committee also recommended that the issue of time limit for filing refund claim under section 77 prospectively, as well as for past period, should also be clarified in the proposed Circular. Law Committee further recommended that GSTN may examine feasibility of development of a functionality, whereby the amount wrongly paid under CGST/ SGST head instead of IGST head, and vice versa, can be adjusted on system itself on payment of amount under correct head by the taxpayer, without need of filing of a separate refund claim by the taxpayer.

8.2 Further, the Law Committee in its meeting held on 11.08.2021 approved the draft circular enclosed as **Annexure-A** to this agenda note.

9. The agenda along with the draft circular, as approved by the Law Committee, is placed before the GST Council for approval.

Circular No. ---/--/2021-GST

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

New Delhi, Dated the, 2021

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 in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act -Reg

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 reads as follows:

“77. Tax wrongfully collected and paid to Central Government or State Government. — (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”

Section 19 of the IGST Act, 2017 reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government-----(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such

manner and subject to such conditions as may be prescribed.

*(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”*

3. Interpretation of the term “subsequently held”

3.1 Doubts have been raised regarding the interpretation of the term “**subsequently held**” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-state or intra-state, is subsequently held by tax officers as intra-state and inter-state respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-state or intra-state supply made by a taxpayer, is subsequently found by taxpayer himself as intra-state and inter-state respectively.

3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-state or intra-state supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-state or inter-state respectively or where the inter-state or intra-state supply made by a taxpayer is subsequently found/ held as intra-state or inter-state respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of duty in the correct head.

4. The relevant date for claiming refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017

4.1 Section 77 of CGST Act and Section 19 of IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-state or inter-state, is subsequently held as inter-state or intra-state respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of CGST Act and section 19 of IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of CGST Rules, 2017 vide Notification XX/2021-Central Tax dated _____. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

*“(1A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of two years from the date of payment of the tax on the inter-state supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that the said application may, as regards any payment of tax on inter-state supply before the coming into effect of this sub-rule, be filed before the expiry of two years from the date on which this sub-rule comes into effect.”

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-state supply, or central and state tax in respect of subsequently held intra-state supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of Notification XX/2021-Central Tax dated _____, the refund application under section 77 of CGST Act/ section 19 of IGST Act can be filed before the

expiry of two years from the date of issuance of this notification. i.e. from

4.3 Application of sub-rule (1A) of rule 89 read with section 77 of CGST Act / section 19 of the IGST Act is explained through following illustrations.

A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

Sl.no.	Scenario	Relevant Date for filing the refund claim
1	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.05.2021 .	Since “A” has paid the tax in the correct head before issuance of notification No. XX/2021-Central Tax, dated YYYYYY, the relevant date of filing refund in FORM GST RFD-01 would be September , 2023 (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.11.2021 i.e. after issuance of notification.....	Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the relevant of filing refund in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.05.2019	Since “A” has paid the tax in the correct head before issuance of notification No. XX/2021-Central Tax, dated YYYYYY, the relevant date of filing refund in FORM GST RFD-01 would be September , 2023 (two years from date of notification)
4	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of notification....	Since “A” has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the relevant of filing refund in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No. XX/2021-Central Tax, dated YYYYYY, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

4.4 Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act.

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

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of

the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 3(x): Transfer of CGST /IGST cash ledger balance between ‘distinct persons’ (entities having same PAN but registered in different states)

Various representations have been received from trade and industry wherein they have requested to allow transfer of balance lying in electronic cash ledger under CGST head between distinct persons i.e. entities having same PAN. A brief note on such proposal along with their analysis in light of legal provisions under GST is presented below.

2 Transfer of CGST / IGST cash ledger balance between ‘distinct persons’ (entities having same PAN but registered in different states)

2.1 Presently, each registration under GST is considered unique. Entities situated in different states but having same PAN are required to obtain registration in each such state from where they make taxable supplies. As such, these ‘distinct persons’ are independent of each other as far as compliance under GST is considered. Their electronic ledgers, both cash and credit, operate independently from each other. Therefore, transfer of electronic cash / credit balance between distinct entities is not permissible. Due to this, companies with pan-India presence face the challenge of capital blockage where excess cash ledger balance remains unutilized in one state while there is insufficient cash balance in another state. In order to overcome this problem, it has been proposed that there should be a mechanism to allow transfer of **cash** balance from one state to another in case of ‘distinct persons’.

2.2 GST law already allows refund of unutilized balance in electronic cash ledger and once the amount is refunded, company has freedom to use it in whatever manner it wants to. As per the present mechanism, the refund has to be claimed, in respect of unutilized balance in electronic cash ledger, by the concerned distinct person. Such refund claim is processed by the jurisdictional proper officer. Only after getting the refund amount, such amount can be used by the other distinct person, who requires the said amount. However, there is some time lag in processing and sanctioning of refund (of unutilized cash ledger balance) whereas the need for sufficient cash balance may be often immediate. Allowing the transfer of cash ledger balance between ‘distinct persons’ would obviate the need for filing of refund as the requisite cash balance can be directly transferred to the entity that needs it. To examine this proposal, it is necessary to understand the features and operation of the electronic cash ledger.

2.3 For payment of tax, regular taxpayers are first required to generate challan using **FORM GST PMT-06** in order to deposit money in their electronic cash ledger. The balance in electronic cash ledger, in combination with the balance in electronic credit ledger, can be used to discharge tax liability through **FORM GSTR-3B**. For accounting purpose, any payment towards CGST cash ledger is treated as credit to the Consolidated Fund of India and any payment towards SGST cash ledger is treated as credit to the Consolidated Fund of that particular state. It is noteworthy that while Consolidated Fund of India is a **single account** of the Government of India, each state has its own Consolidated Fund. Since each state’s Consolidated Fund is different from another, transfer of SGST cash balance between distinct persons (located in different states), at present is not allowed.

2.4 It is pertinent to mention that the introduction of **FORM GST PMT-09** [in terms of rule 87(13) of CGST Rules, 2017] has enabled taxpayers to transfer any amount of tax, interest, penalty etc. that is available in electronic cash ledger, to the appropriate tax / cess head under IGST, CGST and SGST / UTGST. Hence, if a taxpayer has excess balance lying under interest head of SGST cash ledger but he needs to discharge penalty under IGST head, he can transfer the amount from SGST interest head to IGST penalty head. Essentially, **FORM GST PMT-09** gives the taxpayer complete

freedom to transfer cash ledger balance within different tax / cess heads (CGST/SGST/IGST/UTGST) and sub-heads (tax, interest, penalty, late fees), without need for filing a refund claim in respect of the same. While this facility addresses the problem of capital blockage for taxpayers to some extent, this has implications both for the settlement between Centre and States as well as accounting treatment. This is because, to and fro transfer between CGST and SGST cash ledger is akin to transfers between respective Consolidated Funds, thereby affecting revenue settlement between Centre and states. Accordingly, section 53A was inserted to CGST Act, 2017 *vide* Finance (No. 2) Act, 2019 w.e.f. 01.01.2020 that provided for settlement between Centre and State in case cash ledger balance is transferred from CGST head to SGST head or *vice versa*. Sub-section (10) and (11) of section 49 were also inserted *vide* Finance (No. 2) Act, 2019 to allow for transfer of cash ledgers by the registered person.

2.5 **As far as the proposal to allow transfer of CGST and IGST cash balance between ‘distinct persons’ registered in different states**, the amount deposited in cash ledger under CGST/IGST head and its sub-head, in any of the States, are all treated as credit to the Consolidated Fund of India. The Consolidated Fund of India being a single account, it appears that transfer of CGST cash balance between ‘distinct persons’ may not have any impact in settlement of funds between States and Centre. As such, there appears merit in the proposal to allow inter-state transfer of cash ledger balance as it would address the capital blockage issue for large companies having pan-India presence.

2.6 On the similar lines as discussed in para 2.4 above, transfer of SGST cash balance between ‘distinct persons’ registered in different states can be considered. The amount deposited in cash ledger under SGST head and its sub-head, in any of the States, are treated as credit to the Consolidated Fund of that particular state. Thus, transfer of SGST cash balance between ‘distinct persons’ registered in different states will simply mean transfer of funds from the Consolidated Fund of one state to Consolidated Fund of the other state. The process of settlement would be similar to the settlement done for **FORM GST PMT-09**

3.1 The Law Committee deliberated the matter in its meeting dated 11.08.2021. **The Law Committee recommended that unutilized balance in CGST and IGST cash ledger only may be allowed to be transferred between distinct persons, subject to the condition that such transfer will not be allowed if DRC-07 liability exists for the registered person transferring such cash balance.**

3.2 However, Member from Punjab gave the following note:

“Disagree. This is step towards centralized registration and shifting from State wise registration enshrined in section 22 of GST Act, 2017. This can be implemented only if section 22 of GST Act, 2017 is amended. Further, in case, transfer of cash balance between distinct persons is allowed, demand for transfer of credit balance will also arise in future.”

3.3 The comments of Member from Punjab have been examined. The following points merits consideration:

- i. Refund of un-utilized balance in un-utilized cash ledger, per say, is **not refund of tax**.
- ii. Need for refund provision for such unutilized cash balance arises only because of the accounting treatment of deposits in cash ledger, which is deemed as debit in Consolidated Funds of Centre or States.
- iii. Initial design of GSTR-3 allowed the taxpayer to take the refund of balance of cash ledger **through return only, without intervention of proper officer**.
- iv. However, because of non-implementation of GSTR-3 return mechanism, the refund of unutilized cash balance was provided through process of RFD-01 claim route and sanction by

- proper officer.
- v. The proposal is to allow taxpayer to transfer cash balance from one distinct person to other (similar to PMT-09 route already provided), without need for sanction of refund by proper officer, **which will help in reducing procedural compliances and improving liquidity of the taxpayers and ease of doing business.**
 - vi. The proposal, in no way, is linked to section 22 or to centralized registration.
 - vii. There is **no proposal to allow transfer of unutilized credit balance between distinct persons**, as refund of unutilized credit balance is presently also not allowed to any taxpayer, other than in cases of zero-rated supplies and inverted duty structure.
 - viii. **The proposal of allowing transfer of CGST/IGST cash ledger balance between ‘distinct persons’ will help in improving liquidity of all those taxpayers who have got multiple registrations in different states, without affecting revenue of either Centre of the states.**
4. Accordingly, the proposal of Law Committee to allow transfer of CGST/IGST cash ledger balance between ‘distinct persons’ may be approved by the Council. Further, Council may delegate Law Committee to draft the amendment in relevant sections which may be finalized in consultation with the Union Ministry of Law & Justice.
5. Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 3(xi): Additional measures to tackle the menace of fake invoices: Amendment to rule 36(4) of the CGST Rules, 2017

Vide notification No. 49/2019-Central Tax dated 09.10.2019, sub-rule (4) was inserted in Rule 36 of the CGST Rules to restrict availment of input tax credit by a registered person in respect of invoices the details of which have not been furnished by the suppliers. Initially, availment of input tax credit in respect of invoices the details of which have not been furnished by the suppliers was permitted upto 20 percent of the eligible credit available in respect of invoices the details of which have been furnished by the suppliers in **FORM GSTR-1**. Subsequently, this limit was reduced to 10% w.e.f. 01.01.2020 and 5% w.e.f. 01.01.2021.

2.1 It may be noted that *vide* section 109 of the Finance Act, 2021 clause (aa) to the sub-section (2) of section 16 of the CGST Act, 2017 was inserted, so as to provide that input tax credit on invoice or debit note may be availed only when the **details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient** of such invoice or debit note. The said clause reads as under:

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”

2.2 It is also informed that **FORM GSTR-2B** was notified under sub-rule (7) of rule 60 of the CGST Rules vide notification No. 82/2020-CT dt. 10.11.2020, w.e.f. 01.01.2021, as auto-drafted statement containing the details of input tax credit, to be made available to the registered person through the portal, every month. Accordingly, once clause (aa) to the sub-section (2) of section 16 of the CGST Act notified, furnishing of details of invoices / debit notes by the suppliers in their respective **FORM GSTR-1** or **IFF** and communication of such details in **FORM GSTR-2B** to the registered person (recipient) shall become the eligibility criteria for availing ITC.

2.3 In contrast, the existing rule 36(4) allows availment of input tax credit in respect of invoices the details of which have not been furnished by the suppliers upto 5 percent of the eligible credit available in respect of invoices the details of which have been furnished by the suppliers in **FORM GSTR-1** or **IFF**. Further, the said rule does not prescribe communication of the details of invoice or debit note in **FORM GSTR-2B** as a condition for availment of ITC.

2.4 It is also informed that with effect from 12.12.2020, GSTN has made available auto-population of ITC and liabilities in **FORM GSTR-3B** (Payment return) from **FORM GSTR-2B** (auto-generated inward supply statement) and **FORM GSTR-1** (Outward supply statement) which has simplified the return filing. Presently, taxpayers can edit the said auto-populated return, without any limit/ restriction on such editing. GSTN has developed the functionality to restrict the editing in **FORM GSTR-3B**, both on liability side as well as on ITC side. **In order to have legal backing for such limitation/ restriction on editing in respect of ITC in GSTR-3B on the basis of GSTR-2B, it may be desirable to amend Rule 36(4) to link availment of ITC in GSTR-3B with details communicated to the taxpayer through GSTR-2B.**

2.5 Accordingly, it is proposed that the said rule 36(4) of the CGST Rules, 2017 may be amended, once section 109 of the Finance Act, 2021 related to insertion of clause (aa) to the sub-section (2) of section 16 of the CGST Act, 2017 is notified. Such amendment may cover the following

aspects:

- (i) removing the relaxation regarding availment of ITC in respect of invoices, the details of which have not been furnished by the suppliers in respective **FORM GSTR-1 / IFF**; and
- (ii) prescribing communication of the details of invoice or debit note in **FORM GSTR- 2B** as a condition for availment of ITC.

2.6. The rule 36(4) of the CGST Rules, 2017 may be substituted as follows:

*“(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by their suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility, and the details of which have not been communicated to the said registered person under sub-rule (7) of rule 60 in **FORM GSTR-2B.**”*

The said rule may be notified only from a date as recommended by GST Council, after the said amendment in Section 16 (2) of the CGST Act through insertion of clause (aa) is notified.

3. The issue was deliberated by the Law Committee in its meeting held on 08.09.2021. The Law Committee agreed, in principle, that availment of ITC to be linked to GSTR-2B. Further, the Law Committee also approved the proposed formulation of rule 36(4) in para 2.6 above considering the formulation of section 16(2)(aa).

4. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 3(xii): Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017

There are number of cases in respect of taxpayers issuing fake invoices, where while the details of outward supplies are being furnished by taxpayers in **FORM GSTR-1** allowing the recipient to claim input tax credit, the taxpayer does not furnish the corresponding return in **FORM GSTR-3B**. Thus, while the input tax credit is passed on to the recipient, the tax is not paid by the supplier.

2. To tackle the issue of fake invoice, notification No. 94/2020–CT dt. 22.12.2020 and notification Number 01/2021-CT, dated 01.01.2021 were issued, which inter-alia, had inserted sub-rule (6) to rule 59 of the CGST Rules, 2017. It provides that a registered person shall not be allowed to furnish **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months. Similar restriction was placed on taxpayers filing quarterly return, with a deviation that restriction on furnishing details of outward supplies in **FORM GSTR-1** shall be imposed if return in **FORM GSTR 3B** is not filed by the taxpayer for the preceding (one) tax period (3 months). It is further informed that blocking of **FORM GSTR-1** for non-furnishing of two **FORM GSTR-3Bs** has been started on portal since first week of Septemebr 2021.

3. It may be recalled that along with the proposal for law amendment , sequential filing of **FORM GSTR-1**, and requirement of mandatory filing of **FORM GSTR-1** before filing of **FORM GSTR-3B**, has already been approved by the Council in its 43rd meeting. This proposed amendment would regulate return filing and tax payment in GST, by making **FORM GSTR-1** and **FORM GSTR-3B** sequential. **In order to further strengthen the provisions against fake invoicing, it is proposed that the rule 59(6) of the CGST Rules may be amended to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.** This will not only help in reducing the amount of credit passed on without filing of return and payment of tax thereon, but will also streamline the process of return filing in GST.

4. Accordingly, clause (a) of rule 59(6) of CGST Rules may be amended as shown in red below:
“(6) Notwithstanding anything contained in this rule, -

*(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for **the preceding month ~~two months~~**;*

Besides, in view of the proposed amendment, clause (c) of Rule 59(6) will become redundant, and therefore, we may consider deleting the said provision, once the amendment in clause (a) of Rule 59(6) is carried out.

4.1 Since, blocking of GSTR-1 on non-filing of two GSTR-3Bs is already starting on the portal from 01.09.2021, a call may be taken to amend rule 59(6) of the CGST Rules, as proposed above, from a date as may be agreed upon.

5. Law Committee deliberated on the above issue in its meeting held on 08.09.2021 and has recommended the above amendment, to be made effective from 01.01.2022.

6. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 3(xiii): Agenda Note for amendment in Section 54 of the CGST Act, 2017

1. Amendment in sub-section (2) of CGST Act, 2017 regarding time period for filing refund under section 55:

1.1 Reference is invited to sub-section (2) of section 54, which provides for refund of tax paid on inward supplies to the International Organisations and other persons eligible for refund under section 55 of the CGST Act, 2017. The said sub-section is reproduced as under:

“(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.”

1.2 On perusal of the said sub-section, it can be seen that it prescribes **a time limit of 6 months, for filing refund by such entities, from the last date of the quarter** in which the supply was received for claiming refund under Section 55. However, **the said time limit has been extended to 18 months vide Notification No. 20/2018-Central Tax dated 28.03.2018**. It is mentioned that the time limit for refunds under section (1) of section 54 of CGST Act, 2017 is two years from the relevant date.

1.3 Accordingly, **it is proposed that sub-section (2) of Section 54 of the CGST Act, 2017 may be amended so as to align it with sub-section (1) of Section 54**, as shown in **red** below:

*“(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of **two years ~~six months~~** from the last day of the quarter in which such supply was received.”*

2. Amendment in sub-section (10) of CGST Act, 2017 to provide for withholding of refunds in respect of all types of refunds:

2.1 Reference is drawn to sub-section (10) of Section 54 of the CGST Act, 2017 which provides for withholding payment of refund to a person who is defaulter and which also provides for deduction of due amount from the refund. The relevant sub-section is reproduced below:

“(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation. —*For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.”*

2.2 On perusal of said sub-section, it is observed that the said sub-section provides for withholding of refund in case of refunds under sub-section (3) only. i.e. in case of refund of unutilised Input Tax Credit only. However, Section 79(1)(a) of CGST Act provides that the proper officer shall proceed to recover the amount payable by a person by deducting the amount from any money owing to such person which may be under the control of the proper officer or such other specified officer thereby meaning that recovery of the amount payable by a person can be made from any type of refund which is due to him. Therefore, **it is proposed to amend the sub-section (10) of the Section 54** as shown in **red** below:

“(10) Where any refund is due ~~under sub-section (3)~~ to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

-----”

3. Relevant date for filing refund claim of accumulated ITC in respect of zero-rated supplies made to SEZ without payment of duty

3.1 It is submitted that sub-section (1) of section 54 provides that the refund application can be filed before the expiry of two years **from the relevant date**. Further, relevant date for different types of refund is provided at **Explanation (2) under Section 54**. On perusal of the provisions relating to relevant date, it is observed that **no relevant date has been specified for cases pertaining to refund of unutilised ITC on account of supplies made to SEZ**.

3.2 In this regard, it is pertinent to mention that it is not the case that the provision relating to relevant date for refund of unutilised ITC on account of supplies made to SEZ never existed in CGST Act. Initially, at the time of implementation of GST, the relevant date for refund of unutilised ITC on account of supplies made to SEZ was covered under the common clause for the relevant date for the refund of unutilised ITC on account of zero-rated supplies as well as refund of unutilised ITC on account of inverted duty structure. The original provision (e) under Explanation 2 under section 54 relating to relevant date in case of refund of unutilised ITC was as follows:

“(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;”

3.3 The aforesaid provision was amended vide the CGST (Amendment) Act, 2018 which was brought into effect from 01.02.2019 to link relevant date with the GSTR-3B return for the period for which refund claim arises. However, while making such amendment, the reference has been made to **clause (ii) of sub-section (3) of section 54, which relates to refund on account of inverted duty structure**, due to which all refund of unutilised ITC on account of zero-rated supplies got excluded from the said provisions. The amended provision (e) under Explanation 2 under section 54 relating to

relevant date in case of refund of unutilised ITC is as under:

“(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;”

3.4 However, as relevant date for export of goods and services has been clearly laid down, cases of **refund on account of exports** get covered under those provisions. Further, the cases **where supplies to SEZ are made with payment of tax** gets covered under the provisions where relevant date has been specified as the date of payment of tax, thereby leaving only those cases of supplies to SEZ, which are made without payment of tax, out of purview of the definition of relevant date in Explanation 2 under section 54.

3.5 Due to absence of any relevant date, in respect of supplies made to SEZ without payment of duty, in Explanation 2 under section 54 in pursuant to the aforesaid amendment, the cases of refund of unutilised ITC on account of supplies made to SEZ without payment of tax can technically be filed any time, even more than 2 years after the supply was made, thereby resulting in disparity between the time period allowed for filing refund claim on account of exports and supplies to SEZ, when both are made without payment of tax, which is unjustifiable. In fact, disparity has arisen even in cases pertaining to supplies made to SEZ with payment of tax and without payment of tax. In this regard, it appears that the absence of relevant date in respect of the supplies made to SEZ without payment of duty, has resulted inadvertently, due to insertion of specific clause i.e. clause (ii) of sub-section (3), which is pertaining to refund on account of inverted duty structure, in clause (e) of the Explanation 2. Further, the decision to prescribe time period of two years from relevant date for filing application of refund is a conscious policy decision of the government and it appears that government does not intend to discriminate between the different types of refund claims as far as prescribing the time period for filing the application for refund is concerned

3.6 Accordingly, in order to maintain uniformity with respect to relevant date in cases of all supplies made to SEZ, it is proposed to insert a new provision relating to relevant date in Explanation 2 under section 54, in case of supplies to SEZ, as under:

“(ba) in case of zero rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or inputs services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;”

4. The issue was deliberated by the Law Committee in its meeting held on 08.09.2021 and the Law Committee approved the above proposals.

5. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 3(xiv): Clarification on doubts related to scope on “intermediary”

It may be recalled that Circular No. 107/26/2019-GST dated 18.07.2019 (clarification on doubts related to supply of Information Technology enabled Services) was rescinded vide Circular No. 127/46/2019-GST dated 04.12.2019 after the approval given by GIC in its 34th meeting held on 02.10.2019. The same was placed for information before GST Council in its 38th meeting held on 18.12.2019.

2. It was decided in the said meeting that -
 - i. policy issues decided may be resolved first;
 - ii. Appropriate changes in the law may be proposed during the budget session to explicitly state the legal intent, with approval of the GST Council;
 - iii. Circular No. 107/26/2019-GST dt. 18.07.2019 may be rescinded;
 - iv. no new circular may be issued on intermediary urgently without further deliberation on the policy issues involved.

3.1 The issue has been examined. It may be appreciated that while there may be a need to have a relook at the definition of intermediary in the IGST Act and also the provisions pertaining to Place of Supply in respect of intermediary in the said Act, after examination of the international practices in this regard, however any such exercise, being a law amendment, is a long-drawn process and would ONLY be prospective in nature.

3.2 It has emerged during examination of the issue that there have been disputes about the scope of intermediary for a long time. Besides, there are large number of representations and references, including Parliament Question and PMO references, highlighting the difficulties being faced by trade and industry, in view of divergent practices in field formation about interpretation of scope of intermediary as per the present provisions of the IGST Act. Accordingly, in order to avoid legal disputes on the issue and as a responsive tax administration, there is an imminent need to clarify, the scope of intermediary, in terms of the present provision of IGST Act, without waiting any further for law amendments regarding definition of intermediary and Place of Supply provisions.

3.3 The problem appears to have the following solution -

(i) The scope of ‘intermediary services’ as per the present provisions of the law need to be clarified through a Circular, as a first step to address the difficulties being faced by trade and industry due to divergent practices in field formations on interpretation of the said provision. **It is expected that, this step alone will resolve the difficulties being faced on the issue to a large extent.**

(ii) On a long-term basis, issues of amendment in definition of intermediary and Place of Supply provisions pertaining to intermediary may be examined by the Law Committee in due course, based on the international practices on the issue. The issue of exercising powers under section 13 (13) of the IGST Act, 2017 to prevent (apparent) double taxation or non-taxation of any specific supply by *notifying its PoS as a special case may also be examined, if needed, by the Law Committee* in due course.

4. Accordingly, it may be desirable to issue a circular at the earliest to address the issue of difficulties being faced due to divergent practices of interpretation of scope of the ‘intermediary

services' as per the present provisions of the IGST Act. A draft circular has been prepared and is enclosed as **Annexure A** to this agenda note. The Law Committee deliberated the issue in its meeting dated 08.09.2021 and has approved the draft Circular.

5. Accordingly, the agenda note, along with draft circular (Annexure A), is placed before the Council for approval please

F.No. CBIC-20006/26/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the , 2021

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 on doubts related to scope of “Intermediary”–reg.

Representations have been received citing ambiguity caused in interpretation of the scope of “Intermediary services” in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs.

Scope of Intermediary services

2.1 ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under–

“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

2.2 The concept of ‘intermediary’ was borrowed in GST from the Service Tax Regime. The definition of ‘intermediary’ in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;”

2.3 From the perusal of the definition of “intermediary” under IGST Act as well as under Service

Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic pre-requisites, which are discussed below:

3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of “intermediary” itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called....*”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary *“does not include a person who supplies **such** goods or services or both or securities on his own account”*. Use of word “**such**” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the

supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.

3.6 The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked **only when** either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

4. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

Illustration 1

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which 'C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing

the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

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

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 3(xv): Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route

Vide section 123 of the Finance Act, 2021, sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the “IGST Act”) has been substituted with sub-sections (3) and (4) as below:

“(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed. 42 of 1999.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”

Further, in terms of clause (b) of sub-section (2) of section 1 of the Finance Act, 2021, the said amendment shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. **It is proposed that the said section of the Finance Act, 2021 is notified at the earliest.**

2. The amendment has basically restricted the zero rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services and has made the export under LUT as the default route. Before taking any policy decision on notifying the class of supplies or class of taxpayers who can export on payment of IGST and claim refund of such tax, it would be pertinent to examine the intent behind the amendment in section 16 of the IGST Act. The issue which was deliberated in the 39th meeting of the GST Council for the said amendment is as below:

“Various instances, especially in export of few specific commodities, of frauds have come to notice, wherein refunds on payment of IGST have been availed using fraudulent credit. It may be noted that section 16 of the IGST Act, 2017 provides that a person making zero-rated supplies can avail two modes of refund (LUT / IGST), and this appears to be the real reason creating distortions.

Further, it has been observed that internationally, zero-rated supplies are taxed at zero-rate and credit of inputs in respect of such supplies are refunded. The refund of IGST

paid on export is not available internationally, and it is felt that the process can also be implemented under the GST laws in India. This is expected to remove distortions and bring uniformity.

Accordingly, it is proposed to amend the provisions of the IGST Act to make the export of goods and services without payment of integrated tax, under LUT/Bond as the default route for exports and to take an enabling power under section 16 to empower the Commissioner to notify the specific supplies of goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, that may be made eligible for supply on payment of integrated tax.”

3. In view of the above, it appears that the said amendment was proposed to prevent the misuse of the IGST route as proper officer of customs do not have access to the GST portal and therefore, may not be in a position to verify the refund claim properly. Whereas in case of refund of unutilised ITC in case of exports made under LUT route, the jurisdictional GST officers processing the refund have access to all returns and other documents available on GST portal and are in better position to verify such refund claim in details. Thus, it was decided that IGST refund route for goods may be kept open only for some specified class of supplies or class of exporters in respect of which the probability of misuse of the scheme are minimal. Therefore, it is proposed that while notifying the class of supplies or class of suppliers who would be eligible for making export with payment of tax and thereafter, getting refund under IGST route, only such supplies or class of taxpayers may be notified where, either the refund application is scrutinised by the jurisdictional GST officers or where the bona fide of exporter is already verified or the identify the exporter is known/verifiable i.e. the exporter is not a fly by night exporter.

Notifying goods or services that may be exported on payment on integrated tax

4. It may be noted that, at present, refund of integrated tax paid on export of services is processed by the central / state tax officers similar to the refund of unutilised ITC. Further, the refund on account of export of services is filed by the applicant in **FORM GST RFD-01** only after the receipt of export remittances in free foreign exchange. Therefore, it is proposed that **all services may be notified under clause (ii) of sub-section 4 of section 16 of the IGST Act, as class of supplies which may be exported on payment of integrated tax and the supplier of such services may claim the refund of tax so paid.**

Notifying class of persons who may make zero rated supply on payment of integrated tax

5. As regards notifying class of suppliers for zero-rated supply on payment of integrated tax, the methodology should be such:

- i. Which can be implemented on portal;
- ii. Which ensures, to the maximum extent, that exporters are genuine;
- iii. The exporters know before hand that he can export on payment of IGST;
- iv. Which ensures least human interface.

Therefore, the following classes of suppliers of goods or services or both, which appear to fulfil the above criteria to a large extent, can be considered for eligibility for making zero-rated supplies on payment of integrated tax and thereafter getting refund of the tax paid.

6. Category I

6.1 The first category could be such exporters who have been granted Authorised Economic Operator (AEO) certificate under the SAFE Framework of World Customs Organisation.

6.2 Under the **SAFE Framework of World Customs Organisation**, the exporters/importers are provided 3 types of certifications under AEO programme i.e. AEO Tier 1, AEO Tier 2 & AEO Tier 3. There is a rigorous process and prescribe standards to obtain such certification. The details of SAFE Framework of WCO and the AEO certification may be accessed through the link [https://www.cbic.gov.in/htdocs-cbec/home_links/india-ao-prgm]. The total number of AEO certified entity, as on **01.09.2021**, is as below:

Sl. no	AEO CERTIFIED ENTITY AS ON 01.09.2021
Tier 1	3240
Tier 2	573
Tier 3	41
Total	3854

[The list of AEO certified entity is available on the above referred URL]

6.3 As AEO certification is granted to the Importer/Exporters only after a detailed verification procedure as per international standards prescribed by WCO under SAFE Framework, AEO certificate holders may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

7. Category II

7.1 The second category could be such exporters who have been granted star exporter/status holder certification by DGFT.

7.2 The exporters are provided rating as per their export performance during the current and previous three financial years. An exporter is required to achieve the required export performance in atleast 2 out of the 4 years for grant of status holder certificate. A Status Holder is eligible for privileges as specified by the Foreign Trade Policy. The required export performance for status holder certificate as per Foreign Trade Policy and the number of exporters who have been granted such status, are as under:

S. No.	Status Category	Export Performance FOB / FOR (as converted) Value (in US \$ million)	Number of Exporter who have been granted the status holder certification as mentioned in col. (2) (as on 01.09.2021)
1.	One Star Export House	3	8947
2	Two Star Export House	25	2017
3.	Three Star Export House	100	627
4.	Four Star Export House	500	113

5.	Five Star Export House	2000	42
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7.3 It is further informed that as per FTP, three star and above Export House are entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC which is now converted into AEO programme. Further, manufacturers who are also status holders (Three Star/Four Star/Five Star) are also allowed to self-certify their manufactured goods as originating from India under preferential trade agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). Accordingly, it was proposed that three or more-star export houses may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

7.4 This issue was deliberated in the Law Committee meeting held on 08.09.2021 wherein Law Committee deliberated whether all exporters who have been granted star exporter status certification may be included in the proposal regarding notifying class of suppliers. After deliberation, Law Committee took a view that one-star export houses may not be considered for notifying as class of suppliers, as during the verification of certain exporters identified on the basis of data analytics, adverse reports have been received from field formations in respect of number of one star export houses. Therefore, **Law Committee recommended that two or more-star export houses may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.**

7.5 Accordingly, it is proposed that **two or more-star export houses** may be considered for notifying as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

8. Category III

8.1 As there is no doubt about authenticity of Government Departments, Public Sector Undertakings, local authorities and statutory bodies, we may consider notifying Government Department, Public Sector Undertaking, local authority and statutory body as class of suppliers who may make zero-rated supply on payment of integrated tax and claim refund of such tax.

9. In view of above discussion, it is proposed that:

- a. **Class of supplies: All services may be notified under clause (ii) of sub-section 4 of section 16 of the IGST Act, as class of supplies which may be exported on payment of integrated tax and the supplier of such services may claim the refund of tax so paid; and**
- b. **Class of suppliers: The following classes of suppliers of goods or services or both, may be notified under clause (i) of sub-section 4 of section 16:**
 - I. **Exporters who have been granted AEO certification under WCO SAFE Framework;**
 - II. **Exporters who have been granted Status Holder certification of 2 star or more under FTP;**
 - III. **Government Department, Public Sector Undertaking, Local Authority and Statutory Body.**

10. The issue was deliberated by the Law Committee in its meeting held on 08.09.2021. The Law Committee had recommended the proposal given in para 9 above.

11. Notification under clause (i) & (ii) of sub-section (4) of section 16 of the IGST Act, 2017 as per the proposal given in Para 9 above would be required to be issued once Section 123 of the Finance Act, 2021 is notified. Further, implementation of the proposal requires preparedness at the systems level- both at GSTN and ICEGATE. Accordingly, Section 123 of the Finance Act, 2021 may be notified, along with the notifications under clause (i) & (ii) of sub-section (4) of section 16 of the IGST Act, 2017 as per the proposal given in Para 9 above, in consultation with GSTN and DG Systems (ICEGATE). It is desirable that the system preparedness may be completed so as to notify the provisions preferably by 01.01.2022.
12. Accordingly, the agenda note is placed before the GST Council for approval.

Agenda Item 4: Nominations from State Governments on Board of GSTN

There are three representatives of States on the GSTN Board and officers from State are nominated by the Council on rotation basis from time to time. While officers from different States have been on the Board, there is no definite policy for nominating officers from State to the Board. Officers are also not nominated for any fix tenure on the Board and once nominated; an officer has normally been replaced only after he is transferred out from the post to another post that is not connected with GST administration.

2. It is proposed that we may have a policy of nominating officers of the State to the GSTN Board. For this purpose, the States have been divided into three groups (based on the census code and then alphabetically arranged). It is proposed that officers from State in each of the three groups may be nominated on the Board in alphabetical order for a period of one year.

Group-I		Group-II		Group-III	
1	Bihar	11	Arunachal Pradesh	21	Andhra Pradesh
2	Delhi	12	Assam	22	Chhattisgarh
3	Haryana	13	Manipur	23	Goa
4	Himachal Pradesh	14	Meghalaya	24	Gujarat
5	Jammu and Kashmir	15	Mizoram	25	Karnataka
6	Jharkhand	16	Nagaland	26	Kerala
7	Punjab	17	Odisha	27	Madhya Pradesh
8	Rajasthan	18	Sikkim	28	Maharashtra
9	Uttar Pradesh	19	Tripura	29	Puducherry
10	Uttarakhand	20	West Bengal	30	Tamil Nadu
				31	Telangana

3. Currently, we have officers from Uttar Pradesh in Group-I and Maharashtra in Group-III on the Board, both already for a period of more than a year. The nominee from UP, Shri Alok Sinha, has since then been transferred from his place. It is, therefore, proposed that officers from Uttarakhand, Arunachal Pradesh and Puducherry may be nominated on the Board with effect from 1.10.2021 for a period of one year till 31.09.2021 and then, we may follow the alphabetical order in each group.

Agenda Item 5: Performance Report of the NAA (National Anti-Profitteering Authority) for the 1st quarter (April to June, 2021) for the information of the Council

In terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017, National Anti-Profitteering Authority (NAA) is required to furnish a performance report to the GST Council by 10th of the closing of each quarter. Anti-profitteering 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-profitteering mechanism under GST is a multi-tier mechanism. The methodology of examination of the complaints to determine profiteering is asunder:

- 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-profitteering (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-profitteering for the 1st quarter (April to June, 2021) of Financial Year 2021—22 at various levels, is as under:

3.1. Performance of **National Anti-Profitteering 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	
Quarter 1st April, 2021 to 30th June, 2021						
127	12	0	0	0	0	139

3.2. Performance of DG (**Anti-profitteering**):

Opening Balance (No. of cases)	Receipt	Disposal	Mode of disposal of cases		Closing Balance (No. of cases)
			Report to NAA confirming profiteering	Report to NAA for closure action	
Quarter 1st April, 2021 to 30th June, 2021					
83	0	3	3	0	80

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

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
Quarter 1st April, 2021 to 30th June, 2021			
129	38	129	38

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	
Quarter 1st April, 2021 to 30th June, 2021				
38*	66	33	3	68

* In earlier report (Qtr. Ending March 2021) Goa, Haryana and Punjab were not included since Reports were not received from them. Now these states are included in this report so the total Closing Balance of Qtr. ending March 21 and Opening Balance of Qtr. ending June 21 may differ by 3.

Note: A detailed performance of each State Level Screening Committee is enclosed at Annexure "A" (Quarter ending June, 2021).

4. During these quarters NAA has undertaken the following activities/initiatives-

- i. During the quarter April to June 2021, the functioning of the National Anti-Profiteering Authority (NAA) was severely impacted in the month of April 2021 by the second wave of Covid-19 pandemic as it resulted in serious health issues to several officers of the Authority, including one of its Technical Members.
- ii. The functioning of the Authority was also adversely affected in the months of May and June 2021 due to the lack of the minimum prescribed quorum of the Authority after the relieving of Sh. Navneet Goel, Technical Member, on 29.04.2021, pursuant to Office Order No. 37/2021 issued the CBIC, Department of Revenue, Govt of India. Further, Sh. B.N. Sharma, Chairman of the Authority resigned on 17.05.2021 to join his new assignment as Chairman, Rajasthan State Electricity Regulatory Commission.
- iii. Meanwhile, Sh. Amand Shah, Technical Member, was assigned the duties and responsibilities of the post of Chairman, National Anti-Profiteering Authority in addition to his existing responsibilities vide Order No. 78/2021 dated 31.05.2021 issued by the Department of Revenue, Govt of India and he has started discharging the functions of the Chairman since 02.06.2021 as additional charge. However, the Authority's quasi-judicial functions and proceedings will resume as soon as the minimum quorum of three Technical Members, required under Rule 134 (1) of the CGST Rules 2017, is restored.
- iv. Due to the above reasons, no cases could be disposed of in the quarter ending 30.06.2021. Currently, total 139 cases are pending for completion of quasi-judicial proceedings at the level of the Authority.
- v. With a view to get the quorum of the Authority resorted, the Department of Revenue has been requested by the acting Chairman, to appoint three Technical Members and the Chairman of the Authority.
- vi. 66 Anti-profiteering complaints received by the Authority (60 received on the NAA portal and 6 through email) during the quarter have been forwarded to the concerned State Level Screening Committee and / or the Standing Committee. Complaints related to enforcement

issues and where allegation relates to tax-evasion etc. have been forwarded to the Jurisdictional Chief Commissioners & concerned CCTs for necessary action at their end.

5. Accordingly, the quarterly performance report of the National Anti-Profitteering Authority for the period from April to June, 2021 is placed before the GST Council.

Annexure-A

Performance Report of the State Level Screening Committee for Quarter (April - June 2021)							
S.No.	States	Received/Not Received	Opening Balance	Receipt	Disposal		Closing Balance
					Standing Committee	Rejected	
1	Andhra Pradesh	✓	0	0	0	0	0
2	Arunachal Pradesh	✓	0	0	0	0	0
3	Assam	✓	0	0	0	0	0
4	Bihar	✓	0	2	0	2	0
5	Chhattisgarh	X					
6	Goa	✓	1	0	0	1	0
7	Gujarat	✓	0	1	0	0	1
8	Haryana	✓	1	2	0	0	3
9	Himachal Pradesh	✓	0	0	0	0	0
10	Jammu and Kashmir	✓	0	0	0	0	0
11	Jharkhand	✓	0	0	0	0	0
12	Karnataka	✓	0	0	0	0	0
13	Kerala	X					
14	Madhya Pradesh	✓	2	0	0	0	2
15	Maharashtra	✓	1	4	5	0	0
16	Manipur	✓	0	0	0	0	0
17	Meghalaya	✓	0	0	0	0	0
18	Mizoram	✓	0	0	0	0	0
19	Nagaland	✓	0	0	0	0	0
20	NCT of Delhi	✓	25	51	25	0	51
21	Odisha*	✓	0	0	0	0	0
22	Puducherry	✓	0	0	0	0	0
23	Punjab	✓	1	1	0	0	2
24	Rajasthan	✓	0	1	0	0	1
25	Sikkim	✓	0	0	0	0	0
26	Tamil Nadu	✓	1	0	0	0	1
27	Telangana	✓	0	0	0	0	0
28	Tripura	✓	0	0	0	0	0
29	Uttar Pradesh	✓	1	3	3	0	1
30	Uttarakhand	✓	0	0	0	0	0
31	West Bengal	✓	5	1	0	0	6
		29	38	66	33	3	68

* In earlier report (Qtr. Ending March 2021) Goa, Haryana and Punjab were not included since Reports were not received from them. Now these states are included in this report so the total Closing Balance of Qtr. ending March 21 and Opening Balance of Qtr. ending June 21 may differ by 3.

Agenda Item 6: Ad-hoc Exemptions Order(s) issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information

In the 26th GST Council meeting held on 10th March, 2018, it was decided that all ad hoc exemption orders issued with the approval of Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19th August, 2014, as was the case prior to the implementation of GST, shall be placed before the GST Council for information.

2. The details of the ad hoc exemption order issued are as follows:

Order No.	Date	Remarks
AEO No. 06 of 2021	03rd June 2021	Request from Shri Yogesh Gupta for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 07 of 2021	09 th June 2021	Request from Shri Sourabh Shinde for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 08 of 2021	12 th July 2021	Request from Shri Nagumantri VSL Raman for exemption from import duties on import of lifesaving drug Zolgensma, for personal use. (Order copy enclosed).
AEO No. 09 of 2021	14 th July 2021	Request from Shri Satheesh Kumar for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 10 of 2021	03 rd August 2021	Request from Shri Rafeeq for seeking exemption from payment of import duty for import of lifesaving drug Zolgensma, for personal use. (Order copy enclosed).
AEO No. 11 of 2021	29 th August 2021	Request from Shri Nazar P.K., for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).

3. This is placed for the information of GST Council.

F. No. 461/06/2021-Cus V
Ad-hoc Exemption Order no. 6 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 03rd June 2021

To,
The Chief Commissioner of Customs,
Mumbai –III
Mumbai

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Yogesh Gupta, father of baby Ayaansh Gupta, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his son, Ayaansh Gupta, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they raised money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 60 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 60 ml doses of medicine.

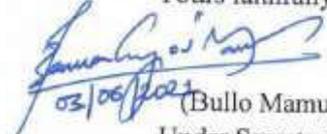
2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 60 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Ayaansh Gupta and will not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

F. No. 461/06/2021-Cus V
Ad-hoc Exemption Order no. 6 of 2021
Issued under section 25(2) of the Customs Act, 1962

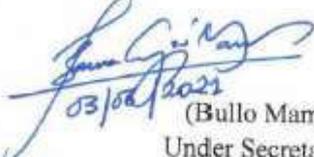
4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Ayaansh Gupta and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.
5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.
6. This order is valid for imports made up to 02.09.2021

Yours faithfully,


03/06/2021
(Bullo Mamu)
Under Secretary

Copy to:

- Mr, Yogesh Gupta A- 1208, Aparna Cyber Life, Nalagandala, Lingampalli, Hyderabad, Telengana Pincode - 500019.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


03/06/2021
(Bullo Mamu)
Under Secretary

F. No. 461/07/2021-Cus V
Ad-hoc Exemption Order no.7 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 09th June 2021

To,
The Chief Commissioner of Customs,
Mumbai –III
Mumbai

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Sourabh Shinde, father of baby Kumari Vedika Shinde, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his daughter, Kumari Vedika Shinde, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they raised money (INR 16 crores) to cover cost for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 74.7 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 74.7 ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 74.7 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Vedika and will not be put to other use. The said drug is already exempt

F. No. 461/07/2021-Cus V
Ad-hoc Exemption Order no.7 of 2021
Issued under section 25(2) of the Customs Act, 1962

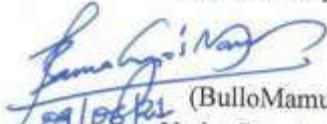
from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Vedika Shinde and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

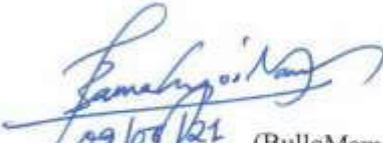
6. This order is valid for imports made up to 08.09.2021

Yours faithfully,


09/08/21 (BulloMamu)
Under Secretary

Copy to:

- Mr. Sourabh Shinde, Survey No. 10/2/6, Sai Sadan, Vikas Colony, Landewadi, Bhosari, Pune, Maharashtra -411039.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


09/08/21 (BulloMamu)
Under Secretary

F. No. 461/10/2021-Cus V
Ad-hoc Exemption Order no. 8 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 12th July 2021

To,
The Chief Commissioner of Customs,
Bengaluru Zone
Bengaluru

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Nagumantri VSL Raman, father of baby Nagumantri Venkata Khyati, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- i. his daughter, Nagumantri Venkata Khyati, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- ii. they have raised money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save her life, through crowd funding.
- iii. they have obtained approval from DGCI to import this life saving medicine for personal use.
- iv. the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 30.4 ml of the drug would be required for the treatment.
- v. The drug is expected to be imported as 1 package with 30.4 ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 30.4 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of baby Nagumantri Venkata Khyati and will

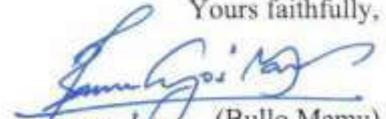
not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of baby Nagumantri Venkata Khyati and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

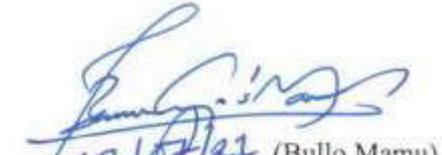
6. This order is valid for imports made up to 11.10.2021

Yours faithfully,


12/07/22 (Bullo Mamu)
Under Secretary

Copy to:

- Mr. Nagumantri VSL Raman, Flat no 213, Malibu Rosita Apartment, Rajbhavi Road, Opp Sub registrar off, Varthur Post, Bangalore 560087.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


12/07/22 (Bullo Mamu)
Under Secretary

F. No. 461/11/2021-Cus V
Ad-hoc Exemption Order no. 9 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 14th July, 2021

To,
The Chief Commissioner of Customs,
Bengaluru Zone
Bengaluru

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Satheesh Kumar, father of baby K.S. Mithrra, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his daughter, K.S. Mithrra, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they have raised money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 55 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 55 ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 55 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby K.S. Mithrra and will not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

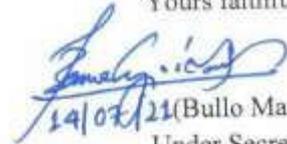
F. No. 461/11/2021-Cus V
Ad-hoc Exemption Order no. 9 of 2021
Issued under section 25(2) of the Customs Act, 1962

4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby K.S. Mithra and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

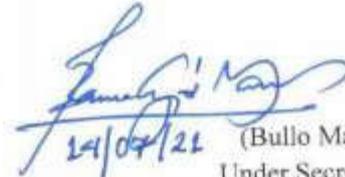
6. This order is valid for imports made up to 13.10.2021

Yours faithfully,


14/07/21 (Bullo Mamu)
Under Secretary

Copy to:

- Mr, K. Satheeshkumar 5/68-23, Thirukumaran Street, Gandhinagar, Komarapalayam, Namakkal, Tamil Nadu- 638183.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


14/07/21 (Bullo Mamu)
Under Secretary

F. No. 461/16/2021-Cus V
Ad-hoc Exemption Order no. 10 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 03rd August 2021

To,
The Chief Commissioner of Customs, Central Goods & Service tax
Thiruvananthapuram Zone

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma- reg.

The undersigned is directed to refer to a request received from Mr. Rafeeq, father of baby Muhammad, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- (i) his son, Muhammad, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- (ii) they are raising the money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- (iii) they have obtained approval from DGCI to import this life saving medicine for personal use.
- (iv) the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 74.3 ml of the drug would be required for the treatment.
- (v) The drug is expected to be imported as 1 package with 74.3 ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 74.3 ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Muhammad and will not be put to other use. The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

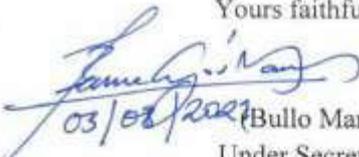
F. No. 461/16/2021-Cus V
Ad-hoc Exemption Order no. 10 of 2021
Issued under section 25(2) of the Customs Act, 1962

4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Muhammad and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 02.11.2021

Yours faithfully,


03/08/2021 (Bullo Mamu)
Under Secretary

Copy to:

- Mr. Rafceq P K, Pakrinte Chalil House, Mattool Central P O Mattool 670302, Kannur, Kerela
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.


03/08/2021 (Bullo Mamu)
Under Secretary

F. No. 461/16/2021-Cus V
Ad-hoc Exemption Order no.11 of 2021
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated: 29th August 2021

To,
The Chief Commissioner of Customs,
Bengaluru Zone
Bengaluru

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of Zolgensma– reg.

The undersigned is directed to refer to a request received from Mr. Nazar P.K., father of Baby Ishal Maryam, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of Zolgensma, a drug for gene replacement therapy.

2. He has informed that:

- i. his daughter, Ishal Maryam, has been diagnosed with Spinal Muscular Atrophy, type 1, a severe, rare, early-onset genetic disorder that affects a child's nervous system and eventually kills the baby as the condition progresses.
- ii. they are raising the money (INR 16 crores) to cover costs for a revolutionary gene replacement therapy, Zolgensma, priced at USD \$2.125 million, to save his life, through crowd funding.
- iii. they have obtained approval from DGCI to import this life saving medicine for personal use.
- iv. the drug Zolgensma needs to be imported from USA and as per the doctor's advice and the infant's weight, 27.5ml of the drug would be required for the treatment.
- v. The drug is expected to be imported as 1 package with 27.5ml doses of medicine.

2.1 They have requested for waiving off the customs duties and GST on the import of this lifesaving drug Zolgensma.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 27.5ml of Zolgensma, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of Baby Ishal Maryam and will not be put to other use.

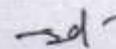
The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of Baby Ishal Maryam and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 25.02.2022

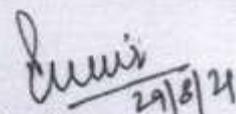
Yours faithfully,



(Komila Punia)
Deputy Secretary

Copy to:

- Mr, Nazar P.K., House No. 42/6, Chandrapa Layout, Bangalore North, Jalahalli East S.O., 15- Karnatka- 560013
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.



(Komila Punia)
Deputy Secretary

Agenda Item 7: Report of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim

Proposal of Sikkim

1. Hon'ble Chief Minister of Sikkim sent a detailed note to the Union Finance Minister on mobilising additional resources from the seeking concurrence of the GST Council to impose 'Covid Cess' in Sikkim. The proposal states that the Covid pandemic and its impact on overall economy and resources together with additional expenditure commitments has significantly altered all the parameters of revenue and expenditure of the State. Sikkim has mentioned that their assessment of resources indicates that their revenue receipts during FY 2020-21 may have shortfall of around 30% from base estimates as outlined in the Budget for 2020-21. Since three-fourths of the State's revenue consists of tax transfers and grants in aid from the Centre, a decline in these resources would have significant impact on State's revenue. Given that the expenditure commitments would see an increase over and above what has been budgeted for 2020-21 and a significant revenue shortfall would be inevitable, there is need to identify possible resource generating options.

2. It was further mentioned in the proposal that the structure of economy of Sikkim is significantly different from the rest of the country. Manufacturing and power sector contribute nearly 55-57 per cent gross value added in the State. Within manufacturing, there has a dominance of pharma companies in Sikkim. Pharma is one of the sectors which has not been adversely affected during this period of lockdown. Based on the data available for 2017-18, Annual Survey of Industries, it is estimated that revenue of Rs. 164 crore may accrue to the State by imposing covid cess on pharma sector at the rate of 1% of the turnover. A 1% covid cess for a specified period may not in any way affect the profitability and competitiveness of this sector. Similarly, overall generation of revenue for State from Covid Cess on power sector is estimated to be around Rs. 95 crore in one year, if levied at 0.1% per unit. Sikkim has hydro power potential and significant hydro power generation. These sectors, which will be the few of the least affected sectors, could provide additional resources. Accordingly, Govt. of Sikkim has requested GST Council's concurrence for imposing a Covid Cess on their output for current year and subsequent two years, upto 2022-23.

CONSTITUTION OF GOM

3. The proposal of Sikkim was discussed in the 43rd GST Council meeting held on 28.05.2021. Accordingly, on the recommendations of GST Council, this **Group of Ministers (GoM) on levy of COVID Cess** has been constituted with the following composition to examine the said proposal (a copy of the Office Memorandum No. S-31011/12/2021-DIR(NC)-DOR dated 11th June 2021 is placed at Annexue-1):

Name	Designation and State	
1. Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convener
2. Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3. Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4. Sh. K. N. Balagopal	Minister for Finance, Kerala	Member
5. Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6. Sh. B. S. Panth	Minister for Tourism & Industries, Sikkim	Member
7. Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member

TERMS OF REFERENCE OF GOM

4. The terms of reference (ToR) for the **GoM on levy of COVID Cess** is to examine the proposal moved by Government of Sikkim that a COVID Cess at the rate of—

(a) 1 per cent of the turnover of pharmaceutical sector (excluding the unorganised sector) is imposed for the current year and subsequent two years, up to 2022-23; and

(b) Rs. 0.1 per unit of power generated is imposed for the current year and subsequent years, up to 2022-23

in light of the relevant provisions of the Constitution and the relevant legislation. The GoM may also examine other aspects that are relevant for the proposal.

Constitutional/Legal Provisions & Supreme Court Judgment relevant for the proposal

5. It is important to examine various constitutional and legal provisions with respect to levy of Goods and Services Tax and evaluate the feasibility and limitations with regard to the proposal of Sikkim. The provisions for levy of GST were introduced in the Constitution through the Constitution (101st Amendment) Act, 2017. The Statement of Objects and Reasons of the Amendment Act read as follows:

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union Territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both].

6. GST is levied by Centre and States by the powers vested in them under Article 246A of the Constitution of India, which reads as follows:

246A. Special Provisions with respect to Goods and Services Tax

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation. – *The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.*

7. It is evident from the provisions above that Centre and States have the power to levy GST on supply of good and services or both and the power to levy GST on intra-state supply is with Centre as well as with the States but the power to levy GST on interstate supply is solely with the Centre. Accordingly sub-section (1) of section 9 of the CGST Act levies tax on intra-state supply of goods or services or both (Section 9 of the GST Acts of all the States has the same language). It reads as under:

9. Levy and collections.— *(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the state goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding*

twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

8. Further, clause (1) of Article 269-A, which deals with levy and collection of GST on inter-state supplies, reads as under:

269A. Levy and collection of goods and services tax in course of inter-State trade or commerce. – (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation. – For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

9. With respect to special provisions for special rate or rates in case of natural calamities, the Sub-clause (f) of clause (4) of Article 279A of the Constitution states that:

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

10. The power of Governments to levy cess after introduction of GST has been examined by the Hon'ble Supreme Court Judgment in case of M/s Mohit Mineral pvt Ltd Vs Union of India & others wherein the Constitutional validity of GST (Compensation to States) Act, 2017 and the levy of compensation cess has been challenged in the Supreme Court wherein the petitioner contested that

- (a) on the same event, two taxes cannot be levied namely GST and Cess;
- (b) Article 246-A of the Constitution does not provide power to Parliament to levy cess;
- (c) Constitution has been amended subsuming all the cesses and surcharges into the GST and therefore, Parliament does not have locus standi to levy cess which violates the Constitution.

11. After hearing the arguments, Hon'ble Supreme Court held that levy of cess is an increment to Goods and Services Tax which is permissible under law and also held that Parliament which has the power to levy tax can also enjoy the power to levy cess. Therefore, GSTC has the power to recommend for levy of cess to raise additional resources during any natural calamity or disaster and there is no any legal impediment for the levy of cess either by Union or States. Cess is also a tax but the only difference is, it is levied for particular purpose and specific period.

12. The above provisions and the judgement of the Supreme Court clearly indicate that the while the States have the power to levy cess, any such cess can be levied on supply of goods and/or services and only on intra-state supply of goods and/or services. GST being a destination-based tax, cess under the GST framework cannot be imposed by any State on supplies originating from that State but getting consumed in another State.

Recommendation of GoM constituted on revenue mobilization in case of natural calamities and disasters on proposal from Kerala for imposing flood cess

13. A similar request was received from Govt. of Kerala after the 2018 floods for levy of cess to mobilize the additional revenue. The issue was discussed in the GST Council and ‘**GoM on Revenue Mobilization**’ was constituted to examine the request of Kerala.

14. The GoM, inter alia, recommended that that Council may consider allowing levy of a cess on intra-state supply of goods and services within the State of Kerala at a rate not exceeding 1% for a period not exceeding two years. The GoM discussed the pros and cons of two ways of mobilizing revenue for natural disasters, viz increase in SGST rate and cess on supply of goods and services. While the GoM agreed that imposition would require a separate legislation, to ensure uniformity in SGST rates across the country, cess would be better way to mobilise revenue for natural disasters. It will ensure that the revenue so realized could be clearly earmarked and would be outside the compensation arrangement. GoM noted that as per the Constitutional provisions, this will have to be recommended for a particular case of natural calamity for a specified period.

15. As is clear, while GoM recommended that Kerala be allowed to levy cess but only on intra-state supply of goods and/or services.

Presentation by Sikkim

16. Consultant, GST and Finance to Government of Sikkim in his presentation gave an overview of the State Finance of Sikkim. He mentioned that though Sikkim is a tiny State, it is politically and strategically very important because of its location. He further stated that Sikkim is a hilly-terrain facing recurrent natural disasters, poor connectivity and infrastructure and faces difficulties in service delivery to dispersed population. About 30% of the work force depends on tourism and allied activities which is not revived until now due to COVID pandemic. Budget 2020-21 was prepared on the basis of the interim report of the 15th Finance Commission and the actual transfer by Centre to Sikkim was short of 460 crore for FY 2020-21. Decline in Central transfers along with the stagnant tax collection for the past three years and COVID 19 impact further added to the fiscal constraints of the State. Revenue received in 2020-21 is enough to meet the expenditure commitments of the State but COVID pandemic has increased the expenditure of the State. Revenue deficit would persist for another two to three years, even there is acceleration in the economic growth which means State needs additional resources to meet its expenditure commitments. These additional resources are required to meet the life and livelihood of the local population under the New Revival Plan. There is a continuous increase in the revenue expenditure of the State since 2018 and therefore, the revenue receipts of the State have been insufficient to meet the commit expenditure. Recently Sikkim received some grants from the Centre but those are meant for some specific schemes except for the allocation of budget deficit grant.

17. Due to growing capital and revenue expenditure of the State, State needs to find out additional revenue mobilization to meet the revenue deficit created by COVID pandemic. Sikkim gets major revenue from the tourism which is not revived subsequent to the COVID pandemic. Therefore, fiscal deficit was raising higher than the limits prescribed under the FRBM. Sikkim has many private investment majority in pharma and electricity generation. Annual survey of Industry has reported that pharma and power sector have achieved the highest profitability located in Sikkim. GSDP has been increasing from the manufacturing and power generation. Both pharma and power sectors have been insulated from the impact of the COVID pandemic and therefore, levy of cess on these two sectors will not impact their profitability. Sikkim is proposing levy of cess on these sectors only for two years upto 2023-24 and the expected revenue will be Rs.250 crore every year. The proposal of COVID cess is expected to reduce the financial stress in view of low revenue receipt, raising expenditure and additional expenditure in view of COVID 19. In view of the above, he requested Hon’ble Chairman and Members of the GoM to consider favourably the proposal of Sikkim to levy 1% cess on turnover of pharma and 0.1% per unit on power generation in Sikkim.

18. The presentation made by Sikkim is placed at Annexure -2.

Deliberations in the GoM

19. The meeting of the Group of Ministers (GoM) on levy of COVID Cess on power and pharma sector in Sikkim was held under the Chairmanship of Shri Basavaraj Bommai, Hon'ble Minister for Home Affairs, Karnataka on 17th June, 2021 at 10:30 AM through Video conferencing. Hon'ble Members of the GoM unanimously agreed with the need of Sikkim for additional resources to meet its rising capital and revenue expenditure due to COVID pandemic.

20. GoM went through all the constitutional, legal provisions and court judgments relevant for the proposal presented by Joint Secretary (Revenue). The presentation made by Joint Secretary (Revenue) is enclosed at Annex-3.

21. The GoM observed that while Sikkim can levy cess on SGST of intra-State supply of goods and/or services, but it cannot levy cess on the inter-State supplies. GoM also noted that Goods and Services Tax is a destination based tax and the taxable event is a supply, but in case of Sikkim's proposal, they want to levy the cess on the turnover of pharma and generation of power which is not permissible under GST framework.

22. Hon'ble Minister for Tourism and Industries, Sikkim stated that the levy of cess or taxes on either supply of goods or services or both which are inter-State character, levied by the Parliament and Article 246-A is not relevant here, as the subject proposal is to levy cess on output of the pharma produced and unit of power generated within the boundaries of Sikkim. Since the cess is not proposed to be levied on specific items but on total turnover, therefore, there is no cascading effect. The Annual Survey of Industries published by MoSPI mentioned that output with respect to investment is better in these two sectors. Sikkim is a tiny State and there is hardly any scope to increase the tax and non-tax revenue as additional source of revenue to protect the life and livelihood of the people. The necessity to levy cess has arisen because of the reduction in the transfers from the Centre to Sikkim. Had Sikkim received Central transfers to the tune received in the financial year 2018-19, the necessity for levy of cess would have not been arisen.

23. The Finance Minister of Kerala shared the experience of the levy of flood cess last year and informed that their cess is being levied only on intra-State supplies and is limited to B2C transactions, that too on the costly items which attracts GST at 12% and above. He felt that since there are some legal impediments in agreeing to the proposal of Sikkim for levy cess on pharma and power, Centre can provide some kind of specific assistance/ special grants to State of Sikkim. He also pointed out that Entry 53 of the State List II provides levy of tax on the consumption or sale of electricity which is not totally subsumed into GST. State of Sikkim can explore the possibility of levying tax on these items.

24. Finance Minister, Odisha stated that electricity does not fall within the purview of GST and therefore, GST Council do not have locus standi to recommend for levy of any tax on electricity.

25. GoM was informed that in many court judgments, it has been held that electricity is goods and accordingly, GST can be levied on electricity. As per GST rate notification, electricity is exempt under GST like many other goods and services. Under Entry 53 of State List, State has authority to levy tax on consumption or sale of electricity, but it needs to be examined whether tax can be levied on generation of the electricity. Either way, this subject would not come under the purview of the GST Council and, therefore, GoM would not go into this issue.

26. Deputy Chief Minister, Delhi pointed out that subsequent to the implementation of GST, States have surrendered their taxations power to the Centre. In such a scenario, if any State faces financial crisis, it is the responsibility of the GST Council to support the States which are facing financial crisis by allowing them to generate additional financial resources. GoM may recommend to

GST Council that Sikkim will be allowed to levy cess on the intra-State supply of goods and services. He stated that it may be legally examined whether Centre can levy cess on the IGST on the supplies originated from Sikkim and consumed in other States, and the cess so collected by the Centre can be transferred to Sikkim after netting out the share of States. He suggested that opinion of learned Attorney General of India may be taken on this issue. However, the GoM noted that the amount that would remain with Centre after netting out the share of States will be very small.

27. Minister for Commercial Tax, Chhattisgarh expressed that taxation principle of GST that envisages taxation of supply at the point of consumption rather than production which goes against the interest of many mineral-rich States because they are producing States and not consuming States. He felt that under GST, supply of goods and services within the State (intra-State) and between the States (inter-State) have been clearly demarcated and, therefore, levying 1% cess on SGST is not an issue. However, levying 1% cess on inter-State supply is not falling within the framework of law. Therefore, Government of India should come forward, sanction additional grants to some States like north-eastern States, smaller States, Union Territories which are losing their revenue after implementation of GST. He felt that it is high time to think to modify the taxation structure under the GST regime taking into account the need came from Sikkim so that equitable and justifiable distribution of resources where the goods are being produced.

28. Finance Minister, Uttar Pradesh stated that the Covid pandemic is a nationwide problem and is not limited to Sikkim only. Therefore, the Kerala proposal cannot be shown as the precedence in the present case as only Kerala was affected by a severe flood which was declared as natural disaster by the Centre. If Sikkim is allowed to levy 1% cess on pharma sector, the price of the pharma products will go up and it will affect the entire nation. If Sikkim is allowed to levy cess to generate additional revenue due to COVID pandemic, similar demands would also come from the other States which would not be a good example. Sikkim can explore levy of VAT, Excise, Cess on petroleum products to mobilize additional revenue.

29. Minister for Tourism and Industries, Sikkim requested members of GoM that if Sikkim's proposal is not legally tenable, GoM can recommend extending special package to the State of Sikkim till 2024 of Rs.300 crore per annum. Sikkim has already explored the possibility of levying VAT, Excise on petroleum products which resulted in collection of only Rs.43 crore per annum. He stated that levying a cess only on intra-state supplies would not yield enough revenue from them and they would not be interested in pursuing the matter for levy of cess only on intra-state supplies.

Recommendations of GoM

30. After detailed deliberations and discussions, Members of the GoM unanimously agreed that State finances of Sikkim have been strained with increase in revenue deficit, fiscal deficit and loans thereof etc. due to COVID pandemic. GoM noted that Sikkim is a small State with less consumption base and the scope for raising tax and non-tax revenue to meet the increasing revenue and capital expenditure due to Covid pandemic is very much limited.

31. Taking into account the legal provisions, the GoM recommended that:

- (a) Sikkim may be allowed to levy cess on intra-State supply of pharma items in line with the recommendation of the GoM on revenue mobilization in case of flood cess in Kerala while the legal issue involved in levy of cess on inter-State supply may be referred to the Learned Attorney General of India for comments;
- (b) As far as electricity is concerned, tax consumption or sale of electricity under entry 53 of State List of the Seventh Schedule of the Constitution is out of the purview of GST. Government of Sikkim may examine the issue independently and take appropriate action that is allowed under the Constitutional framework;
- (c) Sikkim sought a special package of assistance by Government of India to help them tide over the financial stress caused due to the Covid pandemic. The GoM noted the same and the Government of India may examine the request of Sikkim.

S-31011/12/2021-DIR(NC)-DOR

Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 11th June, 2021**OFFICE MEMORANDUM**

Subject: Constitution of Group of Ministers (GoM) on levy of Covid Cess on power and pharma sector in Sikkim– reg.

In pursuance of the decision taken in the 43rd GST Council Meeting held on 28th May, 2021, a Group of Ministers (GoM), who are also Members of the GST Council, is constituted to examine the proposal of the State of Sikkim for levy of COVID Cess on power and pharma sector in Sikkim. The GoM shall consist of the following members:

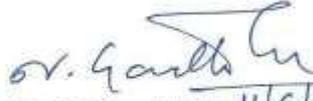
Sl. No.	Name	Designation and State	
1.	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convener
2.	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3.	Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4.	Sh. K. N. Balagopal	Minister for Finance, Kerala	Member
5.	Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6.	Sh. B. S. Panth	Minister for Tourism & Industries, Sikkim	Member
7.	Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member

2. The GoM shall examine the proposal moved by Government of Sikkim that a COVID Cess at the rate of

- a) 1 per cent of the turnover of pharmaceutical sector (excluding the unorganised sector) is imposed for the current year and subsequent two years, up to 2022-23; and
- b) Rs. 0.1 per unit of power generated is imposed for the current year and subsequent years, up to 2022-23

in light of the relevant provisions of the Constitution and the relevant legislation. The GoM may also examine other aspects that are relevant for the

proposal. The Group may submit its report in 15 days. The secretarial assistance to the Group shall be provided by Joint Secretary (Revenue).


(Dr. N Gandhi Kumar)
Director (ST)
Tel.011-23092613

To
The Hon'ble Members of GoM

Copy to;

1. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
2. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.
3. The Nodal officers of the States of Karnataka, Delhi, Chhattisgarh, Kerala, Odisha, Sikkim and Uttar Pradesh, with the request to intimate the Hon'ble Ministers regarding their nominations as Members of the Group of Ministers on levy of COVID Cess on power and pharma sector in Sikkim.
4. Revenue Secretary, North Block, New Delhi
5. Chairman, CBIC, North Block, New Delhi
6. Joint Secretary (Revenue), Department of Revenue, North Block, New Delhi
7. GST Council Secretariat, New Delhi

Presentation of Sikkim

Introduction

- Sikkim is the one of the smallest states in India However it is of a **great political and strategic importance** for our country because of its location along several international boundaries.
- Sikkim has a total population of about **6.58 Lakhs**. It covers an area of **7096 sq kms** and has **4 districts & 16 subdivisions**
- Most of its area falls under difficult **mountainous terrain**. Sikkim faces issues- recurrent **natural disasters**, **poor connectivity and infrastructure** and faces difficulties in **service delivery** to dispersed population
- Almost **30%** of workforce- Tourism & allied services
- Private investments- majority **Pharma & Hydro** companies



State Revenue Receipts (in Crore)

	2018-19	2019-20	2020-21 BE	2020-21 RE	2021- 22 BE
Own Taxes	898.0	970.4	1,241.9	928.5	1,195.5
Non-Tax Receipts	657.8	693.4	710.7	579.8	775.2
Central Tax Transfers	2,789.6	2,295.6	3,042.6	2,133.9	2,582.4
Total Receipts	4,345.4	3,959.4	4,995.2	3,642.1	4,553.1
Grants in Aid	1,575.0	881.9	2,978.1	3,296.8	3,189.6
<i>Of which Revenue Deficit Grants</i>			448.00	448.00	678.00
Total Revenue Receipt	5,920.40	4,841.30	7,973.30	6,938.90	7,742.70

Current State of Revenues (Revenue Receipt show a sharp decline)

- ▶ Pandemic has affected revenue of the State from its internal sources and by Central Tax Transfers
- ▶ Own resources covering both the taxes and non-tax virtually remained **stagnant** in last three years
- ▶ Central tax transfers have declined and even in 2021-22 will not reach the 2018-19 levels
- ▶ In the Budget of FY 2020-21 which was prepared based on interim report of the 15th Finance Commission, the actual release by Central government was short of **Rs 460 crore**
- ▶ Increase in Grants from the Centre are for **programme specific purposes and therefore they can not be utilized for other purposes**, except for the allocation of Revenue deficit grants
- ▶ Revenue constraints may persist for another **two to three years** even if we see an accelerated growth in the economy

Revenue and Capital Expenditure (Rs crore)

	2018-19	2019-20	2020-21 BE	2020-21 RE	2021-22 BE
Revenue Expenditure	5,227	6,185	7,344	7,245	7,391
Salary, Wages, Interest & Pensions	3,438	3,438	4,492	4,735	4,628
Share of committed expenditure (per cent)	65.8	55.6	61.2	65.4	62.6
Revenue Surplus/Deficit	694	(1,344)	630	(306)	352
Capital Expenditure	1,338	738	1,676	1,697	2,077
Fiscal Deficit	642	2,081	1,046	2,003	1,725



Rising Expenditure Commitments & necessity of Resources Generation

(Expenditure are downwards sticky & increasing)

- ▶ Revenue Expenditure continues to increase, and is essential for the livelihood support of population
- ▶ Nearly **two thirds** of the revenue expenditure is committed and incurred on **Salary, Wages, Pensions and Interest Payments**. During **FY 2019-20 and 2020-21**, the revenue receipts of the State, has been insufficient to meet the committed expenditure obligations.
- ▶ Revenue Deficit grants only provides **partial relief**, and these will soon taper off by **FY 2023-2024**
- ▶ **Pandemic has increased commitments** and a '**New Revival Initiative**' for Livelihood support is necessary (Tourism impacted)
- ▶ Resource constraints is pressuring the State government to even fulfil necessities.



Fiscal Liabilities (Rs in crore) exceeds FRBM levels

Public debt & other liabilities	2018-19	2019-20	2020-21 (BE)	2020-21 RE	2021-22 BE
Outstanding Debt & other liabilities	6,335	7,401	8,592	9,008	10,733
Outstanding Guarantees	3,455	3,749	3,651	4,133	4,133
As per cent to GDP					
Revenue Surplus	2.42	(4.14)	(1.81)	(0.98)	0.92
Fiscal Deficit	2.24	6.40	3.00	6.44	(4.0)
Debt, Other Liabilities	22.06	22.77	24.64	28.94	28.15 (27.5)



Deficit is adding to debt burden

- ▶ Sikkim had a Revenue Surplus until 2018-19
- ▶ However, in 2019-20 the State has seen a sharp decline in transfers of taxes and Grants from the Centre (almost 30% reduction compared to BE in FY 2018-2019) in transfers of taxes and Grants from the Centre. In addition, the reduction States own revenue receipt has resulted in a Revenue Deficit
- ▶ Revenue Deficit persisted in 2020-21 as pandemic affected both internal resources and tax transfers from Centre. While there has been a slight increase in grants, but it remains largely insufficient to fully provide for revenue expenditure
- ▶ In 2019-20 and 2020-21, Fiscal Deficit was significantly higher than the limits prescribed under FRBM. Fiscal Liabilities of the State also increased substantially and remain at elevated levels



Additional internal resources needed

- ▶ The Expenditure Commitments of the State for livelihood support is expected to remain high in next 2-3 years
- ▶ Central Tax transfers are expected to increase, however will only provide limited cushion
- ▶ Since most of the expenditure related to revival package can not be postponed, there is **need for immediate supplementary resources**
- ▶ Sikkim has two sectors, which are vibrant and insulated from adverse impact of pandemic, could provide such resources- **Manufacturing & Electricity generation** as they contribute nearly **two-thirds of State Domestic Product**. The share of these two sectors may increase further, as these sectors are unaffected by the pandemic

Structure of Economy (Rs in crore)

	2015-16	2016-17	2017-18	2018-19	2019-20
GVA at Basic Prices	17,243	19,596	23,991	27,218	30,793
GSDP	18,034	20,687	25,971	28,723	32,496
Share of dominant sectors in Economy (per cent)					
Manufacturing	40.8	44.3	47.2	45.4	45.1
Electricity	14.2	13.1	13.0	13.3	13.4
Rate of growth (per cent)					
Manufacturing	20.0	23.3	30.6	9.1	12.3
Electricity	13.8	4.5	21.9	15.6	14.0
GSDP	17.1	14.7	25.5	10.6	13.1
Per Capita GSDP	15.8	13.5	24.2	9.6	11.9

While the employment intensive sectors- under stress

- › While GSDP from **Manufacturing** and **Electricity Sector** is increasing, these sectors provide **employment to only around 10% of the workforce**
- › The tourism and related sectors provide employment to nearly **30%** of workforce. This sector, being contact intensive, has suffered during pandemic
- › The profitable and insulated organised Manufacturing, dominated by Pharma companies, and Electricity sector could support by providing resources for reviving these sectors
- › Both Pharma and Hydro Electricity sector has significantly benefitted from State Industry supportive initiatives. The North-East Industrial and Investment Policy (NEIIP) has also significantly contributed to their growth and profitability.



Pharma sector is significant & profitable

	All Manufacturing	Pharma Companies	Pharma Share (per cent)
Number of Factories	82	32	39.0
Invested Capital (Rs Crore)	8909	8,315	93.3
Total Output (Rs in crore)	18,360	16,395	89.3
Value Added (Rs in crore)	11,416	10,560	92.5
Profits (Rs crore)	9,877	9,144	92.6

The Data from Annual Survey of Industries 2017-18 indicate Pharma companies in Sikkim are highly profitable

Since they have remained generally bouyant during pandemic, their output and profits may have increased further



Hydro electricity generation vibrant & resilient

Location	Installed Capacity	Designed Energy	2018-19	2019-20	2020-21
	MW	MU	Production/Target (MU)		
Central Sector	570	2,911	3,050	3,020	3,045
State Sector	1,200	5,214	4,258	5,213	5,300
Private Sector	399	1,853	1,713	1,822	1,811
Sikkim Total	2,169	9,978	9,021	10,055	10,156

Hydro Sector has progressed in Sikkim both because of its location and policies. Sector has been pandemic resistant and viable.

Cess will not affect the profitability of these sectors (**Very marginal**)

- ▶ Sikkim proposes a **very marginal cess** on these two sectors
- ▶ It is just **one per cent of output** of Pharma sector
- ▶ Given the profitability ratio to output, the cess is **just around 2 per cent of their profits**
- ▶ Even for Hydro sector, Sikkim proposes a cess of **just Rs. 0.1** on each unit generated by the units
- ▶ Cess, neither affects the profitability, nor cause any significant increase in prices
- ▶ Both the sectors can very conveniently absorb this cess
- ▶ The resources generated would be used by the state for **revival of livelihood opportunities** and for **improving access** to basic infrastructure including **health and sanitation**

Period of CESS-

How long should the cess should continue?

- ▶ Sikkim request consideration of cess to be continued **until March 2024**
 - ▶ While economy is expected to rebound, but given the second wave of **pandemic** and anticipated **third wave**, recovery to the **contact intensive sectors** may be slow
 - ▶ Livelihood opportunities of more than a quarter of workforce of Sikkim is dependant on contact intensive sectors of tourism and allied services
 - ▶ Sikkim has already **overshot** its Fiscal liabilities and higher **borrowings** may **not** be **feasible**
 - ▶ Though cess would provide additional resources to the tune of **Rs 250 crore each year**, it would to that extent improve our internal resources and **reduce recourse to borrowings**
-



Why do we believe this proposal needs the recommendation of this esteemed Panel?

- ✓ Given the need of additional resources of the State, we Request the Panel today for your favorable consideration of this proposal
 - ✓ The cess is **minimal** and will barely have any impact on profitability of the two sectors of Pharma and Electricity
 - ✓ The cess will also **not add** to any pressure on **prices**
 - ✓ The cess **will facilitate** for initiating a strategy of **revival** of livelihood opportunities of the contact intensive sectors of Sikkim which provide **employment opportunities** to more than a quarter of our workforce
 - ✓ Cess would be for a **limited period** only
-



Meeting of the GoM on Covid Cess

Group of Ministers

	Name	Designation and State	
1.	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convener
2.	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3.	Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4.	Sh. K. N. Balagopal	Minister for Finance, Kerala	Member
5.	Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6.	Sh. B. S. Panth	Minister for Tourism & Industries, Sikkim	Member
7.	Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member
Terms of Reference:			
to examine the proposal moved by Government of Sikkim in light of the relevant provisions of the Constitution and the relevant legislation.			

Proposal of Sikkim

A COVID Cess at the rate of—

- (a) 1 per cent of the turnover of pharmaceutical sector (excluding the unorganized sector); and
- (b) Rs. 0.1 per unit of power generated

is imposed for the current year and subsequent years, up to 20223

Estimated revenue of Rs. 250 crore may accrue to State

Relevant Constitutional Provisions

246A. Special Provisions with respect to Goods and Services Tax—

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and subject to clause (2), the Legislature of every State have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

279A. Goods and Services Tax Council—

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

Relevant Constitutional Provisions

269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.—

(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council

Explanation.— For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

Legality of levy of cess in GST

The **Compensation Cess** was challenged in Mohit Minerals Vs Union of India in the Supreme Court of India

Petitioners

- Challenged the constitutionality of the compensation cess
- Claimed that there is no power to levy a cess
- Conversely, GST has subsumed even existing cesses and surcharges

Supreme Court held that “ **Levy of Compensation to States Cess is an increment to goods and services tax which is permissible in law** ”

GoM on Revenue Mobilization in case of Natural Calamities and Disasters

Proposal of Kerala for levy of additional 10% cess on State Goods & Service Tax (SGST) in its state for flood relief.

GoM recommended that —

- o cess would be better way to mobilise revenue for natural disasters, although imposition of cess would require a separate legislation
- o it will ensure that the revenue so realized could be clearly earmarked and would be outside the compensation arrangement
- o Council may consider allowing levy of a cess on intra-state supply of goods and services within the State of Kerala at a rate not exceeding 1% for a period not exceeding two years

Relevant Issues

GST is a tax on supply of Goods and Services

Statement of Objects and Reasons: The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both.

Section 9 of the SGST (and CGST) Act

Subject to the provisions of sub-section (2), there shall be levied a tax called the [State] goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15, and at such rates; not exceeding twenty per cent., as may be notified by the Government, on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Power of State to levy GST limited to intra-state supply of goods and services

Agenda Item 8: Closure of Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material.

In pursuance of the decision of the GST Council at its 43rd meeting on 28th May, 2021, a Group of Ministers (GoM) was constituted to examine the issue of GST concessions/ exemption to COVID relief material vide OM dated 19th May, 2021 issued by Department of Revenue (DoR) vide F. No. S-31011/12/2021-DIR(NC)-DOR. The GoM consisted of the following members:

Sl. No.	Name	Designation and State	
1	Shri Conrad Sangma	Chief Minister, Meghalaya	Convenor
2	Shri Nitinbhai Patel	Deputy Chief Minister, Gujarat	Member
3	Shri Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
4	Shri Mauvin Godinho	Minster for Transport & Panchayati Raj, Housing, Protocol and Legislative Affairs, Goa	Member
5	Shri K. N. Balagopal	Minister of Finance, Kerala	Member
6	Shri Niranjan Pujari	Minister for Finance and Excise, Odisha	Member
7	Shri T. Harish Rao	Minister for Finance, Telengana	Member
8	Shri Suresh Kr Khanna	Minister for Finance, U.P.	Member

2. The GoM examined the need for GST concessions/exemptions and made recommendations on-
 - i. COVID Vaccines, drugs and medicines for COVID treatment, and testing kits for COVID detection;
 - ii. Medical grade oxygen, pulse oximeters, hand sanitizers, oxygen therapy equipment such as concentrators, generators and ventilators PPE kits, N 95 masks, surgical masks, temperature checking equipment; and
 - iii. any other items required for COVID relief.
3. The GoM submitted its report in the 44th GST Council Meeting held on 12.06.2021, consequently the GoM has completed its mandate. Accordingly, agenda for closure of the GoM is placed before the GST Council.



Agenda for 45th GST Council Meeting

17 September 2021

Volume – 2





**GST Council Secretariat
New Delhi**

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi

5 September 2021

Notice for the 45th Meeting of the GST Council scheduled to convene on 17th September 2021

The undersigned is directed to refer to the subject cited above and to convey that the 45th Meeting of the GST Council will be held on **17th September 2021** at Hotel Taj (Vivanta), Gomti Nagar in **Lucknow, Uttar Pradesh**. The schedule of the meeting is as follows:

- **Friday, 17th September 2021:** 11:00 hours onwards
2. In addition, an **Officers' Meeting** will be held on 16th September 2021 at the same venue as per following schedule:
- **Thursday, 16th September 2021:** 11:00 hours onwards
3. The agenda item and other details for the 45th Meeting of the GST Council will be communicated in due course of time.
4. Keeping in view the Covid-19 related protocols, it is requested that participation from each State may be limited to 2 officers in addition to the Hon'ble Member of GST Council.
5. Kindly convey the invitation to Hon'ble Member to attend the 45th Meeting of the GST Council.

(-Sd-)

(**Tarun Bajaj**)

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, Union Territories of Delhi, Puducherry and Jammu and Kashmir 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. Chairman, CBIC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.
5. Chairman, GST Network

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Discussion on Agenda Items

Agenda Item 9: Agenda Note on the basis of the Interim Report of the Group of Ministers (GoM) on capacity-based taxation and special composition scheme for certain sectors

The GST Council, during its **42nd Meeting** held on 05th and 12th October 2020, decided that a Group of Ministers may be formed to discuss and analyse the issues pertaining to the Capacity based taxation on Pan Masala, Reverse Charge Mechanism in mentha oil, special composition scheme on brick kilns, stone crushers, etc.

1.2 Accordingly, a Group of Ministers (GoM) on Capacity-based Taxation and Special Composition Scheme in Certain Sectors in GST has been constituted on 24.05.2021, comprising of the following members:

S.No.	Name (Shri)	Designation and State
1.	Niranjan Pujari	Minister for Finance, Odisha (Convener)
2.	Manish Sisodia	Deputy Chief Minister, Delhi
3.	Dushyant Chautala	Deputy Chief Minister, Haryana
4.	K N Balagopal	Minister for Finance, Kerala
5.	Jagdish Devdea	Minister for Finance, Madhya Pradesh
6.	Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh
7.	Subodh Uniyal	Minister for Agriculture, Uttarakhand

1.3 The Terms of Reference (ToR) provided to the GoM are as follows:

- i. To examine the possibility to levy of GST based on the capacity of manufacturing unit and special composition schemes in certain evasion prone sectors like pan masala and Gutkha, brick kilns, sand mining etc. with reference to the current legal provisions.
- ii. To examine whether any change is required in the legal provisions to allow such levy.
- iii. To examine the impact of such levy on the destination nature of the current GST design.
- iv. To examine any other administrative or systemic mechanism to plug leakages in these sectors.
- v. To examine the impact of levy of GST on reverse charge on Mentha oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue.

2. **Meetings of the GoM:** -

2.1 In pursuance to the mandate provided to the GoM, the GoM has met twice till date through video conferencing mode. The first meeting of GoM was held on 06th July, 2021, which was followed by a meeting of Group of Officers deputed to assist the GoM on 17th August, 2021. Thereafter, the second meeting of the GoM was held on 31st August, 2021.

2.2 During these meetings, there was a lengthy deliberation and broad based consideration by the GoM, assisted by the Officers of DoR and the member states, on the proposals formulated on the basis of the Terms of Reference.

3. Based on the above, the GoM has submitted an Interim Report. The main proposals based on the Interim Report are as under:

a Capacity Based levy on Pan Masala and Tobacco products:

- The GoM has at length discussed the feasibility of Capacity based levy on pan masala and tobacco products.
- It was felt by the GoM that there exists a need for a deeper data analysis in this respect, through comparative state wise and product wise revenue figures in the pre and post GST regime in order to draw a clearer picture on revenue implications of such a move. In pursuance to this, such figures have been sought from all the states and UTs.
- Accordingly, considering the sensitivity of the matter and the quantum of revenue involved, the Group of Ministers has requested for an extension of three months for submitting its report on the issue of Capacity Based levy on Pan Masala and Tobacco products.

b. Special Composition Scheme in the sector of Brick Kiln, Sand mining, etc.: -

- The GoM, after long deliberation, and taking into account the various options including capacity based levy on production, decided that in order to augment the revenue realization from the sector, the most appropriate solution would be introduction of a special composition scheme in the brick kiln sector.
- Accordingly, the GoM has made the following recommendations in the brick kiln sector:
 - i. Special composition scheme may be instituted in the Brick Kiln sector prescribing a GST rate of 5%/6% (without ITC), along with a revised GST rate of 12% (with ITC);
 - ii. Threshold exemption limit in the sector may be reduced to Rs. 10 lakhs in order to increase the tax base, keeping in view the fact that majority of the firms in the sector are small and unorganized;
 - iii. This scheme may be instituted with effect from 01.04.2022;
- The feasibility of imposition of a similar special composition scheme in the sector of stone crushing/sand mining is still under examination by the GoM.

c. Reverse Charge Mechanism in Mentha Oil: -

- The proposal for implementation of Reverse Charge Mechanism (RCM) on Mentha oil to curb irregular refunds on exports was examined in a detailed manner by the GoM.
- Accordingly, the GoM has made the following recommendations:
 - i. Reverse Charge Mechanism on the first stage in the sector, as a measure to improve compliance;
 - ii. IGST refund route may be closed for mentha, and only refund by ITC route may be allowed with a predetermined ceiling on refund of ITC (in terms of per kg of Mentha exports, to be determined in an objective manner), as and when an amendment in the section 16 of the IGST Act comes into effect;
 - iii. The modalities for implementation of such changes may be worked out by the state of Uttar Pradesh.

4. Accordingly, an Agenda is placed before the GST Council for approval to the following proposals:

- i. Introduction of a Special Composition Scheme in the Brick Kiln sector with effect from 01.04.2022, prescribing a GST rate of 6%, without ITC, similar to the rate in the services sector. **The Council may deliberate on the GST rate;**
- ii. Increasing the GST rate on supply of bricks from 5% to 12% (with ITC), with effect from 01.04.2022;

- iii. Introducing the payment of GST liability under Reverse Charge Mechanism on the supply of Mentha, at the first stage of the supply;
- iv. Blocking of the IGST refund route on export of mentha, and allowing refund by ITC route only with a predetermined ceiling on refund of ITC (in terms of per kg of Mentha exports, to be determined in an objective manner), as and when amendment in the section 16 of the IGST Act comes into effect. In the interim, the exact modalities would be worked out by the state of Uttar Pradesh;
- v. Extension of the term of the GoM by **another 3 months** in order to further examine the remaining issues.

Agenda Item 10: Transposition of GST rate notifications consequent to changes in tariff item codes in the First Schedule to the Customs Tariff Act, 1975

The GST rates for different items are notified by specifying the HSN (Harmonised System Nomenclature) code, namely the Chapter, heading, sub-heading or tariff item level, read with the description of the goods. As per Explanation (iii) of the notification No. 1/2017-Central Tax (Rate) (which notified the CGST rates of goods), “tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (hereinafter also referred to as Customs Tariff). Similar provisions are contained in the counterpart IGST and UTGST rate notifications. Thus, the GST rate notifications utilize the HSN codes listed in the Customs Tariff.

2. The Customs Tariff codes are internationally aligned up to certain (6-digit) level and are periodically updated (every 5 years) in consultation with the World Customs Organization. These changes are effected through changes in the First Schedule to the Customs Tariff Act, 1975. The latest changes have been enacted through Section 104 (iii) of the Finance Act, 2021, which states that the First Schedule to the Customs Tariff Act, 1975 shall, with effect from 1st January, 2022, be amended in the manner specified in the Fourth Schedule (of the Finance Act, 2021). Thus, the proposed changes to Customs Tariff as part of the periodic update to the Harmonised System of Nomenclature (HSN) have been enacted and will take effect from 1st January, 2022.

3. For the reasons discussed above, some of the tariff codes listed in GST rate notifications may also accordingly need to be changed to align them with the changes in Customs Tariff. Few entries in GST rate notifications, largely from amongst those where HSN code is specified at 8-digit level, are likely to be affected.

4. As an illustration, the existing entry at serial number 258 of Schedule-I to the notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 prescribes CGST rate of 5% for ‘Kerosene Pressure lantern’, as follows-

S. No.	Chapter/ heading/ sub-heading/ tariff item	Description of goods
258	9405 50 31	Kerosene Pressure lantern

With effect from 01.01.2022, tariff items 9405 50 10 to 9405 50 59 (including 9405 50 31) will be omitted in the Customs Tariff and replaced by other tariff item entries. As per these changes, the applicable tariff item for the above notification entry in new Customs Tariff will be 9405 50 00, which needs to be updated in the said CGST notification.

5. This is a technical exercise and for the present cycle of changes, needs to be completed before 1st January, 2022.

6. The GST Council may like to approve that the technical changes required in the Chapter, heading, sub-heading or tariff item codes listed in the GST rate notifications, consequent to the changes in the Customs Tariff may be carried out. The Agenda item is placed before the GST Council for approval.

Agenda Item 11: GST rate on job works services in relation to manufacture of alcoholic liquor for human consumption

Delhi High Court has passed an order in W.P. 5567/2021 filed by Confederation of Indian Alcoholic Beverage Companies that *since this matter involves revenue, we request the GST Council to take up the matter, at the earliest, and to reach a decision, one way or the other, qua the issue at hand. Counsel for the respondents will inform us as to the decision taken by the GST Council on the next date of hearing.* The matter came up again for hearing on 06.08.2021. Hon'ble Court has been informed that matter would be placed before the Council in its next meeting.

2. The issue involved in the writ petition is whether the job work services provided by contract manufacturers to the brand owners for manufacture of alcoholic liquor for human consumption are eligible for GST rate of 5%, prescribed for job work services in relation to food and food products or standard rate of 18%.

3. This issue was discussed in the 39th meeting of GST Council. The proposal placed before the Council was to insert an explanation in the entry related to 'job work services in relation to food and food products' clarifying food and food products exclude alcohol and alcoholic beverages for human consumption. (Agenda item 4(ii), Sl. 4, volume 3, page 15 refers)

3.1 Taking into account the contra views of Punjab, Tamil Nadu, Andhra Pradesh and Maharashtra to the proposal, the Council decided as follows:

"let the law take its own course in the matter of applicable GST rate on the job work service in relation to manufacture of alcoholic liquor for human consumption". (Para 12(vi) of minutes of 39th meeting of Council refers)

3.2 However, while discussing the draft minutes of the 39th GST Council meeting in the 40th meeting, the Hon'ble Chairperson, concurring with view of members from Odisha and Karnataka stated that as the matter is not *sub-judice*, GST Council may take an executive decision in the matter by taking it up as an agenda item in the next Council meeting. (Para 4.2 of minutes of the 40th meeting of Council refers)

4. Relevant facts pertaining to the issue are as follows:

4.1 Confederation of Indian Alcoholic Beverage Companies (CIABC) has stated in its representation to the department that definition of "Food" under section 3(j) of the Food Safety and Standards Act, 2006 covers alcoholic beverages.

5. However, Supreme Court has held in the case of M/S. MSCO. Pvt. Ltd vs Union of India & Ors on 31 October, 1984 that definition from unrelated statutes having different objects and purposes cannot be blindly adopted for the purpose of other statutes and that if a statute does not have definition of a 'word', then common parlance meaning of that word should be adopted.

6. In common parlance, food and food products do not include alcoholic liquor for human consumption.

7. According to Merriam-Webster, 'food' means material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy.

8. Leave alone alcoholic beverages, Supreme Court has not considered even non-alcoholic beverages such as Limca etc. as food. (Supreme Court judgement in the matter of Collector of Central Excise vs. Parle Exports (P) Ltd. refers)

9. Therefore, it is proposed that:

(i) An explanation may be inserted in the entry providing GST rate of 5% on food and food products as under:

“for removal of doubts it is clarified that food and food products does not include alcoholic beverages for human consumption”

(ii) Simultaneously, job work in relation to manufacture of alcoholic liquor for human consumption may also be excluded from the residual entry for job work service at 9988 (id) (12% rate of GST).

10. Therefore, to avoid dispute and litigation it is proposed that, -

(a) An explanation may be inserted at entry 9988 (i)(f) of the notification no 11/ 2017- CTR which prescribes GST rate of 5% for job work services in relation to food and food products to the effect that “for removal of doubts it is clarified that food and food products excludes alcoholic beverages for human consumption”.

(b) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption may be excluded from the residual entry for job work service at 9988 (id) and taxed at 18%.

Agenda Item 12: Agenda Note based on the order of the Hon’ble Kerala High Court in the W.P. (Civil) No. 12481 of 2021 for placing representation by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram regarding inclusion of petrol and Diesel under GST

Petrol and diesel are currently outside the purview of GST and attract Central excise duty by the Central Government and VAT by State Govts at varying rates.

2. A Writ Petition W.P.(Civil) No. 12481 of 2021 was filed by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram, before the Hon’ble Kerala High Court, requesting the Hon’ble Court to issue a Writ of Mandamus directing the GST Council to include petrol and diesel under GST. The Hon’ble High Court passed an order on 21st June, 2021 (copy enclosed as **Annexure-I**), “directing the GST Council represented by the Special Secretary, Office of the GST Council Secretariat, New Delhi to forward the representation of inclusion of petrol and diesel under the GST dated 07.06.2021 to the Union of India represented by the Finance Secretary, New Delhi to take an appropriate decision within a period of six weeks from the date of receipt of the copy of the representation.”

3. The representation dated 07.06.2021 (copy enclosed as **Annexure-II**) has requested for inclusion of petrol and diesel in the GST regime on the following grounds:

- a. Low-income earners who depend on petrol and diesel prices are severely impacted by the day to day increase in the prices of petrol and diesel. In the domestic market, fuel price is partly shaped by actual supply and demand, and mostly by taxation and dealer commission. Though the oil prices are market based, the Government can reduce tax as a populist measure.
- b. The oil price rise results in a transfer of income from oil importing to oil exporting countries according to a shift in terms of trade.
- c. The rise in petrol price in turn has a rippling effect. As all the commodities are transported across India on vehicles that run on petrol or diesel, so increase in petrol and diesel price results in price rise of these commodities as well. Due to increase in the prices of petrol and diesel there has been increase in the prices of fares of vehicles causing lot of problems for the common man, who have to travel-long distances for work. In spite of the heavy price hike, the rich continue to live the life they are used to, while the burden is borne by the poor and the middle classes. This clearly violates the right to life on the citizen and brings in inequality.
- d. Admittedly, different rates are being charged for petrol and diesel in various states in India and the same is due to the different rate of tax levied by the State Governments under their fragmented taxing policies. This is an impediment in the way of achieving a harmonized national market as contemplated under Article 279A (6) of the Constitution of India.
- e. This is happening when India is trying to straighten up from the garb of the pandemic. India's oil demand has sharply fallen due to the Covid-19 pandemic, but higher fuel prices are worsening the situation. While the petroleum companies may have little choice but to hike rates in view of global market rates, higher taxes levied by the central and state governments completely changes the scheme. State and central taxes account for at least 60 per cent of petrol and diesel prices.

4. In view of the direction of the Hon’ble High Court in the aforesaid order, the representation of petitioner and the court order is placed before Hon’ble Council.

5.1 It is also to mention that a similar Writ Petition vide WP(C) No. 14471/2021 has been filed by C.V Sajeevan in the Hon’ble High Court of Kerala on the issue of inclusion of petrol and Diesel under

GST regime. The said writ petition has requested for inclusion of petrol and diesel in the GST regime in public interest, mainly on the ground that non-inclusion of petrol and diesel has led to price rise of these products causing petitioner's profession (auto-rickshaw driver) unviable. This petition is pending disposal.

6. In this regard, it is pertinent to mention that as per Article 279A(5) of the Constitution, the Goods and Service Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel (ATF). As per the section 9(2) of the CGST Act, inclusion of these products in GST will require recommendation of the GST Council.

7. Hon'ble GST Council may deliberate and make recommendations as it considers appropriate.



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 21ST DAY OF JUNE 2021 / 31ST JYAISHTA, 1943

WP(C) NO. 12481 OF 2021

PETITIONER/S:

KERALA PRADESH GANDHI DARSHANVEDHI
(REG. NO.TVM/TC/487/2018), REPRESENTED BY ITS CHAIRMAN,
DR.M.C.DILEEKUMAR, HAVING REGISTERED OFFICE AT
SOWPARNIKA, TC 22/2609, KOCHAR ROAD, EASTHAMANGALAM,
THIRUVANANTHAPURAM-695 010.

BY ADVS.
ARUN.B.VARGHESE
AISHWARYA V.S.



RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY THE FINANCE SECRETARY, MINISTRY OF
FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-
110 001.
- 2 THE SECRETARY,
MINISTRY OF PETROLEUM & NATURAL GAS, GOVERNMENT OF
INDIA, SHASTRI BHAWAN, NEW DELHI-110 001.
- 3 THE GOODS AND SERVICES TAX COUNCIL,
REPRESENTED BY ITS SPECIAL SECRETARY, OFFICE OF THE GST
COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI
BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110
001.
- 4 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF
KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695
001.
- 5 BHARAT PETROLUUM CORPORATION LIMITED,
REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR, BHARAT
BHAVAN, 4 AND 6 CURRIMBHOTY ROAD, BALLARD ESTATE,
MUMBAI-400 001.

- 6 INDIAN OIL CORPORATION LIMITED (IOCL),
REPRESENTED BY ITS CHAIRMAN, REFINERIES DIVISION,
SCOPE COMPLEX, CORE 2, 7, INSTITUTIONAL AREA,
LODHI ROAD, NEW DELHI-011.
 - 7 HINDUSTAN PETROLEUM CORPORATION LIMITED,
REPRESENTED BY ITS CHAIRMAN, PETROLEUM HOUSE, 17,
JAMSHEDJI TATA ROAD, MUMBAI-400 020.
- BY ADV SHRI.P.R.SREEJITH, SC, GSTN

OTHER PRESENT:

SRI. P.VIJAYAKUMAR ASG FOR R1 AND R32, SRI.
P.R.SREEJITH SC FOR R3, SRI C.E. UNNIKRISHNAN,
SPL GP FOR R4, SRI. GOPIKRISHNAN NAMBIAR, FOR R5
TO R7

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.06.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 21st day of June, 2021

S.Manikumar, C.J.

Kerala Pradesh Gandhi Darshanvedi has filed the instant Public Interest Litigation for the following reliefs:

- "1. To issue a writ of mandamus or any other writ or order directing the respondents 1 and 2 to include petrol and diesel under the GST regime.
2. To issue a writ of mandamus or any other writ or order directing the 3rd respondent to recommend the inclusion of petrol and diesel under the GST regime so as to achieve a harmonized national market as contemplated under Article 279 A (6) of the Constitution of India.
3. To declare that the non-inclusion of petrol and diesel under the GST regime are violative of Article 14 and 21 of the Constitution of India.
4. To issue a writ of mandamus or any other writ or order directing the 3rd respondent to consider and pass orders on Exhibit P2 representation.
5. To issue a writ of mandamus or any other writ or order directing the 4th respondent to consider and pass orders on Exhibit P3 representation."

2. Material on record discloses that the petitioner has submitted Exhibit P2 representation to the Special Secretary, Office of the GST Council Secretariat, New Delhi (respondent No.3) to recommend inclusion of petrol and diesel under the GST regime.

3. Material on record further discloses that the petitioner has also submitted Exhibit P3 representation to the Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent No.4) to request the GST Council to include the petrol and diesel in the GST regime and till a decision is taken by the GST Council, Government of Kerala may refrain from levying the state tax on petrol and diesel.

4. Mr.Arun B.Varghese, learned counsel for the writ petitioner submitted that appellant would be satisfied, if a direction is issued to respondent Nos.3 and 4 to dispose of the above said representations within a time frame.

5. Mr.C.E.Unnikrishnan, learned Senior Government Pleader appearing for the Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent No.4) submitted that he has no objection for issuing a direction to consider the representations stated supra.

6. Mr.P.Vijayakumar, learned Assistant Solicitor General, who takes notice for the Union of India and the Secretary, Ministry of Petroleum and Natural Gas (respondent Nos.1 and 2 respectively), submitted that inclusion or deletion of GST is a policy decision.

7. Mr.P.R.Sreejith, learned standing counsel for the GST Council (respondent No.3) submitted that a Hon'ble Division Bench of this court in W.A.No.2061 of 2017 has held that no mandamus can be issued to the GST Council to take any decision. He further submitted that Union of India (respondent No.1) is the competent authority to take a decision on the abovesaid issue.

8. Placing on record the abovesaid submissions and taking note of the decision of the Hon'ble Division Bench of this court in W.A.No.2061 of 2017, we only direct the Goods and Services Tax Council represented by the Special Secretary, Office of the GST Council Secretariat, New Delhi (respondent No.3) to forward Exhibit P2 representation dated 7.6.2021 to the Union of India, represented by the Finance Secretary, New Delhi, to take an appropriate decision within a period of six weeks from the date of receipt of a copy of Exhibit P2 representation. Similarly, Chief Secretary, Government of Kerala, Thiruvananthapuram (respondent

W.P.(C)No.12481 of 2021

6

No.4), to dispose of Exhibit P3 representation.

Writ petition is disposed of accordingly.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

**S.Manikumar
Chief Justice**

Sd/-

**Shaji P.Chaly
Judge**

vpv

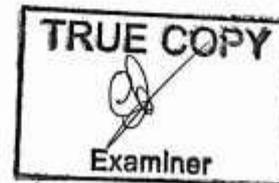
APPENDIX OF WP (C) 12481/2021

PETITIONER ANNEXURES

- Exhibit P1 TRUE COPY OF THE STUDY REPORT DATED
04.03.2021 CONDUCTED BY THE RESEARCH TEAM
OF THE STATE BANK OF INDIA, AVAILABLE IN
THE URL [HTTPS://SBI.CO.IN./WEB/SBI-IN-THE-
NEWS/RESEARCH-DESK](https://sbi.co.in/web/sbi-in-the-news/research-desk).
- Exhibit P2 TRUE COPY OF THE REPRESENTATION DATED
07.06.2021 SUBMITTED BY THE WRIT PETITIONER
BEFORE THE 3RD RESPONDENT.
- Exhibit P3 TRUE COPY OF THE REPRESENTATION DATED
07.06.2021 SUBMITTED BY THE WRIT PETITIONER
BEFORE THE 4TH RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE





HIGH COURT OF KERALA AT ERNAKULAM

Year and Number
of Suit or other
Proceedings : WP(C) 12481 / 2021
Name of
Applicant/Advocate : P.R. SREEJITH
Application
Number : A 17625/2021
Application Date : 21-06-2021
Date of Calling for
Stamp : 23-06-2021
Date of Production
of Stamp : 23-06-2021
Date When copy
was Ready : 23-06-2021
Date Notified for
appearance to
receive the copy : 30-06-2021
Date when copy
was delivered : 23.6.2021

Examiner 

Ex-166-P2

From
Kerala Pradesh Gandhi Darshanvedhi
(Reg. No. TVM/TC/487/2018)
Represented by its Chairman, Dr. M C Dileepkumar
Having registered office at 'Sowparnika', TC 22/609
Kochar Road, Sasthamangalam,
Thiruvananthapuram 695010

To,
The Special Secretary
Office of the GST Council Secretariat
5th Floor, Tower II, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi-110 001.

Sub: Inclusion of petrol and diesel under the GST regime - reg.

Sir,

I am the Chairman of Kerala Pradesh Gandhi Darshanvedhi, an Organisation operating primarily in the State of Kerala aiming towards the spread of the ideas that describes the inspiration, vision and life work of Gandhiji, the father of our nation. The organization is having the motto 'equity - social progress - sustainable development'. The organization also purposes the concept of a welfare state and works towards it by following Gandhian ideologies. The organization is headed by the former Vice Chancellor of the Sree Sankaracharya University of Sanskrit, Kerala. The organization consists of members from various walks of life including academicians, social workers, lawyers, doctors, I.T. professionals etc.

The prices of petrol and diesel are being sharply hiked on a day to day basis. Low income earners who depend on petrol and diesel prices are severely impacted. In the domestic market, fuel price is partly shaped by actual supply and demand, and mostly by taxation and dealer commission.

Though the oil prices are market based, the Government can reduce tax as a populist measure. The oil price rise results in a transfer of income from oil

importing to oil exporting countries according to a shift in terms of trade. The rise in petrol price in turn has a rippling effect. As all the commodities are transported across India on vehicles that run on petrol or diesel, so increase in petrol and diesel price results in price rise of these commodities as well. Due to increase in the prices of petrol and diesel there has been increase in the prices of fares of vehicles causing lot of problems for the common man who have to travel long distances for work. Fuel prices need to be rationalized. In spite of the heavy price hike, the rich continues to live the life they are used to, while the burden is borne by the poor and the middle classes. This clearly violates the right to life on the citizen and brings in inequality.

Admittedly, different rates are being charged for petrol and diesel in various states in India and the same is due to the different rate of tax levied by the State Governments under their fragmented taxing policies. This is an impediment in the way of achieving a harmonized national market as contemplated under Article 279A (6) of the Constitution of India.

This happens when India is trying to straighten up from the grab of the pandemic. India's oil demand has sharply fallen due to the Covid-19 pandemic, but higher fuel prices are worsening the situation. While the petroleum companies may have little choice but to hike rates in view of global market rates, higher taxes levied by the central and state governments completely changes the scheme. State and central taxes account for at least 60 per cent of petrol and diesel prices.

By virtue of Section 9(2), of the GST Act, the council has to recommend the inclusion of Petrol under the GST regime and the Government has to notify the same. By virtue of Art. 279 A (5) of the Constitution of India, the Council has to recommend the date on which GST has to be levied on petrol and diesel.

Therefore it is humbly requested that the petrol and diesel may be included in the GST regime in the interest of greater justice.

Ernakulam
07.06.2021


Dr. M. C. Dileep Kumar

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P2/3

Copy To:

1. The Secretary
Ministry Of Petroleum & Natural Gas
Government Of India
Shastri Bhawan, New Delhi - 110001
2. The Finance Secretary
Ministry of Finance, Government Of India
North Block, New Delhi, 110001
3. The Chief Secretary
Government of Kerala, Secretariat
Thiruvananthapuram-695001

This is the true copy of the document marked as 'Exc.P' referred to in the above case.

Advocate

Agenda Item 13: Concessions to specified drugs used in Covid-19 treatment till 31st December, 2021

On the recommendations of the GOM on Covid relief, the GST Council in its 44th Meeting held on 12th June, 2021, recommended GST rate reduction, till 30th September, 2021, on certain items used in COVID treatment along with the following 4 medicines:

S.No.	Description	From	To
1.	Amphotericin B	5%	Nil
2.	Tocilizumab	5%	Nil
3.	Remdesivir	12%	5%
4.	anti-coagulants like Heparin	12%	5%

2. The Council had also recommended reduction of GST rate to 5% on any other covid relief drug recommended by the Ministry of Health and Family Welfare and the Department of Pharmaceuticals for the period upto 30.9.2021.

3. Accordingly, notification No. 05/2021-Central Tax (Rate) dated 14th June, 2021 was issued.

4. In the extensive consultations held in this regard with Department of Health and Family Welfare and the Department of Pharmaceuticals, the following recommendations have been made by these Departments:

- a. Extend the existing concessional rates on the 4 medicines namely, Amphotericin B, Tocilizumab, Remdesivir and anti-coagulants like Heparin, till 31st December, 2021, as detailed in para 1 above.
- b. Reduce the GST rates from 12% to 5%, till 31st December, 2021, on following drugs:
 - i. Itolizumab,
 - ii. Posaconazole,
 - iii. Infliximab,
 - iv. Bamlanivimab & Etesevimab,
 - v. Casirivimab & Imdevimab,
 - vi. 2-Deoxy-D-Glucose
 - vii. Favipiravir.

5. Accordingly, the following proposals are being placed before the GST Council for recommendations:

- a) the existing concessional rate structure on Amphotericin B, Tocilizumab, Remdesivir and anti-coagulants like Heparin, valid till 30th September, 2021, be extended till 31st December, 2021
- b) GST rate may be reduced from 12% to 5% to the seven new (as mentioned above) drugs till 31st December, 2021.

Agenda Item 14: Issues recommended by the Fitment Committee for the consideration of the GST Council

This agenda note deals with changes in GST rate for supply of goods and services. The proposed changes in GST rates emanate from the recommendations made by the Fitment Committee as detailed below.

2. Briefly stated, representations/recommendations have been received from various stake holders including Ministries and other offices of Centre and States, seeking changes in GST rate and certain clarifications regarding applicability of GST on supply of certain goods/services.

3. The Fitment Committee met on 24th June, 26th August, 2nd and 7th September, 2021 and had detailed discussions on recommendations received from various stakes holders seeking changes in GST/IGST rates or seeking clarification on supply of goods/services. After examination, the Fitment Committee has recommended changes in GST rates or issue of clarification, in relation to certain goods and services. Further, the Fitment Committee has recommended no change in respect of certain goods and services. On certain issues, Fitment Committee was of the view that further examination would be required before making any recommendation to the GST Council (points deferred).

4. Accordingly, Fitment Agenda for consideration of the GST Council is summarised as below:

a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to goods – **Annexure-I**

b) Issues where no change has been proposed by the Fitment Committee in relation to goods – **Annexure-II**

c) Issues deferred by the Fitment Committee for further examination in relation to goods – **Annexure-III**

d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to services – **Annexure-IV**

e) Issues where no change has been proposed by the Fitment Committee in relation to services – **Annexure-V**

f) Issues deferred by the Fitment Committee for further examination in relation to services – **Annexure-VI**

5. The proposals, as contained in para 4 above are placed before the GST Council for consideration.

Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to goods

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Zolgensma and Viltepso medicines for personal use	12%	Nil	<ol style="list-style-type: none"> 1. A number of ad hoc exemptions from IGST on import duty for personal use of medicine Zolgensma have been requested recently. 2. It is most effective drug against Spinal Muscular Atrophy, a life-threatening disease affecting especially children. It has been recently developed. It costs approx. Rs. 16-18 crores per dose and is manufactured by Novartis Gene Therapies. The stated reason for its exorbitant cost is its miniscule market size in the drug manufacturing industry. 3. BCD on medicines for personal use is Nil under conditions (requirement of certificate) vide S. No. 607 of Customs notification No. 50/2017-Cus. However, it attracts 12% IGST. 4. At present, there is only one manufacturer globally. Due to exorbitant cost per dose and scarce affordability, general import is not anticipated and imports may happen for personal use only. 5. Similarly, request has been received to waive IGST on import of Viltepso injection, a costly medicine used for treating Duchenne Muscular Dystrophy, another rare genetic disorder affecting children. 6. In view of the above, the Fitment Committee recommends exemption from GST on medicine Zolgensma and Viltepso, when imported for personal use.
2.	Henna Powder and Henna Leaf.	5%	Clarification	<ol style="list-style-type: none"> 1. As per the explanatory memorandum to HS 2017, [HS

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
	[Chapter 14]			<p>1404] is vegetable products not elsewhere specified or included.</p> <p>2. Further, as per the explanatory notes to the HSN, HS 1404 90 includes <i>Raw vegetable materials of a kind used for primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).</i></p> <p>3. Based on the above, the classification of henna powder and henna leaves, is 1404 90 90.</p> <p>4. Accordingly, GST leviable is 5% as per entry 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.</p> <p>5. GST rate on mehndi paste on cones falling under 1404 and 3305 attract 5%.</p> <p>6. The Fitment Committee recommends that a clarification may be issued that henna powder and henna leaves would be classified under HS 1404 90 90 and shall attract GST rate of 5%.</p>
3.	Copper Concentrate [2603 00 00] and other ores/ concentrates	5%	18%	<p>1. India is a significant importer of Copper Concentrate.</p> <p>2. Copper Concentrate like all ores attract GST rate of 5%.</p> <p>3. These ores are used in the production of metals which attract GST rate of 18%. However while ore/concentrate attract GST at the rate of 5%, their input services like royalty attract GST at the rate of 18%. Thus ore/ concentrate suffers a significant inverted duty structure. Due to this the manufacture of copper concentrates are unable to utilize input tax credit incurred on account of input services. This</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>accumulated ITC is in turn transferred to the customers resulting in increase in prices of the metal.</p> <p>4. The Fitment Committee discussed that ores such as those of iron, copper, manganese, tungsten, nickel, cobalt etc. where metals attract 18% GST may be taxed at 18% so that there will be a smooth flow of ITC.</p> <p>5. Accordingly, Fitment Committee recommends increasing GST rate from 5% to 18% on goods falling under heading 26.01 to 26.10 (i.e., iron, manganese, copper, nickel, cobalt, aluminium, lead, zinc, tin, chromium – ores and concentrates)</p>
4.	Solar PV Module [8541] and other Renewable Energy equipment	5%	12%	<p>1. Solar Modules currently attract GST rate of 5%. While Solar EPC contracts attract effective GST rate of 8.9% (70:30 ratio for goods and services).</p> <p>2. The above rate ratio of 70:30 was prescribed on recommendation of the GST Council in the 31st GST council meeting and 37th GST council meeting.</p> <p>3. It has been represented that 12% rate may be prescribed on Solar Modules as well as EPC contracts.</p> <p>4. Fitment Committee upon detailed examination felt that 5% rate on renewable equipment under S. No. 234 of notification No 1/2017-CT (Rate) has created an inverted rate structure for these items as most of their inputs attract 18% rate. And there is need for correcting inversion in GST rate for these equipments. While a nil rate on solar energy causes an inversion for solar power as well, the Committee felt that correction of inversion of renewable equipment would at least help</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>domestic manufacturing of these items.</p> <p>5. SI No 234 of Notification No 1/2017-CT(Rate) includes the following renewable energy devices & parts for their manufacture:</p> <p>(a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels</p> <p>6. At this stage, Fitment Committee recommends a 12% GST rate on renewable equipment as covered under entry No. 234 of notification 1/2017-CT (Rate)</p>
5.	Solar PV Power Project		Clarification on applicability of GST Rate on Solar PV Power Projects on or before 1st January 2019 – Notification No. 24/2018, dated 31st December 2018.	<p>1. A new GST rate scheme for Renewable energy project prescribing 70:30 ratio for goods and services was prescribed with effect from 1st January, 2019.</p> <p>2. The said method was prospective and is applicable with effect from 1st January, 2019.</p> <p>3. The issue prior to 1st January, 2019 shall be assessed based on the practice of the particular state.</p> <p>4. The Fitment Committee recommends to issue a clarification that a tax payer can pay in terms of 70:30 ratio as described in the Notification No. 24/2018 dated 31-Dec-2018 even for solar power projects completed before January 1, 2019. However, no refunds will be provided in case tax has been paid on the entire contract value at</p>

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				18%.
6.	Fresh fruits and nuts / dried fruits and nuts [0801,0802]	Nil for fresh fruits and nuts, 5/12% for dried fruits and nuts	Clarification as to distinction between fresh and dried fruits and nuts	<ol style="list-style-type: none"> 1. The GST rates on fresh nuts such as almonds etc. falling under HS 0802 is nil whereas the GST rate on dried nuts is 12%. 2. Fresh fruits and nuts refer to such products which are not frozen, dried or processed. 3. Most dry fruits are dried and packed before they are sold and hence are liable to duty as applicable. 4. The Fitment Committee recommends that a clarification may be issued in respect to the fresh and dried nuts.
7.	Dried Coconut [0801] and Copra [1203]	Nil for Dried Coconut and 5% for Copra	Uniform rate of Nil/5% on both dried coconut and copra	<ol style="list-style-type: none"> 1. As per explanatory notes to HS (2017 edition) heading 1203 - Copra is the dried flesh of coconut used for the expression of coconut oil and unsuitable for human consumption. This dried flesh of Coconut, used for the extraction of coconut oil, is classified under HS 1203. 2. As per explanatory memorandum to the HSN, heading 0801 excludes copra. 3. The pre-GST tax incidence of Copra was more than 5%. In some states such as Gujarat 4% VAT rate was applicable along with other embedded taxes. Accordingly, 5% GST Rate on Copra has been recommended by the GST Council. 4. The Committee recommends that a clarification may be issued regarding the definition of Copra.
8.	Coconut Oil [151311/3305]	5% (edible) /18% (hair oil)	18%	<ol style="list-style-type: none"> 1. Coconut oil is used as an edible oil (Chapter 15), attracting 5% GST and Hair oil (Chapter 33) attracting 18% GST. 2. When the Coconut oil is sold in small containers, following indications have been found on

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				<p>containers or labels.</p> <p>a. 'hair oil'</p> <p>b. 'edible oil'</p> <p>c. 'pure coconut oil' or 'coconut oil'.</p> <p>3. Even major brands which advertise the oil as a hair oil, do not mention hair oil in their packs and label them as coconut oil and also print the FSSAI registration number and classify the goods under Chapter 15. This has led to loss of revenue.</p> <p>4. The Fitment Committee felt that this issue needs resolution and the most appropriate way would be to prescribe GST based on the quantity of container.</p> <p>5. Accordingly, the Fitment Committee recommends, keeping in mind the general consumer usage pattern of such products, that</p> <p>i. coconut oil, when packed and sold in a unit container of less than 1000 millilitre may be classified as Hair oil (under Chapter 33), attracting a GST rate of 18%, irrespective of its actual end-usage.</p> <p>ii. the edible coconut oil, when packed and sold in a unit container of 1000 millilitre or above be subject to GST at the rate of 5%</p>
9.	Goods supplied at India-Bangladesh Border haats [Any chapter]	Applicable rate	Exemption	<p>1. Border haat is a makeshift bazaar/ market at a certain point on zero line of the India-Bangladesh border allowing villagers of both the countries to market and shop each other's products once a week.</p> <p>2. These are remote inaccessible area. Border Haats cater to the</p>

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				<p>personal consumption in remote border areas of locally produced (specified) commodities. Number of vendors is limited to 50.</p> <p>3. Border haats do not have much revenue implication. These are mostly exempt items of daily consumption. Bangladesh also does not impose any duty on haat on their side. In any case collecting IGST is an impossibility. Central Government provides BCD exemption and earlier had provided additional duty exemption.</p> <p>4. The Fitment Committee recommends grant of exemption from IGST on the lines of BCD exemption to supplies made in Border haats.</p>
10.	Goods brought back to India from Antarctica [Any Chapter]	As applicable	Nil	<p>1. Notification No. 90/2009-Customs dated 07.09.2009 exempts all goods which have been used for or are related to the Indian Antarctic Expedition or the Indian Polar Science Programme, imported from Antarctica into India, from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duties leviable thereon under section 3 of the said Customs Tariff Act.</p> <p>2. At time of GST rollout, Customs notification No. 43/2017-Cus dated 30.06.2017, in a number of exemption notifications, for the words and figures “additional duty leviable thereon under section 3,” the words, brackets and figures, “integrated tax leviable thereon under sub-section (7) of section 3,” was substituted. However, the same was not done</p>

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				<p>under notification No. 90/2009-Customs.</p> <p>3. Similar change may be incorporated in notification No. 90/2009-Customs.</p> <p>4. The Fitment Committee recommends exemption from IGST on all goods which have been used for or are related to the Indian Antarctic Expedition or the Indian Polar Science Programme, imported from Antarctica into India, subject to same conditions as applicable for Customs duty exemption.</p>
11.	Raw Tamarind Seeds [1209]		Clarification with respect to classification	<p>1. As per general explanatory notes to HS 2017, heading 1209 covers tamarind seeds.</p> <p>2. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species <i>Vicia faba</i>) or of lupines are to be regarded as “seeds of a kind used for sowing”.</p> <p>3. Thus, tamarind seeds even if used for any purpose other than sowing shall be classified under heading 1209.</p> <p>4. The Fitment Committee recommends that a clarification may be issued that the tamarind seeds are to be classified under HS 1209 attracting nil rate of GST.</p> <p>5. Fitment committee also recommends that henceforth nil rate be prescribed only on sowing seeds and therefore exemption be rationalised accordingly to subject seeds meant for any other use than sowing to be taxed at 5% [like oil seeds].</p>

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12.	Carbonated beverage with fruit juice and Carbonated Fruit Beverages of Fruit Drink [2202]	28% + 12% cess	To be classified under [2202 90 20] fruit juice and to be taxed at 12% GST accordingly	<ol style="list-style-type: none"> 1. Average pre-GST tax incidence on such goods was about 40%. This is keeping in view the pre-GST tax rates. 2. Currently, there is wide variation in GST rates on beverages goods under this heading: <ol style="list-style-type: none"> i. Aerated waters, Lemonade, and other waters including aerated waters containing artificial sweeteners or sugar, attract 28% GST and 12% compensation cess. ii. Fruit pulp or fruit juice-based drinks, classified under 2202 99 20 are paying 12% GST. iii. Non-alcoholic beer and other such beverages are paying 18% GST under 2202 9990. 3. There is a lack of clarity in GST rates on Carbonated beverage with fruit juice resulting in different classifications and disputes. 4. Carbonated beverage with fruit juice and Carbonated Fruit Beverages of Fruit Drink fall under sub heading 2202 10 and accordingly attract GST rate of 28% and 12% compensation cess. 5. The Fitment Committee examined the matter and recommends that (i) rate on carbonated drinks be clarified and (ii) a separate description may be incorporated in the notification to specifically provide a description as "Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" prescribing a rate of GST rate of 28% plus a compensation cess of 12%.

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
13.	Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste such as etc. [2303 30]	5%	Clarification on GST Rate	<ol style="list-style-type: none"> 1. As per the explanatory notes to the HSN[sub-heading 2303 30], Brewing or distilling dregs and waste comprise of obtained in the manufacture of beer, distillation of spirits from grain, seeds, potatoes, etc, residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.) consist largely of fibrous and protein substances usually presented in the form of pellets or meal but occasionally as cake. 2. Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] etc. are classified under Heading 2303. 3. Entry at S.No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28.6.2017, exempts aquatic, poultry, cattle feed etc. falling under HS codes 2301,2302, 2308 and 2309. 4. Fitment Committee recommends that a clarification may be issued that Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste such as etc. fall under HS code 2303 and attract GST rate of 5%.
14.	Unintended waste on production of Fish Meal except for Fish Oil [2301]	5%	Nil	<ol style="list-style-type: none"> 1. The manufacturing process of fishmeal produces stick water which is evaporated to produce fish soluble paste which is commercially sold. 2. The GST Council in its 37th meeting granted exemption to supply of "Fish meal" for the period 1.7.2017 to 30.09.2019 and clarified that 5% GST to be imposed thereafter. 3. As fish soluble paste, stick water

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				<p>is a by-product of manufacture of Fishmeal, the same may be extended for exemption from GST till 30.09.2020 and may be taxed at 5% thereafter to maintain parity with Fishmeal.</p> <p>4. The Fitment Committee recommends that the unintended waste generated during the production of fish meal except for Fish Oil proposal may be exempted from GST for the period 1.7.2017 to 30.9.2019, on the same lines as fish meal, so as to have a simplified duty structure for such products and to avoid any possible litigation.</p>
15.	Fibre Drum [4819]	18%	<p>Clarify that, "Fibre drums being made up of corrugated paper and paperboard would be classified at Entry No. 122 of Schedule II under HSN 4819" and hence attract @12% GST.</p> <p>Or</p> <p>Prescribe a concessional rate of 12% GST on other packing material, including Fibre Drums of corrugated paper on retrospective basis since 01.07.2017.</p>	<p>1. Fibre Drums are used for various packaging applications in Food, Pharmaceutical and Chemical Industries that enhance the integrity of the products.</p> <p>2. As per the representations received, these Fibre Drums have a certain portion made from corrugated paper. However, certain field formations have considered these Fibre Drums to be made of non-corrugated papers.</p> <p>3. In this regard, as per entry 122 of Schedule II, 'cartons, boxes and cases of corrugated paper or paper board' under heading 4819 attract a concessional GST rate of 12%. On the other hand, as per entry of not153A of Schedule III, 'cartons, boxes and cases of corrugated paper or paper board' under sub-heading 4819 20 would attract 18% GST.</p> <p>4. The Fitment Committee recommends that a uniform rate of 18% GST may be prescribed on all goods falling under heading 4819. Further, for the past supplies, it may be clarified in</p>

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				view of the ambiguity and keeping in view that a part of fibre drum is corrugated, the supplies made at 12% GST rate may be regularized.
16.	Bitumen supplied by Kerala Public Works Department [CTH 2714]	18%	Exemption under Sec 7(2) of CGST Act 2017 for the supply of Bitumen made by BPCL to Kerala PWD for 1-7-2017 to 31-03-2018 from levy of GST.	<ol style="list-style-type: none"> 1. For the period 2017-18, PWD offices of Kerala had not taken GST registration and therefore BPCL could not issue a B2B invoice for the supply of bitumen to PWD. 2. Due to this and further mis-interpretation of the consequential supplies to contractors as supplies without consideration by the authorities, PWD could neither avail the ITC on this supply nor issue GST invoices for the said supplies. 3. The Fitment Committee has taken a view that the issue pertains only to the past period for which a clarification will be provided to Kerala Public Works Department.
17.	Scope of entry Serial Number 65 of Notification no. 1/2017 Integrated Tax (Rate), regarding pharmaceutical goods (3006)	12%	Clarification	<ol style="list-style-type: none"> 1. All items under heading 3006 attracted Central Excise duty at 6% (except contraceptives which were at Nil rate) and 5% VAT pre-GST. Accordingly, the GST rate was fixed at 12%. 2. The rate was prescribed vide entry at S.No. 65 of Second schedule of notification 1/2017-Central Tax (Rate) dated 28.6.2017. The description of the entry was "<i>Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether</i>

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				<p><i>or not absorbable; Waste pharmaceuticals] [other than contraceptives]</i></p> <p>3. However, Chapter note 4 to Chapter 30 of the First schedule to the Customs Tariff Act, 1975 contains large number of items, many of which have not been covered in the illustrative list of the entry.</p> <p>4. The Fitment Committee recommends that a clarification may be issued that all goods covered under Heading 3006 attract GST rate of 12% and the description should be read along with the whole note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975.</p>
18.	Laboratory Products [3822]		12% via clarification for the past periods	<p>1. Currently 12% GST rates are applicable to “<i>All diagnostic kits and reagents</i>” classified under 3822 vide S.No. 80 of Schedule II of notification No.1/2017-IGST dated 28.6.2017.</p> <p>2. The representation is that Customs formations are interpreting the said entry as applicable to ‘diagnostic’ reagents only, and are not allowing the benefit of concessional rate of 12% to laboratory agents, seeking to levy IGST @18% in the residual category. As noted above, the concessional rate is available to all diagnostic kits and reagents under CTH 3822.</p> <p>3. The Fitment committee recommends that clarification may be given in the matter clarifying that “<i>concessional GST rate of 12% is applicable on Diagnostic reagents and Laboratory reagents falling under HSN 3822.</i>”.</p>
19.	Retro Fitment Kit [9021]	5%/28%	Clarification	<p>1. The retrofit wheel attachments are specifically designed to be used</p>

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				<p>by persons with physical disability, by converting any two-wheeler scooter into a 4-wheeler.</p> <ol style="list-style-type: none"> 2. Evidently, there is no other use of such goods other than in modifying and converting a two-wheeler into a 4-wheeler capable of being used by persons with lower limb disability. 3. Devices of such nature which are used to assist or rehabilitate the disabled persons fall under heading 9021 and attract 5% GST. 4. Further, these retrofit wheel attachments fulfil all the criteria laid down in the Motor Vehicles Act (vide RT-11012/12/01-MVL dated 23.06.2008) and have been approved by the Ministry of Shipping, Road transport and Highways as worthy of modifying the specified two-wheeler to provide balancing and stability to the vehicle. 5. The Fitment Committee recommends that such retrofit kits may be prescribed a concessional rate of 5% GST by including the same in the list of assistive devices, rehabilitation aids and other goods (List 3) of Schedule I.
20.	Paper Sacks		Request to classify paper sacks under HS (481930/481940) and may be notified with CGST @ 6%.	<ol style="list-style-type: none"> 1. Paper sacks are specifically covered under HS code 4819 30/4819 40. 2. Currently, there are two specific entries in GST Tariff for CTH 4819. 3. Sr. No. 122 of Schedule - II of notification No. 1/2017-Central Tax (Rate) provides for 12% GST rate for CTH 4819. However, this entry is restricted to "Cartons, boxes and cases of corrugated paper or paper board". 4. Sr. No. 153A of Schedule - III of notification No. 1/2017-Central Tax (Rate) provides for 18% GST

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				<p>rate for HS Code 4819 20, which covers "Cartons, boxes and cases of non-corrugated paper or paper board".</p> <p>5. Hence, as paper sacks are not covered under any specific entry in GST Tariff, they are covered under residual entry i.e., Sr. No. 453 of Schedule - III of notification No. 1/2017-Central Tax (Rate) and accordingly attract 18% GST.</p> <p>6. The Fitment Committee recommends providing uniform rate of 18% GST on all goods under heading 4819 (refer Sl. No. 16 above) in order to resolve this issue.</p>
21.	Fortified Rice Kernel (Premix) [1904]	18%	Rate reduction	<p>1. Fortified rice kernel (premix) is produced at substantive value addition over normal rice. Fortified Rice Kernel (FRK) is a reconstituted rice grain made from rice flour, vitamins, and minerals using hot extrusion technology. Thus, FRK is a value-add product. So exempting it would not be appropriate.</p> <p>2. Fitment Committee is of the view that Fortified Rice Kernel when supplied for any scheme like ICDS, it may be given same treatment as given to ICDS supplies, i.e. 5% rate.</p> <p>3. The Fitment committee recommends the reduction in GST of Fortified Rice Kernel [1904] from 18% to 5% for ICDS or similar scheme subject to same conditions as apply to ICDS supply for ensuring end use.</p>
22.	Scented sweet supari [21069030]	18%	5%	<p>1. Pre-GST supari attracted Central Excise duty at the rate of 12.5%. The weighted average VAT rate was around 5%. Therefore, based on the pre-GST tax incidence the rate for supari was kept at 18%.</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>2. Reducing the GST rates on betel nuts (supari) would reduce protection to the domestic suppliers vis-à-vis the imports.</p> <p>3. The request to reduce GST on scented sweet supari has already been put before the GST Council (31st and 37th meeting) and has not been recommended.</p> <p>4. The Fitment Committee recommends that appropriate clarification may be issued that scented supari, etc would attract GST at the rate of 18%.</p>
23.	Oncology medicine [30]	12%	Nil	<p>1. As per serial number 180 of Schedule-I of notification No. 1/2017-Central Tax (Rate), certain drugs, including few used in cancer treatment, attract reduced GST rate of 5%.</p> <p>2. Most APIs for medicines under Chapter-29 attract GST at rate of 18% and blanket exemption to oncology medicines will further aggravate duty inversion.</p> <p>3. Request for one specific cancer medicine, Keytruda (Pembrolizumab) is separately under consideration for reducing GST rate to 5% and inputs from Health Ministry have also been received.</p> <p>4. Most drugs attract 12% GST, which is in line with pre-GST incidence.</p> <p>5. The request for reducing GST rate to Nil on oncology medicines is too generic. The issue of reducing GST rate on cancer drugs was earlier discussed in 14th GST Council meeting and was not approved.</p> <p>6. The Fitment Committee recommends that GST rate be reduced to 5% on Keytruda, as recommended by Health. Further, requests to reduce GST to 5% (and not Nil) for specific</p>

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				medicines, if they are of comparable use/ nature to those already present in List 1, may be considered after obtaining the recommendations of the Ministry of Health and Family Welfare or Department of Pharmaceuticals.
24.	Waste, paring and scrap of polyurethanes [39159063]	5%	18%	<ol style="list-style-type: none"> 1. The issue of mis-classification of virgin/fresh goods as waste/scrap to avail lower GST rate is an enforcement issue. 2. The matter was discussed and Fitment Committee is of the view that multiple rates for similar goods, leading to evasion by mis-classification may be discouraged as a policy measure. 3. Fitment Committee recommends that GST rate on waste parings and scrap of polyurethane and other plastics may be increased to 18%. 4. Further, the Fitment Committee was also of the view that other kinds of scrap which are at 5%/ lower rate, and are industrial inputs for goods attracting higher rates, may also be examined in due course.
25.	<p>(a) Parts and components of writing instruments [9608 60 and 9608 91]</p> <p>(b) Fountain Pens, Stylograph Pens [9608]</p> <p>(c) Other Pens other than (b) above</p>	<p>18%</p> <p>18%</p> <p>12%</p>	18%	<ol style="list-style-type: none"> 1. References have been received requesting reduction in GST rate on 'Fountain Pens and Stylograph Pens' from 18% to 12%. Further references have been received requesting reduction in GST rate on and 'Parts and components of writing instruments' from 18% to 12% in order to avoid inversion. 2. Fountain pens and stylograph pens attract GST @18 % based on pre-GST tax incidence [12.5% GST + 4%-5% VAT]. Whereas all other Pens falling under Heading 9608 are subject to a concessional GST @12%. Parts and components of writing instruments attract 18% GST.

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				<p>3. The request on reducing GST rate on fountain pens & stylograph pens had been considered in the 31st GST Council Meeting and had not been recommended.</p> <p>4. Instead of reducing GST rate on parts and components of writing instruments from 18% to 12%, GST rate on pens (other than Fountain Pens, Stylograph Pens) should be increased from 12% (HSN 9608) to 18% due to the following reasons:</p> <ol style="list-style-type: none"> a. It will eliminate the issue of “Inverted Tax Structure”. b. It will make local manufacturing competitive vis-à-vis import. c. There will be uniform rate on all kinds of pen (including Fountain Pens, Stylograph Pens). This will reduce tax compliance issues. <p>5. The Fitment Committee recommends to increase GST rate on pens (other than Fountain Pens, Stylograph Pens-which are already at 18%) from 12% (HSN 9608) to 18%, thereby levying 18% GST rate on all kinds of pens.</p>
26.	UPS Systems/ Inverter sold along with batteries as integral part [8507 or 8504]	28% or 18%	Clarification needed whether to classify the subject goods under 8507 or 8504	<p>1. References have been received seeking clarification about whether ‘UPS Systems sold along with batteries as integral part’ are classified under HSN 8507 (@ 28% GST) or HSN 8504 (@ 18% GST).</p> <p>2. The Fitment Committee examined the issue and is of the view that even if UPS and external battery are sold on the same invoice, their price are separately known and</p>

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				<p>they are two separately identified items. Hence in such supplies UPS would attract GST at the rate of 18% under HSN 8504 while battery would attract 28% under HSN 8507 (except Lithium Ion batteries).</p> <p>3. The Fitment Committee recommends issuance of a clarification on the above lines.</p>
27.	Diesel-Electric Locomotives [86021000]	12%	18%	<p>1. Diesel-Electric Locomotive falls under HSN 86021000 of GST Tariff and attracts GST rate of 12%. GST rate on raw material/ inputs/ services is mostly 18% or 28%.</p> <p>2. The above leads to situation of inverted duty structure and consequent unutilized GST credit. The refund of unutilized credit of GST in Locomotive sector has been strictly restricted vide Notification No. 5/2017- Central Tax (Rate) dated June 28, 2017.</p> <p>3. 37th GST Council Meeting had recommended increase in GST rate on railway parts, locomotive etc. from 5% to 12% in order to resolve the huge accumulation of ITC on account of duty inversion.</p> <p>4. However, accumulation of ITC on account of duty inversion still continues. Therefore, while raising the GST rate to 12% of Railway goods (chapter 86) helped, the issue of inverted rate structure has not been fully resolved. Further rate differential between Chapter 86 goods (items specific to Railways) and other items of use for railways like engine etc. is giving rise to litigations</p> <p>5. The Fitment Committee recommends to increase GST rates on all goods falling in Chapter 86 [railway parts,</p>

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				locomotives etc] from 12% to 18%.
28.	Flavoured and coated Illaichi [2106 90 99]	18%	Clarification regarding classification of Flavoured and Coated Illaichi	<ol style="list-style-type: none"> 1. The flavoured and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is commonly sold as a breath freshening mint. 2. The said product was commonly being classified under HS code 2106 during the Central excise regime, and there is neither any change in ingredients nor any change in manufacturing process. 3. So, the end product made by adding illaichi and other materials, consists of commercially different ingredients that are used in preparation, and due to such mixing of several ingredients, the ingredients lose their individual distinct identity and character, and a new product separately known to the commercial world comes into existence. 4. The Fitment Committee recommends that appropriate clarification may be issued that Flavoured and Coated Illaichi would fall under HS code 2106 and attract GST at the rate of 18%.
29.	Biodiesel supplied to Oil Marketing Companies [OMCs] for blending with Diesel [3826]	12%	5%	<ol style="list-style-type: none"> 1. Currently supply of biodiesel attracts 12% GST. 2. Further, by virtue of S. No. 6 of notification No. 11/2017-Central Excise dated 30th June, 2017, a blend consisting of 80% or more of high-speed diesel oil and biodiesel upto 20% by volume is exempted from Central Excise duty provided that the appropriate Central Excise duty is paid on Diesel and GST is paid on biodiesel. 3. The same has been done as the

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				<p>inputs are subjected to different types of taxes and cross credit of the same is not permissible, hence to avoid double taxation, the output has been exempted from tax.</p> <p>4. The average price of diesel is fixed state wise by the OMCs, the biodiesel which is cheaper than diesel gets priced higher. The entire tax burden of GST on biodiesel gets passed on to the customer.</p> <p>5. Therefore, reducing the GST rates on biodiesel would benefit blending of biodiesel with diesel and the benefit of reduced cost which would in turn be passed on to the consumer.</p> <p>6. Presently ethyl alcohol (ethanol) attracts GST at the rate of 18%. However, ethyl alcohol supplied to Oil Marketing Companies for blending with Motor Spirit (Petrol) attracts GST rate of 5%.</p> <p>7. The Fitment Committee recommends reduction in GST rates on Biodiesel, falling under HS Code 3826, supplied to Oil Marketing Companies [OMCs] for blending with Diesel, from 12% to 5%, on the same lines as is available to ethyl alcohol supplied to OMCs for blending.</p>
30.	Specified goods, imported for specified petroleum operations	5%	Clarification whether the original/ import Essentiality certificate can be used for inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer	<p>1. The issue involved is whether certificate from Directorate General of Hydrocarbons (called “Essentiality certificate”) is required for each inter-state transfer of goods within the same company.</p> <p>2. As per condition No. 1 (d) in notification No. 03/2017-Central Tax dated 28.06.2017, whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH)</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>is to be produced that the goods may be transferred to the transferee and the same are required for petroleum operations.</p> <p>3. The issue is whether original/import Essentiality certificate can be used for inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer.</p> <p>4. The Upstream Oil and Gas companies are facing difficulties when goods move on stock transfer from one state to other and have requested for clarification as to whether certificate from DGH is required for each such transfer.</p> <p>5. The Fitment Committee recommends issuing a clarification that the original/import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) would suffice and there is no need for taking a certificate every time on transfer (interstate movements) of goods within the same company so long the as goods are same as imported by the company at concessional rate on submission of certificate from Directorate General of Hydrocarbons (DGH)</p>
31.	Goods falling under chapter 49 [as covered in S. No. 127, 128, 129, 130, 131, 132 of 12% rate schedule for goods]	12%	18%	<p>1. Fitment Committee took cognizance of GST on articles falling in the said S. No. while examining in details the GST rate on the services provided by way of publishing, printing of these goods. To resolve any dispute Fitment Committee has recommended prescribing uniform rate of 18% on all categories covering such printing of photographs. Simultaneously, the Fitment Committee also</p>

S.No	Description/HSN	Present GST rate	Requested GST rate	Comments
				reviewed the GST rate for Chapter 49 and felt that items falling under said S. Nos, such as plan and designs, cheque forms, certificates, printed cards, printed material, catalogue, printed photograph etc. should attract GST at rate of 18%.
32.	Spice Water [2202 10]	28%+12% Cess	12%	<ol style="list-style-type: none"> 1. At present Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured under [HS 2202 10] are at 28% GST + 12% Compensation Cess as per the recommendations of the GST Council. 2. Very little details about the product composition have been provided. 3. The fitment may take a view to reduce GST on spice water classified under HSN 2202 10 90. 4. The Fitment Committee recommends that a view may be taken by the Council.

Issues where no change has been proposed by the Fitment Committee in relation to goods

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Fertilizer Manufacturing Plants being built by Hindustan Urvarak & Rasayan Limited (HURL)	18%	1. Exemption to supplies received during the construction phase. IGST exemption on import of goods to prevent further accumulation of input tax credit for HURL.	<ol style="list-style-type: none"> 1. In general, end use based exemption for goods are difficult to monitor and would create avenues for diversion. Therefore, providing such exemption for a particular plant may not be feasible. 2. Further, as for refund for input tax credit in the phase, when output supplies are not being made, is again an innovation that should not be allowed for one particular entity. 3. Fitment Committee does not recommend any change.
2.	Scrap HSN 7204, 7404, 7503, 7802, 7902, 8548	18%	<p>Reduce GST rate on Metal Scrap to 5%</p> <p>Or</p> <p>Include Metal Scrap in reverse charge basis</p> <p>Or</p> <p>Levy tax on supply of Metal Scrap partially under forward charge (which shall be negligible, say 0.1% of the applicable tax)</p>	<ol style="list-style-type: none"> 1. This issue has pros and cons. 2. Imports are by traders in large quantity. 3. Reverse Charge Mechanism (RCM) on subsequent stages (after the first stage) is not advisable as it breaks the ITC chain. 4. The Fitment Committee recommends to maintain status quo regarding this issue.
3.	Active Pharmaceutical Ingredients [Chapter 29]	18%	12%	<ol style="list-style-type: none"> 1. APIs fall under Chapter-29 under Organic Chemicals and attract 18% GST. The finished goods, i.e., medicines attract GST of 12% or 5% for certain specified medicines. Input services also attract GST at 18%. 2. Refund of unutilised input credit is available. 3. The Fitment committee

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				recommends to maintain status quo since the refund of accumulated ITC is available.
4.	Glycoside Natural (Stevia) (29389090)	18%	5%	<ol style="list-style-type: none"> 1. Glycoside Natural (Stevia), a natural sweetener, is sourced from plant Stevia Rebaudiana, and is classified under heading 2938 90 90 having GST rate of 18%. 2. Pre-GST tax incidence included 12.5% Central Excise and 6% VAT, which is close to current GST rate. 3. Fitment Committee recommends to maintain status quo as it may not be advisable to promote one sweetener over others by way of GST reduction.
5.	Jute/bamboo/other natural fibre and face mask/sanitizers and all Covid related test kits manufactured by small farmers/ women's co-operatives/ Indian scientists/ entrepreneurs – [Any chapter]	As applicable	Nil	<ol style="list-style-type: none"> 1. Masks attract 5% GST. This rate helps in maintaining ITC chain and avoiding blockage of capital. 2. In respect of sanitizers, clarification has been issued by the Government vide Press Note dated 15th July, 2020. 3. The Fitment Committee recommends status quo as clarification has already been issued.
6.	Proprietary/branded AYUSH products [Chapter 30]	12%	5%	<ol style="list-style-type: none"> 1. In its 22nd Meeting, the GST Council approved the reduced rate of 5% for 'Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia.

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>2. The generic medicines as specified, have been deliberately kept at a lower rate for the benefit of common man. Other medicines which are non-generic are kept at a higher rate of 12%, which is the rate for a large number of allopathic medicines.</p> <p>3. The Fitment Committee recommends to maintain status quo on the particular matter.</p>
7.	Farm Inputs –such as botanical, biological, pheromone traps and lures, micronutrients, fertilizers, pesticides, tractors, drip/sprinkler irrigation systems and other agricultural equipment.	5%, 12%, 18%	Nil	<p>1. The issue of GST on various types of farm inputs such as fertilizers (5%), irrigation systems (12%- 25th Meeting), tractor parts (20th Meeting), etc. have been separately discussed in the past Council Meetings and GST rates have been set accordingly.</p> <p>2. However, a blanket exemption on all agriculture sector inputs will be difficult to implement and prone to evasion.</p> <p>3. Granting of such exemption to all types of farm inputs will lead to inverted duty structure and blockage of funds for the suppliers of these goods.</p> <p>4. The Fitment Committee recommends maintaining status quo on the particular matter to avoid inversion.</p>
8.	Rubber products (4004)	18%	5%	<p>1. GST on rubber scrap was kept at 18% as per pre-GST tax incidence.</p> <p>2. The GST rates on scraps of various articles were reviewed in 22nd GST Council meeting and a uniform rate of 5% was prescribed on scrap of Plastic, Paper, Rubber, Glass, Wood and Precious metals.</p> <p>3. Powders and granules obtained from waste, parings and scrap of rubber are produced from rubber scrap and attract standard rate of 18%.</p> <p>4. Small manufactures can avail threshold exemption and composition scheme.</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>5. Reduction on GST rate on such goods would lead to distortion in GST rate structure and may cause misdeclaration.</p> <p>6. The Fitment Committee recommends to maintain status quo on the particular matter to avoid inversion.</p>
9.	Subabul, Casuarina & Eucalyptus (Pulp wood) [4403]	18%	Nil	<p>1. Subabul, Casuarina & Eucalyptus wood in rough falls under heading 4403 and attracts 18% GST, which is based on pre-GST tax incidence.</p> <p>2. The matter was examined in the 28th GST Council meeting and according a clarification was issued on applicable GST rate on such goods.</p> <p>3. Further, matter of appropriate classification and the applicable GST rate is also <i>sub-judice</i> under Allahabad High Court.</p> <p>4. Lowering of GST on goods falling under heading 4403 has significant revenue implications.</p> <p>5. The Fitment Committee recommends to maintain status quo on the particular matter to avoid inversion.</p>
10.	Cotton [5201]	5% [RCM]	Abolish Reverse Charge Mechanism (RCM) under the GST on cotton.	<p>1. The GST Council after detailed examination in its 23rd meeting held on 10th November, 2017 recommended inclusion of raw cotton in the specified category of goods the supply of which will be taxed based on reverse charge by way of notification under section 9(3) of the GST act to reduce the differential tax burden between composite units and standalone units.</p> <p>2. The Fitment Committee recommends maintaining status quo.</p>
11.	Recycled polyester staple fibre [5503 2000]	18%	5%	<p>1. The pre-GST tax incidence on polyester staple fibres was more than 18%. Accordingly, the GST Council recommended a GST rate of</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>18% on polyester staple fibres.</p> <p>2. Recycled PSF cannot be distinguished from the chemical origin PSF at the point of supply in GST and therefore, providing a lower rate of GST on recycled PSF may be prone to misuse by the suppliers.</p> <p>3. Central excise duty was paid at manufacturing stage and therefore, a lower duty rate on recycled PSF could be effectively monitored for misuse.</p> <p>4. Textile structure is being examined by Council for correction of inverted date structure.</p> <p>5. The Fitment Committee recommends status quo to prevent inversion as the matter of correcting inversion in textile value chain is already before the GST Council.</p>
12.	Engines meant for Gensets [8408]	12%/28%	18%	<p>1. The Fixed Speed Diesel engines with less than 15BHP power are largely used in agriculture and have been kept at concessional GST rate of 12%</p> <p>2. The review of goods at the highest GST slab of 28% was undertaken by 23rd GST Council meeting and only around 50 group of items were retained.</p> <p>3. May be considered along with overall review of 28% GST slab when the same is undertaken.</p> <p>4. The Fitment Committee recommends to maintain status quo on this issue.</p>
13.	Recycle Construction and demolition (C &D) waste [Any Chapter]	5%/18%	5%	<p>1. GST on building material is in line with pre-GST tax incidences.</p> <p>2. GST rates on building material such as natural sands and building bricks have been kept at 5%, marble, granite, ceramic have been kept at GST rate of</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>18%.</p> <p>3. Further, fly ash, fly ash bricks and fly ash blocks have been kept at lower rate of 5%.</p> <p>4. Reducing rate from 18% to 5% for such goods involves huge revenue implication and such reduction will lead to similar requests from other sector.</p> <p>5. The Fitment Committee recommends maintaining status quo on the particular matter to avoid inversion.</p>
14.	Air Cooler	18%	12%	<p>1. GST rate on all these items is fixed based on the Pre-GST rate on these items (12.5%+ 5-14%). Therefore, 18% is Revenue Neutral Rate.</p> <p>2. Increase in domestic prices of the products cannot be the basis of tax cuts as proposed in the request.</p> <p>3. The Fitment Committee recommends status quo on the particular matter to avoid inversion.</p>
	Ceiling Fan	18%	12%	
	Electric Iron	18%	12%	
	Household Filter (Water Purifier)	18%	12%	
	Pedestal Fan	18%	12%	
15.	Solar boats [8901]	5%	Nil	<p>1. While there is a distinction between the two kinds of boats, exemption from GST may lead to an inverted duty structure where solar boat manufacturers may be burdened with unutilized input tax credit.</p> <p>2. This would become a dead weight cost to them and lead to cascading of taxes.</p> <p>3. The Fitment Committee recommends to maintain status quo on the particular matter to avoid inversion.</p>
16.	Energy Storage Systems including Batteries, Pumped Hydro, Compressed Air, Molten Salt, Fly Wheels, Hydrogen set-up for integration with or balancing of Renewable Energy	As Applicable		<p>1. Renewable energy devices and parts for their manufacture attract concessional rate of 5%. In case of EPC contracts of such renewable energy systems, a ratio of 70:30 has been prescribed which gives the effective rate of 8.9% GST.</p> <p>2. This rate although provided to promote the RE sector, creates</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>an inverted duty structure (IDS). IDS is a distortion in the GST regime and needs to be corrected.</p> <p>3. The Fitment Committee recommends maintaining status quo on the particular matter.</p>
17.	Auto LPG conversion kits [87]	28%	5%	<p>1. As a measure to promote environment friendly cleaner fuels, kits required for conversion of petrol or diesel driven vehicles into Compressed Natural Gas (CNG) driven or Propane driven or Liquefied Petroleum Gas (LPG) driven vehicles can be imported at a concessional rate of 5% BCD, subject to the certification of end-user condition from Deputy Secretary in Ministry of Environment and Forests (S.No. 410 of notification No. 50/2017-Cus dated 30.06.2017)</p> <p>2. The parts of the above-mentioned Kits also attract concessional rate of 5% BCD.</p> <p>3. Such conversion kits are classified under heading 8409 and attract 28% GST with Nil compensation cess.</p> <p>4. Generally, auto-parts and components for use in the manufacture of automobiles also attract 28%/18% GST. The Auto LPG Conversion Kits are parts suitable for use solely or principally with the engines of heading 8407 or 8408 and also attract 28% GST.</p> <p>5. The issue of GST reduction on auto-parts has been deliberated during the 23rd GST Council dated 10.11.2017, and thereafter on many occasions. It has been decided that the rationalization of 28% GST rate slab will be taken up once the GST revenues stabilize, and there is no pressure from</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>the revenue front.</p> <p>6. Further, any reduction in the GST rates on the auto-parts and components will involve substantial revenue implications.</p> <p>7. The Fitment Committee recommends maintaining status quo on the particular matter.</p>
18.	NPCIL Projects	Applicable rate	Nil	<p>1. Exemption is sought for both the future as well as for the past GST paid also.</p> <p>2. End use-based exemption are generally given under GST as they break the credit chain credit chain.</p> <p>3. NPCIL projects have been granted exemption from BCD. Uranium Ore concentrate has been exempted from GST.</p> <p>4. As such the major input for generation of nuclear power has been exempted.</p> <p>5. The Fitment Committee recommends to maintain status quo on the particular matter.</p>
19.	Ropeway Projects [9801]	18%	5%	<p>1. Manufactured goods in general attract GST at the rate of 18%.</p> <p>2. Reduction of rate below 18% will cause inversion in rates as most input and input services attract GST at the rate of 18%.</p> <p>3. Therefore, while imports would gain from GST reduction, it would be detrimental to domestic capacity building.</p> <p>4. The Fitment Committee recommends status quo in this matter.</p>
20.	Seek exemption from payment of GST on transfer of dead stock items related to employees, from one Regional Office (RO) to another Regional Office (RO).	Applicable rate	Nil	<p>1. The Fitment Committee recommends to maintain status quo regarding this issue.</p>
21.	Skimmed milk powder (SMP),	5%	0%	<p>1. Skimmed milk is a value-added product and is sold at</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
	whole milk powder (WMP) (0402)			<p>much higher rates compared to normal milk. Skimmed milk is used in ice cream industry which is at 18% GST.</p> <p>2. Exempting such products breaks ITC chain and leads to inversion.</p> <p>3. The Fitment Committee recommends to maintain status quo.</p>
22.	Scientific research supplies to research institutions [Any Chapter]	5%	Correction of inversion	<p>1. The issue raised is blockage of input tax credit of trader-suppliers of such supplies, procured at higher GST rate - 12/18/28% and supplied to research institutions at 5%. These trader-suppliers are unable to get refund of accumulated credit as per para 3.2 of the Circular No 135/05/2020- GST dated 31st March, 2020.</p> <p>2. GST rate of 5% with end use condition is difficult to implement and on the other creates distortion by way of inverted duty structure. Compliance verification of such exemption is also difficult. Therefore, providing benefit by way of refund of GST in excess of 5% to end-user may be a way out.</p> <p>3. However, introducing this mechanism may invite objection from the research institutes as this will place compliance burden of obtaining refunds whereas till now, they are getting upfront concessional GST rate of 5% (like in case of BCD for imported goods.)</p> <p>4. The Fitment Committee recommends maintaining status quo in this matter.</p>
23.	Biodegradable garbage bags (3923 or 6305)	18%	Reduce GST Substantially	<p>1. Environment-friendly biodegradable plastic bags merit incentives. Reduction of GST rate on such goods is one way of promoting its use.</p> <p>2. On the other hand, it is</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>desirable that any possible duty rate inversion arising out of proposed reduction in GST rate may be avoided. Further, since non-biodegradable (normal) plastic bags will attract higher GST (18%), there is possibility of misuse of benefit.</p> <p>3. Further reducing GST rates will bring inversion as raw materials would be at 18%.</p> <p>4. The GST Council deliberately brought the GST rates on all bags to 18% so as to avoid disputes.</p> <p>5. The Fitment Committee recommends status quo to prevent inversion and distortion in rate. These bags may be encouraged through other ways than GST rate reduction</p>
24.	AC Sheet / Fibre Cement Sheet	18%	5%	<p>1. The construction material in general attracts 18% GST.</p> <p>2. The major inputs cement attracts 28% GST rate.</p> <p>3. Reduction in GST rates will lead to inverted duty structure and will lead to refunds</p> <p>4. The Fitment Committee recommends to maintain status quo to prevent inversion.</p>
25.	Rubberized Coir / Mattresses (9404)	12 & 18%	5%	<p>1. Coir Products are classified under various headings and attract different GST rate [5%/12%/18%].</p> <p>2. Coir mats, matting, floor covering etc. attract 5% GST whereas coir furniture and products falling under heading 9404 attract 12% GST. Coir Mattress attract 18% GST.</p> <p>3. Concessional GST rate of 5%/12% has been prescribed for the basic items which does not have substantial value addition. This was done to prevent the inverted duty structure.</p> <p>4. GST rate of 18% has been prescribed for Coir mattress as it is a manufactured item</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				having high value addition. Rate of 5% will create the inverted rate structure. 5. The Fitment Committee recommends to maintain status quo to prevent inversion.
26.	Fertilizers, chemicals and Nutrients for farmers [31, 38]	5%/18%	Nil	1. Blanket exemption from items such as fertilizers, chemicals and nutrients will cause duty inversion and blocking of capital/ duty inversion. 2. The Fitment Committee recommends maintaining status quo.
27.	Yarn Produced by National Textile Corporation Ltd (NTC) mills (Any Chapter)	12%/5%	Nil	1. The incidence of GST is not borne by the producers and is passed down the supply chain. It is not apparent how exemption from GST in the instant case will benefit NTC 2. Moreover, origin based differential taxation of same products (i.e., produced by established industry or village/cooperative) is difficult to implement and prone to evasion. 3. The Fitment Committee does not recommend any reduction in GST rates on yarn produced by NTC mills.
28.	PVC Tufted Coir Mats (5703)	12%	5%	1. PVC tufted coir mats are low pile coir brush mats which can be used in interiors and also out door. 2/3rd of the mats constitutes coir yarn and the rest chemicals. 2. These are classified under CTH 5703 90 20. As per notification No. 01/2017-Integrated Tax (Rate) dated 28th June, 2017 and notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, GST rate of 12% is applicable for this CTH. 3. The major raw material used in its manufacture is Coir yarns which is a vegetable yarn classifiable under Heading 5305 which attract GST at the rate of 5%

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>4. Pre-GST incidence of tax on Vegetable Yarns was 6.50% and therefore GST Rate of 5% was levied on coir yarn.</p> <p>5. Coir yarns are the major raw materials used in manufacture of PVC Tufted Coir Mats along with utilization of services which are chargeable to 18% GST. On inputs side, Job work and road/rail transport services in general attract 5%. But other input services like manpower supply, security, financial services, insurances, maintenance and repair air transport service attract GST at the rate of 18%. As the manufacturing process is extensive, higher GST rate may enable utilization of inputs and input services.</p> <p>6. The Fitment Committee recommends status quo, with no change in GST rates.</p>
29.	<p>Micro irrigation system material and agriculture machinery & equipment</p> <p>HSN 8201, 8424, 8432</p>	Nil/5%/18%	Exempt	<p>1. Exempting these goods would create hardship to manufacturers of these goods as ITC will be stuck.</p> <p>2. This would be to the disadvantage of domestic manufacturers vis-a-vis imports. Hence not desirable.</p> <p>3. The Fitment Committee recommends to maintain status quo regarding this matter.</p>
30.	Newsprint [4801]	5%	Nil	<p>1. Pre-GST incidence on newsprint was 7.63%. Currently, it attracts 5% GST.</p> <p>2. Also, with other type of papers attracting 12% GST. By reducing GST on Newsprint to Nil a rate gap of 12% will appear within the paper commodity.</p> <p>3. The Fitment Committee recommends status quo on the particular matter.</p>
31.	Tyres meant for the agriculture / rural sectors and used in: Power Tillers	28%	5%/12%/18%	<p>1. The Fitment Committee recommends to maintain status quo regarding this particular issue.</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
	Combine Harvesters Animal Driven Vehicles (ADVs) HSN 4011 2 and 3 wheeled tyre 3 Wheeled E- Rickshaw Tyres HSN 4011 3 Wheeled E- Rickshaw Tubes HSN 4013			
32.	Roller Safety Crash Barrier [7308]	18%	Nil	<ol style="list-style-type: none"> 1. It will lead to inverted duty structure as its input, for instance, iron rods, steel, attract 18% GST. 2. The Fitment Committee recommends status quo to prevent inversion.
33.	Board Files, Diaries, Envelopes, Account Books & registers made of paper [4820, 4817]	18%	12%	<ol style="list-style-type: none"> 1. GST rate on products of paper ranges from 12% to 18%. 2. Even during pre-GST regime, tax incidence on the said products was 16% as per the representation. 3. Exercise books & note books are mostly used by students, while account books, diaries, envelopes are mostly used by industry. 4. Therefore, the current GST rate on the said products may merit continuation. 5. The Fitment Committee recommends status quo on the particular matter to avoid inversion.
34.	Lock [8301]	18%	5%	<ol style="list-style-type: none"> 1. Even during pre-GST regime, excise tariff rate on locks was 12.5%. 2. It will lead to inverted duty structure as its input, for instance, iron rods, steel, attract 18% GST. 3. The Fitment Committee recommends to maintain status quo to prevent inversion.

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
35.	Sanitary Napkins, pads, tampons [9619 00 10 or 961900 20]	12%	Redressal of immense difficulty faced by Saurashtra Napkin Manufacturers Association after GST and hurdles in getting GST refund	<ol style="list-style-type: none"> 1. Sanitary Napkins are currently exempted from GST and hence no ITC is available to the manufacturers of the sanitary napkins. 2. Prior to July, 2018, Sanitary Napkins were attracting concessional GST rate of 5% and ITC was available. However, in July, 2018, Sanitary Napkins were exempted from GST. 3. Now, the issue of non-availability of the ITC was raised in the reference. However, at the time of exemption on the sanitary napkins it was made clear that the suppliers of sanitary napkins will not be eligible for ITC. Further, the said items were exempted after many deliberations. 4. The Fitment Committee recommends to maintain status quo to avoid inversion.
36.	SOFC based energy devices and its parts	5%	While there is a concessional rate of 5% provided for solar or wind based energy devices and no concession provided for supplies /on Import with respect to SOFC based energy devices and its parts. Lower GST rate of 5% for supplies and on imports with respect to SOFC based energy devices and its parts.	<ol style="list-style-type: none"> 1. Fuel Cell based system attract 18% GST rate. 2. Fuel Cell based system is not eligible for concessional rate of 5% available on renewable energy-based power generation system. 3. In another proposal, the Fitment Committee has recommended increasing GST rate on renewable equipment from 5% to correct inverted rate structure. 4. The Fitment Committee recommends status quo on the particular matter.
37.	Inputs for manufacture of HAL Do-228 Aircraft	Applicable rate	GST rate may be rationalised to remove Inverted Duty Structure	<ol style="list-style-type: none"> 1. Aircraft (other than those for personal use) falls under heading 8802 and attract 5% GST.

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<ol style="list-style-type: none"> 2. Parts of aircraft, falling under heading 8803 also attracts concessional GST rate of 5%. 3. Other major parts of aircraft like aircraft engines and aircraft seats also attract concessional rate of 5%. 4. Therefore, all parts which are primarily used for aircraft attract concessional rate of 5% which is equal to the GST rate on aircrafts. 5. This was done to remove inverted duty structure. 6. However, general use items which go into manufacturing of aircraft attract their respective rates. 7. There is no provision of end use based exemption in GST and in case of rate reduction on general use items, tax evasion may happen. 8. Further, supplier is eligible to claim refund of the accumulated ITC on account of refund. 9. The Fitment Committee recommends status quo on the particular matter.
38.	Raw Rubber		Request to consider the inclusion of the items raw rubber & its scrap, latex, Indian Standard Natural Rubber (ISNR) and residual products of raw rubber under the purview of RCM	<ol style="list-style-type: none"> 1. Natural rubber is covered under CTH 4001 and it attracts 5% GST under forward charge mechanism where supplier of natural rubber pays GST. 2. According to the request made, GST cannot be charged at the time of purchase of the raw rubber from the agriculturists by the registered person in absence of RCM and hence substantial due amount of tax is deferred from payment of tax, especially for a state like Tripura which supplies natural rubber in large quantities. 3. The Fitment Committee recommends to maintain status quo on the particular matter.
39.	Umbrellas (6401)	12%	5%	<ol style="list-style-type: none"> 1. Currently, GST rate on umbrellas (CTH 6601) is 12%. During pre-GST regime,

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>central excise duty on umbrellas was 6%.</p> <p>2. In this context, 21st GST Council Meeting, dated 9thSeptember, 2017 reduced GST rates on plastic raincoats (CTH 3926) from 28% to 18%.</p> <p>3. Further, GST rate on raincoats (under Chapter 62) is 5% if sold below Rs.1000/piece or 12%, otherwise.</p> <p>4. The Fitment Committee recommends status quo on the particular matter.</p>
40.	Curd, Paneer and Ultra High Temperature (UHT) Milk		Provide 6-digit HSN Code for all these 3 items so that accurate GST Returns can be filled	<p>1. The notification No. 1/2017-Central Tax (Rate) dated 28.06.17 and 2/2017-Central Tax (Rate) dated 28.06.17 issued under section 11 of CGST Act 2017 specifies rate on /exempts intra-State supplies of goods, specified in column 3 of the schedule and falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule.</p> <p>2. Further, as per explanation (iii) and (iv) to the said notifications, "Tariff item", "sub-heading" "heading" and "Chapter" means a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).</p> <p>3. Further, India is a contracting party to the HS Convention and under the Article III of the HS Convention (Obligations of Contracting Parties) it has to apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes and not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System.</p> <p>4. Thus, the current Customs</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>Tariff Act, 1975 (51 of 1975) at six-digit level is in sync with the International Classification as published by World Customs Organization.</p> <p>5. As in the current WTO tariff structure 2017, there is no specific entry at six digits for Curd, Paneer and UHT Milk. Hence, the same cannot be created as a six-digit entry.</p> <p>6. The Fitment Committee recommends to maintain status quo in this particular matter.</p>
41.	Oil used for lighting divine lamps generally called as Deepam Oil [1515/3307]		5%	<p>1. Normally, lamp (Pooja) oil is classified under HS 15180040 and accordingly attracts 12% GST.</p> <p>2. In case of edible oils, 5% GST is leviable on those vegetable oils which are not chemically modified attract 5% GST.</p> <p>3. Therefore, this issue requires more information regarding deepam oil that is said to be classified under heading 3307 and attract higher GST rate.</p> <p>4. The Fitment Committee does not recommend the change in GST rate.</p>
42.	Baker's Yeast [21021020]	12%	5%	<p>1. Baker's yeast is a commercial preparation consisting of dried cells of one or more strains of the fungus <i>Saccharomyces cerevisiae</i>, used as a leavening in baking. It is produced on industrial scale. It is already at concessional GST rate of 12%.</p> <p>2. The GST rate has been fixed on the pre-GST tax incidence on these goods.</p> <p>3. Further, all goods in [HS 2102] attract 12% GST.</p> <p>4. The request to reduce GST on baker's yeast has already been put before the GST Council (28th, 31st and 37th meeting) and has not been recommended.</p> <p>5. The Fitment Committee does not recommend the reduction in GST rate.</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
43.	Smokeless tobacco products [240399]	28% + compensation cess at varying rates	Requested to study the impact of GST rates which leads to evasion of tax on tobacco products	<ol style="list-style-type: none"> 1. The GST Compensation cess rates on smokeless tobacco products were fixed based on the pre-GST tax incidence of tobacco products as recommended by the GST Council. 2. The request was to conduct a study of the impact of GST rates on the extent of evasion of GST. 3. The Fitment Committee recommends that since matter has been referred to GoM on Capacity based Levy and Special Composition Scheme; the same may not be taken up by Fitment.
44.	Polished Napa Stone[25152090]	18%	5%	<ol style="list-style-type: none"> 1. Napa stone is a variety of dimensional limestone. 2. At the time of initiation of GST, polished Napa stone tiles attracted 28% GST based on pre-GST tax incidence. Subsequently during the 22nd GST Council meeting held on 6th October, 2017, the GST Council recommended reduction in GST rates on polished Napa stone from 28% to 18%. Subsequently the issue was discussed in the 25th GST Council meeting held on 18th January, 2018, wherein the Council did not agree to the request on the grounds that 18% GST is applicable on types of flooring materials and an ad valorem rate will ensure lower tax in absolute terms on low priced items. 3. In the 28th GST Council meeting held on 21st July, 2018 it was decided to reduce GST rates on Kota stone and similar stones (except marble and granite) other than ready to use mirror polished stones. The entry in the notification was drafted in consultation with the State of Rajasthan and Andhra Pradesh. 4. Currently all polished stone

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>tiles; including other similarly place stones like Kota stone as well as ceramic tiles attract 18% GST rates.</p> <p>5. Fitment Committee in its meeting dated 20th May, 2021, desired that GST Council has taken a conscious view and this issue has been deliberated at length. It desired that additional information may be collected from states about production volumes, revenue implication, other stones similarly placed etc.</p> <p>6. The Fitment Committee does not recommend any reduction in GST rates, since Napa stone is similar to other polished stone tiles, which are also at 18%, and exemption to polished tiles made from one particular type of stone should not be considered.</p>
45.	Agricultural machinery / implements [8432 / 8433 / 8436]	12%	5%	<p>1. Raw materials for these machineries such as iron steel, plastic, and other metals, in general, attract 18% GST. Reduction in GST from existing 12% to 5% will deepen the duty inversion.</p> <p>2. Lowering rate from GST rate will lead to cascading of input taxes and lower GST rate will result in refund of accumulated ITC with associated carrying cost.</p> <p>3. Lowering rate from GST on manufactured goods will result in negative protection to domestic manufacturers vis-a-vis imports.</p> <p>4. Therefore, tax policy in general and indirect tax concessions in particular, does not appear to be the right instrument to provide relief in the instant case.</p> <p>5. Instead of tax policy, support through public expenditure, especially in the form of direct subsidy to the beneficiaries could be the most effective</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>policy option to provide assistance and relief in the instant case.</p> <p>6. The request had been considered in the 37th GST Council Meeting and had not been recommended.</p> <p>7. The Fitment Committee does not recommend any reduction in present GST rate.</p>
46.	Lithium ion batteries used in electric vehicles and on battery charging service	18%	Reduce	<p>1. 28th GST Council Meeting had recommended reduction of GST rate on lithium-ion batteries from 28% to 18%.</p> <p>2. Other batteries still attract GST at the rate of 28%.</p> <p>3. Lithium-ion batteries for EV are an input and the manufacturer of the EV is eligible for complete ITC and refund of accumulated credit.</p> <p>4. Further, schemes are being designed in order to promote the domestic manufacturing of Lithium-ion batteries in India and reducing rate to 5% will act against the concept of localisation as lower GST will incentivise the imports.</p> <p>5. The Fitment Committee does not recommend any reduction in currently applicable GST rates.</p>
47.	Linz Dinowitz (LD) Slag [2618]	18%	5%	<p>1. Linz Dinowitz slag is a well-mixed aggregate of FeO, lime, silica and MgO generated at the Linz Dinowitz converter. Linz Dinowitz slag is used for cement clinker production, in Sintering as a substitute to lime stone/dolomite rail track ballast.</p> <p>2. In the pre-GST regime, there was Excise Duty of 12.36% + 5% VAT on Slag so overall tax was approx. 18% in pre-GST regime. Accordingly, the present GST rate of 18% is in line with the pre-GST tax incidence.</p> <p>3. The Fitment committee recommends maintaining</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				status quo.
48.	Medicines & Pharmaceutical Preparations [29/30]	12%	5%	<ol style="list-style-type: none"> 1. As per serial number 180 of Schedule –I of notification No. 1/2017-Central Tax (Rate), certain specified drugs attract reduced GST rate of 5%. 2. Most drugs attract 12% GST, which is in line with pre-GST incidence. 3. The request for reducing GST rate to 5% on Medicines & Pharmaceutical Preparations is too generic. 4. The Fitment Committee recommends that requests to reduce GST to 5% (and not Nil) for specific medicines, if they are of comparable use/nature to those already present in List 1, may be considered after obtaining the recommendations of the Ministry of Health and Family Welfare or Department of Pharmaceuticals.
49.	Bunker Fuel [2710]	5%	Nil/1%	<ol style="list-style-type: none"> 1. Pre-GST, the product had general Central Excise duty rate of 14%. However, conditional exemption from Central Excise duty was given to the product when supplied to Indian flagged. The product attracted VAT at the weighted average rate of about 5%. 2. The supply of Bunker Fuel to foreign vessels initially attracted GST rate of 18% from 01.07.2017 to 12.10.2017. 3. The GST rate was reduced to 5% w.e.f. 13.10.2017 on the recommendation of GST Council during its 22nd GST Council meeting held on 6th October 2017, as it was felt that the high rate of GST was making India less competitive vis-a-vis neighboring countries like Sri Lanka. 4. The request to further reduce the rate to ‘nil’ was examined in the 31st GST Council, held

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>on 22nd December, 2018. As the commodity already attracts a low rate of 5%, no further reduction was recommended by the Council.</p> <p>5. The Fitment Committee recommends maintaining status quo regarding this matter as goods already attract concessional GST rate of 5%.</p>

Issues deferred by the Fitment Committee for further examination in relation to goods

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Items which originally attracted 28% GST	Varied	Compensation cess on the differential rate from 28% so that the rate of 28% is applied.	<ol style="list-style-type: none"> The GST rates on many items were reduced from 28% to 18%/12%/5% by the GST Council so as to increase compliance and give a boost to the sector. The Fitment Committee recommends that the proposal may be reviewed at a later stage, preferably at the meeting for the general review of rates.
2.	Raw Tobacco Leaves [2401]		Clarification is needed on the tax rate on the sale of "Raw Tobacco Leaves"	<ol style="list-style-type: none"> The issue requires further elaboration as to what is the exact issue for clarification. The Fitment Committee discussed that the earlier clarification issued in 2017 has led to resolution of the issue in some states. However, as the issue still remains in a few states, Fitment Committee recommends that a fresh clarification may be drafted by states so that Fitment Committee could examine the issue in detail.
3.	Compensation cess on Coal [2701] and [2702]	Rs. 400/MT	Compensation Cess may be imposed on ad-valorem basis	<ol style="list-style-type: none"> Pre-GST, coal, including lignite, attracted Clean Environment Cess at the rate of Rs. 400 per MT. With the rollout of GST, since 1st July, 2017, Clean Environment Cess on coal was abolished and a Compensation Cess of Rs. 400 per Metric Ton has been levied on coal (including lignite). GST rates including compensation cess have been prescribed to retain the incidence of the tax as it was in pre-GST regime. In the 12th meeting of the GST Council dated 16th March, 2017, the issue of rate of GST Compensation Cess on coal was discussed and it was decided to keep it same as to the Clean Energy Cess, which was being

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>imposed in Pre-GST.</p> <p>5. The issue was further discussed in the 37th meeting of the GST Council dated 20th September 2019. No reduction in present rate of Compensation Cess on coal was recommended by it</p> <p>6. The Fitment Committee decides to defer this matter for a detailed comprehensive examination.</p>
4.	Branded Pulses and Food Grains	5%	Nil	<p>1. The GST Council discussed rate on food grains put up in unit container and bearing a brand name in great detail and recommended 5% GST rate on the same.</p> <p>2. Subsequently, to check tax avoidance certain changes were made in the provision, including that if a dealer foregoes an actionable claim against his brand name, no GST will apply.</p> <p>3. There is adequate protection in GST for small suppliers. Such small suppliers are covered under turnover threshold exemption from GST. Further, small suppliers can opt for the composition scheme and pay tax at the rate of 1% of the turnover. This limit for the composition scheme has been increased by GST Council to Rs 1.5 Crore.</p> <p>4. Presently, due to the rate differential between branded and unbranded food items, the small and medium enterprises get some advantage and thus are benefitted.</p> <p>5. Branded food is sold at a premium over the unbranded food items.</p> <p>6. The issue of rate reduction on branded pulses and food grains was placed before the GST Council in its 31st and 37th meetings, but was not recommended by the Council.</p> <p>7. The Fitment Committee recommends that the issue may be kept at high priority for the future meeting on rate</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				rationalisation. Further, states may present their views on the issue.
5.	Unmanufactured Tobacco [2401]	28% + compensation cess 65%/71%	5%	<ol style="list-style-type: none"> 1. GST Council has recommended highest tax rate of 28% on unmanufactured tobacco (except tobacco leaves on which tax rate is 5%) 2. This is in consonance with the policy to tax tobacco and tobacco products at the highest rate as they are sin goods. 3. Further, burden of tax is not on farmers as tax on tobacco leave is 5% under RCM. 4. The Fitment Committee defers the issue for further examination.
6.	Raw silk & other silk weaving materials [50]	5%/Nil	Nil	<ol style="list-style-type: none"> 1. Raw Silk is already at nil rate. 2. Reduction in GST Rate on other silk value added product may not help. 3. It increases the cost for manufacturer as ITC gets blocked. 4. Fitment Committee in meeting dated 20th May, 2021 deferred the matter for further examination. 5. The Fitment Committee recommends that any decision regarding GST Rates on textile items shall be taken post decision of GST Council related to correction of inverted duty structure in textiles, since the matter related to correction of inverted duty structure in textiles is pending for decision with GST Council.
7.	Products of Handloom weavers Association [Any Chapter]	5%	Nil	<ol style="list-style-type: none"> 1. Reducing GST to Nil will result in blockage of input tax credits and increased cost for such domestic manufacturers and will not benefit consumer. 2. Fitment Committee in its meeting dated 20th May, 2021, deferred the matter for further examination and desired that further information for examination of this issue is to be collected.

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>3. The Fitment Committee recommends that any decision regarding GST Rates on textile items shall be taken post decision of GST Council related to correction of inverted duty structure in textiles, since the matter related to correction of inverted duty structure in textiles is pending for decision with GST Council.</p>
8.	<p>GST on reverse charge basis on tobacco supplied for manufacture of Smokeless Tobacco [HS 2403]</p>	<p>28% under forward charge</p>	<p>28% under Reverse charge</p>	<ol style="list-style-type: none"> 1. As per the recommendation of the GST Council in its 14th Meeting dated 18th and 19th May 2017, dried tobacco leaves are already under reverse charge. Unmanufactured tobacco is produced from such tobacco leaves which are further used to produce smokeless and smoking tobacco. 2. In case of Tendu leaves, Odisha Forest Development Corporation is the single agency for collection and sale of tendu leaves via open tenders. Thus, it was administratively convenient to have reverse charge mechanism. 3. Enduring reverse charge only for smokeless tobacco may not be possible and if a policy decision is taken, unmanufactured tobacco may be kept at reverse charge. 4. Further, not only GST but compensation cess will need to be kept under reverse charge. However, this will create a complicated tax structure as applicable excise duty and NCCD on tobacco still needs to be paid by the manufacturer and cannot be under reverse charge. 5. The Fitment Committee recommends that the proposal may be discussed in the already existing Group of Ministers (GoM) on capacity levy and composition scheme in certain sectors of GST.

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
9.	Stock transfer of intermediary product from one refinery [27]	18%	Nil	<ol style="list-style-type: none"> 1. This issue has arisen because the final product is not covered under the GST regime and therefore the ITC of input would become part of the cost of the final product. The total annual ITC stranded due to the final products not being under GST for the PSU OMCs is around Rs. 1,218 crore. 2. As the issue could be resolved only if concession for this particular item is given when supplied to distinct person and end-user-based exemption will be very difficult to administer. 3. The revenue implication as far as OMCs are concerned is not significant. This distortion will be resolved when petroleum products would be brought under GST. 4. The Fitment Committee examined the issue and, given the significant revenue ramifications, recommends a comprehensive data driven decision after collection of all relevant data.
10.	De-oiled Rice Bran (DORB) [2306]	Nil	5%	<ol style="list-style-type: none"> 1. Rice Bran was initially at Nil rate. The GST Council in its 25th Meeting held on 18.01.2018 decided to levy 5% GST on Rice Bran and Nil GST on De-Oiled Rice Bran. 2. However, as mentioned by the Department of Food, Rice Bran is now being sold as de-oiled rice bran. This is causing revenue loss on one hand and reduced availability of rice bran for oil extraction. 3. Levy of 5% duty on De-Oiled-Rice Bran will put it at par with other inputs to cattle feed such as oil meal cakes (other than cotton oil cake) and will also simplify the input chain. 4. Fitment Committee felt that this issue would have ramifications for the agriculture sector and recommended that the matter

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>may be deferred for assessing the implication in detail with further inputs.</p> <p>5. Post meeting of Fitment Committee, comments have been received from Department of Food and Public Distribution which states that:</p> <p>(i) At present, India imports huge quantities of edible oil each year which is about 60% of the total consumption.</p> <p>(ii) Government is encouraging and facilitating increase in the production of Rice Bran ' in the country. On demand side, it is being promoted among the consumers as a healthy medium of cooking. In order to carry forward the "Atmanirbhar" initiative of the Hon'ble Prime Minister, this Department is striving to reduce the dependence on imports of edible oil. Taking this forward, Committee of Secretaries (CoS) in its meeting held on 28" January 2021 recommended that the production of Rice Bran Oil may be increased in the country for domestic use and it may be promoted extensively as a healthy medium of cooking. These initiatives were taken based on the directions of Hon'ble Finance Minister in a meeting of COM held on 16"Feb 2021.</p> <p>(iii) Pursuant to the above decision, series of consultations have been held with major stakeholders including edible oil industry associations, rice millers' associations and Food Corporation of India. Series or meetings were also held the fourteen (14) major rice producing States and ways and means for increasing the production of rice bran oil to its optimum potential and its promotion for cooking were</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>discussed.</p> <p>(iv) The States were requested to assess the potential of rice bran oil production in the ice clusters located in their States and also enhance the capacity of rice mills so as to ensure that rice bran oil is extracted to the maximum.</p> <p>(v) The following actions have been taken to by DFPD for the promotion of Rice Bran Oil</p> <p>(a) Department of Revenue was requested to consider imposing 5% GST on Rice Bran being disposed as cattle feed to solve the problem of credit input. This is to be taken up in the meeting of GST Council.</p> <p>(b) FCI was directed to organize State Level interactive workshops with the Rice Millers and Field Offices to assess their technological requirements for availing benefit under MSE-Cluster Development Program (MSE-CDP) of MSME</p> <p>(c) Consultations were done with the States having Major Paddy/Rice clusters for details like number of Rice Mills, Total Milling Capacity, Total Rice Bran production, Rice Bran sent for Cattle Feed, Rice Bran sent for Solvent Extraction Plant, Number of Mills required up gradation and the issue is being followed up.</p> <p>(d) NAFED has informed that they are going to start sale of RBO through their outlets shortly.</p> <p>(e) In order to include Rice Bran Oil in “Eat Right India” campaign, FSSAI has provided material containing health benefit of Rice bran oil, the content of which is</p>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<p>being used for social media.</p> <p>(f) Social Media Campaign is being carried out through Tweets on Health Benefits of Rice Bran Oil based on the report received from the National institute of Nutrition, Hyderabad and FSSAI.</p> <p>(g) Department of industries and Department of Food of all States/UTs have been requested to ensure millers may avail of all benefits under various programs of the Central and State Governments.</p> <p>(h) Further, in order to take forward the above initiative of Rice Bran Oil further in a time bound manner, it was felt that a dedicated team would be required and therefore a small team for capacity building for increasing the production of Rice Bran Oil is being envisaged and is under examination in Departments IFD.</p> <p>(i) As a result of these initiatives, total rice bran production has now become 10.68 LMT against estimated potential of 18 LMT.</p> <p>(vi) However, diversion of rice bran for cattle feed without processing is a major impediment in this regard.</p> <p>6. The Fitment committee recommends that the issue may be examined in further detail prior to placing before Council for taking a view.</p>

Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relation to services

Sl. No.	Proposal	Justification	Comments
1.	<p>1. Request for GST exemption for FIFA Under-17 Women's World Cup 2021</p> <p>2. Request for GST exemption for AFC Women's Asia Cup 2022.</p>	<p>India is going to host 7th edition of FIFA under-17 Women's World Cup in 2021.</p> <p>Govt of India has given guarantees to FIFA including Guarantee No 8 relating to Tax exemptions.</p>	<p>Recommendation: FIFA U-17 World Cup, 2020 has been exempted vide entry No. 9AA and 82A of notification No. 12/17-CT[R]. Explanation may be inserted in the exemption notification that the exemption would be applicable irrespective of the year in which FIFA U-17 World Cup is held in India.</p> <p>Exemption on the same lines as given to FIFA U-17 World Cup may also be given to AFC Women's Asia Cup 2022.</p> <p>The 37th GST Council had recommended GST exemptions on goods and services related to FIFA U-17 World Cup 2020 [page no 8 and 130 of Agenda, Volume 3 refers]. Exemptions granted vide entry No. 9AA and 82A of Notification No. 12/17-CT[R]. However, these games were postponed in view of Covid.</p> <p>Since the FIFA U-17 Women's World Cup is postponed from 2020 to 2021 the number 2020 is to be replaced by 2021 or the year in which it is held, in the existing GST exemptions.</p> <p>Exemption may also be given on AFC Women Asia Cup, 2022.</p>
2.	Amendment in Sl No.1, 9D, 13, 74A and 80 of notification No. 12/2017-CT(R) and Sl. No. 3(iv)(g) of notification No. 11/2017-CT(R), both dated 27.06.2017.	Specified Services by an entity registered under <i>section 12AA of the Income-tax Act, 1961</i> (43 of 1961) by way of charitable activities is exempted from GST vide entry 1,9D, 13, 74A and 80 of notification No.	<p>Recommendation: Reference to section 12AB of Income Tax Act in the entries of notification No. 11/2017-CT(R) and notification No. 12/2017-CT(R), both dated 27.06.2017 may be included along with reference to section 12AA.</p> <p>Since, in order to claim income tax exemption under section 10 and 11 of</p>

Sl. No.	Proposal	Justification	Comments
		<p>12/2017-CT(R) and Sl. No. 3(iv)(g) of notification No. 11/2017-CT(R)</p> <p>Now in order to claim Income Tax exemption under section 10 and 11 of the Income Tax act, 1961, trust/institution has to register under 12AB of the Income Tax Act, 1961.</p>	<p>the Income Tax Act, 1961, trust/institution has to register under 12AB of the Income Tax Act, 1961, the reference to section 12AA of the Income Tax Act in GST notification may be replaced with “section 12AA or section 12 AB”.</p>
3.	<p>To extend the validity of GST exemption on transport of goods by vessels from India to Outside. This is currently valid till 30.9.2021.</p>		<p>Recommendation: Validity of GST exemption on transport of goods by vessel and air from a place in India to outside India, which is expiring on 30.9.2021 may be extended by one year.</p> <p>These services are presently exempt from GST [till 30.9.2021] vide entry No. 19A and 19B of notification No. 12/2017.</p> <p>This exemption was given as refund mechanism was not fully established. Initially up to 30.9.2018 and then extended every year. Now, refund regime is fully established. So there is a case for withdrawing this exemption.</p> <p>However, in the present position withdrawal of exemption may cause some disruptions for exports. Therefore, Fitment Committee is of the view that this exemption may not be tinkered with at this stage. Accordingly, exemption may be extended by another year.</p> <p>Fitment Committee was also of the view that all such exemptions which are being extended from time to time be comprehensively reviewed before the next meeting of the Council for seeking recommendation of the Council on merit.</p>

Sl. No.	Proposal	Justification	Comments
4.	<p>To amend S. No. 547 A (Condition No. 102) of the notification No. 50/2017-Customs dated 30.06.2017 to</p> <p>(i) obviate the need to re-export aircrafts, aircraft engines and other aircraft parts imported into India under lease within 3 months from the expiry of the lease period.</p> <p>(ii) same dispensation as apply to imports of aircraft on lease apply to lease of aircraft from SEZ. For this, either reverse charge on such is to be applied or exemption from IGST on goods part is to be granted even if IGST on lease service is paid by SEZ services provider.</p>	<p>a. Notification No. 50/2017- Customs dated 30.6.17, Sl. No. 547A exempts aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the CGST Act, subject to the conditions that the goods shall be re-exported within three months of expiry of lease period.</p> <p>b. Similar condition is prescribed vide notification No. 50/2017- Customs Sl. No. 557A and 557B for</p> <p>(a) Rigs and ancillary items imported for oil or gas exploration and production</p> <p>(b) All goods, vessels, ships (other than motor vehicles)</p> <p>Another condition in these notification is that IGST on imports of these goods is exempted provided importer pays IGST on lease rentals. However, in case of SEZ units, IGST is presently paid by SEZ units and not the importer. Therefore, SEZ supplies are being subject to double taxation.</p>	<p>Recommendation: Suitable changes may be made in notification No. 50/2017-Customs dated 30.06.2017 so as to</p> <p>(i) allow transfer of goods imported under lease without payment of IGST at the time of import to a new lessee in India upon expiry or termination of lease;</p> <p>(ii) allow this exemption even where the lessor located in SEZ pays GST under forward charge.</p> <p>It would be appropriate if the condition in exemption notification No. 50/2017-Cus, Sl. No. 547A, 557A & 557B that goods should be re-exported within 3 months of the expiry of the lease period for which they were supplied may be modified to allow, upon expiry or termination of lease, transfer of such goods to a new lessee in India, subject to suitable conditions.</p> <p>Also it may be prescribed that IGST exemption shall be available if IGST on lease rental is paid either by lessor or lessee.</p>
5.	To either zero-rate the lease rentals on lease of rolling	Services of leasing of assets (rolling stock	Recommendation: Exemption on leasing of rolling stock by IRFC to

Sl. No.	Proposal	Justification	Comments
	<p>stock assets by the Indian Railways Finance Corporation to Indian Railways,</p> <p>Or</p> <p>If this is not feasible, levy 5% GST with full ITC on lease rental payable by MoR to IRFC</p>	<p>assets including wagons, coaches, locos) by IRFC to IR is exempt from GST [entry 43 of notification No.12/2017 - Central Tax (Rate)]. Since the output of IRFC is an "exempt turnover", it is not entitled to claim ITC of taxes paid on acquisition of rolling stock [Section 17(2) of the CGST Act]. Zero rating or 5% GST will enable IRFC to take the benefit of ITC of GST payable on acquisition of rolling stock.</p>	<p>IR may be withdrawn by omitting Sl. No. 43 of notification No.12/2017 – CT (R).</p> <p>Zero rating is done only in case of exports and supplies to SEZ. There is no rationale now for exempting such supplies made to railways.</p> <p>It is proposed that the exemption on leasing of rolling stock by IRFC to IR may be withdrawn by omitting Sl. No. 43 of notification No.12/2017 – CT (R). The leasing of rolling stock shall then attract the same rate of GST as applicable on the underlying goods (rolling stock) under Sl. No. 17 of notification No.11/2017 – CT (R) and input taxes will not stick as cost.</p>
6.	<p>(1) Clarification regarding taxability of passenger transportation services supplied using motor cycle through Electronic Commercial Operators (ECOs) to ensure uniformity in taxation of the said services across the country.</p> <p>(2) Tax on AC buses providing inter-state services on All India Tourist Permit may be collected from online vendors</p>	<p>Transport of passengers by non-air-conditioned contract carriage is exempt from GST under Sr No 15(b) of Notification 12/2017 Central Tax (Rate).</p> <p>There is no uniform practice in the States regarding issuance of contract carriage permits in respect of motor cycles. Only 7 states in the country issue contract carriage permits for transport of passengers by motor cycles. As a result, Uber has to pay GST on passenger transportation service by motor cycles supplied through them. But, their competitors such as Ola and Rapido do not pay GST on such services.</p>	<p>Recommendation:</p> <p>1) Transport of passengers by any motor vehicles supplied through ECOs may be excluded from the exemption entry at Sr. No. 15(b), 15 (c) and Sr. No. 17(e) of notification no. 12/2017-Central Tax (Rate)</p> <p>2) Notification No. 17/2017-Central Tax (Rate), dated 28.6.2017 may be amended so as to make the ECO liable to pay tax on service of transportation of passengers by any motor vehicle through it.</p> <p>3) The above changes may be implemented w.e.f. 01.01.2022 so as to allow ECOs to make changes to their software etc.</p> <p>Notification No. 12/2017-Central Tax (Rate), Sl. No. 15 (b) exempts transport of passengers by non-air-conditioned contract carriage other than radio taxi for transportation of</p>

Sl. No.	Proposal	Justification	Comments
			<p>passengers, excluding tourism, conducted tour, charter or hire”.</p> <p>Similar exemptions have been given vide Sl. No. 15 (c) and Sr. No. 17 of Notification No. 12/2017 – Central Tax (Rate) on passenger transport services by way of:</p> <ul style="list-style-type: none"> • stage carriage other than air-conditioned stage carriage. • metered cabs or auto rickshaws (including e-rickshaws). <p>The primary justification for exempting transport of passengers by metered taxi cabs, auto rickshaw and other contract carriages has been that these services are supplied by small or individual operators for whom it would be difficult to meet the requirements of tax compliance; nor can the burden of tax compliance be placed on the individual recipients of service. However, this justification does not hold true in case of services supplied through organised players such as radio taxi networks or ECOs such as Uber India and Ola. This is the reason that radio taxis were excluded from the exemption on transport of passengers through non air-conditioned contract carriage in GST as well as service tax regime.</p> <p>In this context it is also relevant to note that ECOs have been made liable to pay GST on services of passenger transportation by radio taxi, motor cab, maxi cab, and motor cycle supplied through them.</p>
7.	(a) With reference to entries 3 and 3A in notification No. 12/2017-CT (Rate), it may be clarified as whether the phrase “work entrusted to it by Government” means	A State PSU has been mandated by Government of Odisha to create power transmission infrastructure in the	Recommendation: It was felt that the scope of exemption/concessions is being interpreted vastly leading to misuse and disputes of interpretation. Fitment Committee is of the view that these entries

Sl. No.	Proposal	Justification	Comments
	<p>general work mandate of the government entity or a specific work entrusted to the entity with funding for that work, and if later is the meaning of the phrase then what will be the treatment when funding by the Government is partial.</p> <p>A similar question has arisen in case of works contract service procured by BSF from private construction companies.</p>	<p>state. The PSU claims that it is their mandate to create infrastructure and they are eligible for 12% GST on all inward supplies/ procurements, irrespective of whether funding is by Government or not.</p>	<p>should be cleaned by removing Governmental authority and governmental entity from entries related to Works contract in Notification No. 11/2017- CTR dated 28.06.2017 and from entries 3 and 3A of Notification No. 12/2017- CTR dated 28.06.2017.</p> <p>Works contract services procured by a Government Entity attract concessional rate of 12% provided they are procured by the Government Entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or a local authority. [Notification No. 11/2017-CTR, Sl. No. 3 (iii), 3(vi) etc].</p>
	<p>(b) Request to clarify whether AIIMS, New Delhi is a Government Entity and thus entitled to procure WCS at concessional rate of 12% under notification No. 11/2017-CTR, Sl. No. 3 (vi)?</p>		<p>The intention of the proposals was to reduce the financial outlays for projects funded by the Central and State Governments but implemented through governmental entities set up by them. Intention was not to make the reduced rate of 12% applicable on works contract services supplied to PSUs or similar institutions like IIM/AIIMS/Ports.</p> <p>The intention of usage of terms “work entrusted to it by Government” appearing in the condition against Sl. Nos. 3 (iii),(vi),(vii),(ix) and (x) of Notification No. 11/2017-CTR, is evidently to cover specific work or supply made by a Government Entity to the Central Government or any State Government, Union Territory or a local authority under an agreement entered into for that purpose and for which the entire consideration is to be paid by the concerned Government or Local Authority, and not the general work mandate of that Government Entity or the general function it carries out in accordance with the objectives for which it was set up by an act of parliament or legislature or by any Government.</p>

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8.	<p>Request to clarify whether IIM Ahmedabad is (a) a Governmental Authority or (b) a Government Entity or (c) both and whether as a GA/ GE, it is entitled to procure pure services and composite supply of goods and services (where goods constitute not more than 25%) without payment of GST under notification No. 12/2017-CTR, Sl. No. 3 and 3A?</p> <p>VNIT Nagpur and Kandla Port Trust have also filed applications for advance ruling on the same issue. All these organizations are of view that they are Government Authority/ Government entity. The basis of this contention is that they have been <i>set up to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</i></p>	<p>Government Entity has been defined to mean an authority or a board or any other body including a society, trust, corporation, -</p> <p>(i) set up by an Act of Parliament or State Legislature; or</p> <p>(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</p> <p>Indian Institute of Management, Ahmedabad is established under IIM Act, 2017 which empowers it to attain standards of global excellence in management, management research and allied areas of knowledge. Amongst other the objective of IIM is to provide management education of high quality and to promote allied areas of knowledge as well as interdisciplinary studies. Powers and functions of the institute are vested under section 7 of the Act.</p> <p>Board of Governors of each IIM is the</p>	<p>Recommendation: As at Sl. No. 7 above</p>

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		<p>principal executive body and the Board shall in the exercise of its power and discharge of its functions under IIM Act, 2017 is accountable to the Central Government.</p> <p>Therefore, IIM Ahmedabad is of the view that they are Governmental authority as well as Government entity and all the concessional benefits prescribed for a government entity are available to them.</p>	
9.	Request to clarify GST rate of services provided by way of Indoor Amusement Parks/Family Entertainment Centers as 18% instead of 28% and define the word 'amusement park' in GST.	<p>Family Entertainment Centre (FEC) also known as Indoor Amusement Centre are attractions under Amusement sector.</p> <p>This segment of Amusement was also under the same bracket of taxation in the erstwhile regime of entertainment tax (which varied from state to state and at time was charged as per individual machine, revenue), Service tax, GST 28% and now at 18%. All our industry members were of the notion of 28% to 18% GST. State had also recognized them under Amusement Park segment.</p>	<p>Recommendation: (i) It may be clarified that admission to amusement parks attracts GST rate of 18% under entry 34(iii) of notification No. 11/2017-CTR irrespective of whether such parks are outdoor or indoor.</p> <p>(ii) The exemption entry should also be amended suitably to remove any ambiguity therein.</p> <p>1. Entry 34(iii) notification No. 11/2017-CTR prescribes 18% GST on the <i>services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go carting and ballet</i>. The GST was reduced from 28% to 18% vide notification No. 1/2018 – Central Tax (Rate) dt 25.01.2018.</p> <p>2. Entry No. 34(iii) in Notification No 11/2017- CT(R) dated 28.06.2017 levies 28% on the <i>services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like</i>.</p>

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			<p>The intention is thus clear that if amusement park does not have activity like casino, race club or IPL, the tax leviable is 18%.</p> <p>3. We may issue a clarification since there are separate entries at Sl. No. 34(iii) and 34(iiiia) of notification No. 11/2017-CTR for different set of services.</p> <p>4. Fitment also recommended that the wording of notification be suitably amended to remove any ambiguity.</p>
10.	To clarify the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.	<p>A cloud kitchen is a single kitchen premise through which multiple brands and restaurants operate. A cloud kitchen typically offers food under ‘takeaway model’ and ‘home delivery model’. Cloud kitchen or central kitchen are established to deliver to food to customers belonging to multiple brands using food aggregators such as Swiggy etc or allow customers to take away the food for consumption.</p> <p>In a cloud kitchen food prepared and delivered to a restaurant where customers of the restaurant consume the food, food may be delivered to an eating premise owned by multiple restaurants, food may be delivered to door step of a customer who places order for food using the</p>	<p>Recommendation:</p> <p>It may be clarified by way of a circular that services by way of serving of food, door delivery and take away by cloud kitchens/central kitchens are covered under ‘restaurant service’, as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].</p> <p>1. It is relevant to mention that there is no criterion or yardsticks specified in law to identify as to what would qualify as restaurant or eating joint. The word ‘restaurant service’ is defined vide Notification No. 11/2017 – CTR as amended by Notification No. 20/2019-CTR dated 30.09.2019 as below: -</p> <p><i>‘Restaurant service’ means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.</i></p>

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		<p>mobile apps of food aggregators such as Swiggy, Zomato etc. The food from central kitchen may be delivered to multiple restaurant outlets of a restaurant. Typically, a cloud kitchen offers food under 'takeaway' model and 'home delivery' model.</p> <p>A clarification is requested on whether the supply of food prepared by restaurants located in cloud kitchen is classifiable as 'restaurant service' attracting GST@5% or not. Other possible classification of supplies made by a central kitchen include 'other food and beverage' services attracting GST@18% with full ITC and also goods with HSN 2106 having description 'Food preparations not elsewhere specified or included' attract GST@18% with full ITC.</p>	<p>2. As per the above definition of restaurant service, service providers are restaurant, eating joint including mess and canteen. Cloud kitchen are typically delivery only models without eating joint. However, some of the cloud kitchen models may provide for eating facility to a customer.</p> <p>3. The explanatory notes in the classification of service states that '<i>restaurant service</i>' includes <i>services provided by Restaurants, Cafes and similar eating facilities including takeaway services, Room services and door delivery of food.</i></p> <p>4. Food serving, preparation and food delivery should all be covered under restaurant service and attract 5% GST [without ITC]. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service.</p>

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11.	Request for clarification on supplies made in an ice cream outlet.	<p>Ice creams manufactured are sold through franchise outlets across India. Ice-creams are sold through:</p> <ul style="list-style-type: none"> • 500 Gms. Retail Packs (bearing MRP) • Scoop of ice creams in Paper cups or cones • Melted Ice creams – in disposable glasses <p>The entire activity of sale at the store does not involve any element of service like table service, cutlery, cooking, preparation, etc.</p> <p>The retail outlets selling ice creams have always treated this activity as sale of goods and paid VAT/ Sales tax at full rate in all States across India since there is no element of service involved in the activity.</p>	<p>Recommendation:</p> <p>It may be clarified by way of a circular that Ice cream parlor sells already manufactured ice- cream. The activity of ice cream parlor, unlike restaurant, does not involve any cooking. Their activity is supply of ice cream as goods and not as a service, even if certain ingredients of service are present.</p> <p>Ice cream parlor sells already manufactured ice- cream and do not prepare ice-cream for consumption like a restaurant. It is supply of ice cream as goods and not as a service, even if certain ingredients of service are present. Restaurant service involves the aspect of cooking during the course of provisioning of service. Ice cream is a manufactured item and Ice-cream parlors do not engage in any form of cooking at any stage.</p>
12.	To notify 6-digit HSN Code for Multimodal transportation services	By virtue of Notification No. 78/2020-Central Tax dated 15.10.2020 every registered person having turnover of more than Rs 5 crores is required to report HSN at 6 digit level w.e.f 1.04.2021 on tax invoices issued by them.	<p>Recommendation: 6-digit HSN Code for Multimodal transportation services may be specified in the scheme of classification of services annexed to notification no. 11/2017- CT (Rate).</p> <p>Domestic multimodal transport has been recognized as a special category under transport segment in GST. Therefore, specifying a separate Service Code (upto 6 digits) under Head 9965 for Multimodal transport</p>

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		<p>However, there is no specific mention of multimodal transportation services under the SAC 9965 which covers Goods Transport Services.</p> <p>Further, there is no reference for multimodal transportation service under the Central Product Classification Code (CPC)</p>	<p>is only logical. The same would also remove any ambiguity/confusion in the industry over classification of this service.</p> <p>Consequent changes may also be made to explanatory notes (interpretative notes and explanatory notes to 9965).</p>
13.	Request to clarify GST applicability on free coaching services provided by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’ where funding is provided by Government to coaching institutions through grant in aid.	<p>Department of Empowerment of Persons with Disabilities (Divyangjan) has merged the six scholarship schemes into an umbrella scholarship scheme titled "Scholarships for Students with Disabilities" w.e.f. 15 April, 2018:</p> <ul style="list-style-type: none"> • Pre-matric Scholarship for Students with Disabilities • Post-matric Scholarship for Students with Disabilities • Top Class Education for Students with Disabilities • National Overseas Scholarship for Students with Disabilities • National Fellowship for Persons with 	<p>Recommendation: It may be clarified by way of a circular that free coaching services provided by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’ is covered by exemption from GST under the Sl. No 72 of the notification no 12/2017- CTR.</p> <p>Presently, <i>services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration are exempt [sl. No. 72 of notification No. 12/2017- CTR dated 28.06.2017 refers].</i></p> <p>Under the scheme of "Scholarships for Students with Disabilities", Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment provides the fund for the entire</p>

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		<p>Disabilities</p> <ul style="list-style-type: none"> • <u>Free Coaching for Students with Disabilities</u> <p>Free Coaching for Students with Disabilities is a scheme which aims to provide coaching for economically disadvantaged students with disabilities, having minimum 40% or more disability to enable them to appear in competitive examinations and to succeed in obtaining an appropriate job in Government/ Public/ Private sector.</p> <p>Under this scheme, Government releases funds to coaching Institutions/ NGOS which have been empanelled under the scheme. The entire expenditure of the coaching is funded by Government of India in the form of grant-in-aid.</p>	<p>expenditure incurred on coaching of selected Students with Disabilities as per the terms and conditions of the Scheme and agreement entered into with the concerned coaching institute. Fee component of the coaching is released directly to the coaching institutes/ centers concerned in the form of grant-in-aid. Grant-in-aid is released to the institutes concerned in two equal installments every year.</p> <p><u>The free coaching would be covered by the Sl. No 72 of the nf no 12/2017-CTR.</u></p>
14.	Request to grant GST exemption to training and assessment supplied by the Skill Training Providers and Assessment & Certification agencies respectively under Deendayal Antyodaya Yojana- National Urban livelihood Mission (DAY-NULM)	<p>1. For the sake of uniformity, common norms have been made applicable across all skill development schemes of different ministries of Govt. of India as per Cabinet's approval. Presently there are three major skill- trainings conforming to the common norms,</p> <ul style="list-style-type: none"> • Pradhan Mantri 	<p>Recommendation: Scope of Sl. No 72 of notification no 12/2017- CTR may be expanded to exempt training services where the Government bears 75% or more of the expenditure. [Presently Sl. No 72 of notification no 12/2017- CTR, exempts services provided to the Central/State Government, Union territory under any training programme for which <u>total expenditure</u> is borne by the Government.] This would cover training under Deendayal Antyodaya Yojana- National Urban</p>

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		<p>Kaushal Vikas Yojana (PMKVY) of Ministry of Skill Development and Entrepreneurship,</p> <ul style="list-style-type: none"> • Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU GKY) of Ministry of Rural Development, and • Deendayal Antyodaya Yojana-National Urban livelihood Mission (DAY-NULM) of MoHUA <p>2. MoHUA has stated that presently services of training providers and assessment agencies are exempt for two programs, namely, DDU-GKY and PMKVY and GST is being charged by Assessment agencies/training providers for DAY- NULM only.</p> <p>3. This disparity in taxation is causing many operational issues and leading to several requests from the States and UTs for exempting DAY- NULM</p>	<p>livelihood Mission (DAY-NULM), where part of the expenditure may be borne by the trainees.</p> <p>Presently, following skill development trainings are exempt from levy of GST vide notification no. 12/ 2017- CTR dated 28.06.2017.</p> <p><i>(i) Sl. No. 69: Any services provided by the National Skill Development Corporation (NSDC), a Sector Skill Council approved by the NSDC, an assessment agency or training partner approved by the Sector Skill Council or NSDC, in relation to-</i></p> <p style="margin-left: 40px;"><i>(a) the National Skill Development Programme implemented by NSDC</i></p> <p style="margin-left: 40px;"><i>(b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme</i></p> <p style="margin-left: 40px;"><i>(c) any other Scheme implemented by NSDC</i></p> <p><i>(ii) Sl. No. 71: Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training (NCVT).</i></p> <p><i>(iii) Sl. No. 72: Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union Territory administration.</i></p> <p>DAY-NULM has several sub-components, out of which two are</p>

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			<p>related to skill development. They are (i) Capacity Building and Training (CB&T) and (ii) Employment Through Skills Training and Placement (EST&P).</p> <p><u>(i) Capacity Building and Training (CB&T)</u> It is seen from the Capacity Building and Training DAY- NULM (Revised Operational Guidelines) dated 18.07.2018 that w.e.f. 1st April, 2015 that the funding under Capacity Building and Training component will be shared between the Centre and the States in the ratio of 60:40. In case of special category States this ratio will be 90:10 between the Centre and States. Further, in case of UTs (with or without legislature) 100 % funding will be provided by Central Government. So it would be exempt from GST vide Sl. No. 72 of the notification No. 12/2017- CTR dated, 28.06.2017.</p> <p><u>(ii) Employment Through Skills Training and Placement (EST&P)</u> This component of DAY-NULM will focus on providing assistance for development / upgrading of the skills of the urban poor so as to enhance their capacity for setting up self-employment ventures or secure salaried employment. Skill training will be preferably undertaken on a Public-Private-Partnership (PPP) model involving reputed institutes. The EST&P component may not be fully covered under the exemption provided at sl. No 72 as there is possibility of beneficiary to bear certain training cost.</p> <p>Fitment Committee recommends exempting such service where funding by the Government is 75% or more.</p>
15.	Notification No. 25/2019- Central Tax (Rate) dated 30.09.2019 and	To implement the following recommendation of the	Recommendation: Notification No. 25/2019- Central Tax (Rate) dated 30.09.2019 and corresponding

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	<p>corresponding IGST and UTGST notifications may be given retrospective effect from 1.7.2017 through Finance Bills, 2022 of the Union and the States but refund of GST paid during the period from 01.07.2017 to 30.09.2019 may be disallowed.</p>	<p>GST Council, made in its 37th meeting:</p> <p><i>“The Council approved to notify grant of Liquor License by State Governments against payment of license fee as a “no supply” under Clause (b) to Subsection 2 of Section 7 of the CGST Act, 2017 to remove ambiguity in implementation on the subject. The effect of exemption shall apply from 01.07.2017.”</i></p>	<p>IGST and UTGST notifications may be given retrospective effect from 1.7.2017 through Finance Bills, 2022 of the Union and the States but refund of GST paid during the period from 01.07.2017 to 30.09.2019 may be disallowed.</p> <p>Request of the States such as Haryana, Punjab, Odisha, and Andhra Pradesh for exempting GST on license fee charged by the State Governments for grant of liquor license w.e.f. 01.07.2017 or declaring the same as a no supply was discussed in several meetings of the GST Council.</p> <p>2. The GST Council in its 37th meeting recommended as under:</p> <p><i>“The Council approved to notify grant of Liquor License by State Governments against payment of license fee as a “no supply” under Clause (b) to Subsection 2 of Section 7 of the CGST Act, 2017 to remove ambiguity in implementation on the subject. The effect of exemption shall apply from 01.07.2017.”</i></p> <p>3. Notification No. 25/2019-Central Tax (Rate) dated 30.09.2019 was issued, to the effect</p> <p><i>“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called”</i></p> <p>4. Since the activity could not be retrospectively declared an unusual explanation was inserted: -</p> <p><i>“This notification is being issued to implement the recommendation of the 26th Goods and Services Tax council meeting held on the 10th March, 2018 that no GST shall be leviable on licence fee and application fee, by</i></p>

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			<p><i>whatever name it is called, payable for alcoholic liquor for human consumption.”</i></p> <p>5. However, this exemption did not help legally. In view of the above discussion, it is proposed that notification may be given retrospective effect from 1.7.2017 through Finance Bills, 2022 of the Union and the States but refund of GST paid during the period from 01.07.2017 to 30.09.2019 may be disallowed.</p>
16.	Rationalize the different GST rates levied on film distribution under the heading 9973 and 9996.	<p>An alert circular has been issued by the Principal Chief Commissioner of central Tax, Bangalore Zone, where it has been stated that with regard to ‘distribution of films’ wherein the agreement between the producer and the distributor, is on rental/profit sharing/commission basis etc., the service rendered by the distributor appears to be more appropriately classifiable under the SAC 999614, which attracts 18% GST rate.</p> <p>The industry on the other hand is classifying the same under SAC 9973 i.e. licencing services for the right to broadcast and show original films, sound recordings, radio and television programme etc. This entry attracts GST rate of 12%.</p> <p>The Producers Guild</p>	<p>Recommendation: GST rate on ‘Motion Picture, Video Tape and Television programme distribution services’ (Heading 9996) and ‘Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) rights’ [Heading 9973, entry 17(i) of Notification No. 11/2017-Central Tax (Rate)] may be unified at 18%. At present GST rate is 18% under Heading 9996 and 12% under Heading 9973.</p> <p>1. Presently ‘motion picture, videotape and television programme distribution services’ covered by Services Code 999614 attract GST rate of 18% under heading 9996 (vi) of Notification No. 11/2017-Central Tax (Rate). On the other hand, services by way of licensing of rights to broadcast or show films attract GST @ 12% under heading 9973 (i) of the said notification, which covers “<i>temporary or permanent transfer or permitting the use or enjoyment of intellectual property right in respect of goods other than IT technology software</i>”.(Heading 9973)</p> <p>2. The explanatory notes to Service Code 999614 state as follows:</p>

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		<p>has stated that from Service Tax to Maharashtra VAT, there have been circulars that there is a transfer of copyright at each leg of the film distribution whether by producer to distributor or further sale by distributor. Accordingly, it has been requested by them that both the entries may be rationalized.</p>	<p><i>Motion picture, videotape and television programme distribution services</i></p> <p><i>This service code includes:</i></p> <p><i>(i) distribution of audiovisual works, including granting permission to exhibit, broadcast and rent audiovisual works that are implicitly or explicitly protected by a copyright owned or controlled by the licensor, usually intended for theatres, television, home video market etc., such as live action or animated films, videos, digital media, etc.</i></p> <p><i>(ii) management services for motion picture rights</i></p> <p><i>Note: This product is transacted between the distributor and the exhibitor, television network, television station, video rental store etc.</i></p> <p><i>This service code does not include:</i></p> <p><i>- licensing services (by the copyright holder) for the right to reproduce, distribute or incorporate audiovisual originals, cf. 997332</i></p> <p>3. The explanatory notes to Service Code 997332 state as follows:</p> <p><i>Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme etc.</i></p> <p><i>This service code includes:</i></p> <p><i>- licensing services for the right to</i></p>

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			<p><i>reproduce, distribute or incorporate entertainment, musical such as broadcasting and showing of original films, sound recordings, radio and television programmes, prerecorded tapes and videos</i></p> <p>4. It can be seen that there is an overlap between explanatory notes to services codes 999614 and 997332. While “<i>granting permission to exhibit, broadcast and rent audiovisual works protected by copyrights</i>” is covered by Service code 999614, “<i>licensing services for the right to broadcast and show original films</i>” is covered by service code 997332. However, there is no difference between “<i>granting permission</i>” and “<i>licensing</i>”. Both mean the same thing.</p> <p>5. The alert circular issued by Principal Commissioner, CGST, Bangalore states that film distributors are wrongly classifying their services, i.e. distribution of films, under service code 9973 and paying GST at lower rate of 12%.</p> <p>6. Producers Guild of India vide their representation dated 26th March, 2021 has countered the alert circular citing the service tax circular No. 148/17/2011 dated 13-12-2011 which clarified as under -</p> <p><i>“In cases where distributor transfers the rights to sub-distributor, area distributor, exhibitor or theater owner, the distributor is liable to collect the service tax under copyright service and deposit it with the government exchequer. Similarly, when the sub-distributor or area distributor etc. further transfers the rights to any person, he is also liable</i></p>

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			<p><i>to collect the service tax under copyright service and deposit it with the government exchequer.”</i></p> <p>7. The Guild has also cited the Maharashtra VAT circular No. 32T of 2007 dated 3rd April, 2007, which clarified as under:</p> <p><i>“The film is produced by producers and through distributors/sub-distributors /theatre owners, it is exhibited in theatres. Here, right to use copyright (of film exhibition i.e. broadcasting) is given by producers to distributors/sub-distributors and by them, in turn, to theater owners or directly to theater owners.”</i></p> <p>8. The Producers Guild of India has also cited a guidance note dated 26-6-2017 prepared and circulated by Sector Committee of Media and entertainment sector in which under FAQ No. 10 it has been stated as under -</p> <p><i>“Q 10. Is the share of an Exhibitor of a film also liable for GST, under temporary transfer of copyright, since most films are screened on percentage basis (revenue-sharing)?</i></p> <p><i>Ans 10. The Exhibitor of a film is liable to pay GST @ 18% if cost of ticket is Rs. 100/- or below; or @28% if cost of ticket is more than Rs 100/-, on the entire consideration for sale of movie tickets (not merely on the share of the exhibitor), whether it is on revenue sharing basis or otherwise.</i></p> <p><i>On the other hand where the Distributor or Producer supplying film to the Exhibitor, whether it is on revenue sharing basis or otherwise, he would be liable to pay GST @ 12% on the consideration received</i></p>

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			<p><i>from exhibitor/distributor, as Temporary or Permanent Transfer of Intellectual Property Right.”</i></p> <p>9. Section 18 (2) of the Copyright Act makes it clear that the distributor is the owner of the copyright in respect of the rights assigned to him in the cinematographic film by the producer. This being so, he is entitled to act as the copyright owner in respect of those rights and assign them further to a sub distributor or exhibitor or to anyone else in accordance with the Section 18 (1) of the Copyright Act.</p> <p>10. Arrangements between distributors and theater owners (exhibitors) can either be on a principal to principal basis or on partnership, joint or collaboration basis. In principal to principal arrangements, the theater owner acquires copyright from the distributor. GST on supply of copyright @ 12%. However, where the distributor takes the theater on hire from the theater owner and exhibits the film, services supplied by theater owner to the distributor are renting of immovable property services (heading 9972) liable to GST @ 18%. There can be a third arrangement of joint operation or collaboration which is commonly known as revenue sharing arrangement. In this arrangement the distributor and exhibitor are constituents of an Association of Persons and supply services to each other. The terms of the agreement in such arrangement may or may not expressly spell out assignment of copyright by distributor or sub distributor to theater owner but the same is implied where the theater owner exhibits the film and sells the tickets for the same.</p>

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			11. In view of the above, the only possible solution appears to be unification of GST rates on services falling under the said two service codes at 12% or 18%.
17.	Clarification on recognizing Satellite Launch Services provided by M/s New Space India Limited(NSIL) to international customers as 'Export of Service'	It has already been clarified that PoS of satellite launch services by Antrix Corporation Ltd is outside India. The services supplied by NSIL are identical.	<p>Recommendation: It may be clarified that Circular No. 2/1/2017-IGST dated 27.09.2017, which was issued in the context of satellite launch services by Antrix is applicable to similar satellite launch services provided by NSIL.</p> <p>1. Circular No. 2/1/2017-IGST dated 27.09.2017 was already issued with the approval of GST Council to clarify the PoS of satellite launch services by Antrix Corporation Ltd.</p> <p>2. PoS of satellite launch service depend on whether service recipient is located within India or outside India, not on the service provider per se. It was clarified that PoS of satellite launch services of Antrix provided to customers located outside India is outside India. If the service recipient is located in India, the satellite launch services of Antrix would be taxable. Since, satellite launch services of Antrix are similar to that of satellite launch services of NSIL, we may clarify that Circular dated 27.09.2017 applies to NSIL also.</p>
18.	Request to issue clarification –GST on Overloading charges collected at Toll Plazas.	<p>1. Overloading charges cannot be regarded as consideration for any supply. It is charged to recover loss to the concessionaire due to overloading of vehicles</p> <p>2. Overloading charges are additional toll charges and toll charges</p>	<p>Recommendation: It may be clarified that overloading charges at toll plaza would get the same treatment as given to toll as in effect they are of similar nature as overloading charges.</p> <p>1. The National Highways fee (Determination of Rates and Collection) Rules, 2008 provides for rate for fee for overloading of the vehicle. [Rule 10]</p>

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		are exempted supply.	<p>2. Initially, the rules did not provide entry/plying of overloaded vehicle on highways even on payment of fine. Rule 10 provided as under-</p> <p><i>“10. Rate of fee for overloading. - [(1) Without prejudice to the liability of the driver or owner or a person in charge of a mechanical vehicle under any law for the time being in force, a mechanical vehicle which is loaded in excess of permissible [maximum gross vehicle weight in respect of such vehicle] shall not be permitted to use the National Highway or crossing the toll [fee plaza] until the excess load has been removed from such mechanical vehicle.”</i></p> <p>3. Only, by subsequent amendment vide Notification dated 25th Sep. 2018 overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate.</p> <p>4. Thus overloading charges are effectively higher toll charges. As stated, one of the underlying objectives appear that overloading deprives collection of tolls. It may be clarified accordingly.</p>
19.	To issue a clarification that, the words ‘Hire’ & ‘Renting’ should be read synonymously in Sl. No. 22 of the Notification No. 12/2017-CT (Rate)	Vehicle Manufacturers such as Tata Motors have entered into contracts with State Transport Undertakings (STUs) such as Brihanmumbai Electric Supply and Transport Undertaking (BEST) for deploying electric buses (with drivers) to run as stage carriage along with their periodic maintenance and repairs. STUs pays	<p>Recommendation: It may be clarified by way of a circular that the expression ‘giving on hire’ in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. This entry inter-alia covers giving on hire vehicles to State Transport Undertakings and Local Authorities.</p> <p>The decision of MAAR is based on the premise that the activity of renting a vehicle is distinct from that of hiring a vehicle. In case of renting,</p>

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		<p>these vehicle manufacturers on the basis of per kilometer running of these buses.</p> <p>Till now, the vehicle manufacturers had been claiming exemption under Entry No. 22 of Notification No. 12/2017-Central Tax (Rate) which exempts</p> <p><i>“services by way of giving on hire</i></p> <p><i>(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or</i></p> <p><i>(aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers.....”</i></p> <p>However, <u>Maharashtra Authority for Advance Ruling (MAAR) vide its order dated 14.06.2021 in case of M/s M.P. Enterprises and Associates Limited</u>, ruled that the service of operating buses for BEST is not exempt under Entry No. 22 of Notification No. 12/2017-Central Tax</p>	<p>there is a transfer of possession and effective control of the vehicle to another person, whereas in case of hiring the possession and control of the vehicle lies with the owner. In the case of M.P. Enterprises and Associates Limited, the MAAR observed that, though the ownership of buses lies with applicant (M.P. Enterprises) it is BEST that has the exclusive authority to determine routes and schedule of operation of these buses. <u>Therefore, there is a transfer of right to use or in other words effective possession and effective control of these buses from applicant to BEST</u>, thereby making it a taxable service in terms of Entry No. 10(i) of Notification No. 11/2017-Central Tax (Rate). The MAAR has also relied on various case laws to support this view.</p> <p>The terms on which vehicles are given on rent or hire to BEST as seen from the Request for Proposal (RFP) issued by BEST show that the service being sought by BEST is clearly rental services falling under Heading 9966 where effective control over running of the buses/vehicles is with BEST. The entities giving vehicles on hire to BEST are paid on per kilometer basis, subject to an assured or minimum per month payment. Therefore, the services supplied by these entities are not transport of passengers but of giving vehicles on rent or hire to BEST. Since the vehicles are given on rent or hire with operator, they fall under Heading 9966.</p> <p>At the outset it is stated that all the case laws cited in the MAAR ruling were in the context of positive list</p>

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		<p>(Rate) but is rather a taxable activity subject to GST @ 12% in terms of Entry No. 10(i) of Notification No. 11/2017-Central Tax (Rate) which covers rental services of transport vehicles with operators.</p> <p>In view of the stand taken by MAAR, SIAM and Tata Motors have requested for a clarification on applicability of GST on the service of maintaining and operating electric buses, which they provide to STUs</p>	<p>regime of service tax, where “hiring of vehicles” was defined as “transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods”</p> <p>This distinction that transfer of right to use constitutes a sale and giving on hire without transferring ‘right to use’ is a service has been extinguished in GST law. Schedule II declares supply of any goods without transfer of title as supply of service even if right to use is transferred. In GST transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) refers].</p> <p>The concepts of passing of effective control of goods to hirer etc. were used in pre-GST period to determine whether the transaction involved transfer of right to use and was thus a deemed sale under Article 366 (29A) of the Constitution or did not involve transfer of right to use and was thus a service. These concepts and distinctions have lost relevance under GST.</p> <p>The exemption at Sr. No. 22 of Notification No. 12/2017-Central Tax (Rate) indicates both Headings 9966 and 9973. Heading 9973 covers leasing of vehicles without operators/drivers. In such leasing, without driver, the effective control would naturally be with the hirer.</p> <p>The scope of GST rate entries/exemptions is determined with reference to Scheme of Classification of Services and Explanatory Notes.</p>

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			<p>The Explanatory Notes to Heading 9973 use the words hiring, renting, leasing synonymously.</p> <p>The vehicles taken on hire by State Transport Undertakings with or without operators, run on routes and timings decided and controlled by the State Transport Undertakings. If the words ‘giving on hire’ are interpreted in a sense that it will not involve giving effective control over running/plying of the vehicles to the State Transport Undertakings, then the exemption entry would become redundant. It is a settled principle of interpretation of law, that it should not be interpreted in a manner as to render it redundant.</p> <p>Fitment Committee recommends that issue be clarified appropriately.</p>
20.	<p>There are two classification entries in which printing may fall namely, service code 998386 which covers “<i>colour printing of images from film or digital media</i>” and service code 998912 which covers “<i>Printing and reproduction services of recorded media, on a fee or contract basis</i>”. It may be clarified as to what is the GST rate applicable in the services by colour lab owners by way of printing of photographs from digital media and making of photo albums and photobooks. It may also be clarified that the term “publisher” in entry at Sl. No. 27(i) under heading 9989 of notification</p>	<p>Printing of colour images using digital offset printers is being taxed at higher rate of 18% under Heading 998386. The said printing should fall under 998912 “<i>Printing and reproduction services of recorded media, on a fee or contract basis</i>”.</p> <p>The term ‘publisher’ may be interpreted in a narrow sense and lower rate of 12% may be denied to a printer who prints content belonging to a person who is not a publisher.</p>	<p>Recommendation: GST on services by way of printing of goods where only content is supplied by the publisher [Sl. No. 27 (i) of notification no. 11/2017- CT (R)] and on services falling under Service Code 998386 namely, “colour printing of images from film or digital media” [Sl. No. 21(ii) of notification no. 11/2017- CT (R)] may be unified at 18%.</p> <p>GST on printed goods falling under Chapter 49, which presently attract GST at the rate of 12% under entries from 127 to 132 of goods rate Schedule II may also be taxed at 18%.</p> <ul style="list-style-type: none"> As per Explanatory notes the service code 998912 (<i>Printing and reproduction services of recorded media, on a fee or contract basis</i>) excludes “<i>colour printing of images</i>

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	<p>No. 11/2017-CT(R) dt. 28.06.2017 includes any other person who owns the usage rights to inputs.</p>	<p>It is also their contention that printed pictures, calendars, photographs and other such goods are taxable at 12%.</p>	<p><i>from film or digital media</i>". At the same time the service code 998386 includes the colour printing of images.</p> <ul style="list-style-type: none"> • Accordingly, it has been clarified by Circular No. 84/03/2019-GST that service of "printing of pictures" falls under service code "998386: <i>Photographic and videographic processing services</i>" and not under service code "998912: <i>Printing and reproduction services of recorded media, on a fee or contract basis</i>". • The above position has also been upheld in the Advance Ruling in the cases of M/s Colo Color and of M/s Colortone. • Fitment Committee is also of the view that to eliminate disputes in GST, rate on services falling under Heading 998912, namely, printing and reproduction services of recorded media, on a fee or contract basis, should also be raised to 18%. • It is also argued by the photograph printers that the in the Customs tariff and goods schedule, photographs and photographic reproductions of plans, drawings etc. on sensitized paper are classified in the same heading as other printed matter on non-photosensitive paper such as plans, drawings, calendars and attract the same GST rate of 12%. Entries at Sl. No. 127 to 132 of schedule II (12% GST rate) of notification no. 01/2017- CT (Rate) cover goods such as plans, drawings for architectural engineering etc., their photographic reproduction on sensitised paper, calendars, other printed matter including printed pictures and photographs, advertising material, commercial catalogues, printed posters, pictures, designs and

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			<p>photographs etc. There is a case for prescribing standard rate of 18% on these goods.</p> <ul style="list-style-type: none"> A person who gets a photograph printed for himself cannot be considered as a 'publisher'.
21.	To clarify the applicability of GST on inter-state services rendered by ECIL, Hyderabad to the Office of the Chief Electoral Officer, Election Commission of India (ECI), Delhi.	<p>Electronics Corporation of India Ltd. (ECIL), Hyderabad, a PSU, supplies services such as first level checking, preparation of EVMs and VVPATs to ECI for conduct of General Elections to Lok Sabha.</p>	<p>Recommendation: A clarification may be issued to Chief Electoral Officer, Delhi that services rendered by ECIL, Hyderabad to the Office of the Chief Electoral Officer, Election Commission of India (ECI), Delhi are taxable.</p> <p>ECIL is a Public Sector Undertaking under Dept. of Atomic Energy.</p> <p>Sr. no. 8 of the Notification No. 9/2017- IT (Rate) dated 28.06.2017 exempts services provided by Government to Government. However, the services provided by PSUs to Government are not exempt. Thus, the services provided by ECIL to Chief Electoral Officer, are taxable. To be clarified accordingly.</p>
22.	Request for clarity in rate of taxation under GST regarding settlement of Sand Ghats (Bandobasti) for mining of Sand.	<p>The issue is related to the rate of GST on amount received for settlement of Sand Ghats (Bandobasti) by Mines and Geology Department during settlement of Sand Ghats.</p> <p>It may be noted that Mines and Geology Department of the State Government receives Royalty/ settlement amount in lieu of settlement of Sand Ghats for mining Sand. Therefore, it is supply</p>	<p>Recommendation: It may be clarified by way of a circular that the services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01.07.2017. The AAR have given divergent ruling as regards classification of this service under headings 997337 and 999113. The service is more appropriately classifiable under heading 997337. However, irrespective of its classification, under both the headings this service attracted GST at the rate of 18% as recommended by GST Council.</p> <p>Divergent rulings have been issued by Authority for Advance Ruling (AAR) and Appellate Authority for Advance Ruling (AAAR) of various States on</p>

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		<p>of service and it attracts levy of tax under GST Act. In all such cases GST Payment has to be made by the business entity on RCM</p> <p>Advance Ruling Authority of a few States have classified this service under SAC 997337- "licensing services for the right to use minerals including its exploitation and evaluation".</p> <p>A classification issue has been as to whether this service is classifiable under heading 997337 or 999113, which covers public administrative services related to the more efficient operation of business as provided by the Government</p> <p>Even after it, if there exists any doubt then this service would be covered by heading 9997, Other Service Group 99979, Service Code-999799 on which again the rate of 18% tax is leviable</p> <p>In the arena of above facts, this matter can be put before GST Fitment Committee for appropriate clarity on the issue of proper classification of service regarding settlement of Sand Ghats (Bandobasti) for</p>	<p>classification of services by way of granting mineral exploration and exploitation rights and the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 "licensing services for the right to use minerals including its exploration and evaluation", and attracted, prior to 01.01.2019, the same rate of GST as applicable to minerals, that is, 5%. AAAR, Odisha, on the other hand has ruled vide Order dated 5.11.2019 in the case of M/s Penguin Trading and Agencies Limited that though grant of mining lease is covered by service code 997337, the same was taxable @ 18% prior to 01.01.2019.</p> <p>The AAAR, Odisha has held that the rate of GST applicable on lease of goods may have been prescribed as rate of GST applicable to supply of like goods involving transfer of title over the goods, but the rate of GST prescribed for lease of goods can't be made applicable of leasing of mining area conferring the right to extract and appropriate the minerals.</p> <p>The AAAR further held that on a conjoint reading of notification no. 27/2018- Central Tax (Rate) dated 31.12.2018, minutes/ agenda/ proposal/ discussion of the GST Council, it was of the view that amendments have been carried out vide the aforesaid notification to clarify the legislative intent as well as to resolve the unintended interpretations. It is well settled that the legislative intent cannot be</p>

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		mining Sand.	defeated by adopting interpretations which is clearly against such interpretations. It is proposed to issue a circular on the basis of the Advance Ruling of AAAR, Odisha.
23.	To exempt GST on National Permit Fee paid on the vehicles for granting National Permits for goods carriage.	National Permit fee is not a consideration for any service provided and is actually in the nature of a tax. The fee deposited in the National Permit account is distributed on pro rata basis among all states and Union Territories shows that the same is not consideration for any service provided by any state Government /UT for grant of National Permit.	Recommendation: GST on National Permit Fee charged for granting permit to a goods carriage to operate through-out India/contiguous States, may be exempted. The Fitment Committee generally was of the view that national permit fee is not a tax but a fee or consideration for a service supplied by the Government in the form of grant of national permits for plying of vehicles. The fitment Committee, however felt that National permit fee may be specifically exempted from GST as this fee replaced a levy in the nature of tax levied by the states earlier on entry of vehicles in their states.
24.	To make ECOs such as Swiggy and Zomato liable to pay GST on restaurant service supplied through them. Or To declare ECOs as deemed supplier of restaurant service.	A detailed note on the issue is annexed.	Recommendation: ECOs such as Swiggy and Zomato may be made liable to pay GST on restaurant service supplied through them. Restaurant service may be specified under section 9 (5) of the CGST Act. However, services supplied by restaurants located in premises providing ‘hotel accommodation’ services having declared tariff of Rs. 7500/- and above per unit per day may be excluded. This change may be given effect to from 01.01.2022 so as to allow the ECOs time to make changes to their software etc.
25.	Scope of the term ‘in	Entry 3 of Notification	Recommendation: To resolve

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	<p>relation to' for entries at Sl. No. 3 and 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 may be clarified.</p>	<p>No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts from GST, "<i>Pure servicesprovided toby way of any activity <u>in relation to</u> any function entrusted to a Panchayat under article 243G of the Constitution</i>"</p> <p>Similarly, entry 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts from GST, "<i>Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. ... provided to by way of any activity <u>in relation to</u> any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.</i>"</p> <p>In the previous Fitment Committee meeting, it was decided that the Scope of the term 'in relation to' would be further examined in the next meeting. West Bengal was requested to send a draft clarification on the issue.</p>	<p>disputes regarding interpretation of the exemption entries at Sl. No. 3 and 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which exempt pure services and composite supplies (having 25% or less goods component) to Government, Local Authorities etc. in relation to Municipal and Panchayat functions, list of services which are exempt thereunder may be clearly specified. The following list of services were agreed to be specified as exempt under the said entries:</p> <ol style="list-style-type: none"> 1. Agricultural operations, including agricultural extension. 2. Land improvement, implementation of land reforms and soil conservation. 3. Minor irrigation, water management and watershed development. 5. Supply of drinking water. 6. Education, including primary and secondary school education. 7. Adult and non-formal education. 8. Healthcare and sanitation. 9. Family welfare. 10. Women and child development. 12. Water supply for domestic, industrial and commercial purposes. 13. Public health, sanitation conservancy and solid waste management. <p>The above change may be implemented from 1st January, 2022.</p> <p>2. Simultaneously, a clarification may be issued for the past</p>

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			<p>indicating that the intention was to exempt only the above services.</p> <p>The issue was discussed in depth. It was felt that issuing a clarification that only those services which are directly and integrally in relation to municipality or panchayat functions may not resolve the issue. It would lead to disputes as to what is directly or integrally connected with the functions specified in schedule 11 or 12 of the constitution.</p> <p>It was also felt that giving too liberal an interpretation to the exemption or leaving it to the government or local authorities to interpret what service is in relation to the functions specified in 11th/12th schedule may lead to different tax treatment of the same supply by different governments and the local authorities.</p> <p>Entries at Sl. No. 3 and 3A of Notification No. 12/2017-Central Tax (Rate) are being interpreted too widely. The intention was to was to exempt services which are directly connected with the functions entrusted to Panchayat or Municipality and not services remotely or vaguely connected with those functions such as consultancy, surveying, advertising or designing service etc.</p>
26.	(a) To prescribe End-use certification system / form for notification number 12/2017-CT (Rate) [entry no. 3], which exempts pure services provided to Government, Local Authority in relation to Municipality functions.	Under notification number 12/2017-CT (Rate) [entry no. 3], “pure services” provided to the Government or Local Authority or a Government authority by way of any activity in relation to any	Recommendation: As at Sl. No. 25 above

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		<p>function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution are exempt from levy of GST.</p> <p>Law Committee has decided that the expression “in relation to” has a wide meaning and therefore the exemption would cover all services such as advertisement in the print media for floating a tender for laying water pipeline, contract for counting the number of trees, survey of number of people living below the poverty line, services by consulting engineers, project management consultants for mono-rails, metro rails, roads etc.,</p> <p>As the suppliers of services to the Panchayat or Municipality are not in a position to know whether the services supplied are really in relation to a function entrusted to a Panchayat or Municipality, some sort of end-use certification system / form be devised which will be issued by the Panchayat / Municipality inter-alia declaring that the services supplied to them are in relation to a</p>	

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	<p>(b) Request to clarify that the services of hiring manpower by Cantonment Board for providing services of health, public garden, promotion of education etc. which are the functions entrusted to Municipality under Article 243W of the Constitution are exempt from GST</p> <p>‘Cantonment Board’ is a local municipal authority, defined under Section 10(2) of the Cantonment Act, 2006.</p>	<p>function entrusted under the Constitution as referred to above.</p> <p>“Pure services” provided to the Government or Local Authority or a Government authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution are exempt from levy of GST.</p> <p>They hire various manpower for providing various services in relation to functions entrusted to Municipality under Article 243W of the Constitution such as they hire contractual Doctors, lab attendants, pharmacists, staff nurses etc. for providing health services; mali, chowkidars for providing public gardens; contractual teachers, safaiwala etc. for promoting education; electrician, helpers etc. for providing street lighting.</p> <p>All these functions are delegated to municipality and the services of manpower is received to fulfill</p>	

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	<p>(c) To clarify that the services provided by the implementing agency, i.e. CSC-SPV, provided to MoSPI that activity of “Enumeration & Supervision” is exempt from GST under exemption entry 3 of notification No. 12/2017-CT(R) dated 28.06.2017.</p>	<p>these functions by the Cantonment.</p> <p>The Ministry of Statistics and Programme Implementation (MoSPI) has engaged the CSC e-Governance Services India Ltd, a Special Purpose Vehicle (hereinafter referred as CSC-SPV) of the Ministry of Electronics and Information Technology, as implementing agency for the conduct of 7th Economic Census (EC).</p> <p>Economic Census is a periodic exercise undertaken to measure the spread and penetration of the economic activities across the country through door to door survey in prescribed questionnaire form.</p> <p>The activities to be carried out by the implementing agency along with approved cost for each of the components are as under:</p> <ol style="list-style-type: none"> 1. Enumeration & Supervision (through door to door visit throughout country). 2. Training and assessment of the Enumerators & Supervisors engaged in field work of EC. 	

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		<p>3. Deployment of manpower to assist MoSPI and State/UT Governments in 7th EC activities.</p> <p>4. Helpdesk and Call-centre support.</p> <p>5. Awareness and sensitization</p> <p>6. Project Management Charges (@ 8% of project cost)</p> <p>With respect to tax liability admissible on the aforementioned components, the implementing agency has informed that the collection of data and supervision component is not liable to draw tax under GST as per notification No.12/2017- Central Tax (Rate) New Delhi dated 28th June, 2017 (Sl. No. 3).</p>	
	<p>(d) To clarify that the services of spatial planning study, provided by the institutes to Ministry of Panchayati Raj is exempt from GST under exemption entry 3 of notification No. 12/2017-CT(R) dated 28.06.2017.</p>	<p>The Ministry of Panchayati Raj, in collaboration with 16 architecture as well as engineering institutes has taken up the initiative for Gram Panchayat Spatial Development Planning on pilot basis.</p> <p>The proposed study seeks to set out a framework as to how a particular area in the panchayat can be developed taking into account available</p>	

Sl. No.	Proposal	Justification	Comments
		<p>resources. It seeks to promote decentralized planning with strengthening of local identity to create a framework for future policy decisions.</p> <p>As the ongoing spatial planning study seeks to enable panchayats to function as institutions of self-government in accordance with Article 243G of the Constitution.</p>	
27.	To clarify about liability of GST on Man Power Supply Services received by Panchayats, Municipalities and Local Bodies	<p>Notification No 12/2017 Central Tax-Rate dated: 28-06-2017 exempts certain services from the levy of central tax and similar notifications are issued by the state. Entry No. 3 of the said notification reads as under:</p> <p><i>“3.Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat, under Article 243 G of Constitution or in relation to any function entrusted to</i></p>	Recommendation: As at Sl. No. 25 above

Sl. No.	Proposal	Justification	Comments
		<p><i>Municipality under Article 243-W of Constitution.”</i></p> <p>In this regard any pure service related to those functions entrusted to a panchayat under Article 243 G of Constitution and those entrusted to Municipality under Article 243-W of Constitution are exempted.</p> <p>Many of Panchayats, Municipalities and Local Bodies are Obtaining Manpower like Computer Operators and office Personnel who are not directly related to service are received by these bodies. Such services has held not to be directly related to the functions entrusted to Panchayat under Article 243 G of Constitution and those entrusted to Municipality under Article 243-W of Constitution and hence tax was collected from such local bodies and Government Departments by the Contractors.</p> <p>In view of the above a clarification may be issued on the scope of</p>	

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		the words “ in relation to” in the interest of uniformity across the country	
View to be taken by GST Council			
28.	<p>To exempt GST on the following facilities provided to the members and ex-members of the Legislative Assembly, Secretariat, at Bengaluru</p> <p>a) Accommodation at Legislators Home Complex at nominal rent</p> <p>b) Conveyance within BBMP agglomeration limits with nominal rate per km</p> <p>c) Health Club for exclusive use of members and ex-members at nominal rate</p> <p>d) Commercial Establishments for essential needs of members like laundry, Bookshops, Railway/ KSRTC reservation counters, hotel, bakery given to private parties on rent</p>	<p>Hon’ble Home Minister and GST Council Member from Karnataka State in his note dated: 02-02-2021 has informed that the above facilities are provided by Karnataka Legislative Assembly Secretariat to their Hon’ble Members and ex-members to effectively discharge their constitutional duties and responsibilities as public representative and therefore collecting GST from them does not arise and requested to consider the proposal of exempting income earned by Karnataka Legislative Assembly Secretariat by excluding the above facilities provided to Hon’ble members and ex-members from the ambit of GST with retrospective effect.</p> <p>The Government is not considered to cover the Legislature as the Parliament and Legislative Assemblies and Council have their own secretariat and are providing services. Services provided by</p>	<p>Similar request for exemption for Parliament Secretariat was discussed in the 25th meeting of GST Council. The Council decided not to exempt the same observing that the law regarding registration was approved by the Parliament itself and it need not seek exemption from the same. The Council further observed that the pick-up charges by road for MPs was very small and they could afford to pay tax on the same.</p> <p>On the same reasoning, exemption may not be merited in this case too. However, GST Council may take a view.</p>

Sl. No.	Proposal	Justification	Comments
		<p>Government (Executive) and the Judiciary are exempted whereas the services provided by Legislature Secretariats are not specifically exempted.</p> <p>Further, the main issue relates to transportation services provided – whether it amounts to renting of vehicles or transportation of passengers.</p>	
29.	<p>To exempt Entry tickets, viewing gallery tickets, bus services and other services provided by Sardar Vallabhbhai Patel Rashtriya Ekta Trust (SVPRET) from GST.</p>	<p>Sardar Vallabhbhai Patel Rashtriya Ekta Trust (SVPRET) sponsored by the Govt. of Gujarat is managing the national project of “Statue of Unity”. The statue of unity is a memorial to the great Indian patriot and freedom fighter – Sardar Patel in the form of 182mtr high statue- the tallest in the world.</p> <p>This project will help to promote tourism in Gujarat as it is one of the major tourism destinations. On an average 15000 tourist are expected to visit this memorial daily. Since it is double the height of New York’s world-famous Statue of Liberty, decent number of foreign tourists are also likely to visit.</p>	<p>Recommendation: GST Council may take a view.</p> <p>1. Notification No. 47/2017-CT(Rate) under Sl. No. 79A has exempted services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any of the State Acts, for the time being in force.</p> <p>2. Section 2(1) of the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 defines “ancient and historical monument” as <i>“any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years-,”</i></p> <p>3. Also, “protected monument” means an ancient and historical monument which is deemed or declared to be protected monument by or under this Act as per Section 2(12) of the Act.</p>

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			<p>Section 4 of the Act empowers the State Government to declare ancient monuments to be protected monuments. SVPRET does not fall under the category of Ancient Monument or Protected Monument.</p> <p>4. A view may be taken</p>

Suggestions on Committee on E-Commerce Sectoral study of E-Commerce Operator (ECO) and Suppliers/ECOs dealing in Foods delivery etc. such as Swiggy and Zomato

As-Is State:

1. Restaurants charge and deposit 5% GST on the supply of services including supply of food and beverages. There is no ITC available to restaurants on this supply. Further, services upto Rs. 20 lacs have been exempted from registration under the Act. This exemption for services was extended to inter-State supply of services and supply through E-Commerce operators also.
2. It may also be noted that food aggregators such as Swiggy and Zomato are registered under Section 52 as tax collectors at source. It was noticed in one of the cases that a small pizza company in Haryana had a taxable turnover gap of more than Rs. 6 Crore in the turnover declared by Swiggy / Zomato in their GSTR-8 and the turnover declared by the said company in its GSTR-3B.
3. The committee observed there was no mandatory registration check by Swiggy / Zomato and there were restaurants supplying through Swiggy / Zomato which were unregistered.
4. It may be noted that even though the rate of tax is low but since food delivery is a flourishing business and the volumes are high, the amount of tax evasion is also high.
5. It is also seen that supply of food through such aggregators have increased especially in Covid times.

Gap:

6. In the State of Haryana, the data for Zomato, from October 2018 to December 2020 was analyzed and it was found that the gap in taxable turnover for suppliers where TCS deducted by Zomato was greater than turnover declared by such suppliers is **101 Cr.** Therefore, evasion of tax amount is around Rs. **5.20 Cr.**
7. In the State of Haryana, the data for Swiggy, from October 2018 to December 2020 was analyzed and it was found that the gap in taxable turnover for suppliers where TCS deducted by Swiggy was greater than turnover declared by such suppliers is **91 Cr.** Therefore, evasion of tax amount would be **4.5 Cr.**
8. It is important to note that this turnover may be much higher since there may be domestic supplies of these restaurants which may also not be reported.
9. It may be noted that since these are small restaurants which may be popular through social media but exists in small inaccessible places, it is difficult to detect and recovery tax revenues.
10. The concept of cloud kitchen was also discussed by the Committee and it was observed that most of these kitchens do not have a customer interface / dine-in facility, therefore, administration of taxes in such places which do not exist formally is difficult. It was also discussed that many of such kitchens show very high turnover.
11. It was also discussed that many of the restaurant businesses may not require extensive capital investment and may exist as mom and pop store which are started for very short period on experimental basis and then closed. Government of Haryana gave examples of two restaurant owners from other State who did supply of more than Rs. 4.5 Cr and Rs. 1.8 Cr in the State and are now untraceable.
12. It was discussed that in most of the cases the tax was being collected but it was not paid to the Government since the onus of return filing was on the restaurant owner. In many cases, the restaurant owner does not file his return or adjusts the tax collected through ECO in his domestic supplies.

13. It was discussed that an alternate mechanism to collect taxes at the time of supply should be devised.

Options to increase tax compliance:

(A) Option 1: To notify ECO as aggregator under section 9 (5) of the Act.

14. E-Commerce companies such as Swiggy / Zomato involved in supply of foods may be notified as E- Commerce Aggregators under Section 9(5) of the GST Act. Section 9(5) is reproduced as under :-

*Section 9 (5): The Government may, on the recommendations of the Council, by notification, **specify categories of services** the tax on **intra-State supplies** of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:*

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

It is pertinent to note that Section 9(5) can only be applied for **supply of services** and for **intra-State** supply of services.

15. It may be noted that the place of supply of restaurant services is the location where the services are actually performed i.e. the location of the restaurant itself.
16. Therefore, the services of supply, by way or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration may be notified as a category of service under Section 9(5) of the CGST / HGST Act.

Exclusion of supply of certain goods though being food or any other article for human consumption or any drink

17. It may be noted that other than restaurant services, there are goods such as ice cream, bakery items, chocolates etc. which are also supplied through online platforms such as Swiggy and Zomato. However, since there may be classification disputes in these items as now the online platform will be liable for classification and payment of taxes, the 9(5) levy may be restricted to restaurant services only.

Exclusion of certain restaurant services

18. Further, restaurants within hotel where the room tariff is more than Rs. 7500 may be excluded from this levy as the rate of tax is 18% for such supplies.
19. Currently, no separate GST return has been prescribed for Aggregators (Section 9(5) of the GST Act). In future, if it is decided that supply of food through E-Commerce will be converted into aggregators then a separate return will have to be prescribed for aggregators where GSTIN wise details of supply on which tax is being collected and paid by the E-Commerce operator will have to be declared. This return will be similar to GSTR-8 (TCS) return.

20. However, for complete data analysis the supply on which tax has been collected and paid by the ECO has to be declared somewhere by the restaurant in his GSTR-1 and GSTR-3B. This is to ensure that the restaurant continues to pay his taxes on non-ECO supplies. Alternatively, similar to the treatment of other aggregators, the supply on which tax has been collected as aggregator may not be declared by the restaurant in his GSTR-3B at all. This will ensure simplicity of compliance and return filing.
21. It may be noted that Notification 65/2017-CT dated 15th November 2017 extends the 20-lakh turnover (exemption) limit exempted for a person who supplies services through ECO. This limit is not applicable to those supplying under Section 9(5) of the GST Act. It is recommended that at the time of drafting the notification etc. it may be taken care that all restaurant services irrespective of the turnover fall under the aggregator category.
22. It may also be noted that currently aggregators are not paying any GST on delivery services stating that their delivery partners (mostly unregistered) are giving directly to their customers. The assumption is that since most of the electric partners will individually be less than Rs. 20 lacs therefore, there is no need of registration for them. It may be noted that the end customer does not have a choice of choosing the delivery partner, further, there is no invoice raised by the independent delivery partner to the end customer. The invoice, payment, refund and the entire lifecycle of the transaction is managed by E-Cos such as Swiggy and Zomato. Therefore, it is recommended that the E-Cos may also be made aggregators for such delivery services.
23. GSTN was requested to analyze the difference the taxable turnover gap between GSTR-8 (TCS) and GSTR-3B return for only those supplies who are supplying through Swiggy / Zomato. However, the turnover difference of all GSTR-8 and GSTR-3B was analyzed. The following results were obtained :-

FY	Difference between GSTR-3B and GSTR-8	Count of GSTINs	Total value in GSTR-8	Total value in GSTR-3B	Total Difference
2020-21	Upto 1000	23,218	358.29	357.29	0.99
2020-21	1000 to 10,000	40,053	781.98	765.59	16.38
2020-21	10,000 to 50,000	31,003	1,337.58	1,260.63	76.95
2020-21	50,000 to 1,00,000	12,382	861.40	772.15	89.25
2020-21	1 Lakh to 5 Lakhs	25,570	3,330.23	2,717.52	612.72
2020-21	5 Lakhs to 10 Lakhs	8,156	1,916.70	1,338.64	578.06
2020-21	10 Lakhs to 25 Lakhs	7,572	2,894.71	1,702.60	1,192.11
2020-21	25 Lakhs to 50 Lakhs	3,216	2,314.78	1,201.09	1,113.69
2020-21	50 Lakhs to 1 Crore	1,591	1,913.66	824.64	1,089.02
2020-21	Above 1 Crore	825	5,510.74	2,881.86	2,628.89
FY	Difference between GSTR-3B and GSTR-8	Count of GSTINs	Total value in GSTR-8	Total value in GSTR-3B	Total Difference
2019-20	Upto 1000	15,453	276.57	275.90	0.67
2019-20	1000 to 10,000	26,732	535.92	524.93	10.99
2019-20	10,000 to 50,000	21,316	883.37	829.83	53.54
2019-20	50,000 to 1,00,000	9,245	588.48	521.86	66.63
2019-20	1 Lakh to 5 Lakhs	19,516	2,207.03	1,738.04	468.98
2019-20	5 Lakhs to 10 Lakhs	6,166	1,386.91	948.64	438.27
2019-20	10 Lakhs to 25 Lakhs	5,919	2,243.16	1,308.91	934.25
2019-20	25 Lakhs to 50 Lakhs	2,678	1,871.47	930.68	940.79
2019-20	50 Lakhs to 1 Crore	1,566	1,928.22	843.81	1,084.42
2019-20	Above 1 Crore	1,104	6,710.63	2,939.85	3,770.78

It may be noted that the total taxable gap for the country in 2019-20 and 20-21 is **Rs. 15,167 Crores**. If average tax rate of 12% is assumed that is tax loss of **approx. Rs. 2000 Crores**.

(B) Option 2: To notify ECO as deemed supplier under the Act:

24. Details of Proposal:

(i) Declaring two separate supply:

- (a) Present supply of food material from restaurant (or supplier of goods e.g. drinks) to consumer through E-commerce Company may be declared as two separate supplies i.e. supply from restaurant (or supplier other than restaurant) to ECO (**Supply-1**) and then supply from ECO to consumer (**Supply-2**).
- (b) Thus, this option declares ECO as deemed supplier, and not as an aggregator.

(ii) Rate of tax and admissibility of ITC for supply-1:

- (a) No change in rate of tax and admissibility of ITC with respect to supply of food by restaurant and by supplier on supply of goods e.g. drinks.
- (b) Rate of tax on restaurant service (i.e. supply-1) will be as per the present provision of law i.e. 5% without ITC and 18% with ITC.
- (c) Rate of tax on supplies other than restaurant services will also be as per the present provision of law say on supply of ice cream, rate of tax will be 18% with admissibility of ITC.

(iii) Rate of tax and admissibility of ITC for supply-2:

- (a) **Rate of tax:** We may notify uniform rate of 5% on all supplies of food materials made by ECO, whether it is supply of food through restaurant services or supply of other goods (i.e. cold drinks, ice-cream, bakery items, chocolates, etc.)
- (b) **Admissibility of ITC:**
 - I. Admissibility of ITC on restaurant service or any food material: It will be restricted to the extent of 5% of value of restaurant services or any food material (i.e. drinks, ice-cream, bakery items, chocolates, etc.).
 - II. Admissibility of ITC on any services other than restaurant services and any goods other than food material: ITC will not be admissible on any services other than restaurant services i.e. IT services, man-power services, renting of premises, etc. or on any goods other than food material i.e. AC, furniture etc.

25. Why this option is preferable:

- (i) It is very simple option and doesn't distinguish between restaurant services and other food material.
- (ii) As rate on outward supply is same, there will be no issue relating to classification of goods.
- (iii) As ITC to the extent of 5% of the value of inward supply of restaurant service or any food material is admissible and other ITC is not admissible, computation of net tax liability is simple.
- (iv) There is no clarity how to treat supply from restaurant to ECO **in option 1** especially in cases where restaurant is registered person.
- (v) In option-1, ECO will not be eligible to avail ITC as rate is 5% without ITC. This will considerably reduce their profit margin. Therefore, this may not be acceptable to them.
- (vi) Though revenue to Government is less, model is clean, as it considers ECO as deemed supplier and therefore possibility of tax evasion is negligible.
- (vii) In future, other supply through ECOs may be declared as separate supply which may

assure tax compliance.

26. **Issue involved in preferring this option:**

- (i) It requires amendment in the Act, therefore its implementation may take longer time.
- (ii) It may generate fear among other ECOs such that they may be declared as deemed supplier in future.

Issues where no change has been proposed by the Fitment Committee in relation to services

Sl. No.	Proposal	Justification	Comments																																					
1.	GST on transportation of goods through multimodal transportation, particularly involving a coastal leg may be reduced from 12% to 5%	5% GST is levied on transportation of goods through road, rail, vessels and pipeline. However, 12% GST is levied if goods are transported by multimodal mode (involving two or more modes of transportation). Thus, single mode transportation is being preferred by the industry. As a result, the saving (in fuel, time, and expense) through coastal movement or multimodal transport becomes zero or negative. This anomaly is a discouraging factor for multi-modal transport.	<p>The existing rate structure of transport of goods is as under:</p> <table border="1"> <thead> <tr> <th>Service Description</th> <th>Rate</th> <th>Condition</th> </tr> </thead> <tbody> <tr> <td colspan="3">By Vessel</td> </tr> <tr> <td>In a vessel from a place outside India to customs station of clearance in India</td> <td>5</td> <td rowspan="2">No ITC of Input Goods except on vessels/ bulk carriers and tankers</td> </tr> <tr> <td>In a vessel, coastal transport</td> <td>5</td> </tr> <tr> <td>In a vessel from customs station of clearance in India to a place outside India</td> <td>Nil</td> <td>-</td> </tr> <tr> <td>By Inland Waterways</td> <td>Nil</td> <td>-</td> </tr> <tr> <td colspan="3">By Rail</td> </tr> <tr> <td>By Rail [other than in containers by anyone other than Indian Railways]</td> <td>5</td> <td>No ITC of Input Goods</td> </tr> <tr> <td>In containers by anyone other than Indian Railways</td> <td>12</td> <td>-</td> </tr> <tr> <td colspan="3">By Road</td> </tr> <tr> <td rowspan="2">By GTA</td> <td>5</td> <td>No ITC of Input Goods and Services</td> </tr> <tr> <td>12</td> <td>With ITC</td> </tr> <tr> <td>Multimodal</td> <td>12</td> <td>With ITC</td> </tr> </tbody> </table> <p>GST is a value added tax and availability of ITC of tax paid on inputs and input services at each stage of value addition is its fundamental feature. Seamless ITC chain helps. Therefore, multimodal transport may continue to be taxed at 12% with full ITC as it is not comparable to</p>	Service Description	Rate	Condition	By Vessel			In a vessel from a place outside India to customs station of clearance in India	5	No ITC of Input Goods except on vessels/ bulk carriers and tankers	In a vessel, coastal transport	5	In a vessel from customs station of clearance in India to a place outside India	Nil	-	By Inland Waterways	Nil	-	By Rail			By Rail [other than in containers by anyone other than Indian Railways]	5	No ITC of Input Goods	In containers by anyone other than Indian Railways	12	-	By Road			By GTA	5	No ITC of Input Goods and Services	12	With ITC	Multimodal	12	With ITC
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Sl. No.	Proposal	Justification	Comments
			<p>GTAs, most of whom are small players.</p> <p>Fitment Committee does not recommend any change.</p>
2.	<p>To amend Circular No. 354/119/2017-TRU (Pt) dated 07.07.2017 which exempts interstate movement of goods between distinct persons to include supply of services between distinct persons also.</p>	<p>The nature of GTA services mainly consist of booking Less than Truck Load (LTL) consignments from various customers in booking offices, aggregating the said consignments at applicable trans-shipments Hubs, transport of these consignments to an earmarked trans-shipment hub, redistribution of consignment to nearest delivery office and finally delivery of consignment to end customer.</p> <p>To conduct this entire operation, there is a network of many trans-shipment hubs and various branches/agencies.</p> <p>Under GST regime GSTIN has to be obtained in all the states, in which firm operates. The revenue is considered as taxable in the booking state where the goods are accepted for purpose of transportation. To complete the entire service the booking</p>	<p>The issue arises as GTA service attracts 5% on reverse charge without ITC. There is a need to resolve this issue to avoid double taxation. However, service provider has option to avail 12% rate with ITC which resolves this issue.</p> <p>Fitment Committee does not recommend any change for present.</p>

Sl. No.	Proposal	Justification	Comments
		state has to depend on various transshipment hubs and delivery offices located in other states. These units are considered as distinct entity/person under GST Law.	
3.	<p>1. Allow the airlines to pay GST on inputs and input services such as, aircraft lease rentals, MRO costs, computer reservation system (CRS) and global distribution system (GDS) charges under RCM, through utilization of input tax credit (ITC).</p> <p>2. Abolition of GST of 5% on import of owned aircrafts and lease payments on leased aircraft and Engines.</p> <p>3. Increase output GST liability to 12%.</p>	<p>Obligation to discharge GST liability on certain substantial costs such as, aircraft lease rentals, MRO costs, computer reservation system (CRS) and global distribution system (GDS) charges under RCM is leading to huge cash outflow for airlines, especially at this time when airlines are operating at less than 50% of their total capacity and facing liquidity and financial challenges</p> <p>It has been stated that airlines have inverted duty structure as output is subject to 5% GST but most of the Goods and Services are subject to 18% GST, resulting in large accumulation of credits. Therefore, it is recommended to increase output GST to 12%.</p>	<p>This request of the Civil Aviation industry has been driven by their desire to utilize the accumulated ITC. Examination of ITC ledgers and monthly returns, filed by 3 major airlines (Indigo, Spice Jet and Air India) at Delhi, Mumbai and Chennai reveals that they have mostly discharged their entire outward tax liability through ITC and even after discharging their entire tax liability, they have substantial accumulated ITC left in their ledgers. The reason of overflow of ITC in the aviation sector mainly is the low rate of 5% levy on economy class travel and availability of ITC of input services at this rate. Most of their major expenditure is towards input services which comprises aircraft lease rentals, MRO, airport charges etc.</p> <p>Structural change is required for civil aviation sector. All their output services could be taken to 12%. However this may not be feasible in present situation of civil aviation sector.</p> <p>Fitment Committee does not recommend any change.</p>
4.	Proposal for issuing a corrigendum to the Circular No. 34/8/2018-GST dt. 01.03.2018 by TRU clearly stating that considerations in	<p>Viewpoint 1:</p> <p>1. Rental of electric meters does not involve any transfer of property in goods</p>	<p>Circular No. 34/8/2018-GST dt 01.03.2018 clarified that:</p> <p><i>“Issue: Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act</i></p>

Sl. No.	Proposal	Justification	Comments
	<p>respect of</p> <p>(i) rental charges against electricity meter;</p> <p>(ii) application fees for providing electricity connection;</p> <p>(iii) testing fees for meters/transformers/capacitors;</p> <p>(iv) labour charges from customers for shifting of meters/service lines &</p> <p>(v) charges for duplicate bills;</p> <p>provided by Electricity distribution companies being essentially & directly related to services of “Transmission or distribution of electricity by an electricity transmission or distribution utility”, are also exempted from levy of GST.</p>	<p>but only a right to use given to the customer by the distribution company. Thus, such rental is also a service as per Sl. No. 5(f) of Schedule II of the CGST/SGST Acts, 2017.</p> <p>2. Notification No. 32/2010 - ST dated 22.06.2010 exempted “the taxable service provided to any person, by a distribution licensee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003(36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.”</p> <p>3. Notification No. 11/2010-ST dated 27.02.2010 exempted “the taxable service provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon</p>	<p><i>are exempt from GST?</i></p> <p><i>Clarification: Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017- CT (R), Sl. No. 25.</i></p> <p><i>The other services such as, -</i></p> <p><i>i. Application fee for releasing connection of electricity;</i></p> <p><i>ii. Rental Charges against metering equipment;</i></p> <p><i>iii. Testing fee for meters/ transformers, capacitors etc.;</i></p> <p><i>iv. Labour charges from customers for shifting of meters or shifting of service lines;</i></p> <p><i>v. charges for duplicate bill;</i></p> <p><i>provided by DISCOMS to consumer are taxable.”</i></p> <p>2. However, Hon’ble HC of Gujarat in case of Torrent Power Ltd Vs Union of India [Special Civil Application No. 5343 of 2018] dated 19.12.2018 has struck down the para 4(1) of the Circular No. 34/8/2018-GST dt 01.03.2018 as ultra vires the provisions of section 8 of the Central GST Act, 2017 as well as Notification No.12/2017- CT (R) serial No.25.</p> <p>3. The matter is pending for hearing before Hon’ble Supreme Court [24733 of 2019 in case of Union of India Vs Torrent Power Limited]. As the issue involves questions of law related to composite supply, the Apex Court may take suitable decision on the pending appeal.</p> <p>Fitment Committee does not recommend any action as matter is sub-judice.</p>

Sl. No.	Proposal	Justification	Comments
		<p>under section 66 of the said Finance Act.”</p> <p>4. It may also be stated in this context that a similar view was taken by the same TRU in a Service Tax Circular No. 131/13/2010-ST dt.07.12.2010.</p> <p>Viewpoint: 2</p> <p>5. These services are all intrinsic parts & parcel of the electricity distribution service itself and cannot be treated in isolation of such distribution service.</p> <p>6. So, as per the definitions above, such services as stated in Paras 1 & 2 above, form a part of a composite supply as per S. 2(30) where the predominant supply is electricity distribution service.</p> <p>7. Electricity distribution service being exempted from GST, as discussed in Para 10, the tax on such composite supply will also thus be exempted, based on the principle of</p>	

Sl. No.	Proposal	Justification	Comments
		<p>GST levy on composite supplies based on principal supply.</p> <p>8. The same principles have been upheld by the Hon'ble High Court of Gujarat in the order dated 19.12.2018 in the case of TORRENT POWER LTD. versus UNION OF INDIA [R/SPECIAL CIVIL APPLICATION NO. 5343 of 2018].</p>	
5.	To allow ITC on works contract, goods and services on construction of immovable property	<p>ITC pertaining to works contract services or supply of goods and services or both received by airport operators would not be available (except for ITC on machinery) due to restriction placed by Section 17(5) of CGST Act, 2017.</p> <p>Allowing ITC would indirectly benefit customers through reduced cost of services at the same time resolve cash flow issues faced by airports also.</p>	<p>Opening up ITC of Works Contract Service supplied for construction of immovable property, would promote procurement by businesses/ manufacturers of tax paid WCS. This would in turn encourage suppliers of WCS to procure tax paid inputs, capital goods and services. This will make manufacturing and export of goods and services more competitive.</p> <p>The proposal for opening up of ITC of WCS for suppliers of all taxable goods and services is in keeping with the cardinal principle of GST of allowing seamless flow of ITC. However, revenue implication of this proposal is expected to be of the order of magnitude of Rs 6300 crore at the same level of economic activity as in 2016-17.</p> <p>May not be accepted</p>
6.	To exempt GST on entry fee for regional language films	The Karnataka Film Chamber and Commerce Industry have raised the issue	In pre- GST regime, weighted average of entertainment tax on admission to cinema, based on GSDP data, was 30%. Further

Sl. No.	Proposal	Justification	Comments
	<p>screened on single screen.</p>	<p>of exemption of GST on regional language films like Kannada, Kodava, Tulu, Konkani and Banjara films in Karnataka. These films were exempted from payment of Entertainment tax prior to the introduction of GST.</p> <p>Representatives of the film industry have informed that due to the Covid-19 pandemic and consequent lock down, the survival of the film industry has become difficult and has requested regional films screened in single screen theatres to be exempted from GST.</p>	<p>ITC of tax paid on goods and input services were not available, taking the effective incidence to a higher level. In GST regime, ITC now being freely available, making effective rate of GST is lower than 18%.</p> <p>Further, to address the issue of regional cinema, rate has already been reduced to 12% where price of admission ticket is 100 or less and to 18% where price of admission ticket is more than Rs. 100.</p> <p>GST Council in its 16th Meeting held on 11th June 2017 has decided that, as the country is going in for One India-One Tax under GST, it might not be possible to have a lower rate in different States for different regional films. It would be better if the States reimbursed the regional film industry or the cinema theatres screening regional films in any manner that would best promote regional films.</p> <p>It was also decided by the GSTC that states may promote regional cinema by grant. WB has come up with a subsidy scheme. Fitment Committee felt that other States could also evolve similar subsidy scheme. Alternatively, State may devise suitable State specific scheme to exempt the local movie.</p> <p>Fitment Committee does not propose any change.</p>
7.	<p>To reduce GST on ropeway travel from 18% to 5%.</p>	<p>Ropeways are an important component of transport network of the country and are essential to provide last mile connectivity and mobility in hilly areas. They should not just be seen as a tourism activity</p>	<p>Transport of goods and passengers by all major modes of transport attract GST at the rate of 5% (without ITC) or 12% (with ITC).</p> <p>However, sale of cruise tickets attracts GST @ 18%. The reason behind lower GST rates on transport sector is that their major input i.e., petrol, diesel and ATF outside GST ambit. With respect to ropeway travel, one of the main inputs is</p>

Sl. No.	Proposal	Justification	Comments
			<p>electricity, which is also outside ambit of GST.</p> <p>Reducing the rate of GST to 5% without for ropeway travel will result in inversion; it will block the free flow of ITC and also increase the cost of suppliers of ropeway travel services.</p> <p>Considering the above facts and the fact that Ropeways are an important component of transport network of the country and are essential to provide last mile connectivity and mobility in hilly areas, Fitment may examine the request.</p> <p>No change recommended.</p>
8.	To ease the burden on power sector, GST on railway freight (5%) may be waived off for the year 2020-21.	To ease the burden on the power sector	<p>Transport of goods by rail is already taxed at the lower GST rate of 5% with ITC of input services. Any further reduction would not only have adverse revenue impact but also block the ITC of IR and the same will add to the cost.</p> <p>No change recommended.</p>
9.	Request for GST exemption on hiring of office space by MoSPI from the MTNL on rental basis.	MTNL has demanded 18% of GST on the advance rent paid by MoSPI. Since the GST amount is substantially high and it is to be paid from Government to a PSU, MoSPI has requested for GST exemption on the same.	<p>Presently, services of renting of space attracts standard rate of GST of 18%. Renting of space by Government from a PSU or private owner is not exempt from GST. All the Ministries of Government are paying GST on the renting service.</p> <p>May not be accepted.</p>
10.	Exempt GST on services provided by International Financial Services Centres Authority (IFSCA).	Services provided by other regulatory bodies like RBI, SEBI, PFRDA, IRDAI are also exempt from GST. IFSCA may also be exempted on similar lines. <u>Further, they have</u>	<p>There is no blanket exemption to statutory bodies in GST. Many statutory bodies like Warehousing Development and Regulatory Authority (WDRA), Petroleum and Natural Gas Regulatory Board) are not exempt from GST. Further, the nature of work of IFSCA differs from other RBI, SEBI, PFRDA and IRDAI. Further, GST on services provided by IFSCA to business entities would be available as ITC to the</p>

Sl. No.	Proposal	Justification	Comments
		<p><u>stated that section 26 of the IFSCA Act, 2019 states as follows:</u></p> <p><i>“Nothing contained in any other law or enactment for the time being in force, in relation to taxation, including the Income Tax Act, 1961, shall make the Authority liable to pay income-tax or any other tax or duty with respect to its income, services or profits or gains.”</i></p>	<p>business entities.</p> <p>With regard to section 26 of the IFSCA Act, 2019, it may be stated that GST is a federal tax where the power to exempt any supply rests with the GST Council, which consists of members of Centre and States. The said section of the Act would not be implementable without the approval of the Council. Including such a provision in any act would be infructuous as it would not lead to exemption from state GST since it flows from respective GST acts of the states.</p> <p>Further, in terms of the Government of India (Transaction of Business) Rules, 1961 all business allotted to a Department is required to be disposed of by or under the general or special directions of the Minister in charge. In particular, any proposal having revenue implication has to be through the concerned tax legislation and not through any other Act.</p> <p>May not be accepted.</p>
11.	Request for retrospective exemption from GST on the services provided by CCI.	According to CCI, the activities performed by them are not in the nature of service qua any person or party who approaches them but are essentially for protection of competition in the market and to remove distortions, in the national interest. It has also been emphasized that the activities undertaken by the Commission are statutory obligations. The statutory duties performed by CCI cannot be equated with any economic activity pursued in general trade (or) commerce so as to attract any	<p>In pre-GST regime, it was clarified vide CBIC circular dated 13.04.2016 that any activity undertaken against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not.</p> <p>2. In GST, exemption to SEBI and IRDAI has continued. In addition, Food Safety and Standards Authority of India (FSSAI) was given exemption from GST w.e.f 27.07.2018. FSSAI had also requested for retrospective exemption from GST but the same was not acceded to by GST Council.</p> <p>3 Further, Pension Fund Regulatory and Development Authority of India (PFRDA), Warehousing Development and</p>

Sl. No.	Proposal	Justification	Comments
		<p>indirect taxation. The statutory fees deposited by the parties in respect of any information filed or for any combinations are only incidental and not in the nature of 'consideration' which is pre-requisite for being classified as any service.</p> <p>2. It has also been pointed out by CCI that other regulatory bodies like SEBI and IRDAI, have been exempted from the liability of GST. Further, specified income of CCI namely, the amount received in the form of Government grants, the fees received by them and the interest accrued on such grants and fees are exempt under Income Tax Act, 1961.</p>	<p>Regulatory Authority (WDRA) and Petroleum and Natural Gas Regulatory Board (PNGRB) had also requested for GST exemption on services provided by them. However, GST Council has rejected these exemption requests.</p> <p>May not be accepted</p>
12.	<p>To consider our long pending demand to treat tourism industry as deemed exporter at par with IT Industry under Export of Services based on their foreign exchange earnings by relaxing the parameters/definition of Export of Service and by changing the criteria of place of supply.</p>	<p>Tour operators are earning valuable foreign exchange for the country by organizing inbound tours. However, under GST law, the place of supply of tour operator services is not linked with the location of overseas tourist / FTO / customer (the place of supply is declared as the location where services are actually performed i.e. in India). The place of supply should be</p>	<p>It was taxed in service tax regime in similar manner. Further, relaxation in this regard may impact revenue. Relaxing definition for a particular sector is not feasible.</p> <p>May not be accepted.</p>

Sl. No.	Proposal	Justification	Comments
		<p>linked with location of foreign tourist / FTO as in the case of IT Industry.</p> <p>IATO Request:-</p> <p>The services of tour operators earning foreign exchange for the country may be accorded with the status of “export of services” outside India.</p>	
13.	Request to exempt Mega International Conference of Asian Civil Engineering Coordinating Council being hosted by Institution of Civil Engineers (India) from 21 st to 23 rd September, 2022.	<p>It is the first time this international conference is being held in India. The event will unite nearly 800 professionals from over 15 countries to discuss the latest innovations, new strategies and best practices.</p> <p>Further various ministries are already supporting this as knowledge partners.</p>	<p>This is a request for new exemption. No exemption from GST has been granted to any such conferences in any case.</p> <p>May not be accepted.</p>
14.	Request to exempt all outward supplies of goods and services made by International Crops Research Institute for semi-arid tropics (ICRISAT).	<p>ICRISAT has been recognized by Government of India as an International Organization and granted privileges, benefits and exemptions under the United Nations (Privileges & Immunities) Act, 1947 through Gazette Notification No. UI/222(66)/71 dated 28th October 1972 issued by Ministry of External Affairs, Government of India.</p> <p>It has been stated by</p>	<p>Section 8 of the Schedule to UN (P&I) Act, 1947 provides that, “<i>While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.</i>” This is being achieved through Section 55 of CGST Act, 2017, as quoted above. UN (P&I) Act, 1947, however, does not exempt any outward supply of the international organisations notified under it.</p>

Sl. No.	Proposal	Justification	Comments
		<p>ICRISAT that exempt provisions of UNPI Act for transactions/activities undertaken by an organization notified under UNPI Act like ICRISAT have been missed in GST Act.</p> <p>Key activities of ICRISAT include:</p> <p>a. Capacity building activities like holding scientific conferences and seminars, training and workshops, meetings, and other agriculture related events for knowledge dissemination to researchers/scientists working in public and private organizations.</p> <p>b. Technical, scientific and research assistance/ guidance to public and private organizations.</p> <p>c. Technology transfer and knowledge dissemination to public and private organizations.</p> <p>d. Disposal of old and used machinery/ equipment/ goods, used vehicles, waste and scrap etc.</p>	<p>The benefits under UN (P&I) Act, 1947 were extended to ICRISAT by Ministry of External Affairs Notification vide notification dated 28th October, 1972. By virtue of being notified as a specified international organization under section 3 of UN (P&I) Act, 1947, following entitlements are available to ICRISAT:</p> <p>a. ICRISAT is entitled to claim refund of taxes paid on the notified supplies of goods or services or both received by them, as provided in section 55 of CGST Act, 2017 and notified vide Notification No. 16/2017-Central Tax (Rate) dated 28th June, 2017.</p> <p>b. Import of services by ICRISAT is exempt from paying GST vide entry no. 10G of Notification No. 9/2017-Integrated Tax (Rate) dated 28th June, 2017.</p> <p>It may not be advisable to exempt output supplies of ICRISAT in isolation when UN and other international organizations are not eligible for exemption.</p> <p>May not be accepted.</p>
15.	GST exemption on freight and air freight agents' commission for air transport of agri-horti produce,	There is no GST on transportation of the said items by road or rail. It hampers growth of air cargo sector.	The matter was discussed in detail. It was felt that presently airlines are eligible to take full ITC in respect of transport of agri-horticulture produce, fruits & vegetables, fish, shrimps, flowers and perishables.

Sl. No.	Proposal	Justification	Comments
	fruits & vegetables, fish, shrimps, flowers and perishables	<p>Some remote states and NE States have ample produce of such items and air cargo is the best way to carry these perishable items and give good returns to farmers of these states.</p> <p>It will also help Govt. Krishi UDAN & RCS/UDAN Schemes.</p>	<p>Exemption would block their ITC which they would pass on to recipients of service as part of the freight. An exemption may therefore, instead of helping the suppliers of the said items from north-east may actually harm them.</p> <p>Domestic transport of agricultural produce, milk, salt and food grain including flours, pulses and rice <u>by rail, vessel and road</u> is exempt vide S. No. 20 and 21 of notification No. 12/2017-CT (R) dated 28.6.17.</p> <p>Request is for extending exemption to air transport of agri-horticulture produce, fruits & vegetables, fish, shrimps, flowers and perishables.</p> <p>May not be accepted.</p>

Sl. No.	Proposal	Justification	Comments
16.	To grant GST exemption to Japan International Consultants Consortium for design and consultancy work for electrical packages for Mumbai Ahmedabad High Speed Rail (MASHR) Project.	<p>National High Speed Rail Corporation Limited (NHSRCL), a SPV of Ministry of Railways (MoR), is implementing the Mumbai Ahmedabad High Speed Rail Project with technical and financial assistance in form of Overseas Development Assistance from Japan.</p> <p>For the project consultancy work Japan International Consultants Consortium is funded by Japan International Cooperation Agency (JICA) as a grant for detailed design study of MASHR project.</p> <p>Now, NHSRCL is going to engage Japan International Consultants Consortium for design and consultancy work for electrical packages for MASHR Project and have requested for exemption as the services are provided under JICA grant.</p>	<p>The issue was discussed in detail. It was felt that any exemption on services supplied by the consultants/sub-consultants would require them to proportionately reverse their ITC. An exemption may not help either the JICA consultants or the railways as the blocked ITC would be passed on by the vendors to JICA consultants/railways as part of cost.</p> <p>As regards the services provided by JIC (JICA Consultants) site office in India to JIC, Japan, more details would be obtained as regards markup charged by them for further examination.</p>

Issues deferred by Fitment Committee for further examination in relation to services

Sl. No.	Proposal	Justification	Comments
1.	Exemption of GST payable on premium amount for long-term leases of 30 years and above executed by Government owned Institutions/ Industrial Development Corporations/ Undertakings.	<p>The Madhya Pradesh Tourism Development Corporation (MPTDC) grants long term leases of land for a period of 30 to 90 years to investors willing to invest in tourism related projects in the state. Such leases are currently not being considered within the exemption as the land in question does not lie within Industrial areas and the projects cannot be strictly termed as "Infrastructure development projects for Financial Business".</p> <p>Thus, it is proposed that Entry No 41 of the notification No. 12/2017-CT(R) be amended as follows:- <i>"Upfront amount(called as Premium, Salami, cost, price, development charges or by any other name) In respect of service by the way of granting of long-term lease of 30 years or more of plots for development of infrastructure for industry and for financial or other business, provided by the State Government Industrial Development Corporation or Undertaking or by any other entity having 20% or more ownership of Central Government, State Government, Union Territory to the industrial units or the developer."</i></p>	<p>Recommendation: Deferred. GoM to take a view.</p> <ul style="list-style-type: none"> Request of GST rate reduction on long term lease by Government owned Institutions/ Industrial Development Corporations/ Undertaking is already under consideration of GoM (Real Estate). During GoM (Real Estate) meeting dated 21.11.19, it was, inter alia, proposed that the- <i>GST @ 5% may be levied on long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by a *private person or entity, or an entity having less than 20% ownership of the Government.</i> The said recommendation was also placed before council in 38th meeting along with other recommendations of GoM. As per para 10.12 of the minutes of 38th meeting, the council agreed to the suggestion to refer the said issue to Fitment committee and then their recommendations might be discussed in GST council for the reason that it require little more examination on the account of its cross-implication.
2.	Exemption on the redevelopment of buildings in own co-operative housing society on ownership basis in Abhyuday	1. It has been decided to re-develop Abhyuday Nagar Co-operative Housing Societies Ltd. having 48 buildings and to allot occupants of these buildings	<p>Recommendation: Deferred. Matter is pending with GoM (Real Estate).</p> <p>Request to exempt the supply of construction services provided by the Co-operative Housing Society to its members</p>

Sl. No.	Proposal	Justification	Comments
	Nagar, Mumbai	<p>their own houses on ownership basis.</p> <p>2. It is claimed that there is no clarity on the GST applicable on the cost of the new alternate permanent accommodation to be provided to occupants. Earlier at the time of VAT such alternate permanent accommodation were exempted from VAT but due to GST this process of redevelopment is getting delayed.</p> <p>3. It is requested that it will be a landmark decision for the lower middle class if exemption is provided in this regard.</p>	is pending with GoM (Real Estate).
3.	Proposal to exempt the supply of construction services provided by the Co-operative Housing Society to its members.	<p>1. The Co-operative Housing Societies just reimburse the expenses incurred for procuring goods and services for construction purpose. In some cases, the Co-operative Housing Societies collect advance payment from members as per agreed term and conditions to meet the expenses to be incurred for construction of residential real estate property for the members.</p> <p>2. So, ideally there is no value addition when a Co-operative Housing Society is subsequently supplying of goods and services to the members.</p>	Recommendation: Deferred. Matter is pending with GoM (Real Estate).

Sl. No.	Proposal	Justification	Comments
		<p>3. But, the Co-operative Housing Society is liable to take registration since; it is providing taxable supplies to members in relation to construction of residential real estate property for the members.</p>	
4.	<p>(1) Request to reduce GST from 28% to 18% on wagering in horse racing</p> <p>(2) Request to exclude prize money from the taxable value of horse racing.</p> <p>(3) Request for clarification of taxability and valuation of supply in Casinos.</p> <p>(4) Clarification on the valuation and rates of GST on Online Gaming</p>	<p>There are disputes on these issues.</p> <p>Taxing the gross value of these activities d discouraging their consumption and deviation from international practice.</p> <p>Clarity is needed on valuation and taxability</p>	<p>Recommendation: Deferred. Matter is pending with GoM.</p>
5.	<p>Removal of cascading effect of GST on Tourism Industry by charging GST on Deemed Value.</p>	<p>Cascading effect of taxes under GST has been hurting the industry's margin and consequently, business to the extent that survival of small players is under threat. Under the GST regime, tour operator services are taxed under 5% tax slab with denial of Input Tax Credit (ITC) under SAC code 9985. 5% tax on entire package value results in taxing all the input service procurements made by the tour operator once again. This has resulted in cascading of taxes in the</p>	<p>Recommendation: Deferred. The Fitment Committee felt that the issues relating to tour operators/ tourism sector require comprehensive examination and these would be examined in details after obtaining all relevant information.</p>

Sl. No.	Proposal	Justification	Comments
		<p>entire supply chain. This defeats the very purpose of GST. A tour operator typically earns a mark-up of approx. 10% of his gross billing. Thus, income of a tour operator is primarily the margin earned which should only be taxed.</p> <p>After the implementation of GST tourism has been heavily taxed and the average tax on tourism industry works out to in the range of 18% to 23%. Indian tour operators are not able to compete with the neighbouring countries. Many foreign tour operators (FTOs) have started avoiding selling India as a tourist destination and instead they are promoting our neighbouring countries like Nepal, Bhutan, Sri Lanka, Malaysia, Thailand, Indonesia, UAE and Maldives etc. where taxes are between 6-8% only.</p> <p>A deemed value of 10% of gross billing of the tour operator may be considered as the taxable value which means effective rate of GST on the total package cost will work out to 1.8% of gross billing of the tour operator present rate of 5% GST on the gross billing is tax on</p>	
6.	Removal of GST on services provided outside India to foreign Tourists.	Many of our members while conducting tour to India for the foreign tourists include Nepal, Bhutan, Sri Lanka, Maldives and other neighbouring countries. In such tours IGST is payable on the entire package cost including services provided in neighbouring countries.	Recommendation: Deferred. The Fitment Committee felt that the issues relating to tour operators/ tourism sector require comprehensive examination and these would be examined in details after obtaining all relevant information.

Sl. No.	Proposal	Justification	Comments
		<p>However, IGST is fully exempted in case services are provided wholly outside India to foreign tourists and India is not part of the package tour (refer SI. No. 54 of IGST Exemption Not. No. 9/2017-IT(R) dated 28.06.2017). Also if such services are provided by the tour operator located in Nepal, Bhutan, Sri Lanka, Maldives, etc. GST is not applicable.</p> <p>GST/IGST may be fully exempted on the services provided outside India i.e. in neighbouring countries even if package includes India tour.</p>	
7.	Exempt services provided by District Mineral Foundations from GST	<p>A District Mineral Foundation (DMF) Trust is established by the State Government under section 9B of the MMDR Act, 1957, with an objective to work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities etc.</p>	<p>Recommendation: Deferred. The issue is not clear. The nature of activities undertaken by DMF may be obtained from Odisha.</p> <p>‘Local Authority’ has been defined u/s 2(69) of the CGST Act. It includes, among others, a Municipal Committee, a Zilla Parishad, a District Board, and <u>any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund.</u> The DMFs are constituted by the Government under a statute to supervise and regulate Mineral Development Fund created in a particular District.</p>

Agenda Item 15: Recommendations of the 15th IT Grievance Redressal Committee for approval/decision of the GST Council

The 15th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 12th August, 2021 at 11.00 a.m. to resolve grievances of the taxpayers arising out of technical problems faced by them on GSTN portal in relation to GST compliance filings along with cases of non-technical nature.

The agenda for the 15th ITGRC meeting covered the following issues-

1. Eleven cases of TRAN-1/TRAN-2 filing pertaining to Court cases.
2. Four cases of TRAN-1/TRAN-2 filing forwarded by nodal officers in terms of the decision taken in 43rd meeting of the GST Council to take up these cases which had been received from nodal officers prior to 31/08/2020.
3. Four cases of non-technical nature as per extended scope of the ITGRC, approved during the 32nd Meeting of the GST Council; and arising out of court cases.
4. Approval of Standard Operating Procedure (SOP) for correcting Technical issues requiring data fixes through backend utilities.
5. Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches.
6. Additional Agenda containing suggested resolution procedure for Refund case of M/s Atibir Industries in WP (T) No. 4061/2019

2. Recommendations of ITGRC in TRAN-1/TRAN-2 Cases forwarded by the nodal officers and court cases

The GSTN post technical analysis categorized the TRAN-1/TRAN 2 cases as:

- (A) category A1- Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors **or**
- (B) categories B1/B2/B3/B4/B6/B7 -where evidence of technical glitches were not observed post technical analysis. (details of categories mentioned in Annexure-2 of the minutes of 15th ITGRC

The Committee decided to recommend that:

- a. out of four cases forwarded by the nodal officers; one case falling under category A1 merits acceptance for opening the Portal for filing Tran-1 and remaining 03 cases falling under category B1 & B7 are liable to be rejected as no technical glitch was noticed by GSTN in these cases post technical analysis.
- b. out of 11 court cases; 2 court cases of TRAN-1 falling under category A1 are recommended for opening the Portal for filing Tran-1 and 08 cases of TRAN-1 & 01 case of Tran-2 falling under categories B1/B2/B3/B4/B6 are recommended for rejection.

3. Recommendations of ITGRC in cases forwarded by the Nodal Officers in the category of non-technical nature in terms of extended scope of ITGRC as per the 32nd GST Council meeting and as per the High Court order

The ITGRC recommended the 03 cases of M/s Ram Auto, Madurai, M/s. Precision Gasification Service Pvt. Ltd and M/s Carl Stahl Craftsman Enterprises Pvt. Ltd. that were covered under the prescribed parameters in terms of the extended scope of ITGRC by 32nd GST Council Meeting be

allowed for opening the Portal for filing Tran-1 and the rejected the case of M/s Precision Rubber Industries as it was not covered within the prescribed parameters.

4. ITGRC recommendation/decision on agenda for approval of Standard Operating Procedure (SOP) for correcting technical issues requiring data fixes through backend utilities

In the agenda, the GSTN has classified the issues pertaining to data fixes in the following two categories:

- A complaint got raised by taxpayer/ tax officer,
- Result of a periodic internal and external audits.

In order to perform the data fixes, the GSTN suggested that it would perform data analysis, and confirm if the data indeed contained discrepancy. Upon confirmation of the defect, complete list of similar cases would be extracted from the system that are suspected to require data fix, and an approval note with root cause analysis would be prepared and placed before a competent authority, who would approve for the data fix including the manner in which it is to be applied.

4.1 In this sequence of activities, the GSTN had prepared a generic list of typologies of errors that could come based on the pattern noticed so far and the approving authority for allowing the correction of the errors by GSTN would be as follows:

Sr. No	Technical issue Category	Modules affected	Type of error and knowledge of correct data	Approving Authority
1	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data known	Internal (SVP, GSTN)
2	Technical issue with no financial implications,	Such as Registration, Back office, Front Office etc.	Correct data not known	Internal (EVP GSTN) for resetting/ reopening the forms.
3	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data known	GSTN to correct data after Internal Approval by EVP/CEO. The tax administration to be provided with MIS.

4	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data not known with certainty	GSTN to correct data after internal approval by EVP/CEO. GSTN to enable the reset button so that the taxpayer can correct the form and file again. Post facto the approval of ITGRC to be taken and tax administration to be provided with MIS.
5	Technical issue affecting globally with financial implications	Such as cash ledger/ ITC ledger/ Refund etc.	Correct data not Certainly known	GSTN to enable the appropriate data fix after Approval of the ITGRC – Tax payer can reset the form and file again. The tax administration to be provided with MIS.
6	Taxpayers Claiming technical issue to be Defect	NA	No Action required– Clarification provided to the taxpayer	Not Applicable

4.2 The process to be adopted for correction by GSTN would be as follows:

- I. For most of the issues, as depicted in the above table, GSTN would be allowed to fix issues from backend with the approval of the ‘Competent Authority’ as may be approved/ nominated.
- II. For all the issues, a list with impacted GSTIN’s, CINs etc. would be prepared and shared with the competent authority as per Col. 5 above.
- III. The steps involved in the process would be:
 - a. The data discrepancy will be first analysed and confirmation will be sought from MSP
 - b. Upon confirmation, a utility will be written by MSP to extract all similar cases from GST System data stores.
 - c. A root cause analysis will be sought and fix would be implemented by MSP in consultation with GSTN to prevent further damage to data consistency.
 - d. Scripts (SQL or Java depending upon type of defect) will be prepared for data fix and would be tested in multiple cycles by MSP and GSTN.
 - e. Approval note will then be prepared and presented to competent authority for approval to go ahead.
 - f. Once approval is provided, audit entries will be created for each mutation affecting the data state.
 - g. Scripts will be executed and post execution state of data will also be stored for reference later.
 - h. List of all such changes will be presented and explained to GST policy wing & ITGRC

and periodic internal audit will also be undertaken.

4.3 The SoP, as above at para 4.1 and 4.2 was agreed by the ITGRC members and recommended for the approval by the GST Council.

5. ITGRC recommendation on Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches.

The following points emerged during discussion on the agenda at 15th meeting of the ITGRC:

- a. There is merit in waiver of interest being the cases analogous to the cases of waiver of fine and penalty.
 - b. There was a technical glitch in filing GSTR-8 Returns in all these cases but there was no glitch in payment of TCS amount into cash ledger.
 - c. The ITGRC recommends the waiver of interest only from the date on which deposit was made till the actual filing of the GSTR-8 statement wherever it could not happen because of technical glitch. However, in case there was delay in deposit of TCS from the due date of filing of Return, the ITGRC is not recommending waiver of interest.
 - d. ITGRC further observed that, there is no mandate for the ITGRC to consider cases of waiver/refund of interest due to technical glitch as the Circular no. 39/13/2018-GST dated 3rd April, 2018 mandates the ITGRC to recommend the cases of waiver of fine and penalty only.
 - e. Since there is no legal provision either in the GST laws for waiver or refund of interest, therefore, the decision needs to be taken by the GST Council to issue an appropriate notification under Section 148 of the CGST Act.
6. As regards the additional agenda of ITGRC containing suggested resolution procedure for Refund case of M/s Atibir Industries in WP (T) No. 4061/2019, as the same was returned by the ITGRC to GSTN for resolution through the tax administration, not being an IT issue.
7. The recommendations of ITGRC as per attached Minutes of the 15th ITGRC Meeting are placed as Annexure-A for information of the Council.
- a. The GST Council may give its approval on the TRAN-1/TRAN-2 cases and cases of non-technical nature recommended by ITGRC in para 2 and 3 above.
 - b. The GST Council may give its approval on the SOP to be adopted by the GSTN for correcting technical issues requiring data fixes through backend utilities, as per para 4 above.
 - c. GST Council may also issue suitable directions on issues raised in para 5 above, as proposed by the ITGRC.

Minutes of the 15th IT Grievance Redressal Committee (ITGRC) meeting dated 12/08/2021 held in online mode over WebEx Platform

The 15th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 12th August, 2021 at 11.00 am. The list of Committee officers who attended the meeting is attached as **Annexure-1**.

2. Ms. Ashima Bansal, Joint Secretary, GST Council Secretariat, initiated the proceedings of the meeting with the approval of the Chair. She welcomed the Chairman of the committee, members of the committee and gave a briefing about the agenda of the 15th ITGRC meeting. She informed that 15th ITGRC meeting is being held with the approval of the competent authority in the wake of technical issues requiring data fixes through backend utilities; reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches; the pending TRAN-1/TRAN-2 cases involving writ petitions before various High Courts and refund case. She further informed that there are **4 cases** forwarded by the Nodal officers and **11 court cases** pertaining to TRAN-1, TRAN-2 which are being presented in the 15th ITGRC for decision. Out of these 15 cases, **13 cases pertain to TRAN-1 and 02 cases pertain to TRAN-2** (enclosed as **Annexure-2**). Other agenda items pertain to **technical issues requiring data fixes through backend utilities** (enclosed as **Annexure-3**) and **Reversal of interest paid** (enclosed as **Annexure-4**).

3. She also informed that besides these, there are four non-technical cases on agenda (enclosed as **Annexure-5**), pertaining to M/S Ram Auto, Madurai, M/s. Precision Gasification Service Pvt. Ltd, M/S Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore and M/s Precision Rubber Industries, Coimbatore pursuant to Hon'ble High Court's decision. These are being presented before ITGRC as per extended scope of the ITGRC in terms of decision of 32nd GST Council meeting. Another agenda item, to be presented by the GSTN, pertained to refund case of M/s Atibir Industries Co. Ltd. vs. UOI and Ors, (enclosed as **Annexure-6**).

4. The Chairman ruled that first the committee would take up the regular agenda of the ITGRC and the agenda pertaining to data fixes, interest waiver and other agenda items would be taken up thereafter.

5. Sh. Dheeraj Rastogi, Executive Vice President, GSTN made a power point presentation on the background of the ITGRC meetings conducted so far which is attached as **Annexure-7**. He further presented the agenda of the present ITGRC in detail which is summarized in below paragraphs and table.

6. **Proposal of GSTN for 15th ITGRC meeting**

- (1) As explained above, a total of 04 cases (03 cases pertaining to TRAN-1 and 1 case pertaining to TRAN-2), received from Nodal officers along with 11 Court cases (10 cases pertaining to TRAN-1 and 1 case pertaining to TRAN-2), after technical examination by Infosys and GSTN, are being presented before 15th ITGRC for decision.
- (2) Considering the fact that the taxpayers have filed Writ Petitions alleging and insisting technical glitches, e-mails were sent to them with request to provide below mentioned information for further examination in respect of cases falling under category "B":

- i. GSTIN
- ii. Exact technical glitch faced while filing TRAN-1
- iii. Nature of error noticed
- iv. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

7. **Category-wise analysis of 15 (4 Nodal and 11 Court cases) TRAN-1 and TRAN-2 cases, received from Nodal Officers/Court Cases, are given below:**

i) **Cases where the taxpayers could not file TRAN 1/TRAN-2 because of technical issues:**

A1. Processed with error-In this category, the taxpayer has received error message as “Processed with Error”. The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details. **A total of 01 case received from Nodal officers and 02 cases received as court case are falling in this category.**

ii) **Cases where no evidence of technical glitches have been found after analysis of System logs:**

B1. Cases in which, there are no evidences of error on submission/filing of TRAN1, as per GST System log- As per GST System log, there are no evidences of error or submission/filing of TRAN-1. **A total of 02 cases received from Nodal officers and 05 cases received as court case are falling in this category.**

B2. Cases in which filing of TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported. - As per GST System logs, the taxpayers have claimed that they tried to save/submit for the first time or for revision of TRAN 1 but analysis of logs show that there is no system error. **A total of 01 cases received as court case is falling in this category.**

B3. Cases in which TRAN 1 have been filed successfully as per logs with no valid error reported- The taxpayer has successfully filed TRAN 1 and no technical errors have been found in the examined technical logs. **A total of 01 case received as court case is falling in this category.**

B4. TRAN-1 filed once but credit not received. - Cases where the taxpayer has filed TRAN1 once and claims that no credit have been posted. No technical issues have been observed in the logs. **A total of 01 case received as court case is falling in this category.**

B6. TRAN-1 filed, eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported.As per Logs TRAN-1 filed successfully. Eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported in logs. **A total of 01 cases received as court case is falling in this category.**

B7. Cases where TRAN-1 not filed, hence TRAN-2 not attempted - As per Logs Tran-1 not filed. Table 7(a) & section 7b or section 7(d) value has not been declared from the Taxpayer. Hence Taxpayer was not eligible for filing Tran-2. Also as per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated. **A total of 01 case received from Nodal officers is falling in this category.**

Case wise Discussion by ITGRC in matters of Writ Petition:

Category-wise count of Orders passed in court cases

Sr. No.	Court Order/WPs	Category A (TRAN-1/TRAN-2)	Category B (TRAN-1/ TRAN-2)	Total
1	Direction to allow filing of TRAN-1/TRAN-2 manually/electronically	1	1	2
2	No specific order passed	1	7	8
3	Direction to Respondents/Nodal Officer to pass appropriate orders	-	1	1
	Total	2	9	11

8. Category A1: Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors.

8.1 CWP 4547/2021-M/s AAR AAR Technoplast Pvt. Ltd, Faridabad Vs UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
06AADCA2129G1Z5	Haryana	Private Limited Company

Issue: The Petitioner submitted TRAN-1 on 26.08.2017. The message “Processed with error” was displayed on the GST Portal. The Petitioner was entitled to carry forward ITC of Rs. 4,78,364/- which remained unutilised in view of the technical glitches of the GST Portal. The Petitioner submitted TRAN-1 but CENVAT credit was reflected in the credit ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 26.02.2021 apprised the status of case to the CGST Commissionerate (Faridabad) in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending Hon’ble High court of Punjab & Haryana. The court vide order dated 26.02.2021 has directed that the matter should be listed after the decision of SLP (C) Nos.7425-7428 of 2020 therefore the next date of hearing is not available on the court’s website. No effective order is available on the court’s website in this matter.

Technical Analysis: -As per GST System logs, the Petitioner first time opened TRAN-1 and filed. ARN was generated for first attempt. Revision was also tried by the Petitioner. The Petitioner tried to save data as well. During first attempt and revision, while doing save/submit attempt, error was reported on the GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. AADCA2129GXM002/AADCA2129GXM001/AADCA2129GSD004. This registration was not added till 27/12/2017. ITC ledger was also not updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

Discussion & Decision:

The ITGRC approved the proposal of the GSTN in view of the technical analysis report and recommended the case.

8.2 W.P. (c) 221/2020-M/S U.K. Paints India Private Limited v. UOI& Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AAACU0057C1ZR	Uttar Pradesh	Private Limited Company

Issue: The petitioner has alleged that due to glitch in the GST system the GST TRAN-1 form could not be filed as during the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

Status: GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 27.05.2021. The Court has directed that Respondents are directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN-1 Form is filed.

Technical Analysis: -As per GST System logs the Petitioner first time opened TRAN-1 and filed it. ARN was generated for first attempt. During first attempt and revision while doing save/submit attempt error was reported on GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. 09267900686/09268900686C/ 09AAACU0057C1ZR and 09267900686/09268900686C. These registration details were not added till 27/12/2017. Ledger was updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

The Petitioner was also trying to claim ITC by adding his own GSTIN 09AAACU0057C1ZRITC in TRAN-1. This was a wrong way to claim ITC.

Discussion & Decision:

The ITGRC approved the proposal of the GSTN in view of the technical analysis report and recommended the case.

Category B1: As per GST System log, there are no evidences of error or submission/filing of TRAN-1

8.3 SBCWP No. 1687/2020 M/s Nakoda Medical Agencies v. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
08AEXPB4584P1ZJ	Rajasthan	Proprietorship

Issue: The petitioner filed TRAN-1 on 26.12.2017 for carrying forward a credit of Rs. 2,62,716/- as SGST and Rs. 1,03,816.08/- as CGST, however due to technical glitches, same could not be filed through online mode. On account of such glitch, the amount entered in TRAN-1 was not reflected in electronic ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 12.2.2021 apprised the status of case to Jodhpur Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Rajasthan and the next date of hearing is not available on court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 13.03.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 15.03.2021. The Petitioner replied vide email dated 15.03.2021 explaining that due to technical glitches, system errors and huge traffic at common portal (www.gst.gov.in) they failed to upload form GST TRAN-1 by due date of 27-12-2017. No screen shot evidencing error has been provided by them as they contended that they were not aware regarding preserving any evidences e.g. screenshots, etc. of attempt made by the petitioner firm while uploading form GST Tran-1.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed the form TRAN-1. There are no logs of "save. The ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

8.4 W.P.A. No.10104/2021-Hospital Supply Company Pvt. Ltd v. Union of India& Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AABCH9266R1ZM	West Bengal	Private Limited Company

Issue: The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

Status: GSTN is a party in this matter. GSTN vide email dated 19.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing was 3.05.2021. The next date of hearing in this matter is not updated on courts website.

Further investigation by GSTN:-An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021. No response was received by the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

8.5 W.P.A. No.10103/2021-P. Bhogilal Pvt. Ltd v. Union of India & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AABCP7871N1ZN	West Bengal	Private Limited Company

Issue: The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

Status: GSTN is a party in this matter. GSTN vide email dated 20.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon’ble High Court of Kolkata and the last date of hearing is 3.05.2021. The next date of hearing in this matter is not updated on courts website.

Further investigation by GSTN:-An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

8.6 SCA No. 10257/2020-M/s Kishore Vadilal (P) Ltd. v. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
24AAACK5882F1ZK	Gujarat	Private Limited Company

Issue: The Petitioner stated that they were unable to file the GST FORM TRAN 1 due to technical glitch. The Petitioner alleged that the glitch was due to the error in the core field of registration of the Petitioner. The Petitioner was erroneously granted registration certificate as a proprietorship firm on account of error in migration instead of Private Limited Company. The Petitioner’s letter of undertaking was not accepted. Petitioner had tried to file an online application dated 03/03/2018 for amendment in the registration and subsequently amended registration certificate was issued to the petitioner on 26/04/2018.

Status: GSTN is a party in this matter. GSTN vide mail dated 08.03.2021 shared its comments in the matter with the concerned Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated

03.04.2018. The matter is pending before the Ahmedabad bench of Gujarat High Court. The next date of hearing in this matter is not updated on courts website. No effective order is available on the Court's website.

Further investigation by GSTN:-An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
 - ii. Nature of error noticed
 - iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.
- The Petitioner was requested to provide the details by 11.06.2021.

The Petitioner responded vide email dated 11.06.2021 that the petitioner alleged that the glitch was due to the error in the core field of registration of the petitioner. The petitioner was erroneously granted registration certificate (01/07/2017) as a proprietorship on account of error in migration instead of Private Limited Company. Amended registration certificate was issued to the petitioner on 26.04.2018.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of "save" as well. ITC ledger has also not been updated. The Petitioner had done core amendment for change in Constitution of Business on 2nd April, 2018 which is after the due date of filing TRAN1. He has not attempted to file TRAN-1 on or before the due date of 27th Dec, 2017.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

8.7 WP(C) 1560/2021-M/s. Tarun Enterprises Pvt. Ltd. v.UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
07AAACT4460C2ZO	Delhi	Private Limited Company

Issue: The Petitioner has alleged that due to technical glitch in the GST system the TRAN-1 form could not be filed. During the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

Status: GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Delhi and the next date of hearing is 31.08.2021. No effective order is available on the Court's website.

Further investigation by GSTN:-An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
 - ii. Nature of error noticed
 - iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.
- The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of "save" as well. ITC ledger has also not been updated.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

Category B2: Trans-1 Fresh/Revision Attempted with No error or No valid error reported

8.8 WP No. 853/2021 M/s Pee Yel Jay International V. Chairman, GSTC & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
33AAPFP7604Q1ZK	Tamil Nadu	Partnership

Issue: The petitioner had filed TRAN -1 to carry forward the credit of Rs. 10,18,143/- which was available to the petitioner under TNVAT Act. The credit was not reflected in the ledger of the Petitioner. Due to technical glitch an error appeared on the screen. Whenever the Petitioner tried uploading the TRAN1, pop up dialogue box opened and the message “proxy error” was displayed on the screen. The Petitioner was not able to complete the submission as the GST website was automatically jumping, showing error message and sometime there was no response.

Status: GSTN is a party in this matter. GSTN vide email dated 22.02.2021 apprised the status of case to the CGST Commissionerate (Madurai) in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 05.03.2021. The Court vide order dated 05.03.2021 has directed that the jurisdictional officer/6th respondent is directed to verify the correctness of the facts projected in the petition mentioned representations dated 20.02.2020 and on being satisfied with the same, forward the petitioners' case to the Nodal Officer, namely, fifth respondent herein who will coordinate with the first respondent (GSTC) so that the petition mentioned credit amounts filed in Form TRAN 1 are duly carried forward to the petition mentioned Electronic Credit Ledger pertaining to the respective writ petitioners. This exercise shall be carried out and completed within a period of twelve weeks from the date of receipt of a copy of this order.

Further investigation by GSTN: An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner submitted TRAN-1 on 27/12/2017 and the same was successfully processed. TRAN-1 filing however, was not attempted. Further no error was reported in logs and ITC ledger has not been updated. Thus, the Petitioner’s case may be considered as not having faced any technical difficulties.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

Category B3: Successfully Filed as Per Logs with No Error reported. Successfully Filed as Per Logs with No Error reported.

8.9 W.P.A.7926/2021-Ad Well International Private & Anr. V. The SGST Nodal Officers, Technical Glitches & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AADCA3627K1ZK	West Bengal	Private Limited Company

Issue: The Petitioner submitted that the declaration in Form TRAN-1 was filed within due date. Petitioner successfully claimed the transactional credit of VAT amounting to Rs.33,27,308/- under the West Bengal Value Added Tax Act,2003 and further fed the data relating to CENVAT credit of Rs. 65,73,765/- on the GST Portal but the said data was not uploaded. The VAT credit amounting to Rs.33,27,308/- was credited in the electronic credit ledger but CENVAT credit of Rs.65,73,765 was not credited due to technical glitches of the GST portal.

Status: GSTN is a party in this matter. GSTN vide email dated 25.3.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing is 24.03.2021. The next date of hearing in this matter is not updated on courts website.

Further investigation by GSTN: An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021. The Petitioner responded vide email dated 11.06.2021 and stated that while filing TRAN-1 only VAT amount could be uploaded. Excise Duty of Rs.65,73,765.00 by way of balance in the form of CENVAT Credit could not be uploaded. As regards screen shot of the error the Petitioner stated that screen shot of the technical error was not saved. A letter dated 30.08.2018 was sent to the SGST Nodal Officer, Technical Glitches, 14, Beliaghata Main Road, Sales Tax Building, Kolkata-700015. The Petitioner was requested to share the details of the same by EOD 14.06.2021. The Petitioner provided the scanned copy of the letter vide email dated 14.06.2021. In the attached letter Petitioner has mentioned that due to some system error the data fed into the system was not uploaded. No screen shot of the error is available with the Petitioner.

As per GST System logs the Petitioner first time opened TRAN-1 and tried to file. It got stuck in "FRZ" later on filing was done and ARN was generated. For first successful submission ITC ledger was updated. Two unique ARN's were generated due to the fact that the TRAN-1 was stuck in "FRZ" and there were multiple clicks for filing of TRAN-1.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

Category B4: TRAN-1 filed but credit not received.

8.10 WP No. 226277/2020 M/s INM Technologies Private Ltd. v. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
29AADCI7257B1ZK	Karnataka	Private Limited Company

Issue: The petitioner filed TRAN- 1 within the due date but credit amount of Rs.16,27,341/- was not reflected in the electronic credit ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 15.01.2021 apprised the status of case to the CGST Commissionerate (Bengaluru) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is disposed of by Hon'ble High court of Karnataka vide order dated 3.02.2021. The Court has directed that respondents are required to make available necessary provisions on the website of the portal of the respondent to enable the petitioner to claim such credit.

Further investigation by GSTN: An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner has tried to save TRAN-1 form which was processed. The Petitioner filed TRAN-1 successfully and ARN was also generated. ITC ledger was not updated. Further, no error reported in logs. Revision was not attempted by the Petitioner. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

(B) TRAN-2 Cases

Category B6-Tran-1 Filed, Eligible for Tran-2.Trans-2 Fresh/Revision Attempted with No error or No valid error reported

8.11 DB CWP 2938/2021-M/s Bubugao Communication Pvt Ltd vs. Commissioner, CGST, Jaipur &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08AAGCB0384H1ZQ	Rajasthan	Private Limited Company

Issue: -Petitioner saved data in Form TRAN-2 for the month of July,2017, as these showed in draft, but while submitting the final TRAN-2 form for the month of July, 2017 the same is showing as 'Nil'. Therefore, it appears that the Petitioner may have submitted 'Nil' data in their TRAN-2 form for the month of July, 2017.

Status: - GSTN is a party in this matter. GSTN's comments were sent to Jaipur Commissionerate vide email dated 02.06. 2021. The matter is pending before Hon'ble High Court of Jaipur. The next date of hearing in this matter is 07.07.2021. No effective order is available on the court's website.

Further investigation by GSTN: An email dated 30.06.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed

iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers. The Petitioner was requested to provide the details by 02.07.2021. The Petitioner responded vide email dated 01.07.2021. The Petitioner did not provide any screen shots of the alleged technical glitches of the GST Portal. The Petitioner has stated that no data of outward supply on which transition credit was claimed was reflected in Final Form Tran-2 for the month of July-17 when the draft Form Tran-2 for the month of July-17 had complete details. They have filed Final GST Form Tran-2 for the month of July-17 on the same date i.e. 14.06.2018 on which date Form Tran-2 for the month of Aug-17 and Sep-17 was also filed. But the TRAN-2 Form for July-17 had no details and was blank without any details of outward supply and input tax credit whereas Form Tran-2 for the month of Aug-17 and Sep-17 had complete details. For this technical error in Form Tran-2 for July-17 we raised a complaint to the GST help Desk for which ticket ID-SR201806142643144 was allotted.

Ticket no. 201806142643144 was raised on 14.06.2018 and closed on 17.06.2018. The following issue was raised “while filing Trans 2 we have added the details in July month and submit the same but after filing when we check the same it has been filed blank. So kindly open the option in Trans 2 July month so we can add the same and claim credit. As we have both preview draft and final submit draft.” The following resolution was provided to the Petitioner “This is in reference to your query related to the functionality to reset TRAN 2, we would like to inform you that the reset option for TRAN 2 is not available on the GST portal. Kindly wait for further notification, if any. In case, for further concern, please feel free to contact the GST helpdesk number (0120-4888999) or visit Grievance Redressal Portal <https://selfservice.gstsystem.in/> to log a ticket. We regret for any inconvenience this may have caused.”

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner successfully filed TRAN-1 on 25/08/2017 & 26/12/2017. ARN was received for the same and ITC ledger was also updated. The Petitioner filed TRAN-2 for 07, 2017, 08, 2017, 09, 2017 period before 30/06/2018. Valid System message was displayed to the Petitioner while filing TRAN-2 for the period 10, 2017 as Petitioner’s closing balance declared in TRAN-2 for the period 10, 2017 was 0. The message displayed to the Petitioner was “You cannot ADD/EDIT Invoice as closing balance is zero”. ITC ledger of the Petitioner was updated for 3 filed periods.

Discussion & Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

9. Category-wise Summary of Cases sent by Nodal Officers of Centre/States

Category No.	Category	Count of Taxpayers
A1	Processed with error.	01
B1	As per GST system log, there are no evidences of error on submission/filing of TRAN1.	02
B7	TRAN-1 not filed, hence TRAN-2 not attempted	01
	Grand Total	4

Discussion & Decision:

The Committee decided that case falling under category A1 merit acceptance and remaining 03 cases falling under category B1 & B7 are liable to be rejected as no technical glitch was noticed by GSTN in these cases post technical analysis. (Please refer Annexure-2).

10. Cases forwarded by the Nodal Officers in the category of non-technical nature in terms of extended scope of ITGRC as per the 32nd GST Council meeting and as per the High Court order

Ms. Ashima Bansal, JS, GSTC Secretariat presented the four cases forwarded by the Nodal Officers after the decisions of the respective Hon'ble High Court as non-technical cases in terms of extended scope of ITGRC as per the 32nd GST Council meeting, as under:

10.1 Case of M/s Ram Auto, Madurai

The issue involves rectification of Tran-I in case of M/S Ram Auto, Madurai as per the order of the High Court of Madras dated 16.02.2021 in Writ Petition Number 15531/2020. It is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

"In this view of the matter, the communication impugned in the writ petition is quashed. The second respondent i.e. the Principal Nodal Officer, Chennai is directed to forward the petitioner's application to the third respondent i.e. Goods and Service Tax Council forthwith and without any delay. The third respondent will verify the correctness of the averments set out in communication of the jurisdictional Assistant Commissioner to the Commissioner of Central Taxes & Central Excise, Madurai vide C.No.IV/16/48/2018-Tech, dated 17.05.2019. Upon the third respondent being satisfied with the correctness of the same, the third respondent will grant the relief as sought for by the writ petitioner.

Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Assistant Commissioner duly forwarded by the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.

Discussion and decision:

All the committee members decided that it was an error apparent on the face of record and the case is recommended on merit as per the extended scope of ITGRC approved by the 32nd GST Council meeting.

10.2 Case of M/s. Precision Gasification Service Pvt. Ltd

Rectification of Tran-I in case of M/s. Precision Gasification Service Pvt. Ltd as per the High Court of Gujarat order dated 18.03.2021 in R/o Special Civil Application no. 19818 of 2019. It is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

“The respondents are directed to either open the online portal, so as to enable the writ applicants to again file rectified Form GST TRAN-1 electronically or accept the manually filed from the GST TRAN-1 with necessary corrections on, or before, 18.05.2021.”

Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Joint Commissioner duly forwarded by the Commissioner and principal nodal officer, Ahmadabad Zone that it is an error apparent on record involving transposition of the column, the case may be considered by the ITGRC.

Discussion and decision:

All the committee members decided that it was an error apparent on the face of record and the case is recommended on merit as per the extended scope of ITGRC approved by the 32nd GST Council meeting.

10.3 Case of M/s Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore

The issue involves rectification of Tran-I in case of M/S Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore as per the order of the High Court of Madras dated 23.04.2021 in Writ Petition Number 11119/2020. It is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues since the case was presented in the 6th ITGRC meeting and the request of the taxpayer for re-opening of TRAN-1 was "Not approved" citing that the case falls under the category of B10 i.e. mistake/errors committed by taxpayers which was admitted apparently or inadvertently or due to misunderstanding in reporting correct values in TRAN-1 and IT-GRC decided not to reopen TRAN-1 in the case. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

“In the present case, the error is seen to be inadvertent, constituting a human error. The Revenue does not dispute this either. Moreover, the era of GST is nascent and I am of the view that a rigid view should not be taken in procedural matters such as the present one.

The petitioner is thus be permitted to transition the credit. After all, the consequence of such transition is only the availment of the credit and not the utilization itself, which is a matter of assessment and which can be looked into by the Assessing Officer at the appropriate stage.

This writ petition is allowed. The third respondent, i.e., Deputy Commissioner of GST Policy, the Nodal Officer will enable the modification to be effected as well as the transition within a period of four (4) weeks from date of uploading of this order upon an application to be made by the petitioner in this regard.”

Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Commissioner and of the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.

Discussion and decision:

All the committee members decided that it was an error apparent on the face of record and the case is recommended on merit as per the extended scope of ITGRC approved by the 32nd GST Council meeting.

10.4 Case of M/s Precision Rubber Industries, Coimbatore

The taxpayer claimed to have made attempt to file TRAN-1 within the due date 27.12.2017. However, no material evidence has been produced. The case was presented in the 4th ITGRC wherein the case was presented in B1 Category: “Cases where the taxpayers say that they received error. As per GST system log, there are no evidences of error or submission/filing of TRAN1: As per GST System Logs, the taxpayer has neither tried for Saving / Submitting or Filing TRAN1”.

In the Writ Petition Number 11781 & 11784/2019, the High Court of Madras vide order dated 03.10.2019 has directed that-

“The Principal Nodal Officer (Principal Commissioner, Chennai North) is directed, to take appropriate action without loss of further time so as to get the issues resolved by GSTN at the earliest possible time, at any event, within a period of six weeks from the date of receipt of a copy of this Order.”

The High Court has further also stated that-

“... Needless to say that the impugned denial is only because of the reason that the time for filing TRAN-1 had lapsed and since that issue is sought to be resolved before GSTN.

The case was again presented before 9th ITGRC under Category C: “Cases already presented before 1st to 7th ITGRC but not recommended by ITGRC and now as per 32nd GST Council decision, it has been forwarded without recommendation by jurisdictional tax authority.” The ITGRC had directed State/CBIC tax authorities to re-examine these cases and forward properly, only if they fulfill the parameters/conditions as laid down in 32nd GST Council Meeting.

In view of the above, the Principal Commissioner, Coimbatore has re-examined the case and recommended that since the taxpayer is otherwise eligible for the credit but for this procedural lapse of non-filing Tran-I within time, their representation may please be considered.

However, this case does not fulfil the criteria set by 32nd GST Council meeting while extending the scope of ITGRC to consider non-technical issues viz. error apparent on the face of record. In this case, the assessee failed to submit the Tran-I on time and there is no error apparent on the face of record.

Discussion and decision:

All the committee members agreed that the case should not be recommended on merit as per the extended scope of ITGRC approved by the 32nd GST Council meeting and rejected the same.

11. Agenda Note for ITGRC for Technical Issues requiring data fixes through backend utilities

11.1 GST system was envisioned to have gone live with all software components ready for go live on 1st of July, 2017. GSTN, accordingly developed the application modules keeping in mind the GST Law, rules and format, stipulated in Software Requirement Specifications (SRS). However, keeping in mind the fact that GST is a new law and taxpayers may not have clarity on a lot of details pertaining to information sought in forms, GST Council approved new formats changing the structure of major

returns processing. Besides, the rules and formats for many other forms could not be notified in time. Pursuant to various feedbacks received from industry bodies and trade, many changes were also stipulated in prevailing laws and rules that required changes to be continuously made in the GST System.

11.2 Therefore, GSTN moved to an agile methodology of developing applications for GST System keeping it modular to handle frequent changes in law and rules incorporated in a running application. This created an overhead of integrating all new application changes downstream being dependent on the module undergoing the change. This led to following issues:

- Some corner scenarios owing to varying taxpayer actions and system behaviour when subjected to heavy load, went unhandled leading to inconsistent data persisting in GSTSystem.
- The data inconsistencies varied from ledger getting improper debits/credits, the return details stored in the system having incorrect information relating to situations where an irreversible commit had happened in the database,
- No option available to taxpayer to seek remedy in GST System leading to a need of performing data fixes through auditable utilities.

11.3 Due to the complex set of validations and process requirements through multiple touch points in GST System's application, the processing errors either due to unhandled exceptional scenarios or any software glitches occasionally occur. In order to remediate such issues, the processed incorrect data require fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders.

11.4 As part of medium term measure, GSTN proposes to perform the following:

- GSTN to request MSP (Infosys) to undertake a detailed assessment of any of such problem being reported in order to ascertain whether the problem at hand is due to the technical glitches that have been reported by the stakeholders. GSTN intends to seek a detailed assessment report from MSP and get them corrected.
- Upon confirmation of glitch, post internal approval through CEO GSTN, GSTN shall intimate MSP to perform data fix as immediate relief for issue at the hand as in the absence of such step, the taxpayer would be left in lurch and not able to complete compliance.
- After execution of data fix utility, GSTN will request a detailed report of the impacted stakeholder such as taxpayers and the respective data fixes applied. The report generated shall be shared with ITGRC and respective Centre/State jurisdictional officers for information on a fortnightly basis.
- All such reports shall also be submitted to the GST Council.
- GSTN shall ensure maintenance of complete audit trail of such data fixes applied for future audit requirements.
- GSTN shall perform a periodic sample-based audit of data fixes to ensure necessary governance and control mechanism are in place.

11.5 Action that should be taken by GSTN

The issues generally have been noticed after

- A complaint got raised by taxpayer/ tax officer,
- Result of a periodic internal and external audits.

GSTN then usually performs data analysis, and confirms if the data indeed contained discrepancy. Upon confirmation of the defect, complete list of similar cases would be extracted from the system that are suspected to require data fix, and an approval note with root cause analysis would be prepared and placed before a competent authority, who would approve for the data fix including the manner in which it is to be applied. In this sequence of activities, the GSTN has prepared a generic list of typologies of errors that could come based on the pattern noticed so far and has proposed an approval process on which approval is required by GSTN. The method followed would be as follows:

11.6 The classification of issues and the method to correct them:

The Issues can be identified into following 5 categories:

Sr. No	Technical issue Category	Modules affected	Type of error and knowledge of correct data	Approving Authority
1	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data known	Internal (SVP, GSTN)
2	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data not known	Internal (EVP GSTN) for resetting/ reopening the forms.
3	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data known	GSTN to correct data after Internal Approval by EVP/CEO. The tax administration to be provided with MIS.
4	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data not known with certainty	GSTN to correct data after Internal Approval by EVP/CEO GSTN to enable the reset button so that the taxpayer can correct the form and file again. Post facto the approval of ITGRC to be taken and tax administration to be provided with MIS.

5	Technical issue affecting globally with financial implications	Such as cash ledger/ ITC ledger/ Refundetc.	Correct data not Certainly known	GSTN to enable the appropriate data fix after Approval of the ITGRC – Taxpayer can reset the form and file again. The tax administration to be provided with MIS.
6	Taxpayers Claiming technical issue to be Defect	NA	No Action required– Clarification provided to the taxpayer	Not Applicable

11.7 The process to be adopted for correction:

- I. For most of the issues, as depicted in the above table, it is advised that GSTN may be allowed to fix issues from backend with the approval of the ‘Competent Authority’ as may be approved/ nominated.
- II. For all the issues, a list with impacted GSTIN’s, CINs etc. will be prepared and shared with the competent authority as per Col. 5 above, as approved by ITGRC.
- III. The steps involved in the process shall be:
 - a. The data discrepancy will be first analyzed and confirmation will be sought from MSP
 - b. Upon confirmation, a utility will be written by MSP to extract all similar cases from GST System data stores.
 - c. A root cause analysis will be sought and fix would be implemented by MSP in consultation with GSTN to prevent further damage to data consistency
 - d. Scripts (SQL or Java depending upon type of defect) will be prepared for data fix and are tested in multiple cycles by MSP and GSTN.
 - e. Approval note will then be prepared and presented to competent authority for approval to go ahead.
 - f. Once approval is provided, audit entries will be created for each mutation affecting the data state.
 - g. Scripts will be executed and post execution state of data will also be stored for reference later.
 - h. List of all such changes will be presented and explained to GST policy wing & ITGRC and periodic internal audit will also be undertaken.

Discussion

(i) Shri Dheeraj Rastogi, from GSTN stated that in GSTN, they are often faced with above situations. In addition to their own discovery of data inconsistencies, recently CAG took the IT Audit of the GSTN and the CAG pointed out that in certain cases, there were some inconsistencies in the data where something else was recorded in Hadoop data base and some other amount was there in the taxpayer’s ledger.

(ii) The Chairman then asked him to explain the corner situations, being referred to by him. He

explained that by the corner situations, he meant an existing situation of very low probability which the GSTN was not able to anticipate at the time of design of the software but subsequently when the software was in operation and a ticket was lodged by a taxpayer, such kind of situation was brought to the notice and these had to be fixed.

(iii) ITGRC members deliberated and agreed that there was a need for establishing a procedure through which GSTN can handle the incorrect data. Since GSTN handled data on behalf of centre and states, some unworkable situations arose at times needing urgent attention such as, if the taxpayers' return was stuck due to a technical issue, it would attract the late fee, penalty and the like consequences. Hence, there is a need for such SOP, as proposed by GSTN, to handle the situations at different levels or to seek the intervention of tax administration or the ITGRC to deal with such scenarios in suitable cases.

(iv) GSTN explained that they have designed a process, which is a three-part procedure. One was that of preparatory work that the GSTN would be undertaking, then there were certain suggested procedures that they would undertake with the approval of competent authority and then the safeguards that GSTN would keep while incorporating corrections in Data. That in urgent situations they had proposed to keep internal approval process at the level of SVP or EVP for incorporation with regards to correction in Data discrepancy; while in other situations, they would take prior approval of the authority within GSTN or outside GSTN such as ITGRC. Further, the safeguard that, they would make a data report which would be shared with ITGRC and the centre and state jurisdictional officers so that they could do whatever audit they wanted and maintain the audit trail in the system also seemed appropriate.

It was clarified by GSTN that for most of the issues, they are proposing to seek the internal approval of the authorities in the GSTN, as they were of urgent nature. Wherever there would be serious situations wherein either financial implications are there or the issue has travelled to some other system, in such instances, the GSTN proposed the intervention at the level of ITGRC.

(v) The Chairman stated that there were broadly two issues. One was within the mandate of ITGRC and second was what GSTN had presented was a mix situation where they knew the corrections to somebody's returns or cash Ledger and those were data errors and need not necessarily be system glitches. He therefore inquired as to whether later type of issues were required to be brought before ITGRC as the issue was regarding data which pertained to the return or the cash Ledger or refund. It is quite possible that there would be a legal requirement of seeking somebody's approval for making a change being an amendment in any of those documents. He further stated that it was not clear that as per the process suggested by GSTN, whether the taxpayer would approach the jurisdictional authority or that their raising a ticket with the GSTN would be proper. He suggested that committee members may deliberate on these two issues before getting into the nitty gritty of the SOP.

(vi) Member from Tamil Nadu enquired whether MIS would be provided to Model-1 states and sought clarification about 1151 cases mentioned in Annexure - 3(a) to the Agenda. EVP, GSTN clarified that the compilation in Annexure 3(a) was of kinds of errors that had been noticed so far and corrected and it only gave flavour as to what kind of errors keep on happening. Further, there was no set process as to how to handle them and with whose approval to correct them and that GSTN wanted to lay down the process.

(vii) Mrs. Ashima Bansal, Joint Secretary, GSTC Secretariat submitted that she found that SOP proposed by GSTN and enumerated at para 12.5 and 12.6 was quite good in the sense that whenever

financial implications were global, GSTN would be presenting to ITGRC and after its approval, the data fix would be done and where the financial implication was local, in those cases, GSTN would be taking up the issue at their own level and even in those cases, they would be seeking the approval of the ITGRC later on. She further observed that where ever financial implications were there, they would be coming to the ITGRC either prior or afterwards. In that sense, this SOP was very much reasonable and must be considered positively.

(viii) ITGRC Member from West Bengal supported the proposed SOP. ITGRC Member from Haryana also stated that it was quite reasonable and very much needed to fix data problems such as the one faced last year with respect to GSTR-8 returns. He then requested for similar procedures with regard to debiting and crediting of taxpayer's ledger/bank account as there were lot of issues at RBI end. With respect to the issue raised by ITGRC Member from Haryana, the GSTN clarified that there were certain limitations in this respect and there was already a process in place regarding it. GSTN further observed that this particular issue was beyond the proposed agenda.

(ix) The Chairman brought up two more queries for GSTN to seek clarification with regards to Annexure - 3(a). He further inquired that the if Annexure - 3(a) was just an illustrative list and GSTN might have more instances, apart from the ones currently listed therein, which might come in the future but did they all fit into the typology of the proposed criteria. The second point that the Chairman inquired was with regards to requirement of taking prior permission for the amendment in data as discussed earlier. He further enquired that assuming that there is an amendment required to be made in the return data which requires some approval legally, then the taxpayer would first have to obtain that approval and then come to GSTN for making a suitable amendment. However, there is no such provision in the GST law which mandates that somebody's approval needs to be taken for making an amendment in data. So, this needs to be looked into. He also added that from perusal of the situation pointed out by GSTN in the annex, it seemed that GSTN had been handling them manually and GSTN might inform how they had dealt with them so far.

(x) EVP, GSTN clarified that in actual practice, a particular taxpayer would raise a particular issue that he had faced e.g. in case of TCS ledger; that had happened with some taxpayers was that there was a double credit of TCS amount in the ledger of the Taxpayer, then one of the taxpayers had raised the issue seeking rectification. GSTN then investigated the issue and found that such error had happened in 150 taxpayers' ledger. Thus, after the analysis, GSTN noticed that it was something which was having financial implication but they knew for sure that double credit had happened and they knew what should be the correct balance, so after the approval of the EVP in the GSTN the software defect was cured and appropriate debit entries were also passed in the affected ledgers. Further, it was not done manually but was done with a script and they kept all the audit trails. Thus, in a nut shell, if any glitch was found, they scanned the entire data base and tried to find out the root cause and how many cases were affected. First GSTN fixed the problem and then made appropriate data fix to resolve the cases. Further, in all such situations, no adjudications were required as these were not pertaining to legal disputes about correct filing of the Form/ Return but correction of wrongly passed entries into the Data base.

(xi) The committee then approved the proposal of the GSTN unanimously. The Chairman further emphasised that in their SOP, it should be specifically added that proper trail of those amendments should be kept for the purpose of audit and in those cases, where somebody raises objection about correctness of amendment, then some records should be available to show how they carried out the amendments and on what basis that was done. EVP, GSTN replied that GSTN normally had files in e-

office and all were traceable and that they kept both the data in the DB, the earlier one would be dormant and 2ndone after data fix would be visible and effective.

(xii) The Chairman further enquired about the domino effect of data corrections to which GSTN replied that so far, they had not encountered any such issue. Further, EVP GSTN clarified that such cases were covered under serial no. 5 of the table at para 13.5.

Decision

Pursuant to the discussions above, the ITGRC approved the SOPs proposed by GSTN, as enumerated at Para 11.5, 11.6 and 11.7 above.

12. Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches.

12.1 Section 52 of the GST Act mandates an e-commerce operator to collect tax at the specified rate on the net value of the supplies made through it by other suppliers where consideration has to be collected by the operator. The operator has to file the details of tax so collected in a statement in Form GSTR-8 on monthly basis. On the basis of statement so filed by operators, the tax collected is made available to the suppliers for taking the credit into their cash ledgers.

The operators are not required to file the aforesaid statement for the month in which no supply has been made by any supplier through his portal. But the details provided in a statement of the month can be amended at the time of filing statement of the subsequent month if supplier has not taken the credit till such time or supplier had rejected the details uploaded by the operator. Additional amount is paid by the operator in case of upward amendment and he gets credit by reduction in liability if amendment is made downwards.

There is no late fee payable by operators on delayed filing of the statement of a month but interest is payable for delayed filing. Interest is computed by system based on the net liability and the period of delay.

Tax collected and paid in a statement can be adjusted in subsequent statement if goods supplied are returned. It means that liability is paid on net of basis in GSTR-8. Details are provided GSTIN wise for a tax period.

12.2 System glitches

Sometime during filing of return or statement, it so happens that though acknowledgement (ARN) is generated but filing process is not completed. It may happen due to immediate logging out of user after filing or interruption in internet connectivity or due to defect in system application.

The e-commerce operators are required to file statement in Form GSTR-8 on monthly basis. While filing statement for the month of November, 2020, in 74 users, the filing process could not be completed in the system. When the impacted operators came to file statement December, 2020 in January, 2021, system started showing error that your previous tax period's statement has not been filed. After noticing the defect, the same was fixed on 23-01-2021.

Due date of filing GSTR-8 of a tax period is 10th of the next month. Due to the defect, the filing of the said statement was delayed by few days. Though, there is no late fee on delayed filing of GSTR-8 but interest becomes payable after due date and same is computed by system. Although, the defect was noticed in filing of statement but there was no defect in depositing the amount of liability. Out of 74 operators, 60 have deposited the amount of liability by due date i.e. by 10th January, 2021. 10 operators have deposited the liability at the time of filing the said statement. Since, filing of GSTR-8 is not mandatory for every operator, 4 operators have not filed the statement of December, 2020.

In the second case, few operators belonging to GOIBIBO and MMT could not file the statement of

September, 2020 due a defect in system application. Though, defect had not impacted all operators but due to multiple amendments 9 operators of GOIBIBO and 6 operators of MMT were stuck up due to the defect. In case of GOIBIBO, all operators have deposited the liability by due date for all applicable tax period but in case of MMT, the liability was deposited at the time filing the statement in Form GSTR-8. Though, few operators of MMT have deposited the liability few days before filing the said statement.

The details of fixes provided in above cases is shown in the table below:

	FIX PROVIDED ON	RQM ID
74 CASES	22-Jan-21	19830
MMT & GIBIBO	17-Feb-21	19830

12.3 Interest paid

A. Summary of the interest paid by the operators who have deposited the liability by due date and those who have deposited after due date but few days before filing the statement in Form GSTR-8 is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest to be re-credited		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
(1) Incomplete filing process of November, 2020 tax period	Deposited by due date	60	Dec, 2020	7215692	1297419	1297419
(2)(a) Stuck up in September 2020 tax period	Deposited by due date	9	Sep, 2020	87460	334919	334919
		9	Oct, 2020	99471	385394	385394
		9	Nov, 2020	98207	318254	318254
		9	Dec, 2020	70897	221576	221576
		9	Jan, 2021	19297	65506	65506
	Sub-total (2a)	45		375332	1325649	1325649
(2)(b) Stuck up in September, 2020 tax period	Deposited after due date but before filing statement	1	Sep, 2020	1497	9505	9505
		3	Oct, 2020	2089	21127	21127
		3	Nov, 2020	2283	22070	22070
		3	Dec, 2020	2715	31710	31710
		1	Jan, 2021	1996	16216	16216
	Sub-total (2b)	11		10580	100628	100628

TOTAL		116		7601604	2723696	2723696
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The amount deposited through challan is credited to cash ledger of the concerned person after confirmation of the deposit from bank / RBI. The RBI credits the amount to Consolidated Fund or India for IGST, CGST and Cess and the amount deposited under SGST is credited to the Consolidated Fund of concerned State.

B. The operators who have deposited the amount of liability on the day of filing the statement in Form GSTR-8 and excludes the amount of interest paid from the date of deposit to date filing the said statement, is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest paid		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
1) Incomplete filing process of November, 2020 tax period	Deposited after due date	10	Dec, 2020	236960	10422	10422
	Deposited after due date	6	Sep, 2020	97869	995253	995253
		6	Oct, 2020	55773	694023	694023
2) Stuck up in September, 2020 tax period	(on the day of filing statement or before filing the same)	6	Nov, 2020	47801	510515	510515
		6	Dec, 2020	28893	372103	372103
		6	Jan, 2020	9214	122600	122600
	Sub-total (2)	24		239550	2694494	2694494
	Total (1+2)	34		476510	2704916	2704916

12.4 Proposal for refund of interest paid

ITGRC may take a view whether to refund the interest paid by the operators detailed at para A or to refund the amount paid at details given at para B also. Amount of interest to be refunded will be credited to cash ledger under respective major head.

Discussion

(i) GSTN presented this agenda, which pertains to TCS collection by the e-commerce operator at source under Section 52 of the CGST and SGST Act, 2017 and subsequent deposit of the same while filing the GSTR- 8 statement. EVP, GSTN informed that E-commerce operators collected tax at source under Section 52 of the CGST and SGST Act, 2017 and deposited that along with filing of the GSTR-8 statement and filing of the GSTR-8 statement was successful only after payment of tax. Though there was no late fee prescribed for the E-commerce operators for late filing of the return,

however, system automatically calculated the interest for any delay at the time of filing the GSTR-8 statement. There were 2 distinct cases pertaining to GSTR 8 Return. In 1st Case, the Non-completion of return filing process pertained to November where acknowledgement was generated but filing process could not be completed for the month of November, 2020 in 74 cases. The impacted cases could not file the statement for the month of December, 2020. The defect was fixed on urgent basis after noticing the same. However, there was no defect in depositing tax liability by the operators. As a result, 60 operators had deposited the amount of tax liability in Cash Ledger by due date; 10 operators deposited the tax liability after due date at the time of filing the statement. Remaining 4 operators had neither deposited tax nor filed the statement for the month of Dec, 2020 (Reason: May be no transaction during the month)

In 2nd Case; reported by GOIBIBO and MMT and subsequently a WP was also filed before Delhi HC by them. It pertained to Non-filing of statement for the month of September, 2020 by some registrations of GOIBIBO and MMT. The defect had impacted GSTR-8 filing of GOIBIBO in 9 States and 6 States in case of MMT. Out of the two operators, GOIBIBO had deposited the tax liability by due date; while MMT, deposited the tax liability after due date.

(ii) EVP, GSTN further informed that the entire instances where the TCS amount was deposited before the due date of filing the Return i.e. in first category (incomplete filing process of November 2020), 60 instances were reported, while in second category (persons who were unable to file tax liability for September 2020), 45 instances were reported. There were remaining 11 cases in which persons who were unable to file returns due to technical glitches; they deposited the tax after due date of Return filing but before filing the Return.

(iii) The Chairman inquired about the legal position and the Principal Commissioner, GST Policy Wing, CBIC informed that as far as the present legal position was concerned, the deposit of amount in electronic cash ledger did not amount to payment of tax. The tax is considered to have been paid only when the relevant return is filed on the portal. Therefore, in case of any delayed filing of return, interest liability will arise from the due date of filing the return, till the actual date of filing the return. The interest would accrue till tax was actually adjusted while the return was filed. He further added that in present cases, the operators had intended to file the return by depositing the cash in electronic cash ledger by due date but they could not file GSTR-8 return on the portal because of some system related technical issues. The GSTN has clarified that tax was deposited in the electronic cash ledger by due date in some cases but was not debited towards payment of tax due to technical glitch in filing the GSTR-8 Return statement subsequently.

(iv) The Chairman observed that the implication of the same is that the tax was not paid effectively by the due date, as per the law.

(v) The Member from West Bengal observed that strictly speaking, the interest was leviable in both the cases because filing of return by due date was criteria for levy of interest. He further stated that they had two cases in hand. However, there is a need to look at both the situations closely to see the intention of the operator. In first case, the intention was very clear to pay the tax on time, as he had deposited amount in electronic cash ledger. He wanted to file the return but couldn't do it due to system glitches. However, in the second case, the person concerned had not even deposited the tax in cash ledger. So, these two cases need to be distinguished and while the first case may be considered for interest waiver, the 2nd case may not be considered for interest waiver.

(vi) The Member from Haryana observed that earlier also GSTN had done similar action a couple of times in 2018 and 2019 where they did a last moment GSTR 3B date extension and they returned some money back to the cash ledger but the GSTN never had done it through a decision of the GIC or ITGRC. He was therefore of the view that if a refund of money has to be made into someone's cash Ledger, the matter should not be dealt at ITGRC level but it should go to the Council. The Chairman

clarified that the ITGRC could just confirm that there was a technical glitch and it would not take a decision about whether the refund was due or not due. He further mentioned that as Member from West Bengal had observed, they could just recommend to the Council that in one category of cases, interest waiver appeared to be due and in the other category, it did not appear to be due. He further clarified that ITGRC was not taking a decision on actually recrediting the interest in the cash ledger.

(vii) The Member from Haryana submitted that if the cash was deposited in the ledger but not debited, interest would always be leviable. The Chairman asked that if interest would be leviable even if someone was prevented from debiting the interest due to technical glitches. The Member from Haryana clarified that the cases referred by GSTN are special cases, in these cases tax could not be paid through returns due to the system fault.

(viii) Principal Commissioner, GSTPW added that there was no doubt about accrual of interest in such cases as per the present position of the law. However, ITGRC could consider the special circumstances, under which due to the technical glitch on the portal, returns could not be filed in time, and accordingly make suitable recommendations to the Council for directions/ decision.

(ix) EVP, GSTN further drew the attention of the committee towards the fact that many of the operators had deposited tax in their cash ledger by due date of the filing of return but in some cases, they had deposited tax after due date but before filing of the returns. The Member from West Bengal observed that if someone was filing the return belatedly, no waiver should be allowed. EVP, GSTN clarified that return filing was late due to system glitch. The Member from West Bengal agreed that if there existed a system glitch, then they might recommend to the Council to consider waiver of interest in both the cases.

(x) Joint Secretary, GSTC submitted that they had never allowed waiver of interest so far. She further mentioned that interest was a natural corollary to the tax and, in many cases, Supreme Court had also observed the same. As long as amount was not debited, the tax did not go to the kitty of the department. The Chairman observed that interest liability had arisen because of technical glitches and mandate of ITGRC was to look into cases where there was a technical glitch while either filing return or TRAN1 or any tax on time. On enquiry by Joint Secretary, GSTC, about other such cases, EVP GSTN clarified that those were unique cases and other cases had been resolved.

(xi) DG, Systems submitted that as per his understanding, interest was calculated from the due date till the time debit was made in the return. So, to bring the parity in the decision that if they recommended that interest was to be waived in case the amount was deposited before the due date and because of technical glitch, they could not make the debit entry in their return or file the return, then the same facility had to be given if taxes were paid on a later date after the due date but because of technical glitch, debit could not be made. So, while the interest for the period from the date of deposit till the time debit was made should be waived in both the situations whether it was paid before the due date or after that date **but** for the period from due date till the time amount was deposited, the interest was chargeable and could not be waived. **EVP** GSTN clarified that actually the agenda had highlighted this difference and was seeking the interest waiver only for the intervening period when the deposit was made and offset was done in the return.

(xii) The Member from Tamil Nadu observed that the first thing, there was no provision for waiver of interest and second thing whether ITGRC could recommend legally to refund the interest to the electronic commerce operator. If so, what are the means and the provisions under which they could refund the amount of interest.

(xiii) Principal Commissioner, GST PW clarified quoting para number 7 of the Circular no. 39/13/2018-GST dated 3rd April 2018 which mentioned specifically about authorisation given to the ITGRC for waiver of fine and penalty but the said para was silent about waiver of Interest. He

mentioned that accordingly, as per the present mandate of ITGRC, there is no mandate available with ITGRC for waiver/ refund of interest. He further clarified that there was no express provision in law for waiver of interest. However, since the issue was of system related technical fault, hence, ITGRC could find a solution and make the recommendations to the Council for directions.

(xiii) On this, the Chairman suggested that ITGRC should take a decision on whether there was a technical glitch or not and place before the Council for directions, as there was no express provision in the circular or OM issued laying mandate of ITGRC on waiver of interest and there was no legal provision either for waiver of interest. He added that if at all interest had to be waived, notification needed to be issued under Section 148 of CGST Act which required the mandate of Council. Further, ITGRC needs to decide whether or not, there was a technical glitch and can make suitable recommendation to the council whether there appeared to be a case for waiver of interest or not. He further enquired all the committee members about their decision. The Member from Tamil Nadu agreed to the proposal.

(xiv) The Member from West Bengal submitted that this being a typical case of system glitch, it was acceptable to go to Council with recommendations and seek directions of the Council.

(xv) It was unanimously agreed that ITGRC may categorically recommend that as there was a technical glitch in those cases, there was a merit in waiving the interest because of that technical glitch. However, as there is a gap owing to the absence of legal provision and the mandate given to ITGRC, specific directions of the Council may be sought. It was also agreed that the recommendation may be made for waiver of the interest only from the date on which deposit was made in electronic cash ledger till the actual filing of the return filing, which could not be filed timely because of technical glitch. However, if the deposit was made in electronic cash ledger after the due date of filing of the return filing, the interest waiver will not be recommended for such delayed deposit beyond due date. GST Council Secretariat would place the proposal before the Council seeking directions of the Council in such cases of technical glitch on the portal and the Council could take a view.

Decision:

The committee agreed to recommend unanimously the following to the GST Council:

- a. There was a technical glitch in filing GSTR-8 Returns in all these cases but there was no glitch in payment of TCS amount into cash ledger.
- b. There is merit in waiver of interest being the cases analogous to the cases of waiver of fine and penalty.
- c. Thus, the ITGRC recommends the waiver of interest only from the date on which deposit was made in electronic cash ledger till the actual date of filing of the GSTR-8 statement, wherever it could not happen because of technical glitch, as per details provided by GSTN.
- d. However, in cases, where there was delay in deposit of the amount in electronic cash ledger beyond the due date of filing of Return, the ITGRC is not recommending waiver of interest.
- e. ITGRC further observed that, there is no mandate for the ITGRC to consider cases of waiver/refund of interest due to technical glitch as the Circular no. 39/13/2018-GST dated 3rd April, 2018 mandates the ITGRC to recommend the cases of waiver of fine and penalty only. Since there is no legal provision in the GST laws for waiver or refund of interest; therefore, the decision needs to be taken by the GST Council in the matter of issuance of an appropriate notification under Section 148 of CGST, Act for waiver of interest in such cases, as recommended by ITGRC.

13. Additional Agenda – Refund case of M/s Atibir Industries Co. Ltd. Vs. UOI and Ors

Sh. Dheeraj Rastogi, Executive Vice President, GSTN has presented the refund case of **M/s Atibir Industries Co. Ltd as per order of Hon’ble High Court of Jharkhand** in Writ Petition No. 4061 of 2019.

13.1. Facts of the case

1. The aforesaid Writ Petition No. 4061 of 2019 filed by M/s Atibir Industries (**GSTIN 20AADCA1825B1ZO**) in the High Court of Jharkhand wherein GSTN was also made as one of the Respondent. The petitioner argued that they couldn’t file application for refund of unutilized ITC w.r.t. compensation cess in Form GST RFD-01 pertaining to the periods 2017-18 and 2018-19 on GST Portal due to technical difficulty. After hearing the Petitioner and Respondents, it was held in the Order dated 04.01.2021 passed by the Hon’ble High Court that the petitioner would be entitled to avail of the opportunity to file applications for refund of compensation cess for FY 2017-18 and 2018-19. The respondents were directed to communicate the petitioner through email as to whether they would open the GSTN portal or would accept the refund applications manually within a period of 15 days.
2. Subsequently, the Departments have filed two Review Petition i.e. Civil Review Petition No. 20/2021 and Civil Review Petition No. 30/2021 in WP (T) 4061 of 2019. The Hon’ble High Court has dismissed the said Review petition vide order dated 29.07.2021 with further direction to the concerned Respondent to consider the refund application in accordance with law.
3. Further, as per the High Court’s Website Petitioner has also filed a Contempt Case (Civil No.) 340 of 2021, wherein the Hon’ble High Court vide order dated 29.07.2021 allowed three weeks’ time to the Respondents to file show cause regarding compliance of the direction made in the writ petition being WP(T) No. 4061/2019. The contempt petition matter is listed for hearing in the week of 23rd August 2021.
4. Commissioner of State Tax (Jurisdictional office) has also decided not to file SLP before the Hon’ble Supreme Court.

Observation of the GSTN:

1. It is submitted that while filing the online refund application on the GST portal, the taxpayer has to select the category of refund and a particular tax period. For few categories of Refund including refund of ITC may be filed for multiple tax periods in a single refund application. There is a validation on GST portal that refund for a particular period under a particular category can be filed only once.

In the case of GSTIN 20AADCA1825B1ZO, the details of applications of refund filed by the Taxpayer for the FY 2017-18 and FY 2018-19 are given in the following table:

ARN	Date of Filing	Status	Refund Type	From Period	To Period	Claim amount
AA200619006822 H	25/06/19	RSA	EXPWOP	201707	201803	1031171
AA200719000632 O	02/07/19	RSA	EXPWOP	201804	201903	12973905

2. As seen from the above table, the Taxpayer/Petitioner has filed applications under the category of unutilised ITC for the FY 2017-18 and FY 2018-19. In such scenario, the system validation doesn't allow the Tax payer to file another refund claim of the same category for the same period. Whereas, the High court of Jharkhand has directed GSTN to allow Taxpayer to file refund of unutilised ITC of compensation cess for the FY 2017-18 and FY 2018-19. In the present Refund application framework, the applications will not be allowed to be filed in the system. Any change in the refund framework to allow this refund application may impact the existing refund functionality and in turn the stability of the GST system.

Recommendation of the GSTN:

To handle extraordinary scenarios that may arise due to non-availability of a particular category or due to the presence of any system validation, the GST portal gives the option to file refund claim under the 'Any others' category. The taxpayer can state his case and request for grant of refund.

In the instant case, the Hon'ble High Court has already deliberated upon the matter and passed a detailed order directing the Respondents to open GST portal enabling the Taxpayer/Petitioner to file Refund application (RFD-01) for the period 2017-18 and 2018-19. However, in the present case in order to comply with the direction of the High Court there is a need for waiver of the limitation of the filing of a refund application for a particular period under a particular category 'only once', as imposed by GST system and allowing M/s Atibir Industries to file application for refund of ITC of compensation cess under "Any Others" category.

In view of the aforesaid facts and circumstances GSTN has sought decision in this matter on further action required to be taken by GSTN.

Discussion and decision:

The Chairman observed that technically speaking, it is not a case of technical glitch and it requires an executive decision which needs to be taken by the jurisdictional Commissioner. The issue should not come to the ITGRC. There are other instances also. Member from West Bengal observed that this case is not in the preview of ITGRC and should be forwarded to Law Committee. Principal Commissioner, GSTPW clarified that it is not law committee issue either. This case should be dealt by Jurisdictional GST Commissioner. Member from Haryana suggested that the taxpayer may be asked to file refund in "Other Category" and the proper officer can deal it as per law. Principal Commissioner, GSTPW also supported this view.

The committee decided that it is not a case for the ITGRC to decide and the jurisdictional officer should deal with it as per the law. GSTN may allow the Taxpayer to file the refund in "Other Category". GSTN stated that they would inform the Jurisdictional Commissioner accordingly.

CENTRE:

1. Sh. Vivek Johri, Member, CBIC
2. Sh. Sanjay Kumar Agarwal, Principal Director General, DG Systems
3. Sh. Alok Tiwari, Pr. Chief Commissioner, CGST, Delhi Zone

GST Council Secretariat:

4. Dr. C. S. Mohapatra, Additional Secretary, GST Council Secretariat
5. Ms. Ashima Bansal, Joint Secretary, GSTC

States:

6. Sh. Sidharth Jain, Haryana
7. Sh. Prayag Shah, State Tax, Gujarat
8. Sh. Rasal Dors Soloman J., State Tax, Tamil Nadu
9. Sh. Khalid Anwar, Commissioner, State Tax, West Bengal

Special Invitee:

10. Sh. Manish Sinha, CEO, GSTN
11. Sh. Dheeraj Rastogi, VP, GSTN
12. Sh. Sanjay Mangal, Pr. Commissioner, GST Policy Wing

15TH IT GRIEVANCE REDRESSAL COMMITTEE MEETING AGENDA NOTE FOR TRAN-1/TRAN-2 CASES

I. Brief Background and Updates:

A total no. of 3631 cases of TRAN-1 / TRAN-2 / TRAN-3 were received until 03.07.2021 from the Nodal officers of Centre and the States for consideration by ITGRC. These cases, excluding the court cases, were received in two phases i. e.

(A) **Based on SOP issued by GSTN in pursuance of Circular No. 39/13/2018 dated 3rd April 2018.:** - A total of 2655 cases of TRAN-1, 213 cases of TRAN-2 and 18 cases of TRAN 3 were received from the Nodal officers of Centre and the States until 31st March, 2019, for consideration by ITGRC. These cases were received from the Nodal Officers either through the email or by post, though, a few cases have been received in GSTN office even after due date i.e. 31st March, 2019. Further, a few cases, which were received by GSTN Nodal officer containing all the relevant information but were not in the format prescribed in SOP (issued by GSTN in April 2018), have also been placed before ITGRC meetings.

(B) **Cases received in terms of Letter F. No. CBEC-20/10/16/2018-GST (Pt. I)/352 dated 04/02/2020 issued by Commissioner, GST and O. M. dated 06/02/2020 issued vide F. No. 71/Expansion-ITGRC/GSTC/2019:** -As per the directions contained in the letter issued by CBIC and the O. M. issued by GSTC, jurisdictional Tax Administrators and Nodal Officers were requested to forward representations of the taxpayers to GSTN where filing/revision of TRAN-1/TRAN-2 could not be done by due date owing to technical glitches on common portal (excluding already approved / not approved cases in ITGRC Meetings), after ascertaining the following:

- i. Whether there appeared to be a demonstrable technical glitch due to which filing could not be completed on the common portal.
- ii. the evidences, which may identify the bona fide attempts on the part of the taxpayer for attempting to file TRAN 1 on or before 27.12.2017.

The jurisdictional Nodal officers, nominated by Central and States' Tax authorities, were also required to compile and collate the applications of the taxpayers along with evidences and send the same to GSTN Nodal officer in prescribed template (Excel) at email ID- tran.extscope@gstn.org.in not later than 15th February 2020. However, due to continuing delayed submission by the Nodal officers as well as extension in terms of CBIC vide Notification No. 35/2020-CT dated 03.04.2020 read with Notification No.55/2020-CT dated 27-06-2020, the cases are still being received and taken up for technical analysis. As per the instructions, the representations of taxpayers, forwarded by the jurisdictional Nodal Officers, are processed by GSTN for consideration and decision by ITGRC.

A total of 745 cases were received from jurisdictional Nodal officers under clause (B) above until 3rd July 2021 for consideration by the ITGRC. A summary view of these cases, excluding court, cases is given below:

Sr. No.	Status	Cases forwarded by Nodal Officers
i.	Cases decided by 11 th and 12 th ITGRC	361
ii.	Cases decided by 13 th ITGRC	47
iii.	Cases decided by 14 th ITGRC	43
iv.	Cases being presented before 15th ITGRC (Annexure-1)	04
v.	Cases Returned to Nodal Officers due to non-compliance with SOP.	290
vi.	Total Cases (i to v)	745

Cases forwarded by Nodal Officers

Presently, **04 cases at Sr. no. iv**(attached as Annexure-1)of TRAN-1/TRAN-2, processed by GSTN are being presented before the ITGRC for consideration and decision.

Further, **290 cases at Sr. no. v** were returned to jurisdictional Nodal officers due to following reasons:

- a) Some cases were already received and presented before the previous ITGRCs or
- b) Information was not received as per the SOP and the same were sent back or
- c) Incomplete details furnished by the Nodal Officer.

Court Cases Received through GSTN Nodal and other Sources:

A total of 496 writ petitions have been received by GSTN pertaining to TRAN-1/TRAN-2/Migration as on 07.07.2021. A few cases were received from Nodal officers and were processed accordingly; however, later on GSTN had received Writ Petition also. Therefore, the present figures and figures provided in the ITGRC minutes vary. Further, court cases pertaining to TRAN-1/TRAN-2 are still being received on a regular basis and are being investigated and referred to ITGRC. These include the court cases received by GSTN Nodal officer at email ID tran.extscope@gstn.org.in as well as cases received through other sources.

A brief analysis of 496 court cases is given as under-

- i. 482 Court cases were processed till 14th ITGRC meeting.
- ii. 11 Court cases of TRAN-1/TRAN-2 have been processed at GSTN level and are being presented before 15th ITGRC for decision.
- iii. 3 Court cases pertaining to TRAN-1 are pending technical analysis.

The details of 493 TRAN-1/TRAN-2/ Migration court cases presented/to be presented before ITGRC is as follows:

ITGRC Meeting	TRAN-1	TRAN-2	Migration	Total
1 st ITGRC Meeting	19	0	0	19

2 nd ITGRC Meeting	78	0	0	78
3 rd ITGRC Meeting	16	0	0	16
4 th ITGRC Meeting	53	0	0	53
5 th ITGRC Meeting	21	0	0	21
6 th ITGRC Meeting	88	0	0	88
7 th ITGRC Meeting	13	0	0	13
8 th ITGRC Meeting	45	2	0	47
9 th ITGRC Meeting	23	0	0	23
10 th ITGRC Meeting	12	1	0	13
11 th ITGRC Meeting	15	3	0	18
12 th ITGRC Meeting	14	0	0	14
13 th ITGRC Meeting	54	2	1	57
14 th ITGRC Meeting	19	2	1	22
To be presented before 15 th ITGRC Meeting	10	1	0	11
Total	480	11	2	493

II. As detailed below, fourteen meetings of ITGRC have been held so far. A total of **3789** TRAN-1/TRAN-2/TRAN-3 cases (**including court cases**) were presented before ITGRC in these meetings. Out of these, **a total of 1329 cases have been approved for filing** TRAN-1/TRAN-2. The decision of ITGRC regarding approval/non-approval of these cases has also been communicated to the jurisdictional Nodal officers for onward transmission to the taxpayers.

The detail of TRAN-1, TRAN-2 & TRAN 3 cases (including court cases) **approved/not approved/withdrawn** up to 14th ITGRC, are given below:

ITGRC Meetings	Meeting Date	Approved	Not Approved	Withdrawn by GSTN	Grand Total
1st	22.06.2018	122	48		170
2nd	21.08.2018	213	127		340
3rd	26.10.2018	70	198		268
4th	12.02.2019	165	296		461
5th	05.03.2019	80	144		224
6th	26.05.2019	172	510		682

7 th	11.06.2019	98	151		249
8 th	13.08.2019	137	352	2	491
9 th	02.12.2019	72	194	13	279
10 th	22.01.2020	11	52		63
11 th	18.03.2020	82	193		275
12 th	26.05.2020	38	80		118
13 th	01.09.2020	26	78	-	104
14 th	04.03.2021	43	22	-	65
Grand Total		1329	2445	15	3789

The approved TRAN-1/TRAN-2 cases have been enabled for filing at GST Portal. The taxpayers, who have been enabled for filing TRAN-1/TRAN-2, have been informed through e-mails for filing their TRAN-1 and/or TRAN-2 with in-depth procedure of filing. Further, reminders have also been given to those taxpayers who had either not attempted to file TRAN-1/TRAN-2. The taxpayers who failed to file their TRAN-1/TRAN-2 even after reminders, have been contacted telephonically by the Officers of GSTN and guided appropriately for filing of the same.

III. Proposal for 15th ITGRC Meeting

i) Cases received from Nodal officers:

As explained above, a total of **04cases** (enclosed as Annexure-1) received from Nodal officers (**excluding court cases**), are being presented before 15thITGRC for decision, after technical examination by Infosys and GSTN. These cases have been received as per SOP and directions given in the letter/OM referred in **para I (B)**above.

ii) Court cases

As explained above a total of 11 court cases (enclosed as Annexure-2) are being presented before 15th ITGRC for decision after technical analysis.

In view of the fact that the taxpayers have filed Writ Petitions alleging and insisting technical glitches, e-mails were sent to them with request to provide below mentioned information for further examination in respect of cases falling under category “B”:

- i.** GSTIN
- ii.** Exact technical glitch faced while filing TRAN-1
- iii.** Nature of error noticed
- iv.** Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The taxpayers were requested to share the above-mentioned details to substantiate their claims within specific time. Replies were received in 5 cases (Sl. Nos. 3, 6, 8 and 9 for TRAN-1 and Sl. No. 1 for TRAN-2). The taxpayers did not share any screen shots evidencing any technical glitches of the GST Portal. The details of each case have been provided in Annexure-2 to this agenda.

Accordingly, total 15 cases are being presented to the 15th ITGRC for consideration and decision. Out of these 15 cases, 4 cases have been received from Nodal Officers and 11 are court cases.

IV. Category-wise analysis of 15 (4 Nodal and 11 Court cases) TRAN-1 and TRAN-2 cases, received from Nodal Officers/Court Cases, are given below:

iii) Cases where the taxpayers could not file TRAN 1/TRAN-2 because of technical issues:

A1. Processed with error-In this category, the taxpayer have received error message as "Processed with Error". The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details. A total of **01 case** received from Nodal officers and **02 cases** received as court case are falling in this category.

Accordingly, 03 cases of TRAN-1 are being presented before 15th ITGRC for consideration and approval.

iv) Cases where no evidence of technical glitches have been found after analysis of System logs:

B1. Cases in which, there are no evidences of error on submission/filing of TRAN1, as per GST System log- As per GST System log, there are no evidences of error or submission/filing of TRAN-1. A total of **02 cases** received from Nodal officers and **05 cases** received as court case are falling in this category.

B2. Cases in which filing of TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported. - As per GST System logs, the taxpayers have claimed that they tried to save/submit for the first time or for revision of TRAN 1 but analysis of logs show that there is no system error. A total of **01 cases** received as court case is falling in this category.

B3. Cases in which TRAN 1 have been filed successfully as per logs with no valid error reported- The taxpayer has successfully filed TRAN 1 and no technical errors have been found in the examined technical logs. A total of **01 case** received as court case is falling in this category.

B4. TRAN-1 filed once but credit not received. - Cases where the taxpayer has filed TRAN1 once and claims that no credit have been posted. No technical issues has been observed in the logs. A total of **01 case** received as court case is falling in this category.

B6. TRAN-1 filed, eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported. As per Logs TRAN-1 filed successfully. Eligible for TRAN-2. TRAN-2 fresh/revision attempted with no error or no valid error reported in logs. A total of **01 cases** received as court case is falling in this category.

B7. Cases where TRAN-1 not filed, hence TRAN-2 not attempted - As per Logs Tran-1 not filed. Table 7(a) & section 7b or section 7(d) value has not been declared from the Taxpayer hence Taxpayer was not eligible for filing Tran-2. Also As per logs User neither

submitted nor filed the form. No logs of save as well. ITC ledger also not updated. A total of **01 case** received from Nodal officers is falling in this category.

Category-wise Summary of Cases sent by Nodal Officers of Centre/States

Category No.	Category	Count of Taxpayers
A1	Processed with error.	01
B1	As per GST system log, there are no evidences of error on submission/filing of TRAN1.	02
B7	TRAN-1 not filed, hence TRAN-2 not attempted	01
	Grand Total	4

Category-wise count of Orders passed in court cases

Sr. No.	Court Order/WPs	Category A (TRAN-1/TRAN-2)	Category B (TRAN-1/ TRAN-2)	Total
1	Direction to allow filing of TRAN-1/TRAN-2 manually/electronically	1	1	2
2	No specific order passed	1	7	8
3	Direction to Respondents/Nodal Officer to pass appropriate orders	-	1	1
	Total	2	9	11

Cases sent by Nodal Officers of Centre/States

	Category	Detailed Description	Count of Taxpayer
A1	Processed with error.	The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details.	01
B1	As per GST system log, there are no evidences of error or submission/filing of TRAN-1.	As per GST System Logs there is no evidence that the taxpayer has tried for Saving / Submitting / Filing TRAN-1	02
B7	TRAN-1 not filed, hence TRAN-2 not attempted.	As per Logs Tran-1 not filed. Table 7(a)-Part 7B or section 7(d) value has not been declared by the Taxpayer hence Taxpayer was not eligible for filing Tran-2. Also As per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated.	01
	Total		4

Category A1: Cases where the taxpayer received the error ‘Processed with error. The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details.

S. No.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	24AAACK8850D1ZQ	KEVIN PROCESS TECHNOLOGIES PVT LTD	Private Limited Company	SGST Rs. 30,32,317/-	Gujarat	Shri A. A. Mansuri, Assistant Commissioner	Center	cexahmed@nic.in commr-cexamd3@nic.in

Category B1: Cases in which, as per GST system log, there are no evidences of error or submission/filing of TRAN-1. As per GST System Logs, the taxpayer has neither tried for saving / submitting or Filing TRAN-1.

S. No.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	36AAGCA1556J1ZN	ANU ADVANCE COMPOSITE PRODUCTS PRIVATE LIMITED	Private Limited Company	SGST : Rs. 9,38,030/-	Telangana	Shri. B. Raghu Kiran, Additional Commissioner	Center	cgst.adc1hydcommte@gov.in
2	09ACVPK6803A1ZJ	RAJEEV KUKREJA	Proprietorship	Not Available	Uttar Pradesh	Addl. Commissioner - Gr-2(IT)	State	ctithqlu-up@nic.in

Category B7: Cases where TRAN-1 not filed, hence TRAN-2 not attempted: As per Logs Tran-1 not filed. Table 7(a) – Part 7(B) or Table 7(d) value has not been declared by the Taxpayer hence Taxpayer was not eligible for filing Tran-2. Also As per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated.

S. No.	GSTIN	Legal Name	Constitution of Businesses	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	37AAACL2937J1ZD	LIFESTYLE INTERNATIONAL PRIVATE LIMITED	Private Limited Company	Rs. 59,77,434/-	Andhra Pradesh	S. Faheem Ahmed, Principal Commissioner	Center	ahmed.fahmeem@gov.in

Writ Petition Cases

(A) TRAN-1 Cases

Category No.	Category	Detailed Description	Count of Taxpayer
Category-A1	Processed with error	Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors.	2
Category-B1	As per GST system log, there are no evidences of error or submission/filing of TRAN-1	As per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated. No Valid Error reported.	5
Category-B2	Trans-1 Fresh/Revision Attempted with No error or No valid error reported	As per GST System logs, the taxpayers have claimed that they tried to save/submit for the first time or for revision of TRAN 1 but analysis of logs show that there is no system error.	1
Category-B3	Successfully Filed as Per Logs with No Valid Error reported.	The Taxpayer has successfully filed TRAN-1 and no technical errors had been found in the examined technical logs.	1
Category-B4	TRAN-1 filed but credit not received	Cases where the taxpayer has filed TRAN1 once and claims that no credit has been posted. No technical issues have been observed in the logs.	1
	Total		10

Category A1: Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors.

1. CWP 4547/2021-M/s AAR AAR Technoplast Pvt. Ltd, Faridabad Vs UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
06AADCA2129G1Z5	Haryana	Private Limited Company

Issue: The Petitioner submitted TRAN-1 on 26.08.2017. The message "Processed with error" was displayed on the GST Portal. The Petitioner was entitled to carry forward ITC of Rs. 4,78,364/- which

remained unutilised in view of the technical glitches of the GST Portal. The Petitioner submitted TRAN-1 but CENVAT credit was reflected in the credit ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 26.02.2021 apprised the status of case to the CGST Commissionerate (Faridabad) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending Hon'ble High court of Punjab & Haryana. The court vide order dated 26.02.2021 has directed that the matter should be listed after the decision of SLP (C) Nos.7425-7428 of 2020 therefore the next date of hearing is not available on the court's website. No effective order is available on the court's website in this matter.

Technical Analysis: -As per GST System logs, the Petitioner first time opened TRAN-1 and filed. ARN was generated for first attempt. Revision was also tried by the Petitioner. The Petitioner tried to save data as well. During first attempt and revision, while doing save/submit attempt, error was reported on the GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. AADCA2129GXM002/AADCA2129GXM001/AADCA2129GSD004. This registration was not added till 27/12/2017. ITC ledger was also not updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

2. W.P. (c) 221/2020-M/S U.K. Paints India Private Limited v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AAACU0057C1ZR	Uttar Pradesh	Private Limited Company

Issue: The petitioner has alleged that due to glitch in the GST system the GST TRAN-1 form could not be filed as during the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

Status: GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 27.05.2021. The Court has directed that Respondents are directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN-1 Form is filed.

Technical Analysis: - As per GST System logs the Petitioner first time opened TRAN-1 and filed it. ARN was generated for first attempt. During first attempt and revision while doing save/submit attempt error was reported on GST Portal. PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. 09267900686/09268900686C/09AAACU0057C1ZR and 09267900686/09268900686C. These registration details were not added till 27/12/2017. Ledger was updated for first filing. From the above it can be seen that the Petitioner faced technical glitches while filing TRAN-1.

The Petitioner was also trying to claim ITC by adding his own GSTIN 09AAACU0057C1ZRITC in TRAN-1. This was a wrong way to claim ITC.

Category B1: As per GST System log, there are no evidences of error or submission/filing of TRAN-1

3. SBCWP No. 1687/2020 M/s Nakoda Medical Agencies v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
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08AEXPB4584P1ZJ	Rajasthan	Proprietorship
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Issue: The petitioner filed TRAN-1 on 26.12.2017 for carrying forward a credit of Rs. 2,62,716/- as SGST and Rs. 1,03,816.08/- as CGST, however due to technical glitches, same could not be filed through online mode. On account of such glitch, the amount entered in TRAN-1 was not reflected in electronic ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 12.2.2021 apprised the status of case to Jodhpur Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Rajasthan and the next date of hearing is not available on court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

- iv. Exact technical glitch faced by you while filing TRAN-1
- v. Nature of error noticed
- vi. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 15.03.2021. The Petitioner replied vide email dated 15.03.2021 explaining that due to technical glitches, system errors and huge traffic at common portal (www.gst.gov.in) they failed to upload form GST TRAN-1 by due date of 27-12-2017. No screen shot evidencing error has been provided by them as they contended that they were not aware regarding preserving any evidences e.g. screenshots, etc. of attempt made by the petitioner firm while uploading form GST Tran-1.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed the form TRAN-1. There are no logs of "save. The ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

4. W.P.A. No.10104/2021-Hospital Supply Company Pvt. Ltd v. Union of India &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AABCH9266R1ZM	West Bengal	Private Limited Company

Issue: The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

Status: GSTN is a party in this matter. GSTN vide email dated 19.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing was 3.05.2021. The next date of hearing in this matter is not updated on courts website.

Further investigation by GSTN: -An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021. No response was received by the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

5. W.P.A. No.10103/2021-P. Bhogilal Pvt. Ltd v. Union of India &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AABCP7871N1ZN	West Bengal	Private Limited Company

Issue: The petitioner failed to file TRAN-1 form due to technical glitches on the GST Portal.

Status: GSTN is a party in this matter. GSTN vide email dated 20.5.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon’ble High Court of Kolkata and the last date of hearing is 3.05.2021. The next date of hearing in this matter is not updated on courts website.

Further investigation by GSTN:-An email dated 10.06.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

6. SCA No. 10257/2020-M/s Kishore Vadilal (P) Ltd. v. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
24AAACK5882F1ZK	Gujrat	Private Limited Company

Issue: The Petitioner stated that they were unable to file the GST FORM TRAN 1 due to technical glitch. The Petitioner alleged that the glitch was due to the error in the core field of registration of the Petitioner. The Petitioner was erroneously granted registration certificate as a proprietorship firm on account of error in migration instead of Private Limited Company. The Petitioner’s letter of undertaking was not accepted. Petitioner had tried to file an online application dated 03/03/2018 for amendment in the registration and subsequently amended registration certificate was issued to the petitioner on 26/04/2018.

Status: GSTN is a party in this matter. GSTN vide mail dated 08.03.2021 shared its comments in the matter with the concerned Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Ahmedabad bench of Gujarat High Court. The next date of hearing in this matter is not updated on courts website. No effective order is available on the Court’s website.

Further investigation by GSTN: -An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021.

The Petitioner responded vide email dated 11.06.2021 that the petitioner alleged that the glitch was due to the error in the core field of registration of the petitioner. The petitioner was erroneously granted registration certificate (01/07/2017) as a proprietorship on account of error in migration instead of Private Limited Company. Amended registration certificate was issued to the petitioner on 26.04.2018.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated. The Petitioner had done core amendment for change in Constitution of Business on 2nd April, 2018 which is after the due date of filing TRAN1. He has not attempted to file TRAN-1 on or before the due date of 27th Dec, 2017.

7. M/s. Tarun Enterprises Pvt. Ltd. v. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
07AAACT4460C2ZO	Delhi	Private Limited Company

Issue: The Petitioner has alleged that due to technical glitch in the GST system the TRAN-1 form could not be filed. During the filing of the details in the form, the window was automatically logged out, resulting in non-filing of the form.

Status: GSTN is a party in this matter. GSTN vide email dated 19.3.2021 apprised the status of case to Delhi Commissionerate in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon’ble High Court of Delhi and the next date of hearing is 31.08.2021. No effective order is available on the Court’s website.

Further investigation by GSTN: -An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021. No response was received from the Petitioner.

As per GST System logs the Petitioner neither submitted nor filed TRAN-1. There are no logs of “save” as well. ITC ledger has also not been updated.

Category B2: Trans-1 Fresh/Revision Attempted with No error or No valid error reported

8. WP No. 853/2021 M/s Pee Yel Jay International V. Chairman, GSTC &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
33AAPFP7604Q1ZK	Tamil Nadu	Partnership

Issue: The petitioner had filed TRAN -1 to carry forward the credit of Rs. 10,18,143/- which was available to the petitioner under TNVAT Act. The credit was not reflected in the ledger of the Petitioner. Due to technical glitch an error appeared on the screen. Whenever the Petitioner tried uploading the TRAN1, pop up dialogue box opened and the message “proxy error” was displayed on the screen. The Petitioner was not able to complete the submission as the GST website was automatically jumping, showing error message and sometime there was no response.

Status: GSTN is a party in this matter. GSTN vide email dated 22.02.2021 apprised the status of case to the CGST Commissionerate (Madurai) in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 05.03.2021. The Court vide order dated 05.03.2021 has directed that the jurisdictional officer/6th respondent is directed to verify the correctness of the facts projected in the petition mentioned representations dated 20.02.2020 and on being satisfied with the same, forward the petitioners' case to the Nodal Officer, namely, fifth respondent herein who will coordinate with the first respondent (GSTC) so that the petition mentioned credit amounts filed in Form TRAN 1 are duly carried forward to the petition mentioned Electronic Credit Ledger pertaining to the respective writ petitioners. This exercise shall be carried out and completed within a period of twelve weeks from the date of receipt of a copy of this order.

Further investigation by GSTN: An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

- iv. Exact technical glitch faced by you while filing TRAN-1
- v. Nature of error noticed
- vi. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner submitted TRAN-1 on 27/12/2017 and the same was successfully processed. TRAN-1 filing however, was not attempted. Further no error was reported in logs and ITC ledger has not been updated. Thus, the Petitioner’s case may be considered as not having faced any technical difficulties.

Category B3: Successfully Filed as Per Logs with No Error reported. Successfully Filed as Per Logs with No Error reported.

9. W.P.A.7926/2021-Ad Well International Private &Anr. V. The SGST Nodal Officers, Technical Glitches &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
19AADCA3627K1ZK	West Bengal	Private Limited Company

Issue: The Petitioner submitted that the declaration in Form TRAN-1 was filed within due date. Petitioner successfully claimed the transactional credit of VAT amounting to Rs.33,27,308/- under the West Bengal Value Added Tax Act,2003 and further fed the data relating to CENVAT credit of Rs. 65,73,765/- on the GST Portal but the said data was not uploaded. The VAT credit

amounting to Rs.33,27,308/- was credited in the electronic credit ledger but CENVAT credit of Rs.65,73,765 was not credited due to technical glitches of the GST portal.

Status: GSTN is a party in this matter. GSTN vide email dated 25.3.2021 apprised the status of case to Kolkata Commissionerate in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the last date of hearing is 24.03.2021. The next date of hearing in this matter is not updated on courts website.

Further investigation by GSTN: An email dated 10.06.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 11.06.2021. The Petitioner responded vide email dated 11.06.2021 and stated that while filing TRAN-1 only VAT amount could be uploaded. Excise Duty of Rs.65,73,765.00 by way of balance in the form of CENVAT Credit could not be uploaded. As regards screen shot of the error the Petitioner stated that screen shot of the technical error was not saved. A letter dated 30.08.2018 was sent to the SGST Nodal Officer, Technical Glitches, 14, Beliaghata Main Road, Sales Tax Building, Kolkata-700015 which is annexed to the writ petition as Annexure "P-2". The Petitioner was requested to share the details of the same by EOD 14.06.2021. The Petitioner provided the scanned copy of the letter vide email dated 14.06.2021. In the attached letter Petitioner has mentioned that due to some system error the data fed into the system was not uploaded. No screen shot of the error is available with the Petitioner.

As per GST System logs the Petitioner first time opened TRAN-1 and tried to file. It got stuck in "FRZ" later on filing was done and ARN was generated. For first successful submission ITC ledger was updated. Two unique ARN's were generated due to the fact that the TRAN-1 was stuck in "FRZ" and there were multiple clicks for filing of TRAN-1.

Category B4: TRAN-1 filed but credit not received.

10. WP No. 226277/2020 M/s INM Technologies Private Ltd. v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
29AADC17257B1ZK	Karnataka	Private Limited Company

Issue: The petitioner filed TRAN- 1 within the due date but credit amount of Rs.16,27,341/- was not reflected in the electronic credit ledger.

Status: GSTN is a party in this matter. GSTN vide email dated 15.01.2021 apprised the status of case to the CGST Commissionerate (Bengaluru) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is disposed of by Hon'ble High court of Karnataka vide order dated 3.02.2021. The Court has directed that respondents are required to make available necessary provisions on the website of the portal of the respondent to enable the petitioner to claim such credit.

Further investigation by GSTN: An email dated 13.03.2021 was sent to the Petitioner requesting for the following information: -

- iv. Exact technical glitch faced by you while filing TRAN-1
- v. Nature of error noticed
- vi. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 15.03.2021, however, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner has tried to save TRAN-1 form which was processed. The Petitioner filed TRAN-1 successfully and ARN was also generated. ITC ledger was not updated. Further, no error reported in logs. Revision was not attempted by the Petitioner. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

(C) TRAN-2 Cases

Category No.	Category	Detailed Description	Count of Taxpayer
Category-B6	Tran-1 Filed, Eligible for Tran-2. Tran-2 Fresh/Revision Attempted with No error or No valid error reported	As per Logs Tran-1 filed successfully. Taxpayer was eligible for filing Tran-2. As per logs taxpayer filed Tran-2 without any error.	1

Category B6-Tran-1 Filed, Eligible for Tran-2, Trans-2 Fresh/Revision Attempted with No error or No valid error reported

1. DB CWP 2938/2021-M/s Bubugao Communication Pvt Ltd v. Commissioner, CGST, Jaipur &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08AAGCB0384H1ZQ	Rajasthan	Private Limited Company

Issue: -Petitioner saved data in Form TRAN-2 for the month of July,2017, as these showed in draft, but while submitting the final TRAN-2 form for the month of July, 2017 the same is showing as 'Nil'. Therefore, it appears that the Petitioner may have submitted 'Nil' data in their TRAN-2 form for the month of July, 2017.

Status: - GSTN is a party in this matter. GSTN's comments were sent to Jaipur Commissionerate vide email dated 02.06. 2021. The matter is pending before Hon'ble High Court of Jaipur. The next date of hearing in this matter is 07.07.2021. No effective order is available on the court's website.

Further investigation by GSTN: An email dated 30.06.2021 was sent to the Petitioner requesting for the following information: -

- iv. Exact technical glitch faced by you while filing TRAN-1
- v. Nature of error noticed
- vi. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 02.07.2021. The Petitioner responded vide email dated 01.07.2021. The Petitioner did not provide any screen shots of the alleged technical

glitches of the GST Portal. The Petitioner has stated that no data of outward supply on which transition credit was claimed was reflected in Final Form Tran-2 for the month of July-17 when the draft Form Tran-2 for the month of July-17 had complete details. They have filed Final GST Form Tran-2 for the month of July-17 on the same date i.e. 14.06.2018 on which date Form Tran-2 for the month of Aug-17 and Sep-17 was also filed. But the TRAN-2 Form for July-17 had no details and was blank without any details of outward supply and input tax credit whereas Form Tran-2 for the month of Aug-17 and Sep-17 had complete details. For this technical error in Form Tran-2 for July-17 we raised a complaint to the GST help Desk for which ticket ID-SR201806142643144 was allotted.

Ticket no. 201806142643144 was raised on 14.06.2018 and closed on 17.06.2018. The following issue was raised “while filing Trans2 we have added the details in July month and submit the same but after filing when we check the same it has been filed blank. So kindly open the option in Trans 2 July month so we can add the same and claim credit. As we have both preview draft and final submit draft.” The following resolution was provided to the Petitioner “This is in reference to your query related to the functionality to reset TRAN 2, we would like to inform you that the reset option for TRAN 2 is not available on the GST portal. Kindly wait for further notification, if any. In case, for further concern, please feel free to contact the GST helpdesk number (0120-4888999) or visit Grievance Redressal portal <https://selfservice.gstsystem.in/> to log a ticket. We regret for any inconvenience this may have caused.”

On completion of technical analysis conducted by GSTN it was observed in the logs that Petitioner successfully filed TRAN-1 on 25/08/2017 & 26/12/2017. ARN was received for the same and ITC ledger was also updated. The Petitioner filed TRAN-2 for 07, 2017, 08, 2017, 09, 2017 period before 30/06/2018. Valid System message was displayed to the Petitioner while filing TRAN-2 for the period 10, 2017 as Petitioner’s closing balance declared in TRAN-2 for the period 10, 2017 was 0. The message displayed to the Petitioner was “You cannot ADD/EDIT Invoice as closing balance is zero”. ITC ledger of the Petitioner was updated for 3 filed periods.

Subject: Agenda Note for ITGRC for Technical Issues requiring data fixes through backend utilities.

Background

GST system was envisioned to have gone live with all software components ready for go live on 1st of July, 2017. GSTN, accordingly developed the application modules keeping in mind the GST Law, rules and format, stipulated in Software Requirement Specifications (SRS). However, keeping in mind the fact that GST is a new law and taxpayers may not have clarity on a lot of details pertaining to information sought in forms, GST Council approve new formats changing the structure of major returns processing. Besides, the rules and formats for many other forms were also not notified that were to be developed. Pursuant to various feedbacks received from industry bodies and trade, many changes were also stipulated in prevailing laws and rules that required changes to be continuously made in the GST System.

Therefore, GSTN moved to an agile methodology of developing applications for GST System keeping it modular to handle frequent changes in law and rules incorporated in a running application. This created an overhead of integrating all new application changes downstream being dependent on the module undergoing the change. This led to following issues:

- Some corner scenarios owing to varying taxpayer actions and system behaviour when subjected to heavy load, went unhandled leading to inconsistent data persisting in GST System.
- The data inconsistencies varied from ledger getting improper debits/credits, the return details stored in the system having incorrect information relating to situations where an irreversible commit had happened in the database,
- No option available to taxpayer to seek remedy in GST System leading to a need of performing data fixes through auditable utilities.

Due to the complex set of validations and process requirements through multiple touchpoints in GST System's application, the processing errors either due to unhandled exceptional scenarios or any software glitches occasionally occur. In order to remediate such issues, the processed incorrect data require fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders.

As part of medium term measure, GSTN proposes to perform the following:

- GSTN to request MSP (Infosys) to undertake a detailed assessment of any of such problem being reported in order to ascertain whether the problem at hand is due to the technical glitches that have been reported by the stakeholders. GSTN intends to seek a detailed assessment report from MSP and get them corrected.
- Upon confirmation of glitch, post internal approval through CEO GSTN, GSTN shall intimate MSP to perform data fix as immediate relief for issue at the hand as in the absence of such step, the taxpayer would be left in lurch and not able to complete compliance.
- After execution of data fix utility, GSTN will request a detailed report of the impacted stakeholder such as taxpayers and the respective data fixes applied. The

report generated shall be shared with ITGRC and respective Centre/State jurisdictional officer for information on a fortnightly basis.

- All such reports shall also be submitted to the GST Council.
- GSTN shall ensure maintenance of complete audit trail of such data fixes applied for future audit requirements.
- GSTN shall perform a periodic sample-based audit of data fixes to ensure necessary governance and control mechanism are in place.

Action that should be taken by GSTN

The issues generally have been noticed after

- A complaint got raised by taxpayer/ tax officer,
- Result of a periodic internal and external audits.

GSTN then usually performs data analysis, and confirms if the data indeed contained discrepancy. Upon confirmation of the defect, complete list of similar cases would be extracted from the system that are suspected to require data fix, and an approval note with root cause analysis would be prepared and placed before a competent authority, who would approve for the data fix including the manner in which it is to be applied. In this sequence of activities, the GSTN has prepared a generic list of typologies of errors that could come based on the pattern noticed so far and has proposed an approval process on which approval is required by GSTN. The method followed would be as follows: as follows:

The classification of issues and the method to correct them:

The Issues can be identified into following 5 categories:

Sr. No	Technical issue Category	Modules affected	Type of error and knowledge of correct data	Approving Authority
1	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data known	Internal (SVP, GSTN)
2	Technical issue with no financial implications,	Such as Registration, Back office, Front Office etc.	Correct data not known	Internal (EVP GSTN) for resetting/ reopening the forms.
3	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data known	GSTN to correct data after Internal Approval by EVP/CEO. The tax administration to be provided with MIS.

4	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data not known with certainty	GSTN to correct data after Internal Approval by EVP/CEO. GSTN to enable the reset button so that the taxpayer can correct the form and file again. Post facto the approval of ITGRC to be taken and tax administration to be provided with MIS.
5	Technical issue affecting globally with financial implications	Such as cash ledger/ ITC ledger/ Refund etc.	Correct data not Certainly known	GSTN to enable the appropriate data fix after Approval of the ITGRC – Taxpayer can reset the form and file again. The tax administration to be provided with MIS.
6	Taxpayers Claiming technical issue to be Defect	NA	No Action required– Clarification provided to the taxpayer	Not Applicable

The process to be adopted for correction:

1. For most of the issues, as depicted in the above table, it is advised that GSTN may be allowed to fix issues from backend with the approval of the ‘Competent Authority’ as may be approved/ nominated.
2. For all the issues, a list with impacted GSTIN’s, CINs etc. will be prepared and shared with the competent authority as per Col. 5 above, as approved by ITGRC.
3. The steps involved in the process shall be:
 - a. The data discrepancy will be first analyzed and confirmation will be sought from MSP
 - b. Upon confirmation, a utility will be written by MSP to extract all similar cases from GST System data stores.
 - c. A root cause analysis will be sought and fix would be implemented by MSP in consultation with GSTN to prevent further damage to data consistency
 - d. Scripts (SQL or Java depending upon type of defect) will be prepared for data fix and are tested in multiple cycles by MSP and GSTN.
 - e. Approval note will then be prepared and presented to competent authority for approval to go ahead.
 - f. Once approval is provided, audit entries will be created for each mutation affecting the data state.
 - g. Scripts will be executed and post execution state of data will also be stored for

referencelater.

- h. List of all such changes will be presented and explained to GST policy wing & ITGRC and periodic internal audit will also be undertaken.

Please Note:

1. While in most cases, where cash is involved, the tax amount would have already moved from taxpayer's bank account to Govt. account, and it will only entail changes to local ledgers in GST System without any requirement to correct records on downstream systems. Therefore, these changes may be allowed to be performed through audited scripts and procedures as mentioned at point number 3.
2. For certain category of issues in the table above, where the impact of the defect is limited to GST System only, an option will be given through an identified list of taxpayers impacted in self-service mode to correct the errors. This will be analysed and done case to case basis, and an enablement will be done for such taxpayers on their respective dashboards, such as Returns, Refunds, Registration etc. For other categories, data fix from the back end after the approval of the competent authority as proposed would be applied.
3. However, for some issues, such as Sl. no 5 of the above table e.g. cash ledger problems, because of unforeseen issues, the CPIN information travels from GST Portal to banks, to RBI, State Accounting authorities, Pr. CCA etc. Any replay of the records will also need to flow globally to all these entities and they need to make the correction across the board.

Decision Point:

Since these problems, though are now sparse, cannot be ruled out in future as well. Therefore, a competent authority may be approved/assigned at GSTN for the categories mentioned, upon whose approval; the data fixes can be performed.

Accordingly, for the data errors an approving authority to approve the change as column 5 of the table above may please be approved:

Sample list of data errors with no financial impact

In the below cases, there has been technical issue which has been fixed (data fix) by GSTN after taking internal approval.

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
1	Registration	Duplicate Registration incase of migrated Taxpayers	In case of migration of taxpayers from the old regime, in some cases it so happened that the taxpayer has migrated from the old registration number and obtained fresh registration from the GST Portal. In such cases, since the GSTIN was issued from two different systems, therefore the GSTIN in both the cases was same but in the database two reference IDs were created as both the processes happened independently. The reference ID which was not being used by the taxpayer was made inactive and any credit against the inactive reference ID was transferred to the Active Reference ID.	129
2	Registration	Duplicate Registration in case of UIN/TDS/GST P Temporary ID	The registration number for the UIN/TDS/GSTP and Temporary ID gets generated from a running serial Number. Due to technical issue, the running serialnumber was reset and the sameregistration number was allocated to UIN/TDS/GSTP and Temporary ID registrants. Therefore, one Reference ID was made inactive.	581
3	Cash Ledger	Double entry in Electronic CashLedger	Due to defect in the system application, against a single challan, two credit entries were posted in the Electronic Cash Ledger. This was due to technical issue as the banks were submitting remittances at the same time. In some cases, the taxpayers had paid voluntarily through form GST DRC-03.	5 Tickets raised.
4	TRAN-1	Wrong Credit posted in Credit Ledger	It was observed that wrong credit entry was posted after filing of TRAN1 form for claiming transitional credit. It has happened due to technical defect.	1151

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
5	Return /GSTR3B	Multiple Entries in Return Summary Table	After filing GSTR3B form, there is an internal table where the details of the GSTR3B form summary is being maintained. At high load due to exception, multiple summary entries for the same taxpayer and tax period were present. This is due to GSTR3B issues which have also impacted GSTR-9.	70
6	Return (GSTR3B /GSTR4)	Credit/Cash ledger has been either credited or debited twice	<p>It has been noticed that while filing return of a tax period in form GSTR3B, the credit ledger has been either credited or debited twice. The double debit behavior has been observed in Cash Ledger in few cases. On receiving the grievance through helpdesk, the entries have to be corrected by data fix.</p> <p>Consequently, system computed GSTR-9 had also undergone changes after the aforesaid data fix.</p>	36
7	Return/GSTR-4	Incompletion of filing Process	System has allowed filing of GSTR-4 (quarterly) without setting off the liabilities. Since the debit entry was not made in cash ledger but liability was posted in the liability register, therefore system has stopped the taxpayer to file subsequent returns. Though, ARN was generated but entries in relevant tables for return filing was not updated.	16
8	Return/ GSTR 4	Negative Late fee	<p>System computes late fee at the time of filing return in form GSTR-4 up to the time of Submit of the said form. Since submit button was having some challenges, the same was removed and late fee was computed at the time of filing of the return.</p> <p>For the old cases. Late fee was becoming negative in some cases and the same was rectified subsequently by data fix after removal of submit button.</p>	57

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
9	Return/GSTR4	Transferring reverse charge amount to cashledger	A composition taxpayer had paid excess amount by declaring inward supplies attracting reverse charge. Later on the taxpayer amended the transactions but there was no reverse charge liability to settle the excess amount paid in the earlier tax period. Therefore, the excess amount was credited back to his cash ledger.	1
10	Return/GSTR4	Tax Amount Debited Twice from Cash Ledger	In GSTR-4 form, the tax amount has been debited twice from cash Ledger as the filing process was incomplete and the taxpayer filed the return again. This is due to user behavior as they have clicked on Filing Button twice during high peak load.	25
11	Return/ (GSTR-9A,GSTR-4)	Incomplete computation of GSTR-9A	During the FY 2017-18 and 2018-19, the composition taxpayers were required to file return in form GSTR-4 on quarterly basis. In addition, the taxpayers were also required to file annual return in form GSTR-9A. In few cases, the data in database of July to September 2017 was overwritten due to defect in the system. In such cases, GSTR-9A liability and other entries could not be computed for all quarterly returns of the year.	1 ticket
12	Return/ITC 03	ITC-03 filing process incomplete after filing	The taxpayer has filed Form GST ITC-03 and discharged the liability but the filing process was not completed due to technical issue and the taxpayer was not able to file statement in form GST CMP- 08 to discharge the liability.	1 ticket
13	Refund	Taxpayer not able to download application after filing	The taxpayer had filed the Refund Application and were not able to download the filed application form. This was due to technical deployment issue.	120 JSON
14	Refund	Duplicate ARN received after Filing.	After filing the refund application, duplicate ARN got generated for RFD01 application. This was due to technical issue where the validation that ARN should not be generated for the same tax period again.	921

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
15	Refund	Duplicate Refund Order for the same ARN.	There was technical issue in the signing process where the Tax Officer would get error on signing the Refund Order and he was able to sign again. This led to issue of Duplicate Refund Order.	80
16	Refund	Amount Not Credited to Ledger after Issuing Deficiency Memo/RFD-6	The amount was not getting credited back to the ledger after the tax Officer raises deficiency memo. Similarly, the amount deemed as inadmissible in RFD-06 was also not being credited back to the ledger. This was due to technical issue where the posting was failing in the ledger as the deficiency memo could be issued multiple times. The issue of deficiency memo was successful in the 1st attempt and was failing on subsequent occasions.	4500
17	Back Office	Change in Jurisdiction	Change of Jurisdiction, Assignment of Refund and Other Modules ARN to GST Officer in case of non-assignment of role by the Back Office Admin.	

Sample list of data errors with no financial impact

Technical Challenges faced by the taxpayer- GSTN to reset or enable the reset button after Internal Approval to enable the taxpayers to file again. In case of reset, the same late fee has to be taken which was paid by the taxpayer at the time of his 1st filing.

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
1	Return- (GSTR3B,GSTR4)	Mismatch in Saved and Data Posted in Ledger after filing	This is due to Taxpayer Behaviour where they have opened multiple tabs for the same GSTIN and working simultaneously. The GSTR3B form was filed successfully but has mismatch in the values posted in the ledger and values saved in the database. The GSTR3B form was reset and the taxpayer has filed GSTR3B again in 18534 cases. Presently 77058 cases are still pending for reset. There are 32697 cases where the detail JSON file has been changed by the taxpayer after filing. For these cases, the summary JSON matches with the ledger.	77058
2	Return GSTR3B	GSTR3B Filed but filing process was incomplete	This has happened in GSTR3B because taxpayer tried to reset their data using the then “Reset” button provided on User Interface (which was provided from 20th Nov 2017 till 23rd Feb 2018, later again added from 27th March 2018 till 4th Sept 2018) which was intended to help taxpayers clear their liability and return filing status when they have not yet offset, but have already submitted the data for a particular return period. Eventually, when they clicked on “Reset” button, the ledger details were reset but return filing status still remained, resulting into a partial commit situation. Thereafter, taxpayer filed the return thinking he had already submitted the same, without checking liabilities and ITC were not offset.	109

3	Return/GSTR-4	GSTR-4 Filed but filing process was incomplete	It has been noticed that in GSTR-4 Composition Taxpayers form the filing was completed but the liability was not offset but posted in the liability ledger. As the liability was not offset, the taxpayers were not able to file the subsequent GSTR- 4/CMP-08 form for the next quarter.	11
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In GST System - Taxpayers claiming to be Defect - Clarification provided to the taxpayer

Sr. No.	Module	Issue Category	Note Statement	GSTIN Impacted
1	Return /GSTR9/ Other Returns	Incorrect data input by Taxpayer or System Defect	The taxpayer had negative value in Table 6 Details of ITC Availed during the Financial Year, in column (K) i.e. Transition Credit through TRAN1 (Including revision if any). He was taxpayer was asked to remove the negative value and save with positive number as he was not able to File GSTR-9 form. The taxpayer has logged ticket to reverse the late fee as he was able to file after the due date. Similar cases happen in other returns also	2

Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches presented by GSTN

1. Background

1.1 Section 52 of the GST Act mandates an e-commerce operator to collect tax at the specified rate on the net value of the supplies made through it by other suppliers where consideration has to be collected by the operator. The operator has to file the details of tax so collected in a statement in Form GSTR-8 on monthly basis. On the basis of statement so filed by operators, the tax collected is made available to the suppliers for taking the credit into their cash ledgers.

1.2 The operators are not required to file the aforesaid statement for the month in which no supply has been made by any supplier through his portal. But the details provided in a statement of the month can be amended at the time of filing statement of the subsequent month if supplier has not taken the credit till such time or supplier had rejected the details uploaded by the operator. Additional amount is paid by the operator in case of upward amendment and he gets credit by reduction in liability if amendment is made downwards.

1.3 There is no late fee payable by operators on delayed filing of the statement of a month but interest is payable for delayed filing. Interest is computed by system based on the net liability and the period of delay.

1.4 Tax collected and paid in a statement can be adjusted in subsequent statement if goods supplied are returned. It means that liability is paid on net of basis in GSTR-8. Details are provided GSTIN wise for a tax period.

	FIX PROVIDED ON	RQM ID
74 CASES	22-Jan-21	19830
MMT & GIBIBO	17-Feb-21	19830

2. System glitches

2.1 Sometime during filing of return or statement, it so happens that though acknowledgement (ARN) is generated but filing process is not completed. It may happen due to immediate logging out of user after filing or interruption in internet connectivity or due to defect in system application.

2.2 The e-commerce operators are required to file statement in Form GSTR-8 on monthly basis. While filing statement for the month of November, 2020, in 74 users, the filing process could not be completed in the system. When the impacted operators came to file statement December, 2020 in January, 2021, system started showing error that your previous tax period's statement has not been filed. After noticing the defect, the same was fixed on 23-01-2021.

2.3 Due date of filing GSTR-8 of a tax period is 10th of the next month. Due to the defect, the filing of the said statement was delayed by few days. Though, there is no late fee on delayed filing of GSTR-8 but interest becomes payable after due date and same is computed by system. Although, the defect was noticed in filing of statement but there was no defect in depositing the amount of liability. Out of 74 operators, 60 have deposited the amount of liability by due date i.e. by 10th January, 2021. 10 operators have deposited the liability at the time of filing the said statement. Since, filing of GSTR-8 is not mandatory for every operator, 4 operators have not filed the statement of December, 2020.

2.4 In the second case, few operators belonging to GOIBIBO and MMT could not file the statement

of September, 2020 due a defect is system application. Though, defect had not impacted all operators but due to multiple amendments 9 operators of GOIBIBO and 6 operators of MMT were stuck up due to the defect. In case of GOIBIBO, all operators have deposited the liability by due date for all applicable tax period but in case of MMT, the liability was deposited at the time filing the statement in Form GSTR-8. Though, few operators of MMT have deposited the liability few days before filing the said statement.

3. Interest paid

3.1 Summary of the interest paid by the operators who have deposited the liability by due date and those have deposited after due date but few days before filing the statement in Form GSTR-8 is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest to be re-credited		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
(1) Incomplete filing process of November, 2020 tax period	Deposited by due date	60	Dec, 2020	7215692	1297419	1297419
(2)(a) Stuck up in September 2020 tax period	Deposited by due date	9	Sep, 2020	87460	334919	334919
		9	Oct, 2020	99471	385394	385394
		9	Nov, 2020	98207	318254	318254
		9	Dec, 2020	70897	221576	221576
		9	Jan, 2021	19297	65506	65506
	Sub-total (2a)	45		375332	1325649	1325649
(2)(b) Stuck up in September, 2020 tax period	Deposited after due date but before filing statement	1	Sep, 2020	1497	9505	9505
		3	Oct, 2020	2089	21127	21127
		3	Nov, 2020	2283	22070	22070
		3	Dec, 2020	2715	31710	31710
		1	Jan, 2021	1996	16216	16216
	Sub-total (2b)	11		10580	100628	100628
TOTAL		116		7601604	2723696	2723696

3.2 The amount deposited through challan is credited to cash ledger of the concerned person after confirmation of the deposit from bank / RBI. The RBI credits the amount to Consolidated Fund or India for IGST, CGST and Cess and the amount deposited under SGST is credited to the Consolidated Fund of concerned State.

3.3 The operators who have deposited the amount of liability on the day of filing the statement in Form

GSTR-8 and excludes the amount of interest paid from the date of deposit to date filing the said statement, is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount of interest paid		
				IGST	CGST	SGST/UTGST
1	2	3	4	5	6	7
1) Incomplete filing process of November, 2020 tax period	Deposited after due date	10	Dec, 2020	236960	10422	10422
	Deposited after due date	6	Sep, 2020	97869	995253	995253
		6	Oct, 2020	55773	694023	694023
2) Stuck up in September, 2020 tax period	(on the day of filing statement or before filing the same)	6	Nov, 2020	47801	510515	510515
		6	Dec, 2020	28893	372103	372103
		6	Jan, 2020	9214	122600	122600
	Sub-total (2)	24		239550	2694494	2694494
	Total (1+2)	34		476510	2704916	2704916

4. Proposal for refund of interest paid

ITGRC may take a view whether to refund the interest paid by the operators detailed at para **A** or to refund the amount paid at details given at para **B** also. Amount of interest to be refunded will be credited to cash ledger under respective major head.

Agenda Note for cases under extended scope of ITGRC presented by GSTC

Subject: Agenda Note for ITGRC of cases forwarded by the Nodal Officers in the category of non-technical nature in terms of extended scope of ITGRC as per the 32nd GST Council meeting and as per the High Court order.

There are four cases forwarded by the Nodal Officers after the decisions of the respective Hon'ble High Court as non-technical cases in terms of extended scope of ITGRC as per the 32nd GST Council meeting. However, only three cases appear to have been covered under the extended scope of ITGRC and the fourth case does not appear to be covered under the extended scope of ITGRC, which are being presented before the ITGRC for decision. The details of the all cases are as follows-

1. Case of M/s Ram Auto Madurai

The issue involves rectification of Tran-I in case of M/S Ram Auto, Madurai as per the order of the High Court of Madras dated 16.02.2021 in Writ Petition Number 15531/2020. It is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

“In this view of the matter, the communication impugned in the writ petition is quashed. The second respondent i.e. the Principal Nodal Officer, Chennai is directed to forward the petitioner's application to the third respondent i.e. Goods and Service Tax Council forthwith and without any delay. The third respondent will verify the correctness of the averments set out in communication of the jurisdictional Assistant Commissioner to the Commissioner of Central Taxes & Central Excise, Madurai vide C.No.IV/16/48/2018-Tech, dated 17.05.2019. Upon the third respondent being satisfied with the correctness of the same, the third respondent will grant the relief as sought for by the writ petitioner.

Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Assistant Commissioner duly forwarded by the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.

2. Case of M/s. Precision Gasification Service Pvt. Ltd

Rectification of Tran-I in case of M/s. Precision Gasification Service Pvt. Ltd as per the High Court of Gujarat order dated 18.03.2021 in R/o Special Civil Application no. 19818 of 2019. It is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

“The respondents are directed to either open the online portal, so as to enable the writ applicants to again file rectified Form GST TRAN-1 electronically or accept the manually filed from the GST TRAN-1 with necessary corrections on, or before, 18.05.2021.”

Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Joint Commissioner duly forwarded by the Commissioner and principal nodal officer, Ahmadabad Zone that it is an error apparent on record involving transposition of the column, the case may be considered by the ITGRC.

3. Case of M/s Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore

The issue involves rectification of Tran-I in case of M/S Carl Stahl Craftsman Enterprises Pvt Ltd., Coimbatore as per the order of the High Court of Madras dated 23.04.2021 in Writ Petition Number 11119/2020. It is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues since the case was presented in the 6th ITGRC meeting and the request of the taxpayer for re-opening of TRAN-1 was "Not approved" citing that the case falls under the category of B10 i.e. mistake/errors committed by taxpayers which was admitted apparently or inadvertently or due to misunderstanding in reporting correct values in TRAN-1 and IT-GRC decided not to reopen TRAN-1 in the case. It is proposed that this case may be considered by the ITGRC.

In this case, the High Court has stated that-

"In the present case, the error is seen to be inadvertent, constituting a human error. The Revenue does not dispute this either. Moreover, the era of GST is nascent and I am of the view that a rigid view should not be taken in procedural matters such as the present one.

The petitioner is thus be permitted to transition the credit. After all, the consequence of such transition is only the availment of the credit and not the utilization itself, which is a matter of assessment and which can be looked into by the Assessing Officer at the appropriate stage.

This writ petition is allowed. The third respondent, i.e., Deputy Commissioner of GST Policy, the Nodal Officer will enable the modification to be effected as well as the transition within a period of four (4) weeks from date of uploading of this order upon an application to be made by the petitioner in this regard."

Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional Commissioner and of the Principal Commissioner and Principal Nodal Officer, CGST, Chennai North, that it is an error apparent on record involving transposition of the column, the case may be considered by ITGRC.

4. Case of M/s Precision Rubber Industries, Coimbatore

The taxpayer claimed to have made attempt to file TRAN-1 within the due date 27.12.2017. However, no material evidence has been produced. The case was presented in the 4th ITGRC wherein the case was presented in B1 Category: "Cases where the taxpayer say that they received error. As per GST system log, there are no evidences of error or submission/filing of TRAN1: As per GST System Logs, the taxpayer has neither tried for Saving / Submitting or Filing TRAN1".

In the Writ Petition Number 11781 & 11784/2019, the High Court of Madras vide order dated 03.10.2019 has directed that-

"The Principal Nodal Officer (Principal Commissioner, Chennai North) is directed, to take appropriate action without loss of further time so as to get the issues resolved by GSTN at the earliest

possible time, at any event, within a period of six weeks from the date of receipt of a copy of this Order.”

The High Court has further also stated that-

“.... Needless to say that the impugned denial is only because of the reason that the time for filing TRAN-1 had lapsed and since that issue is sought to be resolved before GSTN.

The case was again presented before 9th ITGRC under Category C: “Cases already presented before 1st to 7th ITGRC but not recommended by ITGRC and now as per 32nd GST Council decision also forwarded without recommendation by jurisdictional tax authority.” The ITGRC had directed State/CBIC tax authorities to re-examine these cases and forward properly, only if they fulfill the parameters/conditions as laid down in 32nd GST Council Meeting.

In view of the above, the Principal Commissioner, Coimbatore has re-examined the case and recommended that since the taxpayer is otherwise eligible for the credit but for this procedural lapse of non-filing Tran-I within time, their representation may please be considered.

However, this case does not fulfill the criteria set by 32nd GST Council meeting while extending the scope of ITGRC to consider non-technical issues viz. error apparent on the face of record. In this case, the assessee failed to submit the Tran-I on time and there is no error apparent on the face of record.

S. No.	GSTIN	Legal Name	Amount of Credit to be claimed in TRAN-1 (in Rs.)	Name of High Court and Order date	Name and Designation of Nodal Officer	Recommendation	Remarks
1	33AADFR0636C1ZT	M/s Ram Auto, Madurai	Rs.4,85,684/-	High Court of Madras . Order dt. 16.02.21 in Writ petition Number 15531/2020	G. Ravindranath Principal Commissioner, GST and Central Excise Chennai North, Principal Nodal Officer for IT Grievanc	This case relates to ‘Tax payer filed TRAN-1 but by mistake uploaded the details in wrong column/table’ which is covered under non-technical issues viz., errors apparent on the face of record’ and the Tax payer has also filed declaration before 27 th December 2017. As per GST Council Office memorandum F.No.71/Exemption/ITGRC /GSTC/2019/5235 dated 19.02.2019, this case is covered under non-	Covered under extended scope of ITGRC set by 32 nd GST Council Meeting

					es, Tamil Nadu and Puduche rry Zone	technical issue. Hence, this case is recommended for consideration.	
2.	24AAKCS69 48Q1ZE	M/s. Precisi on Gasific ation Servic e Pvt. Ltd	Rs. 12,30,84 3/- & Rs. 20,01,64 0/-	High Court of Gujarat . order dated 18.03.2 1 in R/Spec ial Civil Applic ation no. 19818 of 2019	Commis sioner & Principal Nodal Officer for Ahmeda bad Zone, CGST & C.Ex, Gandhin agar	Taxpayer filed the TRAN-1 by due date but by mistake uploaded the details in wrong column. The case of the Petitioner appears to be genuine and may be considered being bonafide mistake made by them while filing GST TRAN-1 return.	Cove red under exten ded scope of ITGR C set by 32 nd GST Coun cil Meeti ng
3.	33AADCC2 950P1ZI	M/S Carl Stahl Crafts man Enterp rises Pvt Ltd., Coimb atore	Rs.25,88 ,556/-	High Court of Madras dated 23.04.2 021 in Writ Petitio n Numbe r 11119/ 2020.	G. Ravindra nath Principal Commis sioner, GST and Central Excise Chennai North, Principal Nodal Officer for IT Grievanc es, Tamil Nadu and Puduche rry Zone	It appears that this is not a technical issue and a case of mistake committed by the taxpayer while filing TRAN-1	Cove red under exten ded scope of ITGR C set by 32 nd GST Coun cil Meeti ng

4.	33AADCG0 576B1Z5	M/s Precision Rubber Industries, Coimbatore	Rs. 32.89 Lakhs	High Court of Madras . Order dated 03.10.2 019 in Writ petition Number 11781 & 11784/ 2019	Commissioner, Chennai North, Principal Nodal Officer for IT Grievances, GST – Central Tax – Chennai Zone,	Since the taxpayer is otherwise eligible for the credit but for this procedural lapse of non-filing Tran-1 within time, their representation may please be considered.	Not Covered.
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Additional Agenda – Refund Case presented by GSTN**WP (T) No. 4061/2019- Atibir Industries Co. Ltd. Vs. UOI and Ors.**

GSTIN	State	Constitution of Business
20AADCA1825B1ZO	Jharkhand	Private Limited Company

Facts of the case:

1. The aforesaid Writ Petition No. 4061 of 2019 filed by M/s Atibir Industries (**GSTIN 20AADCA1825B1ZO**) in the High Court of Jharkhand wherein GSTN was also made as one of the Respondent. The petitioner argued that they couldn't file application for refund of unutilized ITC w.r.t. compensation cess in Form GST RFD-01 pertaining to the periods 2017-18 and 2018-19 on GST Portal due to technical difficulty. After hearing the Petitioner and Respondents, it was held in the Order dated 04.01.2021(Annexure-1of order) passed by the Hon'ble High Court that the petitioner would be entitled to avail of the opportunity to file applications for refund of compensation cess for FY 2017-18 and 2018-19. The respondents were directed to communicate the petitioner through email as to whether they would open the GSTN portal or would accept the refund applications manually within a period of 15 days.
2. Subsequently, the Departments have filed two Review Petition i.e. Civil Review Petition No. 20/2021 and Civil Review Petition No. 30/2021 in WP (T) 4061 of 2019. The Hon'ble High Court has dismissed the said Review petition vide order dated 29.07.2021(Annexure-2of order) with further direction to the concerned Respondent to consider the refund application in accordance with law.
3. Further, as per the High Court's Website Petitioner has also filed a Contempt Case (Civil No.) 340 of 2021, wherein the Hon'ble High Court vide order dated 29.07.2021 (Annexure-3 of order) allowed three weeks time to the Respondents to file show cause regarding compliance of the direction made in the writ petition being WP(T) No. 4061/2019. The contempt petition matter is listed for hearing in the week of 23rd August 2021.
4. Commissioner of State Tax (Jurisdictional office) has also decided not to file SLP before the Hon'ble Supreme Court.

Observation:

1. It is submitted that while filing the online refund application on the GST portal, the taxpayer has to select the category of refund and a particular tax period. For few categories of Refund including refund of ITC may be filed for multiple tax periods in a single refund application. There is a validation on GST portal that refund for a particular period under a particular category can be filed only once.
2. In the case of GSTIN 20AADCA1825B1ZO, the details of applications of refund filed by the Taxpayer for the FY 2017-18 and FY 2018-19 are given in the following table:

ARN	Date of Filing	Status	Refund Type	From Period	To Period	Claim amount
AA200619006822H	25/06/19	RSA	EXPWOP	201707	201803	1031171
AA200719000632O	02/07/19	RSA	EXPWOP	201804	201903	12973905

3. As seen from the above table, the Taxpayer/Petitioner has filed applications under the category of unutilised ITC for the FY 2017-18 and FY 2018-19. In such scenario, the system validation doesn't allow the Tax payer to file another refund claim of the same category for the same period. Whereas, the High court of Jharkhand has directed GSTN to allow Taxpayer to file refund of unutilised ITC of compensation cess for the FY 2017-18 and FY 2018-19. In the present Refund application framework, the applications will not be allowed to be filed in the system. Any change in the refund framework to allow this refund application may impact the existing refund functionality and it turn the stability of the GST system.

Recommendation of GSTN:

To handle extraordinary scenarios that may arise due to non-availability of a particular category or due to the presence of any system validation, the GST portal gives the option to file refund claim under the 'Any others' category. The taxpayer can state his case and request for grant of refund.

In the instant case, the Hon'ble High Court has already deliberated upon the matter and passed a detailed order directing the Respondents to open GST portal enabling the Tax payer/Petitioner to file Refund application (RFD-01) for the period 2017-18 and 2018-19. However, in the present case in order to comply with the direction of the High Court there is a need for waiver of the limitation of the filing of a refund application for a particular period under a particular category 'only once', as imposed by GST system and allowing M/s Atibir Industries to file application for refund of ITC of compensation cess under "Any Others" category.

In view of the aforesaid facts and circumstances a decision is being sought in this matter on further action required to be taken by GSTN.

 Goods And Services Tax Network


Summary of Court Cases presented before/to be presented before ITGRC

Sl. No.	ITGRC Meeting	TRAN-1	TRAN-2	Migration	Total
1	1 st ITGRC Meeting	19	0	0	19
2	2 nd ITGRC Meeting	78	0	0	78
3	3 rd ITGRC Meeting	16	0	0	16
4	4 th ITGRC Meeting	53	0	0	53
5	5 th ITGRC Meeting	21	0	0	21
6	6 th ITGRC Meeting	88	0	0	88
7	7 th ITGRC Meeting	13	0	0	13
8	8 th ITGRC Meeting	45	2	0	47
9	9 th ITGRC Meeting	23	0	0	23
10	10 th ITGRC Meeting	12	1	0	13
11	11 th ITGRC Meeting	15	3	0	18
12	12 th ITGRC Meeting	14	0	0	14
13	13 th ITGRC Meeting	54	2	1	57
14	14 th ITGRC Meeting	19	2	1	22
15	15 th ITGRC Meeting (In Progress)	10	1	-	11
Total		480	11	2	493

Summary of Court Cases presented before 15th ITGRC



TRAN-1/TRAN-2 Cases reported as having Technical Glitch

Sub Category	Sub Category Description	Cases received as Court Cases
A-1	Processed with Error	2 (S. No 1 – 2 of Annexure 2)
	Sub Total	2

TRAN-1/TRAN-2/ reported as **not** having Technical Glitch

Sub Category	Sub Category Description	Cases received as Court Cases
B-1	Cases in which as per GST system log, there was no evidences of error during submission/filing of TRAN1.	5 (S. No 3 to 7 of Annexure 2)
B-2	Trans-1 Fresh/Revision Attempted with No error or No valid error reported.	1 (S.No. 8 of Annexure 2)
B-3	Cases in which TRAN 1 have been filed successfully as per logs with no valid error reported.	1 (S. No 9 of Annexure 2)
B-4	TRAN-1 filed but credit not received	1 (Sl. No. 10 Annexure 2)
B-6	Tran-1 Filed, Eligible for Tran-2.Trans-2 Fresh/Revision Attempted with No error or No valid error reported	1 (Sl. No. 1, TRAN-2, Annexure-2)
	Sub Total	9

TRAN-1 (Court Cases) Category A1: Processed with error



CWP 4547/2021- M/s AAR AAR Technoplast Pvt. Ltd, Faridabad Vs UOI & Ors.

(Sl. No. 1 Annexure-2, TRAN-1)

Issue: The Petitioner submitted TRAN-1 on 26.08.2017 and “Processed with error” was displayed on the GST Portal. ITC involved; Rs. 4,78,364/-

Status:- Pending in Punjab & Haryana High court and to be listed after the decision of SLP (C) Nos.7425-7428 of 2020. No effective order is available on the court’s website in this matter.

Technical Analysis:-As per GST System logs, the Petitioner first time opened TRAN-1 and filed. Revision was also tried and the Petitioner tried to save data as well.

During first attempt and revision, while doing save/submit attempt, error was reported on the GST Portal.

PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. AADCA2129GXM002/AADCA2129GXM001/AADCA2129GSD004.

GSTIN/ Provisional ID	State	Constitution of Business
06AADCA2129G1Z5	Haryana	Private Limited Company

TRAN-1 (Court Cases) Category A1: Processed with error



M/S U.K. Paints India Private Limited GSTIN mentioned in M/s. Tarun Enterprises Pvt. Ltd. v. UOI & Ors. (Sl. No. 2, TRAN-1, Annexure-2)

Issue: Due to glitch in the GST system the TRAN-1 form could not be filed and during the filing of the details in the form, he was automatically logged out, resulting in non-filing of the form.

Status :- Disposed off vide order dated 27.05.2021. Court's direction: Respondents directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN-1 Form is filed.

Technical Analysis:-- The Petitioner first time opened TRAN-1 and thereafter revised it. During first attempt and revision error was reported on GST Portal.

PE (Process with error) was reported for invalid registration for VAT/CENVAT/SVAT no. 09267900686/09268900686C/09AAACU0057C1ZR and 09267900686/09268900686C.

GSTIN/ Provisional ID	State	Constitution of Business
09AAACU0057C1ZR	Uttar Pradesh	Private Limited Company

Summary of Nodal Cases presented before ITGRC



Sl. No.	ITGRC Meeting	TRAN-1	TRAN-2	TRAN-3	Total
1	1 st ITGRC Meeting	151	0	0	151
2	2 nd ITGRC Meeting	262	0	0	262
3	3 rd ITGRC Meeting	252	0	0	252
4	4 th ITGRC Meeting	408	0	0	408
5	5 th ITGRC Meeting	203	0	0	203
6	6 th ITGRC Meeting	593	1	0	594
7	7 th ITGRC Meeting	236	0	0	236
8	8 th ITGRC Meeting	442	2	0	444
9	9 th ITGRC Meeting	66	164	18	248
10	10 th ITGRC Meeting	6	44	0	50
11	11 th ITGRC Meeting	246	11	0	257
12	12 th ITGRC Meeting	102	2	0	104
13	13 th ITGRC Meeting	43	4	0	47
14	14 th ITGRC Meeting	40	3	0	43
15	15 th ITGRC Meeting (Being Presented)	3	1	0	4
Total		3053	232	18	3303

Summary of Nodal Cases being presented before 15th ITGR



TRAN-1/TRAN-2 Cases reported as having Technical Glitch

Sub Category	Sub Category Description	Cases received through Nodal Officers
A-1	Processed with Error.	01 (S. No. 1 of Annexure-1)
	Total	1

TRAN-1/TRAN-2/ reported as **not** having Technical Glitch

Sub Category	Sub Category Description	Cases received through Nodal Officers
B-1	Cases in which as per GST system log, there was no evidences of error during submission/filing of TRAN1.	02 (S. No. 2 & 3 of Annexure-1)
B-7	TRAN-1 not filed, hence TRAN-2 not attempted.	01 (S. No. 4 of Annexure-1)
	Total	03

TRAN-1 (Nodal) Category A1: Processed with error



**M/S KEVIN PROCESS TECHNOLOGIES PVT LTD, GSTIN - 24AAACK8850D1ZQ
(Sl. No. 1, TRAN-1, Annexure-1)**

Issue: The taxpayer had filed TRAN-1 on 26.08.2017 and later filed revised TRAN-1 in the first week of December 2017. In the revised TRAN-1, the said taxpayer claimed ITC of VAT amounting to Rs. 30,32,317/- but while processing, submission could not be done due to technical glitch.

Technical Analysis:-- As per GST System log, user first time opened form and filed. ARN generated for first attempt. Revision was also attempted by taxpayer and try to save. During revision save/submit attempt, error reported PE (Process with error) for invalid registration for VAT/CENVAT/SVAT no. AABCB5576GST084/ADKPS6062KST001/AAACF1190PST0001/AAFFM7067CST001/AOBPK7848BST001.

GSTIN/ Provisional ID	State	Constitution of Business
24AAACK8850D1ZQ	Gujarat	Private Limited Company



Category-wise count of Orders passed in court cases

Sr.No	Court Order/WPs	Category A (TRAN-1)	Category B (TRAN-1)	Total
1	Direction to allow filing of TRAN-1/TRAN-2 manually/electronically	1	1	2
2	No specific order passed	1	7	8
3	Direction to Respondents/Nodal Officer to pass appropriate orders	-	1	1
	Total	2	9	11



THANK YOU!!

 Goods And Services Tax Network





Agenda for 45th GST Council Meeting

17 September 2021

Volume – 3





**GST Council Secretariat
New Delhi**

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi

5 September 2021

Notice for the 45th Meeting of the GST Council scheduled to convene on 17th September 2021

The undersigned is directed to refer to the subject cited above and to convey that the 45th Meeting of the GST Council will be held on **17th September 2021** at Hotel Taj (Vivanta), Gomti Nagar in **Lucknow, Uttar Pradesh**. The schedule of the meeting is as follows:

- **Friday, 17th September 2021:** 11:00 hours onwards
2. In addition, an **Officers' Meeting** will be held on 16th September 2021 at the same venue as per following schedule:
- **Thursday, 16th September 2021:** 11:00 hours onwards
3. The agenda item and other details for the 45th Meeting of the GST Council will be communicated in due course of time.
4. Keeping in view the Covid-19 related protocols, it is requested that participation from each State may be limited to 2 officers in addition to the Hon'ble Member of GST Council.
5. Kindly convey the invitation to Hon'ble Member to attend the 45th Meeting of the GST Council.

(-Sd-)

(Tarun Bajaj)

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, Union Territories of Delhi, Puducherry and Jammu and Kashmir 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. Chairman, CBIC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.
5. Chairman, GST Network

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Discussion on Agenda Items

Agenda Item 16: Agenda Note for GST Council on National Anti-Profiteering Authority

The National Anti-Profiteering Authority (NAA) was constituted by the Government of India, Ministry of Finance, Department of Revenue under Section 171 of the CGST Act, 2017 read with Rule 124 (1) of the CGST Rules, 2017 vide Order No. 343/2017 dated 28th Nov, 2017 for a period of two years. The NAA started functioning w.e.f. 1st Dec, 2017. Sub-sections (1) and (2) of Section 171 of the Act reads as under:

171. Antiprofitteering 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.

2. The initial tenure of National Anti-profiteering Authority(NAA) was upto 30th November 2019. The issue of extension of tenure of National Anti-profiteering Authority was placed before the GST Council during its 35th meeting held on 21st June, 2019. During the discussion, it was considered that National Anti-profiteering Authority was intended as a transitional arrangement with a specific time limit in view of the sudden changes in tax levels due to introduction of GST followed by periodic rationalization.

3. It was also considered that since a number of orders had been passed by the NAA in the pending cases, therefore to implement those orders, it was necessary to extend the period of NAA further. It was also discussed that the intent of the Council, while forming NAA was always that it could not exist in eternity and would need to come to an end when GST starts functioning smoothly on its own. In such a scenario it would be able to take care of profiteering by itself. In the end, the Council agreed to the suggestion of extending the tenure of NAA by two years.

4. The tenure of the NAA was accordingly extended for further two years by amending Rule 137 of the CGST Rules, 2017 vide Notification No. 33/2019-Central Tax dated 18.07.2019. The current tenure of the NAA thus ends on 30th Nov, 2021.

5. The NAA has 5 members consisting of a Chairman and 4 Technical members. The post of Chairman is vacant since 11th May, 2021. There are 2 vacant posts of Technical Members currently.

6. The latest quarterly report of the NAA for April-June 2021 has already been placed before the Council. 39 cases are currently pending for disposal with NAA and 427 cases are either under investigation by Directorate General of Anti-profiteering (DGAP) or under scrutiny of the Standing Committee and the State Level Screening Committees. Nearly all the Anti-Profiteering rules framed to give effect to the provisions of Section 171 of CGST Act, 2017 are under challenge through 126 writ petitions filed by suppliers against the NAA's orders in 8 High Courts of the country.

7. In view of the above, the matter is placed before the GST Council on whether to—
- (a) let the term of the authority be over and empower the Competition Commission of India established under The Competition Act, 2002 (12 of 2003) under sub-section (2) of section 171 of the Central Goods and Services Act, 2017 or any other authority as the Council may deem fit;

or

 - (b) any other option as may be decided by the Council.

Agenda Item 17: Review of Revenue Position under Goods and Services Tax

1. The Figure below shows the trend and Table 1 shows the details of the collection in FY 2021-22 vis-à-vis FY 2020-21.

Figure 1: Monthly gross GST collection (in ₹ lakh crore)

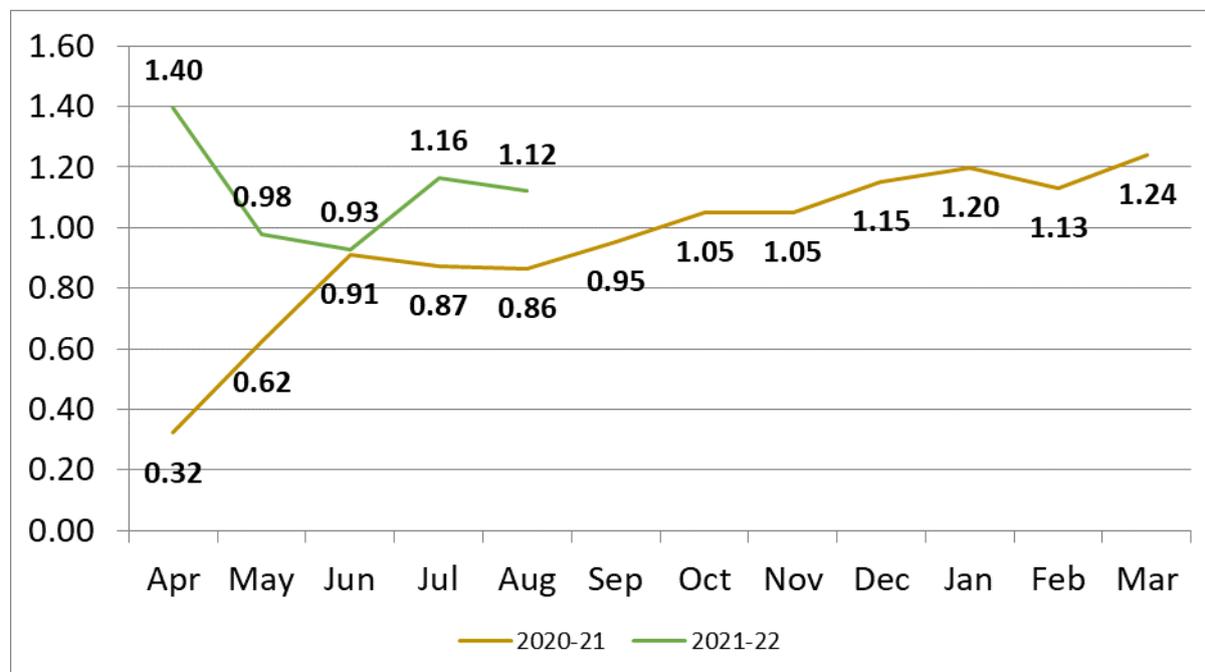


Table 1: Monthly gross GST collection (₹crore)

	Apr'21	May'21	Jun'21	Jul'21	Aug'21
CGST	27,837	16,120	16,331	22,197	20,522
SGST	35,621	20,739	20,341	28,541	26,605
IGST	66,878	51,737	49,179	57,864	56,247
<i>Domestic</i>	38,882	25,735	23,417	29,964	29,363
<i>Imports</i>	27,996	26,002	25,762	27,900	26,884
Comp Cess	9,372	9,225	6,949	7,790	8,646
<i>Domestic</i>	8,464	8,357	6,140	6,975	8,000
<i>Imports</i>	908	868	809	815	646
Total	139,708	97,821	92,800	116,393	112,020

2. Table 2 shows the IGST collected, refunded and settled/apportioned during FY 2021-22 till July, 2021.

Table 2: IGST Collection/Settlement/Apportionment/Refund in FY21-22

1	Collections (+)	229197.48
2	Recovery from IGST Ad-hoc apportionment(+)	0
3	Refunds (-)	39405.64
4	Settlement (-)	167019.80
	i. CGST	91572.22
	ii. SGST	75447.58
5	Ad-hoc Settlement (-)	0
	i. CGST ad hoc	0
	ii. SGST ad hoc	0
6	Net (1+2-3-4-5)	22772.04*

Source: PrCCA, CBIC

*Rs. 24,000 crore of IGST settled on adhoc basis on 12th August, 2021

Compensation Fund

3. As per provision of GST (Compensation to States) Act, 2017 the Compensation Cess collected since implementation of GST w.e.f. 01.07.2017 till August 2021 and the compensation released are shown in the table below:

Table 3: Compensation Cess collected and compensation released

	(Figures in Rs. Crore)				
	2017-18	2018-19	2019-20	2020-21	2021-22 (Apr-Aug)
Opening Balance		21,466	47,272	55,737	3940
Compensation Cess collected (net)	62,612	95,081	95,551	85,191	40,464
Compensation released	41,146	69,275	1,20,498	1,36,988	21,000
Balance	21,466	47,272	55,737*	3940	23,404 [#]

* Centre had transferred Rs. 33,412 crore from CFI to Compensation Cess Fund as part of an exercise to apportion balance IGST pertaining to FY 2017-18

[#]Centre has released compensation of Rs. 22,000 crore on 10.09.2021

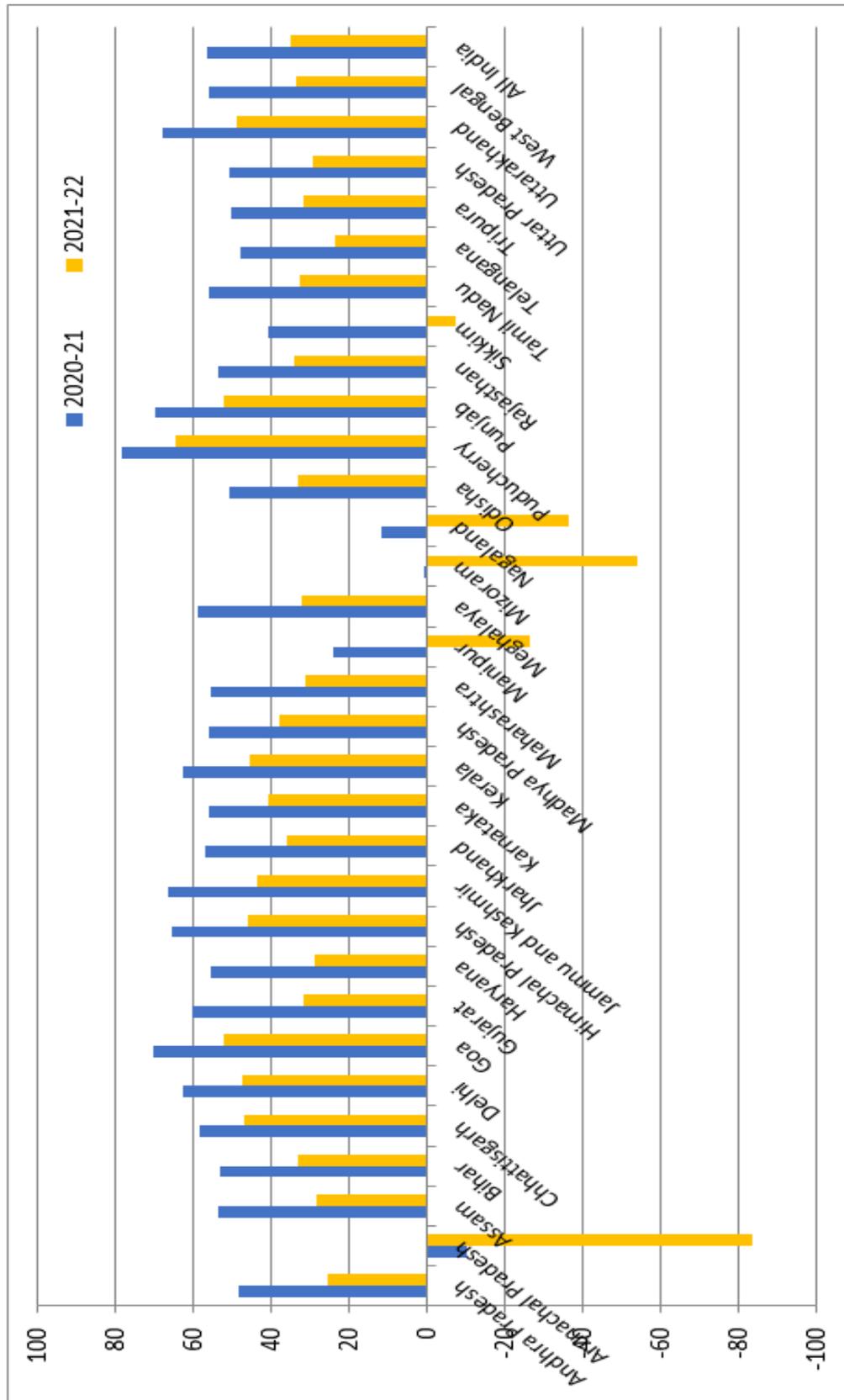
Gap with respect to base Revenue

4. The State-wise details of gap between the protected revenue and the post settlement gross SGST revenue (including ad-hoc settlement) for April-August of FY 2021-22 as compared to April-August of FY 2020-21 may be seen in the Table 4. This information is also depicted in the graph placed at Figure 2.

Table 4: Revenue Gap during the period April to August

	State/UTs	2020-21(%)	2021-22(%)
1	Andhra Pradesh	48.1	25.5
2	Arunachal Pradesh	-10.4	-83.5
3	Assam	53.4	28.4
4	Bihar	53.2	32.9
5	Chhattisgarh	58.3	46.7
6	Delhi	62.5	47.3
7	Goa	70.4	51.9
8	Gujarat	60.1	31.5
9	Haryana	55.3	28.7
10	Himachal Pradesh	65.4	45.9
11	Jammu and Kashmir	65.3	41.0
12	Jharkhand	56.8	36.1
13	Karnataka	56.1	40.8
14	Kerala	62.8	45.6
15	Madhya Pradesh	55.8	37.7
16	Maharashtra	55.4	31.1
17	Manipur	24.0	-26.2
18	Meghalaya	59.0	32.0
19	Mizoram	0.2	-54.1
20	Nagaland	11.5	-36.3
21	Odisha	50.7	33.0
22	Puducherry	78.5	64.3
23	Punjab	69.8	52.3
24	Rajasthan	53.4	34.1
25	Sikkim	40.8	-7.6
26	Tamil Nadu	55.9	32.5
27	Telangana	47.7	23.4
28	Tripura	50.2	31.5
29	Uttar Pradesh	50.6	29.2
30	Uttarakhand	67.6	48.9
31	West Bengal	56.1	33.4
	All India	56.2	34.8

Figure 2: Revenue Gap comparison- April 2021 to August 2021 YoY



Trends in Return filing

5. The table 5 shows the trend in return filing in FORM GSTR-3B till due date and till date for return periods upto July, 2021. Table 6 and 7 show the State wise filing for these months.

Table 5: Return filing (GSTR-3B) till due date and till date

Return Period	Till due date		Till 5 Sep, 2021	
	Filed	%	Filed	%
Apr'21	1,217,800	17.54%	62,90,907	90.61%
May'21	1,446,441	20.81%	6,260,927	90.08%
Jun'21	6,843,455	63.04%	9,915,789	91.34%
July'21	4,909,070	69.95%	5,899,851	84.06%

Figure 3: GSTR-3B Filing till due date and till 5th Sep'2021

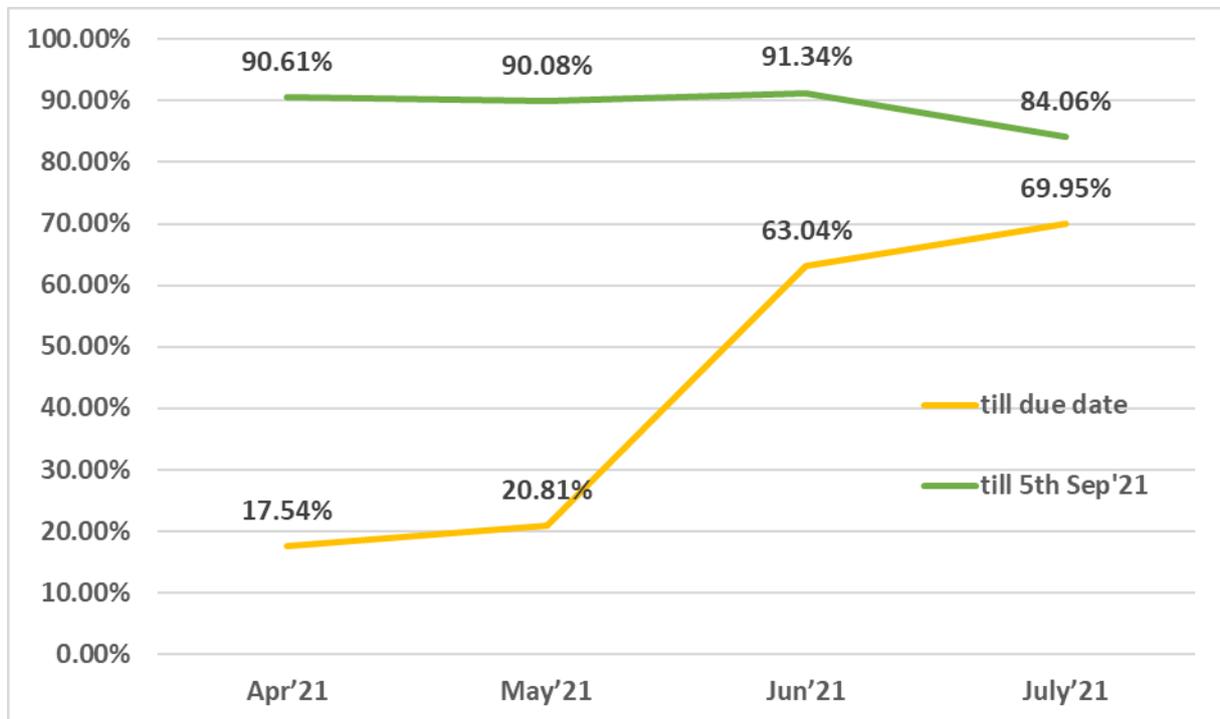


Table 6: State-wise Return filing (GSTR-3B) till due date (Apr'21-July'21)

	State/UT Name	Apr'21	May'21	Jun'21	July'21
1	Jammu and Kashmir	18%	25%	66%	75%
2	Himachal Pradesh	18%	22%	68%	71%
3	Punjab	22%	23%	74%	77%
4	Chandigarh	26%	29%	71%	80%
5	Uttarakhand	16%	22%	63%	67%
6	Haryana	16%	23%	66%	71%
7	Delhi	15%	21%	67%	70%
8	Rajasthan	15%	23%	70%	72%
9	Uttar Pradesh	15%	23%	64%	74%
10	Bihar	14%	19%	56%	63%
11	Sikkim	20%	20%	52%	57%
12	Arunachal Pradesh	14%	14%	37%	42%
13	Nagaland	22%	18%	43%	55%
14	Manipur	12%	14%	30%	42%
15	Mizoram	28%	27%	46%	55%
16	Tripura	19%	15%	54%	68%
17	Meghalaya	21%	22%	52%	52%
18	Assam	15%	16%	46%	58%
19	West Bengal	21%	19%	62%	65%
20	Jharkhand	18%	21%	59%	70%
21	Odisha	18%	19%	57%	66%
22	Chhattisgarh	17%	23%	54%	59%
23	Madhya Pradesh	16%	24%	66%	68%
24	Gujarat	23%	27%	75%	80%
25	Daman and Diu	-	-	-	-
26	Dadra and Nagar Haveli	29%	32%	62%	70%
27	Maharashtra	23%	25%	62%	66%
29	Karnataka	15%	18%	61%	71%
30	Goa	15%	19%	52%	55%
31	Lakshadweep	27%	24%	51%	57%
32	Kerala	6%	9%	44%	66%
33	Tamil Nadu	17%	16%	62%	75%
34	Puducherry	17%	20%	55%	69%
35	Andaman and Nicobar Islands	15%	14%	42%	52%
36	Telangana	21%	22%	53%	61%
37	Andhra Pradesh	19%	20%	59%	68%
38	Ladakh	19%	25%	65%	55%
97	Other Territory	68%	56%	67%	78%
	All India	18%	21%	63%	70%

Table 7: State-wise Return filing (GSTR-3B) till 5th Sep, 2021

	State/UT Name	Apr'21	May'21	Jun'21	July'21
1	Jammu and Kashmir	98%	99%	98%	92%
2	Himachal Pradesh	92%	92%	94%	85%
3	Punjab	92%	92%	94%	88%
4	Chandigarh	97%	97%	97%	92%
5	Uttarakhand	90%	89%	91%	82%
6	Haryana	90%	90%	91%	84%
7	Delhi	89%	88%	91%	83%
8	Rajasthan	94%	94%	94%	87%
9	Uttar Pradesh	93%	93%	95%	89%
10	Bihar	83%	82%	87%	79%
11	Sikkim	81%	79%	82%	71%
12	Arunachal Pradesh	66%	65%	68%	56%
13	Nagaland	80%	79%	79%	70%
14	Manipur	67%	66%	67%	58%
15	Mizoram	74%	74%	75%	67%
16	Tripura	85%	86%	87%	81%
17	Meghalaya	73%	72%	79%	65%
18	Assam	82%	82%	84%	75%
19	West Bengal	83%	82%	87%	77%
20	Jharkhand	92%	92%	91%	84%
21	Odisha	90%	90%	91%	81%
22	Chhattisgarh	89%	88%	89%	78%
23	Madhya Pradesh	95%	95%	95%	87%
24	Gujarat	95%	95%	95%	90%
25	Daman and Diu	0%	0%	0%	0%
26	Dadra and Nagar Haveli	92%	91%	91%	84%
27	Maharashtra	91%	90%	91%	81%
29	Karnataka	92%	91%	91%	85%
30	Goa	76%	75%	80%	69%
31	Lakshadweep	86%	83%	83%	73%
32	Kerala	91%	90%	90%	83%
33	Tamil Nadu	94%	93%	92%	88%
34	Puducherry	90%	89%	88%	83%
35	Andaman and Nicobar Islands	81%	80%	80%	70%
36	Telangana	84%	83%	84%	76%
37	Andhra Pradesh	89%	88%	88%	82%
38	Ladakh	90%	88%	90%	73%
97	Other Territory	83%	82%	80%	79%
	All India	91%	90%	91%	84%

Agenda Item 18: Compensation- Scenario Post June-2022 and Options

1. The GST compensation is paid out the GST Compensation Fund as per section 10 (2) of the GST Compensation Act to which the Compensation Cess levied under Section 8 is credited. The GST compensation is calculated as per the formula provided in the Compensation Act and is released on a bi-monthly basis. GST compensation for financial years 2017-18, 2018-19 and 2019-20 has already been paid to the States/UTs out of the Compensation Cess collected.
2. However, the economic impact of the pandemic has led to higher compensation requirement due to lower GST collection and at the same time lower collection of GST compensation cess. GST compensation of ₹1,13,000 crore has been released to States to partly meet the compensation payable since April 2020 and the amount in GST Compensation Fund is not adequate to meet the full compensation requirement.
3. The issue of GST Compensation to States has been deliberated in the 41st and 42nd GST Council meetings, especially in light of the fact that States needed immediate access to resources to meet the challenges thrown by the pandemic. Accordingly, in 2020-21, Centre borrowed 1.1 lakh crore under a special window and passed on to the States as back-to-back loan to help the States to meet the resource gap due to short-release of compensation on account of inadequate balance in the Compensation Fund. This arrangement had been finalized after detailed deliberations with the States and all States opted for this arrangement.
4. Subsequent to deliberations in the 43rd GST Council meeting, it has been decided that the Centre is borrowing ₹1.59 lakh crore from the market through special window in current financial year and passing it on to the States/ UTs as a back-to-back loan in appropriate tranches as was done in the last year. Out of this, Centre has already released ₹. 75,000 crores to States on 15.07.2021 as back-to-back loan through special borrowing to meet the compensation shortfall. In addition, depending on the amount available in the Compensation Fund, Centre has also been releasing the regular GST compensation to States to make up for GST revenue shortfall.
5. During the current year, it is expected that the GST revenues would do better and the monthly gross revenues have been above ₹ 1.1 lakh crore again after the temporary dip during the second wave of the pandemic. It is expected that after taking into account the compensation cess that would be released to States of around ₹ 1 lakh crore, the back-to-back assistance would more than cover the gap and would partially compensate for the arrears of last year.
6. The GST Council has already extended the levy of cess to enable repayment of the loan taken to provide the assistance on a back-to-back basis and arrears of compensation.
7. A detailed presentation will be made during the meeting to list out the scenario post June-2022 and options that can be considered to make up for the shortfall.